



Alternative Dispute Resolution

Recommendations for best practice

Statement

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Contents

Section		Page
1	Summary	2
2	Background	4
3	Responses to the consultation on proposed recommendations for best practice and Ofcom's comments	7
4	Ofcom's conclusions and next steps	16
5	List of respondents to consultation	18

Section 1

Summary

- 1.1 Ofcom's (the Office of Communications) principal duty as set out in Section 3(1) of the Communications Act 2003 ("the Act"), in carrying out its functions, is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate, by promoting competition. Effective competition delivers choice and lower prices to consumers as well as opportunities for new services and providers. However, consumers may need protection from inappropriate behaviour by certain providers that may undermine confidence in the market as well as causing consumer detriment.
- 1.2 Section 52 of the Act requires Ofcom to set general conditions to ensure that communications providers establish and maintain procedures to, amongst other things, handle complaints and resolve disputes between them and their domestic and small business customers ("customers"). The relevant condition set is General Condition 14, under which communications providers are required to publish a complaints code of practice ("the Complaints Code") and provide access to independent alternative dispute resolution ("ADR").
- 1.3 Ofcom has a statutory duty under Section 54(4) of the Act to undertake periodic reviews of the ADR procedures it has approved. Currently there are two organisations providing ADR services which have been approved by Ofcom. These are:
 - CISAS (Communications and Internet Services Adjudication Scheme), approved 19 November 2003.
 - Otelo (Office of the Telecommunications Ombudsman), approved 30 September 2003.collectively referred to as the 'Schemes'.
- 1.4 On 27 July 2005, Ofcom published a report, *Ofcom Review of Alternative Dispute Resolution Schemes* <http://www.ofcom.org.uk/consult/condocs/adr/adr/#content> ("the Review").
- 1.5 In that Review we:
 - Confirmed that Ofcom did not intend to modify the conditions of its approval or withdraw its approval of the Schemes.
 - Consulted on a number of proposed recommendations for best practice (see Table 1, section 2.14).
- 1.6 This Statement summarises the responses Ofcom received to those recommendations (published on Ofcom's website (<http://www.ofcom.org.uk/consult/condocs/adr/responses/?a=87101>) and Ofcom's comments.
- 1.7 Ofcom is now re-issuing its recommendations, amended to reflect our analysis having considered the responses received. Set out below is a summary:

Transparency of Schemes' performance

- CISAS and Otelo should publish Key Performance Indicators covering: staff competence, timeliness of decision making and overall customer satisfaction, together with regular reports showing breakdown of complaint by type.

Accessibility and customer satisfaction

- Otelo should continue and CISAS should start to publish (comparable) consumer satisfaction surveys. The surveys should capture the socio-demographic profiles of the respondents.

Ensuring compliance with Scheme rules

- Schemes should notify Ofcom where a member's breach of the rules and/or decisions is sufficiently serious to consider expulsion from the Scheme. This early warning to Ofcom will ensure that Ofcom can take action against a communications provider for failure to comply with its obligations in relation to being member of a Scheme (under General Condition 14).

1.8 Ofcom has decided to withdraw its previous recommendation that the Schemes use an independent third party to handle complaints about the Schemes. This is because:

- Complainants are not bound by the Ombudsman's/adjudicator's decision and may pursue an action through the courts.
- The Schemes have their own independent review procedures in place.
- Ofcom has received only a handful of complaints about the Schemes to date.

1.9 It is important that Ofcom has a greater understanding of the way in which disputes are handled in order to assess whether Schemes are effective. Ofcom would welcome a constructive dialogue with the Schemes, industry and consumer interests on how to improve best practice in dispute handling. Ofcom will continue to monitor the research available and undertake further research of its own where appropriate. However there are a number of suggestions which Ofcom believes will help to ensure that complainants have access to ADR when required:

- Communications Providers should ensure complainants are correctly signposted to the Schemes and make sure that their Complaints Code is easily accessible.
- If appropriate, a standard definition of 'complaint' may be used to assist with the accurate recording and monitoring of complaints. A 'deadlock' letter should be issued whenever the provider decides that a complaint cannot be resolved. Complainants should not be made to wait for twelve weeks as a matter of course before being referred to ADR.

