

UK Competitive
Telecommunications
Association

Response to
Ofcom's consultation on its
review of alternative dispute
resolution and complaints
handling procedures

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1. Introduction

The British Chamber of Commerce's most recent Burdens Barometer shows that the total cost of the major regulations to the business approved since 1998 is now £65.99 billion. This figure had increased by £10 billion in 2007 alone.¹

Like all other UK regulators, Ofcom is required to undertake an impact assessment whenever it is contemplating the introduction of a new regulation or amendment to an existing regulation.

UKCTA is becoming increasingly concerned about the number of regulations, particularly in the consumer area, that are currently being considered by Ofcom (or have been imposed in the recent past). It is of course the principal duty of Ofcom to further the interests of citizens and consumers etc in accordance with Section 3(1) of the Communications Act 2003. Nevertheless, recent activities by Ofcom show worrying signs of attempts at overzealous regulation without any perceived benefit to the consumer but with potentially huge cost and resulting harm to communications providers and the competitiveness of the UK communications industry as a whole. Apart from formal regulations, there is also a worrying trend around informal micromanagement of regulatory issues done in the purported spirit of consumer protection.

The consultation document on alternative dispute resolution and complaints handling procedures has reaffirmed our concerns over this regulatory policy trend. Our comments on Ofcom's proposals are set out in the following.

2. General comments

Ofcom proposes to make the following changes to the current regulatory requirements around ADR and complaints handling procedures:

1. CPs would be required to give notice in a durable written form to a consumer who makes a complaint within 5 working days of the CP receiving the complaint and again after 8 weeks.² The time which CPs would thereby have to resolve a customer complaint before the customer would be able to go to ADR would be reduced from 12 to 8 weeks.
2. CPs would be required to keep a log with details of all complaints for a period of 15 months.

¹ www.britishchambers.org.uk/6798219245170437228/Burdens_Barometer_2008.pdf

² Earlier if deadlock letter is issued.

3. CPs would have to comply with a single Ofcom approved code of practice for complaints handling (rather than as now have individual codes of practice) and to incorporate details of complaint handling processes under the code in customers' contracts.

CPs would have three months to implement the changes to comply with the new requirements once in force.

We do not believe that Ofcom's proposals represent a justified regulatory response to the perceived weaknesses in communications providers' current complaint handling systems. The changes to provider's internal complaints handling systems and procedures that would be required to comply with the proposed requirements would very costly which makes it very difficult to see how Ofcom's proposals would pass muster when carrying out a detailed cost-benefit analysis.

Ofcom asserts that "levels of consumer awareness of ADR are at an unacceptably low level." This conclusion is based on Ofcom's research that shows that overall 15% of adults were aware of at least one of the two ADR schemes. Ofcom does not, however, explain why it believes this figure is unacceptably low nor whether it believes this figure has deteriorated over the years. Moreover, there is no suggestion that this figure compares particularly poorly with any other industry sector. That is not to say that the awareness figure could be improved but we would question what figure Ofcom would consider acceptable in terms of an overall benchmark. Nor does Ofcom claim (presumably because they are unable to do so) that a single Ofcom code would significantly improve awareness.

The Futuresight Report commissioned by Ofcom is helpful in understanding the types of customer service issues that affect the communications industry. The Report lists the recommendations that the interviewed customers made for improvements to customer service as follows:

- Responding to queries promptly
- Demonstrating an understanding of the problem by offering more than a basic response
- Apologising where appropriate rather than implying that the customer was somehow at fault
- Assuring the customer that they were doing everything they could
- Giving honest answers as opposed to fobbing customers off with excuses
- Communicating progress
- Taking the initiative
- Offering appropriate compensation rather than an amount that does not in any way reflect the costs incurred or the inconvenience caused
- Complying with agreed times and dates
- Making follow-up calls after the problem is resolved, to demonstrate an appropriate level of customer care.³

³ Page 27 of the Futuresight Report

These issues are very similar to those listed in the most recent annual report from Otelo.⁴ We would suggest that all of the above are customer service issues that communications providers are seeking to tackle on an ongoing basis. Although commissioned and conducted with the clear purpose of providing evidence in support of Ofcom's proposals, the Futuresight report actually does not provide any new or particularly useful information.

Needless to say, we absolutely agree that the Futuresight report provides clear evidence of customer dissatisfaction with the way in which their communications provider has treated them. Some of the evidence, in particular the detailed case descriptions, give a rather emotive narrative of the problems caused to the lives of individual customers when their communications service does not meet their (legitimate) expectations.

