MOTT MACDONALD

ADR Decision Review

Final Report

23rd November 2017

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Executive summary

Overview

Ofcom requires all Communications Providers (CPs) to belong to an Ofcom-approved Alternative Dispute Resolution (ADR) scheme. It has approved two such schemes:

- Ombudsman Services (OS)
- The Communications and Internet Services Adjudication Scheme (CISAS).

Ofcom appointed Mott MacDonald to undertake a review of decision-making at the schemes, to understand the degree to which there is consistency within and between the schemes with regard to making decisions. This follows a set of reviews completed between 2011 and 2013, which identified some minor inconsistencies in decision-making between the schemes, and devised strategies to address them – e.g. via the introduction of a set of Decision Guidelines, and steps designed to harmonise compensation. As in the past, Mott MacDonald based its review on documents relating to the Decision process for a sample of c.80 cases at each scheme.

Findings

Mott MacDonald found that the quality of decision-making at both schemes was high – with Good Decisions[1] made in 85% of cases by OS and 82% by CISAS. In the case of OS this represented an improvement on the 83% achieved in 2011. The percentage at CISAS was the same as in that former review. Mott MacDonald found no examples of Poor Decisions – again an improvement on the 2011 review. Overall there were found to be no systemic issues with decision-making at the schemes.

There has also been an improvement in the time taken to reach a Decision at both schemes, with the average time being 53 days at OS and 52 days at CISAS. In both cases this was faster than encountered in 2011, with OS having taken 135 days then and CISAS 56 days. Mott MacDonald also found that communication with consumers about case progress was good in 95% of cases at OS[2], and that the Decision had been clearly explained to consumers in 98% of cases at OS and 100% of cases at CISAS. The structure and clarity of Decision text was particularly consistent at CISAS.

Whilst the overall quality of Decisions was high, there was still some scope for improvement. In 15% of cases at OS and 18% of cases at CISAS Mott MacDonald rated the Decisions as Questionable (defined as Decisions which are “consistent with the Decision Guidelines in part, and raise issues which merit further consideration by the scheme”). This was because there was still a slight tendency not to give adequate weight to the word of the consumer in cases where there was a lack of evidence, and to place too great a burden on the consumer to substantiate their case. In contrast, there was also a slight tendency to allow the CP to rely on terms and conditions or statements regarding its usual processes – rather than requiring the CP to produce evidence of what had actually been agreed, for example at point of sale. It should be noted, however, that on these same issues the schemes did usually get the balance right, and expressed the appropriate interpretations well in many Decisions.

There were differences in the patterns of financial awards made by the schemes, with CISAS making such awards in 56% of cases – versus 74% at OS – but awarding much higher sums. CISAS’s average award for goodwill/compensation was £106 in contrast to £61 at OS. Mott

[1] Mott MacDonald classified Decisions as either Good, Questionable or Poor (see section 2.1 for a definition of these terms in this context)

[2] It was not possible to analyse this element regarding CISAS

MacDonald found evidence of increased harmonisation with regard to awarding goodwill/compensation – with both schemes making many awards at the £50 level for similar reasons. However, OS awarded 22 awards under £50 versus four at CISAS; and CISAS awarded 20 awards of £100 or more versus nine at OS – suggesting that some differences in policy remain.

Mott MacDonald also found differences in the systems used to express the outcomes of cases. The term "upheld" at OS is used not to express the result of the case from the consumer's perspective, but to indicate cases in which a legitimate complaint has not been dealt with adequately by a CP. Whilst the principle of this is sound, it does not give a sense of the degree to which customers claims are or are not being accepted. Conversely, the term "succeeds in full" at CISAS seemed only to have been applied when the claim had been 100% successful – meaning that a consumer can have succeeded in all the material aspects of their claim, except for a peripheral aspect (sometimes a request beyond the powers of CISAS) – and have their case labelled "succeeds in part"; the definition of "upheld" thus seemed somewhat narrow. The term "maintained" at OS covers cases in which consumers' legitimate complaints have already been adequately dealt with by CPs prior to ADR - but was found to have been inconsistently applied. Mott MacDonald also found some inconsistencies regarding the awarding of apologies.

Recommendations

Mott MacDonald makes seven recommendations on issues to be examined further and / or addressed by Ofcom to achieve further harmonisation.

