Ofcom consultation: Review of alternative dispute resolution and complaints handling procedures

Comments from Yahoo! UK & Ireland

October 2008

Introduction

Yahoo! UK & Ireland welcomes the opportunity to respond to this consultation. Yahoo! provides only a small number of services which fall within the scope of the Communications Act 2003 and require an approved code and adherence to an ADR scheme. The vast majority of our services are subject to other processes and, in some cases, self-regulatory schemes with other complaints-handling processes. Our comments therefore focus on the impact Ofcom's proposals may have on providers in this situation and on consumers' expectations of these providers.

Consultation questions

Question 1 – Do you agree with the following definition of a 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*"

The definition should make clear that "*complaints*" for the purposes of Ofcom-approved codes and ADR schemes refer only to complaints about products or services which fall within the remit of the Communications Act 2003. This would manage user expectations that this regulatory system may not extend to all of a particular provider's services and that other services may be covered by another scheme. We would therefore suggest amending the definition as follows:

"*Complaint means an expression of dissatisfaction made to a communications provider related to a ~~its~~ relevant product~~s~~ or service~~s,~~ or ~~the~~ complaints-handling process ~~itself,~~ where a response or resolution is explicitly or implicitly expected. A relevant product or service means a product or service that is a Public Electronic Communications Service / that falls within the remit of the Communications Act 2003*"

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 issues a deadlock letter?

Yes.

Question 3 – Do you agree with our preferred option 4 that a CP should be required to give written notice about ADR (a) within 5 working days after the CP first receives the complaint unless the complaint is resolved after the first point of contact (if a consumer contacts a CP again about a matter which the CP reasonably believed to be resoled at the first contact then notice should be given at that time) AND (b) 8 weeks after the CP first receives the complaint, earlier if the complaint is resolved or when the CP issues a deadlock letter?

Note: We assume from reading ch3 that this question should refer to "option 3" not option 4.

Yahoo! favours a combination of option 2 and option 4 – i.e.: give consumers notice about ADR at the point when he is able to go to ADR and raise awareness of ADR through signposting.

Informing a consumer about ADR when they first send in a relevant complaint can be misleading and encourage them to contact the ADR service when the matter can be fully resolved by the provider and the provider intends to do so. It would also be onerous on the ADR provider in terms of time and resources wasted on logging and validating complaints which are being actively resolved by the provider.

Yahoo! typically resolves customer complaints within a few days. An obligation to introduce a new step in the complaints-handling process which would only be used for a small number of services (i.e.: services which fall within the scope of the Act) and a minority of cases (i.e.: those which take longer than 5 days to resolve) would be onerous. It could also result in consumers being sent notices when a matter is already resolved and the consumer has not made contact to confirm this.

We do, however, accept Ofcom's observations that providers could do more to raise awareness of ADR among their consumers and we intend to consider how we can improve our signposting when we next review our code.

Question 4 – Do you agree that the notice about ADR which the CP should give must be (a) in writing, (b) in plain English, clearly written and concise, (c) include a reference to the complaint, (d) include details of the ADR scheme which the CP is a member of including contact details and (e) summarise when the consumer has the right to go to the ADR scheme and the role of the ADR scheme?

Yes, this is industry good practice. However, the approach must be flexible enough for electronic complaints-handling systems and allow for some information to be given as hyperlinks embedded in an email notice.

We would not support giving users a right to choose to receive a notice in a medium other than email. This would be onerous on providers whose services are online only and whose complaints-handling processes are wholly electronic. Consumers of these services are very accustomed to communicating with their provider via email.

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

Yes. We agree with the proposed criteria set out in s3.105.

We note the additional comments on accessibility and are concerned that Ofcom proposes to withhold approval from any ADR scheme where it is not satisfied that all eligible consumers can access the scheme with "*sufficient ease*". This implies that Ofcom would also consider withdrawing approval from *existing* schemes if standards dropped for some reason. If this is the case, this would leave providers who are members of such a scheme in a situation of non-compliance with the Communications Act. It would be better for Ofcom to focus efforts on *assisting* ADR providers in this situation to raise standards rather than resorting to enforcement action in the first instance. This is in line with better regulation principles which puts greater emphasis on supporting compliance efforts and reserving interventions for the most egregious breaches of rules.

We also note that the cost of membership and case-handling of approved ADR schemes can vary and that this has attracted comment from critics of one scheme or another. We believe it is acceptable for ADR schemes to compete on cost, as long as they meet the standards required by the Act. This competition ensures that providers get good value for money and that cost does not become a barrier for new entrants to the market.

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 agree with Ofcom's view that *detailed* mandatory codes would unduly interfere with a provider's customer management strategies and that the costs may be unreasonably high. High level principles would give providers flexibility to determine the presentation and communication of complaints-handling more broadly, of which an Ofcom-approved code and ADR scheme may only be one small part. It also leaves scope for flexibility for providers who have *global* complaints-handling processes for some services. We feel it is particularly important that providers remain free to draft their own text to reflect their 'house style' and a language and tone of voice that their customers are familiar with.

Ofcom notes that approving every provider's code is onerous. Ofcom might usefully explore the potential to delegate responsibility for approving codes to industry bodies. ISPA, for example, was well on the way towards introducing its own ADR scheme before responsibility was assigned to Ofcom by the Communications Act. There may also be scope for industry bodies to integrate the requirements of the Act in to existing codes in order to minimise the proliferation of codes and to make codes less confusing for consumers.

We do not support a mandatory requirement for providers to have a free phone number as part of its complaints-handling process. We agree that it is reasonable to expect users to pay the cost of a geographic call, particularly when the complaints process is accessible electronically and at no additional cost to the user.

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) details of the complainant including name and address, (b) the date on which the complaint was first received, (c) a description of the complaint and (d) a description of how the CP deals with the complaint?

Our electronic complaints-handling system logs this information. However, for online-only (and particularly free) services it is worth noting that the logged "address" is most likely to be an email address rather than a physical address.

Ofcom proposes a retention period of 15 months for these records. We feel that 12 months is a more appropriate benchmark and aligns more closely with retention periods for other purposes (e.g.: communications data) and industry good practice. 12 months of records should allow ample time for a serious breach of a code to surface and provide Ofcom with sufficient evidence to undertake an investigation.

Question 8 – Do you agree that 3 months from publication of the statement for this review is a reasonable period to implement the changes proposed in this consultation document?

Three months would not be a reasonable period to implement Ofcom's favoured option in question 3.

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