Next steps

1.10 The review process raised a number of policy issues that fall outside of the strict remit of the Scheme approval process. These include the need to ensure that the existence of two Schemes benefits customers; and that customers are aware of their rights and how to complain. Ofcom intends to consider these issues further and will gather additional evidence to support its policy thinking.

Section 2

Background

- 2.1 Ofcom's principal duty, as set out in section 3 (1) of the Communications Act 2003 ("the Act"), in carrying out its functions, is to:
 - (a) further the interests of citizens in relation to communications matters; and
 - (b) further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.2 Ofcom must also have regard to the community requirements set out in Section 4 of the Act.
- 2.3 Section 45 (1) of the Act gives Ofcom the power to set conditions, including general conditions, binding on the person to whom they are applied. The Schedule to a notification issued by the Director General of Telecommunications on 22 July 2003 under section 48(1) of the Act, and taking effect from 25 July 2003, sets out certain general conditions ("General Conditions").
- 2.4 Section 52 (5) (a) of the Act requires Ofcom to set general conditions to ensure that communications providers establish and maintain procedures to, amongst other things, handle complaints and resolve disputes between them and their domestic and small business customers ("customers"). Section 52(5) (b) of the Act requires those procedures to be, and continue to be, approved by Ofcom.
- 2.5 The relevant condition is General Condition 14, which includes requirements in relation to the handling of complaints and requirements in relation to dispute resolution ("ADR").
- 2.6 On 24 May 2005, Ofcom published Guidelines for communications providers which provide further guidance to Ofcom's view on how communications providers should handle complaints and resolve disputes with their customers (http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/gce/ccodes/ccodes.pdf). Those Guidelines dealt with, amongst other things, the requirement to implement and comply with a dispute resolution scheme, which is a procedure approved by Ofcom in accordance with section 55 of the Act.
- 2.7 The code of practice for complaints ("the Complaints Code") must give details of how complaints received from customers will be handled. In addition customers must be made aware of the procedures for bringing an unresolved complaint to ADR. In practical terms, this means that communications providers should be members of an Ofcom-approved dispute resolution scheme and be prepared to comply with any final decision of that scheme. Unless Ofcom is satisfied that a provider is a member of a scheme it will not approve its Complaints Code.
- 2.8 Under section 94 of the Act Ofcom may give a notification to a person where it determines there are reasonable grounds for believing that person is contravening, or has contravened, a condition set under section 45 of the Act. Under Section 96 of the Act, Ofcom may impose a penalty of up to ten per cent of turnover for failure to comply with such a notification within the time period specified.

- 2.9 Ofcom has a statutory duty under Section 54(4) of the Act to undertake periodic reviews of the ADR procedures it has approved. Ofcom published a report on 27 July 2005 setting out the findings of its first review of the two organisations providing ADR services (“the Review”):
- CISAS (Communications and Internet Services Adjudication Scheme), approved 19 November 2003.
 - Otelo (Office of the Telecommunications Ombudsman), approved 30 September 2003.
- collectively referred to as the ‘Schemes’.
- 2.10 The Act stipulates certain criteria for gaining approval by Ofcom, which were applied by Ofcom in reviewing the effectiveness of CISAS and Otelo. These are as follows:
- The arrangements for handling ADR must be independent from Ofcom and from the communications providers to which they apply.
 - The procedures must be easy to use, transparent and effective.
 - ADR must be available to domestic and small business customers free of charge.
 - The ADR service must have all the necessary information to be effective.
 - Disputes must be investigated effectively.
 - Schemes must have the provision for making awards of appropriate compensation.
 - Schemes’ procedures must be such as to enable awards of compensation to be properly enforced.
- 2.11 Ofcom’s methodology for undertaking the Review had a number of strands: formal information requests by Ofcom to the Schemes and to a random sample of their members; quantitative and qualitative research; and comparative analysis with Ofcom’s internal data on consumer satisfaction.
- 2.12 Having undertaken a comprehensive Review, Ofcom does not intend to modify or withdraw its approval of CISAS or Otelo (Section 54 (5) of the Act).
- 2.13 However, in the course of its investigations, Ofcom found that some communications providers appeared not to be handling complaints effectively. Independent research found that two thirds of complainants were very dissatisfied with the way in which communications providers’ staff handled their complaints.
- 2.14 Given that the effectiveness of the ADR process (intended as dispute resolution as a last resort) depends to a large extent on the way in which communications providers handle complaints, Ofcom included a number of proposals for improving complaints handling in its proposed recommendations. Ofcom consulted on those proposals and the consultation closed on 5 October 2006. The proposed recommendations are reproduced in Table 1 below.