1. Undertake dialogue with schemes regarding findings on Questionable cases

In particular this should examine:

- The weight attached to the word of the consumer
- The burden of proof / degree of substantiation expected of the consumer
- The requirement for proper substantiation by CPs of sale or agreement (rather than reliance on T&Cs or usual process)
- The division of responsibility between the wholesale supplier and CP serving the consumer
- Treatment of cases relating to elderly and / or vulnerable consumers
- Policy for treating cases where the CP has not responded to the scheme.

It would be useful to understand to what degree the schemes recognise the issues identified, and to what extent the findings reflect an issue with accuracy as opposed to policy.

2. Reconfirm or amend a common set of Decision Guidelines

Mott MacDonald believes the Decision Guidelines serve a useful purpose and it is laudable that the schemes have both put a version of the guidelines on their websites, albeit in altered forms. From a consumer perspective, it is useful to be able to see the principles that will guide a Decision – and particularly to see that the schemes pledge to give equal consideration to both parties in a dispute. However, ideally there should be a single common set of guidelines – which can serve as a consistent foundation for Decisions made and the statements explaining them.

3. Revisit the guidance produced on compensation

There have certainly been improvements in consistency with regard to goodwill/compensation awards, with a greater degree of standardisation particularly at the £50 and £100 level. However, there are still differences between the schemes at the lower and higher ends of the scale. Mott MacDonald recommends that the schemes revisit the guidance produced regarding a framework for compensation – bearing in mind step seven in particular, which stated: "Ideally the two schemes should confer and collaborate on the development of this framework, including

with regard to the production and use of a shared matrix to set stress and inconvenience awards."

4. Review and tighten policy with regard to Apologies

There should be clear criteria on when and why to give apologies – as they can form an important part of a verdict. Again, ideally the same system would be used by both schemes.

5. Review and harmonise the systems used to record outcomes

Mott MacDonald believes it would make sense to develop a system for expressing outcomes which a) is consistent across the schemes and b) reflects the degree to which complaints have been dealt with effectively as well as the degree of success achieved with regard to core elements of the claim. There are a range of degrees of success – and ideally the system should reflect this. Ultimately the labels used should be an accurate and intuitive reflection of their meaning.

6. Consider harmonising application forms / procedures

It is recognised that the schemes have different processes and cultures with regard to interactions with the consumer. However, an upshot of this is that currently their application processes are posing different questions to consumers in different ways. Ideally the material aspects of the information sought by the application forms and procedures would be similar, thus laying a consistent foundation for the adjudication processes which follow.

7. Clarification of what constitutes good evidence

Mott MacDonald is not privy to the internal guidance in place at the schemes with regard to the quality of evidence, but it can be inferred that it might be worthwhile tightening this guidance. For example, such guidance might clarify:

- What is / isn't required of consumers as proof of having sent a letter (a copy of the letter; proof of postage; proof of receipt?)
- What is required of CPs to prove sale and / or cancellation
- What is required of CPs in terms of the way in which they present their evidence (i.e. complete system notes versus notes cut and pasted into their narrative.

By sharing such guidance with consumers and CPs the schemes could also help them to present their evidence in the most effective way.

1 Introduction

1.1 Background

Ofcom requires all Communications Providers (CPs) to belong to an Ofcom-approved Alternative Dispute Resolution (ADR) scheme. It has approved two such schemes:

- Ombudsman Services (OS)
- The Communications and Internet Services Adjudication Scheme (CISAS).

Ofcom is obliged under the Communications Act 2003 to review periodically its approval of ADR schemes and in 2010 it launched such a review. During this review, it became keen to understand the reasons for what appeared to be a material difference between the prospects of success for a consumer going to either scheme (64% at CISAS vs 88% at OS). This difference was even more significant for those cases where the schemes were required to adjudicate the dispute (35% vs 84% respectively).

In 2011 Ofcom therefore asked Mott MacDonald to conduct a review of cases which had been adjudicated by the two schemes, in order to try to understand these differences (henceforth "MM 2011 Review"). It found that there was no systemic problem with the adjudication at either scheme – with both schemes producing verdicts deemed reasonable or very reasonable in over 80% of cases. However, Mott MacDonald identified a number of issues which were influencing the difference in outcomes – such as an occasional tendency by CISAS to be unduly dismissive of the consumer's argument, and a tendency by OS to be over liberal in the awarding of small sums of compensation.