However, we believe it is very difficult to make the link between Ofcom's research evidence and the proposals being put forward. As explained in more detail in response to the individual questions below, we fail to understand how the cost-benefit analysis underpinning Ofcom's proposals could reasonably stand up to "profound and rigorous" scrutiny.⁵ We do not believe that Ofcom has equipped itself with a sufficiently cogent and accurate set of inputs to enable it to perform a reliable and soundly based cost-benefit analysis.⁶

Finally, we would note that none of the research commissioned by Ofcom for the purposes of this consultation seemingly indicates any particular problems with regard to business customers, even sole traders. For this reason, we would question what evidence Ofcom has to suggest that the proposed requirements should apply to business customers (as defined in the Communications Act 2003) as opposed to only residential customers. In UKCTA's view, Ofcom has the statutory powers to discriminate between small business customers (with 10 or fewer employees) and residential customers when imposing General Conditions of Entitlement. Section 52(5) gives Ofcom the power to set general conditions for complaint resolution "to such extent as they consider appropriate". We believe that this allows Ofcom the discretion to determine whether or not they need to make regulatory provision for business customers.

We do not believe there is any evidence to support the imposition of uniform complaints handling procedures in relation to business customers. Even if such conditions were justifiable, we believe that requiring them to be set out in customer contracts is unduly burdensome and potentially confusing. Communications providers do not have information on the staffing levels of their customers, levels which will inevitably vary over time. The only prudent course therefore would be to incorporate references in the contracts of SME customers regardless of their size. We believe this is not Ofcom's intent and is potentially confusing for customers and customer service staff of UKCTA members alike.

⁴ See page 12 of the 2008 Annual Report from Otelo.

⁵ *Hutchison 3G UK Ltd v Office of Communications* [2008] CAT 11, paragraph 164.

⁶ *Vodafone Limited v Office of Communications* [2008] CAT 22, paragraph 47.



Our responses to Ofcom's specific questions are set out in the following section.

3. Responses to Ofcom questions

**Question 1: Do you agree with the following definition of Complaint:
“Complaint means an expression of dissatisfaction made to a
Communications Provider related to its products or services, or the
complaints-handling process itself, where a response or resolution is explicitly
or implicitly expected.”**

No we do not agree with Ofcom’s proposed definition of complaint. It appears to us that Ofcom has taken this definition from the ISO 10002:2004 standard, which is actually not a definition of complaint at all. The ISO standard deals with “non-conformities” i.e. a non-conformity is a "situation where requirements have not been fulfilled". A "non-conformity" is much broader than what is conventionally understood as a “complaint” and would include, for instance, service issues that the customer had never reported (or indeed never been aware about). Ofcom’s consultation document does not explain why it considers these terms to be equivalent.

In any event we believe that a generic inclusion of faults in the definition of complaints would be confusing for the customer. If a customer reports a fault with their communications service (landline, broadband or mobile phone), they obviously expect it to be fixed within a reasonable period of time. They do not expect to receive an acknowledgement from their provider that the fault is being treated as a complaint which the provider will seek to resolve within 8 weeks failing which the customer can refer the matter to ADR. Such a process will not make sense in the eyes of the average customer.

In addition, the vast majority of technical faults tend to get resolved within 2-3 working days. To receive an acknowledgement of the complaint after the fault has been rectified will confuse the customer and potentially cause unnecessary anxiety (and cost for the communications provider who may have to deal with further communications with the customer around the same matter although the fault has been rectified).

Taking all of the above into account, we would therefore propose the following definition of complaint:

“A complaint is an expression of dissatisfaction, however made but excluding technical faults with the communication provider's service, about the standard of service, actions or lack of action by a communications provider.”

We would further suggest that for the avoidance of doubt the following events should not be classified as a complaint:

- Nuisance calls;
- Called in error problems;
- Fault reports;
- Request for information; and

- Placing of orders.

**Question 2: Do you agree that a consumer should have the right to go to ADR:
(a) eight weeks after a complaint is first received by a CP; OR
(b) earlier, if a CP has issued a deadlock letter.**

We agree with Ofcom's analysis that very few complaints get resolved in the period after 8 weeks but before the current 12-week deadline for issuing a deadlock letter. However, UKCTA would note that there would still be a cost to communications providers if customers were able to go to ADR earlier than is now the case. We would question whether the consumer interest outweighs this cost to the communications industry.