Table 1: Ofcom draft proposals for best practice

Proposed Recommendation 1	Communications providers must improve complaints handling procedures and customer awareness of Schemes. Communications providers must make customers aware of their Complaints Code as soon as a complaint is received and ensure that the codes are easily accessible ideally through the company website and/or on customer invoices.
Proposed Recommendation 2	Communications providers should use a standard definition of complaint, to ensure accurate recording and monitoring of progress. Front line staff should be trained adequately in company complaints handling procedures. Communications providers should not direct enquiries to Ofcom nor prematurely to a Scheme.
Proposed Recommendation 3	To help ensure implementation of recommendations 1 and 2, Ofcom will work with the Schemes to develop best practice for communications providers as part of their conditions of membership of a Scheme.
Proposed Recommendation 4	Ofcom considers Schemes should publish Key Performance Indicators covering staff competence, timeliness of decision making and overall customer satisfaction. In addition the Schemes should publish regular reports showing the breakdown of complaints received.
Proposed Recommendation 5	The Schemes should work with communications providers to improve awareness of the service amongst those groups who are currently under-represented. CISAS should start, and Otelo should continue, to monitor socio-demographics of complainants as an integral part of consumer satisfaction surveys and take action to ensure that the scheme is equally accessible to all.
Proposed Recommendation 6	Schemes should consider using an independent third party to handle complaints about their own processes and procedures.
Proposed Recommendation 7	Schemes should take action against communications providers who fail to comply with their rules, including best practice on complaints handling and/or who fail to abide with a Scheme's decision. The Schemes should alert Ofcom of any potential problems that may prove detrimental to customers.

2.15 This Statement summarises the responses to the proposed recommendations and Ofcom's comments on those responses. This Statement further outlines Ofcom's revised proposals and the next steps in policy development.

Section 3

Responses to the consultation on proposed recommendations for best practice and Ofcom's comments

- 3.1 Ofcom's report on ADR, published on 27 July 2005, <http://www.ofcom.org.uk/consult/condocs/adr/adr/#content> included a number of recommendations for best practice in complaints handling.
- 3.2 Ofcom invited stakeholders' views on the proposed recommendations, together with any other comments they wished to make on the findings of the Review.
- 3.3 Ofcom received a total of 17 responses, including responses from CISAS and Otelo, members of the industry and consumer interests, listed in Annex 1, which are available for viewing on the Ofcom website at <http://www.ofcom.org.uk/consult/condoc/adr/responses/?a=87101>.

Ofcom's proposals

Proposed recommendation 1: Communications providers must improve their complaints handling procedures and customer awareness of Schemes. Communications providers must make customers aware of their Complaints Code as soon as a complaint is received and ensure that the codes are easily accessible ideally through the company website and/or on customer invoices.

- 3.4 In its Review Ofcom asserted that the way in which communications providers handle complaints from their domestic and small business customers impacts on the effectiveness of the Schemes.
- 3.5 For example, in its response, Ofcom's Consumer Panel argued that Schemes will not be effective unless there is compliance by the communications providers with their own Complaints Code so that their customers are properly signposted to ADR. (The Review found that a minority of complainants are referred to ADR through a company 'deadlock letter' (16 per cent of cases referred to Otelo and 47 per cent of cases accepted for adjudication by CISAS)).
- 3.6 There was considerable divergence of views regarding the appropriate point at which consumers should be made aware of the Complaints Code. CISAS, along with several industry respondents disagreed with the proposal that this should be as soon as the complaint is received; also that the Complaints Code should be published on the back of a company invoice. They believe this might discourage providers from dealing with the complaint themselves, and lead to an increase in the number of enquiries made to the Schemes prematurely.
- 3.7 The Ofcom Consumer Panel does not share this view. It believes that consumers should be made aware of company's complaints handling processes even before they need to complain. The Panel felt this would empower consumers and pressurise companies into following best practice. The Panel would also like the company Complaints Code to be widely available in a number of different formats.