Subsequent work by Mott MacDonald aimed to assist the schemes to adopt a more harmonised approach. Mott MacDonald reviewed the schemes decision-making processes and internal guidance documents and interviewed adjudicators and key staff at the schemes. This led to the production of an Outcomes Agreement in January 2012, which contained a set of Decision Guidelines – comprising nine points to serve as a consistent set of principles to govern decision-making (included for reference in Appendix A)[3].

Further work in 2013 looked specifically at the issue of the awarding of compensation for stress and inconvenience. The *Review of ADR Schemes – Statement* of 2012 and associated Agreement had required that both schemes agree on a common approach to the setting of compensation awards. Mott MacDonald's work thus sought to devise such a common approach, based on a review of a further sample of cases. The analysis found that OS still awarded sums (under £50) far more frequently than CISAS – albeit with clear justification. And whilst steps had been taken to address some of the tendencies shown in the past there was nevertheless still a degree of inconsistency in the making of stress and inconvenience awards. Mott MacDonald therefore recommended a seven-step approach to harmonising compensation awards.

1.2 Ofcom's current requirement

Ofcom has now asked Mott MacDonald to undertake a fresh review of decision-making at the schemes, in order to understand the degree to which there is consistency within and between the schemes with regard to making Decisions on cases.

The objectives of this review are to:

[3] OS includes a slightly revised nine point version of this set of principles on its website under the heading "Decision Guidelines" https://www.ombudsman-services.org/sectors/communications/decision-making-principles

CISAS includes a revised six point version of this set of principles on its website under the heading "How to we make decisions on claims" https://www.cedr.com/cisas/

- Identify the degree of reasonableness in the adjudication of cases at the two schemes
- Show patterns in the awarding of compensation – indicating the level of awards made, their type and circumstances
- Provide information on the time taken to reach verdicts on cases
- Give a comparative view of the quality and characteristics of decision-making versus the previous case reviews
- Present a view of the degree to which it can be inferred that the past recommendations with regard to the use of Decision Guidelines and a framework for compensation awards have been implemented and / or have made a difference
- Provide insights into patterns and characteristics with regard to Decisions at the two schemes – both those previously identified but also any new developments
- Examine the quality of any initial triaging to see if the right cases are being put forward for informal closure or for full adjudication at the beginning of the process
- Assess the quality of the communications from both schemes, both in terms of keeping complainants up-to-date, but also how well the final Decision, and the rationale for that Decision, are explained
- Make recommendations on issues to be examined further and / or addressed by Ofcom to achieve any further harmonisation required.

1.3 Approach

An overview of the methodology used is shown in Figure 1.

Figure 1: Methodology

Source: Mott MacDonald

The process revolved around a review of c. 80 cases from each scheme. To facilitate this, the schemes provided case materials relating to the consumer's application, the responses received from the CP and the consumer, and the Decision. Mott MacDonald reviewed these materials and recorded key factors and comments in a spreadsheet. This data was then used to inform quantitative and qualitative analysis.

The selection of cases reviewed was chosen by a process of stratified random sampling – which involved sorting the cases relating to Decisions reached in January and February 2017 into strata according to certain characteristics, and then sampling with a frequency designed to produce c. 80 cases[4]. The characteristics of the strata were organised so that a representative selection of cases was chosen – with the case outcomes, category of case, and mix of CPs in

[4] In fact, the sampling method errs on the side of selecting as close to 80 cases as possible – but at least 80 cases. Hence, the sample selected from OS comprises 82 cases and that from CISAS 83 cases.

the sample proportionate to the prevalence of those characteristics in the overall pool of cases[5]. It should be noted that this was the same methodology employed during MM's 2011 Review – which also involved an analysis of a sample of c. 80 cases from each scheme.

As part of the current exercise Mott MacDonald also reviewed a sample of 40 OS cases which had been settled by Early Resolution. The aim of this was to see if Mott MacDonald could examine the quality of any initial triaging to see if the right cases are being put forward for informal resolution at the beginning of the process. The findings on this element are explored in section 6. A review of informal resolution was not undertaken regarding CISAS cases as its process differs – with the decision on whether to seek settlement effectively determined by CPs and not CISAS.

1.4 The Decision process at each scheme

Before outlining Mott MacDonald's findings, it is worth noting that the schemes have slightly different processes for handling cases and reaching Decisions. Mott MacDonald's understanding of these processes has come from brief interaction with the schemes, discussion with Ofcom, and what it has been able to infer from the case materials. It has not been within the scope of this assignment to study or map the processes.