**Question 3: Do you agree with our preferred Option 4 that a CP should be required to give written notice about ADR:
(a) Within five working days after the Communications Provider received the Complaint, unless the complaint has been resolved at the first point of contact;(If a consumer contacts a CP again about a matter which the CP reasonably believed to be resolved at first contact then notice should be given at that time)
AND
(b) eight weeks after the CP first receives the complaint, earlier if the complaint is resolved or when the CP issues a Deadlock Notice.**

We strongly disagree with this proposal for the following reasons.

First, we do not believe that providing this additional information to the customer at the time of making a complaint will provide any measurable improvement to current complaints handling processes. Ofcom's research around customer service has only confirmed what all communications providers already knew namely that some customers unfortunately sometimes do not receive the customer service they should be able to expect from a sophisticated technology industry. However, we fail to see how telling the customer that they have filed a complaint will improve overall customer service levels. Customer service is already a major competitive tool within constant independent market research putting pressure on providers to improve their performance (see for instances regular research published by uswitch.com and broadbandchoices.co.uk).

Second, we believe the perceived consumer harm has been exaggerated in the research commissioned by Ofcom for the purposes of this consultation. Futuresight notes that:

*"The vast majority of consumers were satisfied with their telecoms services (86%), but when they had reason to be dissatisfied, and made a complaint, the majority were unsatisfied with they [sic] way their complaint was handled."*⁷

⁷ Futuresight Report, page 5.

Futuresight's research suggests that customers who did complain were largely dissatisfied with the way in which their complaint was handled (e.g. 52% of mobile customers, 65% of broadband customers and 70% of fixed telephony customers). Whilst these figures may suggest that there is a problem with regard to complaints handling among communications providers, there are a number of important issues that need to be borne in mind here:

1. Customers who have a reason to complain are naturally dissatisfied with their service in the first place and may therefore be more prone to conclude that the handling of their complaint was less than satisfactory.
2. Dealing with complaints is a difficult task for any large communications provider. Although communications providers do their best to simplify the services they provide by hiding all the technical details involved, resolving individual customer issues tend to be difficult to resolve precisely for those reasons. Obviously, it is the responsibility of providers to have billing and other CRM systems in place to enable them to provide an adequate service to their customers. However, certainly in the fixed-line and broadband markets, most providers often rely on third-party providers, notably Openreach and BT Wholesale, to provide service which, in the case of a complaint around technical service issues, tend to complicate the picture. None of these factors should excuse a communications provider from offering a less-than-adequate complaints handling procedures but they go to show that dealing with complaints is often, as a matter of fact, less-than-straightforward.
3. The Futuresight research only provides a snapshot of customer perception at this point in time. It does not give any indication of whether the perceived customer dissatisfaction has been improving or deteriorating over time. Nor does Ofcom suggest any particular trend in its consultation document. The point here is that it is very risky to rely on snapshot research to decide on regulatory policy which will have a longer-term impact. Proper evidence-based policymaking needs to be based on some kind of idea of whether complaints handling performance is actually deteriorating (or not improving fast enough). Ofcom has not presented any evidence to show any such trend. In fact, we find it incredibly hard to believe that customer service across the communications industry would be deteriorating over time. Given the level of competition based on customer service performance, it is reasonable to assume that complaints handling performance would be improving over time.
4. The Futuresight research does not attempt to verify how the results compare with other industry sectors. We would suggest that the communications industry generates far fewer complaints than, for instance, the energy industry. In 2007/8, Otelco recorded 104,000 complaints (down from 105,600 in 2006/7) out of which it reached 4,139 provisional conclusions.⁸ In stark contrast to these figures, Energywatch received complaints from more than

⁸ Otelco Annual Report 2008, page 5.

330,000 customers in 2007 and investigated and resolved 48,000 of those complaints.⁹ In addition, in 2007/8, the Energy Ombudsman recorded 45,000 complaints out of which it reached 2,469 provisional conclusions.¹⁰ As a result, new complaint handling procedures have been introduced in the energy industry in 2008. However, the evidence for the communications industry on which Ofcom seeks to rely for the introduction of more regulation looks markedly weak in comparison to the problems in the energy industry. In relation to the comparison between the energy and communications industry, it is also important to note that the average customer spends far more on energy than they do on communications services. Energywatch estimates that the average annual spend for a dual fuel customer is now over £1,200.¹¹ In contrast, Ofcom estimates that the total annual household spend on communications services was approximately £780 in 2007.¹² The risk of financial harm to a consumer in the energy industry is therefore arguably much higher than for the communications industry further negating the need for more intrusive regulation around complaints handling.