Ofcom's comments

- 3.8 In undertaking the review, Ofcom found that in general there was low consumer awareness of communications providers' Complaints Codes. Independent consumer research found that only three in ten complainants were generally aware that a complaints procedure existed. There also seemed to be considerable dissatisfaction in the way in which complaints were handled. Otelos customer satisfaction surveys found that one of the main reasons for contacting Otelos was because the complainant has been unable to get a satisfactory response from the provider. CISAS has also reported receiving many complaints about difficulties in getting through to the communications provider's help line as well as failure to respond to complaints.
- 3.9 Ofcom's formal information requests to a random sample of communications providers revealed that several providers did not record the amount of time a complaint was outstanding, nor identify cases where a 'deadlock' letter could be issued.
- 3.10 Although the Ofcom guidelines do not specify how codes should be made available, we make it very clear that customers must be made aware of their existence and that it is up to the providers to find appropriate ways of doing this. Independent research undertaken for the Review found a wide range of consumer preferences for obtaining information on complaints handling processes, with the main preference either the Web/Internet (54%) or the provider's bill (26%).
- 3.11 Communications providers should be sensitive to their customers' needs and ensure that everyone with a complaint is signposted appropriately. For example, reference could be made to the existence of the Complaints Code and how to obtain a copy of it on the back of the bill or on a customer contract.

Ofcom's conclusions

- 3.12 Having considered the consultation responses, and in relation to the evidence gathered for the Review, Ofcom has revised its proposed recommendation 1. The following suggestions are made to encourage best practice in complaints handling.
- To improve the effectiveness of ADR, communications providers should ensure complainants are correctly signposted to the Schemes and make sure that their Complaints Code is easily accessible.
 - A deadlock letter should always be issued whenever a communications provider decides that a complaint cannot be resolved. Complainants should not be made to wait twelve weeks as a matter of course before being referred to ADR.

Proposed recommendation 2: Communications providers should use a standard definition of complaint, to ensure accurate recording and monitoring of progress. Front line staff should be trained adequately in company complaints handling procedures. Communications providers should not direct enquiries to Ofcom nor prematurely to a Scheme

- 3.13 There were mixed views about this proposal. Broadly speaking, the fixed providers, consumer representatives and the Schemes felt there could be considerable merit in having a standard definition of a complaint. For example, it might remove some of the confusion both on the part of the customer and the provider as to when a

complaint has officially been made. It may also help companies monitor their own customer service standards.

3.14 CISAS recommended that Ofcom should consider drawing on the ISO1001 standard, which is:

- “an expression of dissatisfaction made to an organisation, related to its products, or the complaints handling process itself, where a response or resolution is explicitly or implicitly needed.”

3.15 However, the mobile operators were concerned that a common definition of a complaint based on ‘any expression of dissatisfaction’ may be costly to implement and might inadvertently include enquiries, rather than complaints (eg reports of a lost or damaged handset).

Ofcom’s comments

3.16 Ofcom’s formal information requests to a random sample of CISAS and Otelco members found considerable variation in the way in which providers defined a ‘complaint.’ Following its initial draft information request, Ofcom was asked for further guidance. Ofcom used the draft definition adopted by fixed line communications providers, in preparation for the publication of comparable quality of service (‘QoS’) indicators, as directed by Ofcom in its *Statement on setting quality of service parameters*, published 27 January 2005 (<http://www.ofcom.org.uk/consult/condocs/qualitystate/statement/statement.pdf>):

“any expression of dissatisfaction from an end user with the service provided by the company, irrespective of the means by which the complaint was communicated and/or whether the company considers the complaint to be justified.”

which is very similar to the ISO1001 standard proposed by CISAS.

3.17 The proposed recommendation was made by Ofcom to help provide guidance to those providers who were unsure of how to define a ‘complaint.’ A standard definition may prove useful, for example, in establishing the ‘12 week qualifying period’ for access to ADR and identifying cases where it would be appropriate to issue a ‘deadlock’ letter.

Ofcom’s conclusions

3.18 Ofcom has therefore slightly revised proposed recommendation 2 as follows:

- Communications providers may wish to use a standard definition of ‘complaint’ to assist with the accurate recording and monitoring of complaints. For example, communications providers have developed an agreed definition for the publication of comparable quality of service indicators, as set out in paragraph 3.16 above.
- Front line staff should be trained adequately in company complaints procedures and not direct enquiries to Ofcom or ADR prematurely.