The process at OS

The OS process starts with the consumer completing an application form. At this point, some cases are considered for Early Resolution (see section 6).

If this route is not chosen, or is unsuccessful, the case is allocated to an investigation officer who reviews the case data, discusses the case with the CP and applicant, and makes a decision – which is issued as a "Proposal" to both parties. The proposal invites the parties to either accept the decision or provide representations within 10 working days. If both parties agree to the proposal then it becomes a "Mutually Acceptable Settlement" (MAS) and the company has 20 working days to implement the agreed remedy. If one or both parties submits representations, the complaint moves to the next stage of the investigation procedure.

If either party submits representations then the complaint is re-considered by the investigation officer. The investigation officer decides whether the proposed remedy is fair and reasonable, in view of the representations. The investigation officer will then issue their final Decision – called the "Ombudsman Services Decision" (OSD). This marks the end of the complaints process and there is no further scope for appeal.

The process at CISAS

The CISAS process starts with the consumer submitting an application form. CISAS cases can then be settled between the parties after the consumer submits this application form but before an adjudicator starts to evaluate a case. There are two forms of settlement: (1) settlement in full, which is where the CP agrees to give the consumer everything they asked for on their application form; and (2) negotiated settlement, which is where the CP and consumer agree on an alternative remedy or remedies, different to those that were articulated by the consumer on the application form. It's solely up to the CP to determine whether it wants to settle a case, and it is an option available for every case that CISAS deals with.

CISAS has emphasised that across all the schemes operated by CEDR, it provides a period during which the parties have the opportunity to settle the claim without the involvement of an adjudicator. It believes it has a consistently high success rate in reaching an agreed resolution during this 'settlement period', with 46% of all cases CISAS deals with being resolved in this way. In its view both parties derive real value from the settlement phase, and consequently only

[5] It should be noted that cases involving Vodafone were excluded from the sampling, because during the period sampled the volume of Vodafone cases was disproportionately high (up 41% of all cases accepted in January and 37% in February) – owing to some issues being dealt with by the CP at the time. It was felt that including Vodafone in the analysis might introduce bias into the findings.

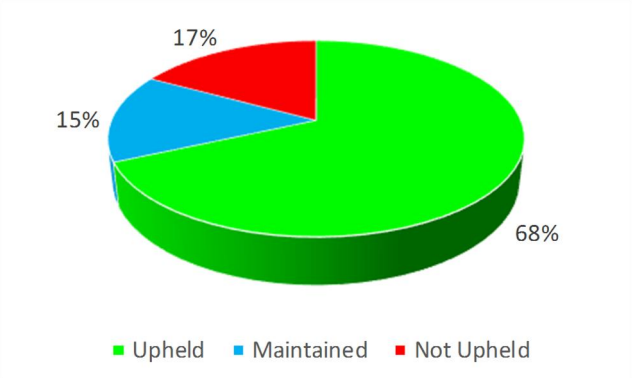
those cases where parties are unable, or unwilling, to reach a resolution proceed to the adjudication phase.

For cases which aren't settled, the CP is asked to provide a written response to the complaint, along with supporting information. The consumer is then sent this response, and is invited to comment upon it. These three forms of communication (Application, Response and Comments), and the supporting evidence provided with them, are then analysed by an Adjudicator. The Adjudicator reaches a verdict and produces a Decision document which summarises the arguments made in the three documents and the details of the case, and communicates the Decision. This marks the end of the complaints process and there is no further scope for appeal.

1.5 Pattern of outcomes in the sample

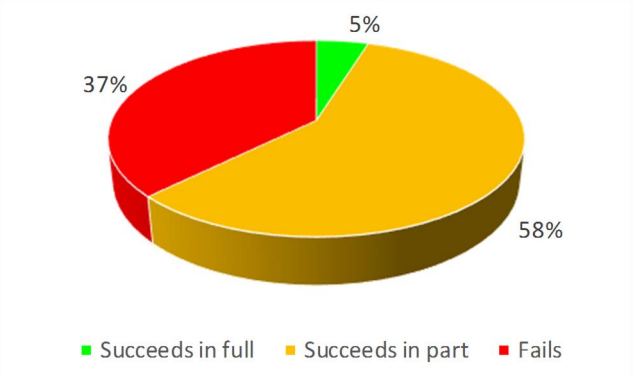
Before delving into the case analysis, it is pertinent to look at the pattern of case outcomes prevalent in the sample analysed. Each scheme classifies the outcomes of cases in a slightly different way, as shown in Figure 2 and Figure 3.