For all of the above reasons, we believe that the research evidence relied upon by Ofcom may exaggerate the consumer harm or at least not represent it in a sufficiently objective manner.

Third, we disagree with Ofcom's proposal because of the cost of implementation. Ofcom admits that its findings suggest that the implementation cost across industry would be up to £20 million in the first year. This is a staggering amount of money to be expected to be borne by communications providers in an industry where profit margins are already slim, the world's economic circumstances are worsening by the day, and when business and domestic customers alike are tightening their belts.

Moreover, Ofcom admits that it has no idea how much it would cost industry to comply with the proposed new obligations on an ongoing annual basis. We therefore fail to understand how Ofcom could carry out a robust cost-benefit analysis as part of its obligatory regulatory impact assessment when it does not have available a more detailed analysis of the implementation costs across the communications industry.

Question 4: Do you agree that the notice about ADR which CP should give must be: (a) be in writing in a durable form be in plain English, clearly written and concise; (b) include a reference for the complaint; include details of the ADR Scheme which the CP is a member of, including contact details; (c) and summarise when the consumer has the right to go to ADR Scheme and the role of the ADR Scheme.

⁹ Energywatch Campaign Document, Getting serious about energy complaints and customer service, 30 January 2008.

¹⁰ Energy Ombudsman Annual Report 2008, page 5.

¹¹ Energywatch Campaign Document, Energy market failure calamitous says energywatch, 22 August 2008.

¹² Mobile citizens, mobile consumers, Ofcom consultation document, 28 August 2008, page 12.

As noted in response to Question 3 above, we do not agree with the proposal for additional requirements for informing the customer about ADR.

Question 5: Do you have any comments on the criteria which we propose we will use in our future review approval of the ADR Schemes?

We do not have any comments to make at this stage.

Question 6: Do you agree that CPs' should be required to comply with a single Ofcom Approved Complaints Code of Practice which sets out high level mandatory standards for complaints handling?

We do not have any comments on the principle of requiring communications providers to comply with a single Ofcom Approved Complaints Code of Practice. However we would have the following specific comments on this proposal:

1. We are not convinced that it is reasonable of Ofcom to require communications providers to allow customers to access to a geographic rate telephone number when making a complaint. Many communications providers use 084/087 numbers for customer service purposes, including complaints, and we do not feel that Ofcom has made the case as to why this practice would be detrimental to customers.
2. We would welcome Ofcom's clarification that communications providers would be able to continue with the practice of "bundling" all applicable codes of practice into a single document. We believe this is a useful practice for customers as they are able to find all the relevant information in relation to what a communications provider is obliged to publish in one single and handy document.
3. As set out in our introductory remarks above, we believe Ofcom does have discretion to set conditions differently for business and for residential customers. The requirement to incorporate references to consumer focused complaints processes in contracts is potentially extremely confusing for both customers and staff handling customer complaints.

Question 7: Do you agree that CPs should be required to keep a log of all complaints? We could require CPs to log complaints when they are first received and as they are handled. These records must include as a minimum for each Complaint a log setting out:

- (a) details of the Complainant, including their name and address;**
- (b) the date on which the Complaint is first received;**
- (c) a description of the Complaint;**
- (d) and a description of how the CP deals with the Complaint.**

We believe that the proposed record-keeping obligations are completely unreasonable. Ofcom estimates that the cost to the industry of implementing such a requirement would be £5 million in the first year alone. This cost is highly disproportionate to the objective of this requirement which is to make it easier for Ofcom to investigate the other proposed requirements set out in the consultation

document. First, Ofcom has not even attempted to show that it would not be able to supervise compliance with the other proposed requirements in the absence of the extensive record-keeping obligations. For instance, Ofcom has not suggested, never mind proven, that the lack of record-keeping obligations would have been a problem in any other area of compliance with the General Conditions of Entitlement.

Second, imposing a record-keeping requirement applicable to a single regulatory obligation when there are no similar requirements for other General Conditions of Entitlement seems excessive, disproportionate and even discriminatory. If Ofcom considers that record-keeping obligations are now required in order to monitor compliance with general conditions of entitlements, we fail to understand why similar requirements have never been proposed or contemplated with regard to other regulatory obligations.

Question 8: Do you agree that three months from publication of the Statement for this Review is a reasonable period to implement the changes proposed in this Consultation Document?

We believe that an implementation period of only three months may well be much too short for some communications providers. Given the potential implications for systems and procedures, we would suggest that an implementation period of between six and twelve months would be required if Ofcom were to decide to go ahead with some or all of its proposals.