Proposed recommendation 3: To help ensure implementation of recommendations 1 and 2, Ofcom will work with the Schemes to develop best practice for communications providers as part of their conditions of membership of a Scheme.

- 3.19 CISAS and Otelo welcomed the opportunity for further discussions with Ofcom in order to encourage best practice in complaints handling. The Federation of Communications Services ('FCS'), and two of the mobile operators also welcomed the opportunity to play a part in developing procedures, possibly without the need for Ofcom's involvement.
- 3.20 Ofcom's Consumer Panel and the National Consumer Council ('NCC') felt that further research is needed in this area in order to expand the sample size of the original research undertaken for the Review.

Ofcom comments

- 3.21 It is important that Ofcom has a greater understanding of the way in which complaints are handled in order to assess whether Schemes are effective. For example if complainants are being incorrectly signposted eg being sent to the Schemes too early, this puts pressure on a Scheme's resources and may adversely affect its own service levels. If complainants are not being signposted to ADR at all, this may mean that the provider is not 'maintaining procedures' to conform to the Complaints Code (General Condition 14.2)¹. It is important that customers get the same level of protection from ADR, whoever the provider is and regardless of which Scheme is being used.

Ofcom's conclusions

- 3.22 Ofcom would welcome a constructive dialogue with the Schemes, industry and consumer interests on how to improve best practice in dispute handling. In order to inform its decision making, Ofcom will continue to monitor the research available and undertake further research of its own where appropriate. Our decision on proposed recommendation 3 is therefore subject to the outcome of further work.

Proposed recommendation 4: Ofcom considers the Schemes should publish Key Performance Indicators ('KPI') covering staff competence, timeliness of decision making and overall customer satisfaction. In addition the Schemes should publish regular reports showing the breakdown of complaints received.

- 3.23 There was considerable support for the production of KPI by the Schemes' members, provided that the costs were not excessive. Most respondents favoured regular publication of breakdown of complaints received by type.
- 3.24 Otelo regularly publishes KPIs on its service standards and CISAS has agreed to start publishing KPIs in 2006. The parameters are listed in Table 2 below.

¹ Under General Condition 14.2, "the Communications Provider shall establish and thereafter maintain procedures that conform with any applicable Code of Practice for Complaints for the handling of complaints made by its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services."

Otelo	CISAS
Percentage of provisional conclusions issued within 6 weeks of authority, from the customer, to investigate.	Percentage of Adjudicator's decisions issued within 6 weeks of authority, from the customer, to investigate.
Percentage of provisional conclusions issued more than 8 weeks after authority, from the customer, to investigate.	Percentage of Adjudicator's Decisions issued more than 8 weeks after receipt of the application from the customer.
Percentage of calls answered by Otelo Enquiry Staff within 2 minutes.	Percentage of calls answered by CISAS staff within 2 minutes.
Percentage of written correspondence receiving a response within 5 working days.	Percentage of written correspondence receiving a response within 5 working days.
Unit cost as an indication of improved efficiency: 80% of costs divided by the number of provisional conclusions issued.	Unit cost as an indication of improved efficiency: 80% of costs divided by the number of Adjudicator's Decisions conclusions issued.

Ofcom's comments

- 3.25 Ofcom has set a benchmark of six weeks for the consideration of a complaint by the Scheme and stated in the July consultation that it would expect at least 80% of cases to have been resolved within this time, with a higher rate of completion within target if possible.
- 3.26 Both Otelo and CISAS currently publish a breakdown of the type of complaints received in their Annual Reports. It would be helpful if this data were published more frequently as this would provide 'early warning' of potential problem areas.

Ofcom's conclusions

- 3.27 Proposed recommendation 4 is to be implemented by both Schemes without modification.

Proposed recommendation 5: The Schemes should work with communications providers to improve awareness of the service amongst those groups who are currently under-represented. Otelo should continue to monitor socio-demographics of complainants as an integral part of consumer satisfaction surveys. CISAS should start to commission independent consumer satisfaction surveys as soon as possible. Action should be taken to ensure that ADR is equally accessible to all.

- 3.28 Respondents' views on this topic diverged considerably. The Citizens' Advice Bureau ('CAB') felt that Otelo had been more proactive in this regard than CISAS. CISAS, whilst welcoming the opportunity to work with Ofcom and consumer agencies to increase public awareness of ADR, recommended caution to dissuade complainants from using ADR as the first point of call. This view was shared by several industry respondents.
- 3.29 Whilst there was a general consensus that ADR should be equally accessible to all, there was some doubt as to the extent to which Schemes could influence this.