Figure 2: Cases by outcome at OS (82 Cases)



Source: Mott MacDonald

Figure 3: Cases by outcome at CISAS (83 Cases)



Source: Mott MacDonald

As can be seen from the graphs, there are notable differences in the pattern of outcomes.

At CISAS, 5% of CISAS cases were marked as "succeeds in full". However, if we add the 58% of "succeeds in part" cases to the CISAS total – this means that in 63% of cases the consumer received a remedy of some kind. Conversely, 37% of cases at CISAS were recorded as "case fails" – with the consumer receiving no remedy.

At OS, 68% of cases were "upheld" and 17% of cases were "not upheld". However, at OS there were also 15% of cases identified as "maintained". OS's "maintained" category relates to cases where

the CP had made a mistake or had not initially treated the complainant fairly which led to the complaint being made. However, when the complaint was made, the CP put its mistakes right and made a reasonable offer to resolve the dispute prior to OS accepting the complaint for investigation (see section 3.2.4 for analysis of its usage). What this implies is that maintained cases include examples where consumers[6] do receive a remedy as a result of ADR (if the original proposal made by the CP had not been implemented) and examples where they don't (if it had been implemented). It is therefore not possible to say definitively what proportion of consumers taking claims to OS do receive a remedy (as this equals: upheld cases plus an unknown portion of maintained cases. It is somewhere between 68% of cases and 83% of cases.

[6] Small businesses can also use ADR, however, the majority of complainants are consumers and therefore Mott MacDonald has referred to them as consumers throughout the report.

However, it should be noted that the use of the term “outcome” by OS is not intended to relate directly to whether it makes an award or not. Rather, its codes record whether the complaint was justified and, if so, whether the provider responded effectively to it. In effect, therefore, outcome means something different at OS and CISAS. Further analysis of this subject is carried out in section 3.

1.6 Sample Composition

Further information on the composition of the sample is included in Appendix B.

2 Analysis of Decisions

2.1 Introduction

The aim of this section is to outline Mott MacDonald's findings on the quality of decision-making. One of the key objectives of this study was to evaluate the extent to which the Decisions made by the two schemes could be considered reasonable, and the degree to which this might differ across the schemes.

To review the reasonableness of Decisions, Mott MacDonald employed a rating comprising three categories, shown in Table 1.

Table 1: Classification of verdicts

Classification	Definition
Good Decision	• Fully reasonable and consistent with the Decision Guidelines
Questionable Decision	• Consistent with the Decision Guidelines in part, and raises issues which merit further consideration by the scheme
Poor Decision	• Unreasonable Decision, inconsistent with the Decision Guidelines

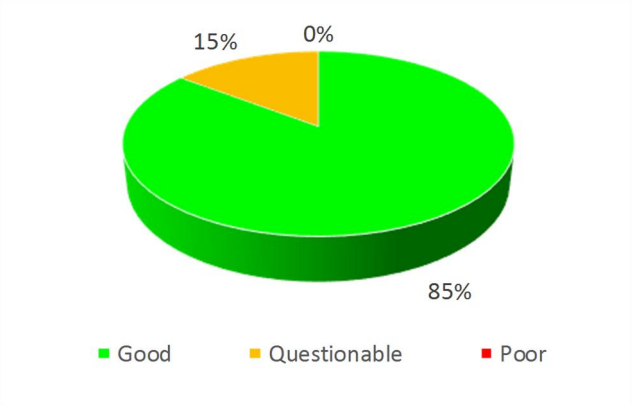
Source: Mott MacDonald

It should be noted that this is a simplification of the system used during MM's 2011 Review. In that review, the Good cases were classified as either Very Reasonable or Reasonable, the Questionable cases as Average or Questionable and the Poor Cases as Unreasonable. However, Mott MacDonald found that a five-category system was slightly over-complicated and the labels used a little unwieldy. Mott MacDonald believes the revised system delivers the same insight in a simpler and clearer way.

2.2 The reasonableness of Decisions

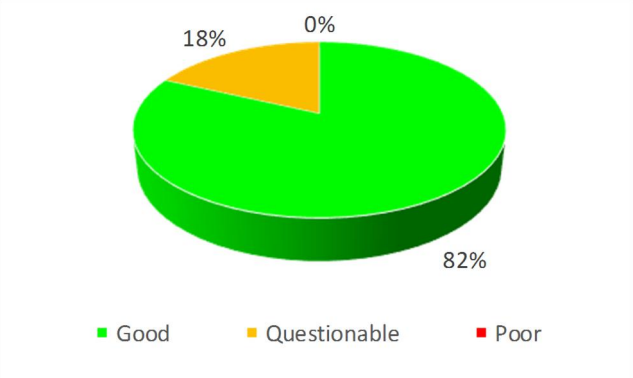
Based on the above classification system, a breakdown of verdicts at each scheme is shown in Figure 4 and Figure 5.

Figure 4: Rating of Decisions at OS



Source: Mott MacDonald

Figure 5: Rating of Decisions at CISAS



Source: Mott MacDonald

The percentage of Good Decisions was 85% at OS versus 82% at CISAS. Mott MacDonald did not find any systemic issues with the quality of decision-making at either scheme.

The level of quality is similar to that found in MM's 2011 Review – where the percentage of Good Decisions was 83% at OS and 82% at CISAS (meaning that OS has thus shown a slight improvement). It is also notable that Mott MacDonald did not identify any Poor Decisions at either scheme – representing an improvement again on 2011, when there were two such cases at OS and one at CISAS.

Whilst this represents a good level of decision-making, there were nevertheless 15% of cases at OS and 18% of cases at CISAS found to be Questionable. A review of these cases is undertaken in sections 2.3 and 2.4.

2.3 Analysis of Questionable Decisions at OS

There were 12 Questionable cases at OS. A number of key and recurrent issues were apparent in these cases, as outlined below.

Treatment of cases involving elderly and / or vulnerable consumers

The same rules apply to elderly consumers as to all consumers, and the vast majority of elderly people are as capable of dealing with the ins and outs of telecoms services as other consumers. However, in some cases there are signs that being elderly may be inhibiting the consumer's ability to understand or effect communication with a CP. In this sense, they are to a degree "vulnerable" to misunderstanding or to being taken advantage of. This applies to other consumers also such as those with limited English language capability or mental health issues. When there are signs that this is the case, it is arguable that CPs ought to make an additional effort to ensure such consumers do understand the agreements into which they are entering. Similarly, the adjudication schemes should ensure that they take such factors adequately into account in determining whether the consumer has been treated fairly. Because of the sensitivity of such cases it is arguable they ought to be dealt with by an Ombudsman. That doesn't mean referring all cases involving elderly people to an Ombudsman, but rather those cases where a consumer claims vulnerability on such grounds, or where it can be inferred.

Weight attached to the word of the consumer

In cases where evidence is lacking, the verdict often comes down to an evaluation of the word of the consumer against that of the CP. In this situation, it is important to remember that, as stated by the Decision Guidelines, adjudicators should "Give equal consideration to the word of the consumer and the word of the company". Consumers do not have the same means at their disposal as CPs, and sometimes the only evidence of their position will come from their words on the events. Of course, the degree to which they are able to explain their position clearly and consistently is likely to weigh in their favour, although it should also be remembered that not all consumers have equal time, means or ability to present arguments.

Adequate Proof of Sale / agreement

In cases involving mis-selling, the key evidence required is evidence of what was agreed at the point of sale. It is of course acceptable for CPs to secure contracts based on verbal agreements – something not always understood by consumers – but such verbal agreements must be evidenced via a call recording. A welcome letter or a system note are not proof of sale. Moreover, as the selling party, the onus is on the CP to prove what was sold and agreed – not on the consumer to prove that that they did not agree something.

Judgement in cases where the CP does not respond

The evidence and arguments made in any case are of paramount importance, even in cases where the CP does not respond. A consumer cannot automatically "win" just because a CP has not responded; the consumer's arguments might be spurious and have no weight in themselves. However, Mott MacDonald would argue that in many cases it ought to make a difference whether or not the CP has responded. The process of adjudication is a process of balancing one position against the other and allocating a degree of weight to each side. If the CP has not

responded this often ought to weigh in favour of the consumer. This is both fair and also serves as a disincentive to the CP to fail to respond.