- 3.30 Otelo confirmed that it will continue to publish regular independent customer satisfaction surveys on its website <http://www.otelo.org.uk/content.php?pageID=100>. Those surveys cover a wide range of indicators including: main reasons for complaint; reasons for contacting Otelo; “preferred method of contact”; reasons for dissatisfaction (where appropriate); and, how the complainant found out about Otelo. Although Otelo does not monitor demographics of enquirers/complainants at the point of contact, it captures the data from survey respondents, including age, sex, ethnic origin, first language spoken, housing tenure and disability by type.

Ofcom’s comments

- 3.31 Otelo’s analysis of the demographics of consumer satisfaction survey respondents found they were predominantly of white ethnic origin, owner occupiers, aged between 36 and 55. Ofcom was not able to comment on whether this demographic profile is the same for both schemes as CISAS had not collected data prior to the Review.
- 3.32 CISAS has agreed to start collecting consumer satisfaction data early in 2006. Ofcom would expect CISAS to collect a comparable data set.
- 3.33 Ofcom accepts there may be a fine balance between raising consumer awareness of ADR and ensuring that complaints are dealt with effectively by the company itself. We would like to explore this further and intend to continue to gather data through our residential tracker survey and/or through dedicated research as well undertaking comparative analyses with the Schemes’ surveys.

Ofcom’s conclusions

- 3.34 Ofcom considers customer satisfaction surveys to be a useful means of assessing whether ADR is effective as well as identifying those groups who may be deterred at present from using ADR.
- 3.35 On this basis, Ofcom has revised proposed recommendation 5 as follows:
- Otelo should continue, and CISAS should start, to publish (comparable) consumer satisfaction surveys. Those surveys should capture the socio-demographic profile of the respondents. Otelo and CISAS should ensure that they comply with the requirements of the relevant data protection legislation eg Data Protection Act 1998.

Proposed recommendation 6: Schemes should consider using an independent third party to handle complaints about their own processes and procedures.

- 3.36 Whilst respondents did not reject this proposal, there was no particular enthusiasm for it either.
- 3.37 Otelo’s existing governance structure means that complaints about the Ombudsman and her decisions are referred to the Council Chairman. Complaints about the way in which a particular case has been handled are first considered by Otelo’s Director of Operations.
- 3.38 CISAS is a division of the Chartered Institute of Arbitrators and adheres to published complaints handling processes, which it intends to update with the publication of ISO 10001. CISAS adjudicators comply with a code of ethics and are subject to scrutiny by a Professional Conduct Committee, comprising both ADR professionals and lay persons.

Ofcom's comments

- 3.39 ADR's primary role is to provide an independent, non-adversarial approach to dispute resolution, as an alternative to the courts. The Schemes are independent, accessible and free of charge to complainants. The complainant is not bound by the Ombudsman's/adjudicator's decision.
- 3.40 Ofcom recognises that not all complainants will be satisfied with the ADR decision. The proposal for using an independent third party to consider complaints about Scheme processes and procedures was intended to act as an additional safeguard for all parties.
- 3.41 Where complainants remain dissatisfied with the Schemes after having followed their internal procedures, they may write to Ofcom. Whereas Ofcom will not interfere in individual decisions, the information may be taken into account as part of the Scheme approval process. To date Ofcom has received only a handful of complaints about the Schemes.

Ofcom's conclusions

- 3.42 Ofcom has therefore decided to withdraw proposed recommendation 6.

Proposed recommendation 7: Schemes should take action against communications providers who fail to comply with their rules, including best practice on complaints handling; and/or who fail to abide with a Scheme's decision. Schemes should alert Ofcom of any potential problems that may prove detrimental to consumers.

- 3.43 Several industry respondents felt that existing procedures were adequate. There was some support for introducing a best practice policy as part of Scheme membership terms and conditions, provided it was not overly prescriptive.
- 3.44 Some industry respondents were concerned that the proposal might effectively mean that the Schemes acquired inappropriate regulatory duties 'through the back door,' damaging their neutrality as well as increasing costs to members. Further clarification was sought regarding the Schemes' role in alerting Ofcom of "potential problems" and how these might be defined.
- 3.45 Consumer interests supported the need to act against those in breach but were uncertain of Ofcom's role in the process and how it enforces the regulations and imposes sanctions for breaches of General Condition 14. Ofcom is encouraged to take proactive steps to ensure communications providers improve the way in which they handle complaints.
- 3.46 In Otelo's view, this recommendation is closely tied to recommendation 3 and relates to the way in which communications providers handle complaints in general. Otelo believes that if there were a universal requirement for Schemes to have certain reasonable requirements included as a condition of membership (eg implementation of awards within certain timescales, requirement to provide adequate case files) with corresponding reporting requirements, this could be a useful way of encouraging best practice.

Ofcom's comments

- 3.47 Two of the key criteria laid down by the Act to assess whether or not an ADR procedure is effective are:

- Schemes must have the provision for making awards of appropriate compensation.
 - Schemes procedures must be such as to enable awards of compensation to be properly enforced.
- 3.48 Both CISAS and Otelo have procedures in place whereby members are warned and given an appropriate amount of time to remedy a situation before escalating the case and suspending or expelling the member. It is at the latter stage that Ofcom would be informed because the member would then be in breach of statutory regulations which Ofcom needs to be made aware of.
- 3.49 If a member is expelled from a Scheme, Ofcom can instigate compliance proceedings against it for being in breach of General Condition 14.4 and alert both Schemes. There are penalties for non-compliance with a notification under Section 94 of the Act.
- 3.50 In the Review, Ofcom noted CISAS' disquiet about some members who had failed to pay financial compensation awarded to the complainant within the time limits specified. Ofcom noted that CISAS members were given 21 days to settle, compared with 28 days for Otelo members.
- 3.51 Ofcom believes a pragmatic approach should apply here. If the shorter timeframe does not match system processes and procedures such that some Scheme members will automatically be in breach of the Scheme rules there are several options available, including:
- The member in question introduces system changes that allow it to make payments on time.
 - The Scheme fines the member and/or imposes an interest charge payable to the complainant.
 - The Scheme expels the member for non-compliance with its rules.
 - The Scheme changes its rules to accommodate the longer time frames.
- 3.52 Ofcom would be concerned if any action were taken by either Scheme to prolong the process for settlement of a claim unduly, as this may have a detrimental impact on customers.

Ofcom's conclusions

- 3.53 Having considered the responses to the consultation, Ofcom has amended proposed recommendation 7 in order to clarify its role in relation to the Schemes. The proposal takes account of the interaction with the Schemes' rules with communications providers' obligations under General Condition 14:
- Schemes should notify Ofcom where a member's breach of the rules and/or failure to comply with decisions is sufficiently serious that the member risks expulsion from the Scheme. This will alert Ofcom to a potential breach of General Condition 14.4 so that appropriate action can be taken.

Comments on the report not covered by the recommendations

- 3.54 Otelo was disappointed with what it considered to be a superficial analysis within the Review which, it believes, gives the impression that CISAS and Otelo are sufficiently similar for the comments to be applied equally to both.
- 3.55 Consumer interests were seeking assurance that there is no difference between the customer experience of the different Schemes. Ofcom has been asked to undertake further research on this.
- 3.56 The Ofcom Consumer Panel would like to see a clear statement from Ofcom of the sanctions which apply for non-compliance with General Condition 14.2². It would like Ofcom to publish regular reports showing which communications providers fail to meet best practice in complaints handling and would also welcome regular publication of complaints data by the Ofcom Contact Centre (OCC) and the Schemes.
- 3.57 Some industry commentators expressed disappointment that the Review did not consider the effects of dynamic competition as a means of delivering improved performance in the area of complaints handling, including the provision of ADR.
- 3.58 Telewest commented that activity on ADR should be complementary to and consistent with, parallel activity on QoS data publication requirement, in accordance with the Ofcom Direction published on 27 January (<http://www.ofcom.org.uk/consult/condocs/qualitystate/statement/statement.pdf>).

Ofcom's comments

- 3.59 Ofcom's first review of the Schemes assessed them against the criteria for approval of ADR procedures as stipulated by the Act. It was not the purpose of this review to carry out a comprehensive assessment of the merits or otherwise of different forms of ADR.
- 3.60 Ofcom has put in place streamlined procedures for monitoring compliance with General Condition 14.2 and 14.4 and has issued Section 94 Notifications to several providers who do not provide access to ADR to their customers (http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_851/).
- 3.61 Ofcom welcomes the benefits competition may bring to consumers in terms of raising quality of service. In this regard, Ofcom welcomes the publication of comparable quality of service indicators by communications providers next year, which are intended to help consumers make choices with confidence.

Ofcom's conclusions

- 3.62 Ofcom would like to explore further the potential of competition between the Schemes to benefit customers, along with the potential risks. Ofcom will consult on its wider consumer policy in the New Year, which will consider, amongst other things, options for improving consumer awareness of their rights in relation to dispute handling.

Section 4

Ofcom's conclusions and next steps

- 4.1 Ofcom's review of the ADR procedures it has approved was undertaken in accordance with the criteria in the Act. On that basis Ofcom does not intend to modify or withdraw the approval of CISAS or Otelo.
- 4.2 Ofcom consulted on a number of proposed recommendations for improving best practice. Having carefully considered the responses to the consultation and the findings of the review itself, Ofcom is re-issuing its recommendations which have been revised (or withdrawn) as appropriate. These are summarised in Table 3.
- 4.3 Ofcom has decided to withdraw its previous recommendation (6) that the Schemes use an independent third party to handle complaints about the Schemes. This is because:
- Complainants are not bound by the Ombudsman's/adjudicator's decision and may pursue an action through the courts.
 - The Schemes have their own independent review procedures in place.
 - Ofcom has received only a handful of complaints about the Schemes to date.
- 4.4 The review process raised a number of policy issues that fall outside of the strict remit of the ADR Scheme approval process. These include the need to ensure that the existence of two Schemes benefits customers; and that customers are aware of their rights and how to complain. Ofcom intends to consider these issues further and will gather additional evidence to support its policy thinking.

Table 3: Revised recommendations for best practice

<p>Recommendations for ensuring complainants have access to ADR when required</p> <p>(Revision of proposed recommendations 1, 2 and 3)</p>	<p>To improve the effectiveness of ADR, communications providers should ensure complainants are correctly signposted to the Schemes and make sure that their Complaints Code is easily accessible.</p> <p>A deadlock letter should be issued whenever the provider decides that a complaint cannot be resolved. Complainants should not be made to wait for twelve weeks as a matter of course before being referred to ADR.</p> <p>If appropriate, a standard definition of 'complaint' may be used to assist with the accurate recording and monitoring of complaints.</p> <p>Front line staff should be trained adequately in company complaints procedures and should not direct enquiries to Ofcom or the ADR prematurely.</p>
<p>Recommendations for providing transparency of Schemes' performance</p> <p>(Proposed recommendation 4 confirmed with clarification)</p>	<p>CISAS and Otelo should publish Key Performance Indicators (KPI) covering: staff competence, timeliness of decision making and overall customer satisfaction. In addition the Schemes should publish regular reports showing the breakdown of complaints received (by type).</p>
<p>Recommendations for assessing accessibility and consumer satisfaction with Schemes.</p> <p>(Proposed recommendation 5 with modification)</p>	<p>Otelo should continue and CISAS should start to publish (comparable) consumer satisfaction surveys. The surveys should capture the socio-demographic profiles of the respondents. Otelo and CISAS should ensure that they comply with the relevant data protection legislation eg Data Protection Act 1998.</p>
<p>Recommendations for ensuring compliance with a Scheme's rules.</p> <p>Proposed recommendation 7 with modification)</p>	<p>Schemes should notify Ofcom where a member's breach of the rules and/or decisions is sufficiently serious to consider expulsion from the Scheme. This will alert Ofcom to a potential breach of General Condition 14.4 so that appropriate action can be taken.</p>

Annex 1

List of respondents to consultation

Responses to the consultation were received from:

BT

Citizens Advice

Communications and Internet Services Adjudication Scheme (CISAS)

Consumer Panel

Federation of Communication Services (FCS)

Hutchison 3G Limited (H3G)

National Consumer Council (NCC)

ntl

O2

Office of the Telecommunications Ombudsman (Otelo)

Orange

Scottish and Southern Energy plc

Telewest Broadband

T-Mobile UK Ltd

Vodafone UK

Vonage Ltd

James Webb