Allocation of responsibility with respect to role of wholesale providers

A consumer's CP is the party with whom they have a contractual relationship, and where there have been errors or delays in provisioning service, it is to this CP that they will rightly look for redress. The fact that the delay has been caused by the CP's wholesale provider is unfortunate from the CP's perspective, but it not relevant to the duty of care owed to the consumer.

Statements such as the following by OS were found in a number of cases: "Although your order was placed with the CP, it is Openreach who plan and complete any engineering work necessary to fulfil the order. Our view is that the CP is responsible for placing the order with Openreach but cannot be held responsible for errors that Openreach makes."

Mott MacDonald does not agree with this statement. It is for the CP to manage their relationship with the wholesale provider and to seek redress from it for any failings with regards to its own terms of supply. In adjudicating cases, it is not sufficient to accept that delays have been caused by a party such as Openreach and to determine therefore that they are beyond the CP's control.

2.4 Analysis of Questionable Decisions at CISAS

There were 15 Questionable cases at CISAS. A number of key and recurrent issues were apparent in these cases, as outlined below.

Burden of proof placed excessively on consumer

CISAS frequently makes the following statement in its Decisions: "A CISAS adjudication is an evidence-based process. All claims must be supported by substantive evidence in order to succeed. As the claim is brought by the customer, it is for him to substantiate his assertions."

Mott MacDonald agrees that this is an evidence based process and that all claims must be supported by substantive evidence. However, Mott MacDonald disagrees that the fact that the claim is brought by the consumer means that it is for the consumer to substantiate his or her assertions. As stated by CISAS on its website, "in achieving a fair and reasonable outcome for both parties, a CEDR adjudicator will:

- Recognise that both parties must, where it is in their possession, provide evidence relevant to the matters in dispute.
- Give equal consideration to the word of the consumer and the word of the company."

In other words, it is for both parties to substantiate their position, not just the consumer. Where evidence is lacking, the word of the consumer ought to be given some weight.

In one case the words of the CISAS Adjudicator reflected a careful and balanced consideration of the viewpoint and evidence of the consumer: "On the balance of probability the submission of the customer is persuasive, and I take them at face value, that it was a verbally agreed condition of the contract that the customer would retain his number in exchange for moving to the company."

Similar phrasing regarding taking the consumer's word "at face value" was found in other verdicts and seems to be a good way to capture the sense that the word of the consumer alone can have weight.

Unrealistic expectations with regard to consumer evidence

It is important to recognise that the consumer and the CP generally have different means at their disposal, not to mention a different level of understanding of telecoms technology and CP processes. In expecting the consumer to substantiate their case, a common-sense view needs to be taken on what it is reasonable to expect a consumer to do, based on common capabilities

and behaviour. Proving someone did not send a text message, expecting consumers to take contemporaneous notes of conversations with CPs, or requiring them to prove that a CP received a letter – these are not reasonable things to expect. That doesn't mean taking notes doesn't help a consumer's case, but that's not the same as making it an implied requirement. If it is to be a requirement, this needs to be made clear to all consumers – arguably by CISAS, Ofcom and the industry as a whole.

In one case, a consumer makes a good point on this issue: "The CP says that the onus is on me as the customer to provide corroborative evidence, but they must be aware that customers do not routinely record telephone calls. The CP does record customer calls, but now says that they are unavailable. They are in effect accusing me of lying when they speak of "bare assertions", but in fact it is the CP that is making assertions without evidence."

Treatment of cases where the CP has not responded

As stated above with regard to OS cases, the evidence and arguments made in any case are of paramount importance, even in cases where the CP does not respond. A consumer cannot automatically "win" just because a CP has not responded; the consumer's arguments might be spurious and have no weight in themselves. However, Mott MacDonald would argue that in many cases it ought to make a difference whether or not the CP has responded. The process of adjudication is a process of balancing one position against the other and allocating a degree of weight to each side. If the CP has not responded this often ought to weigh in favour of the consumer. This is both fair and also serves as a disincentive to the CP to fail to respond.

CISAS expresses the right approach itself in a verdict on one case: "The company has not challenged the consumer's claim by way of a defence. Therefore, I have taken the customer's account as an accurate record of the events leading to the complaint. Nonetheless, even in the absence of a defence, the customer must prove on the balance of probability that the company was in breach of contract or failed in its duty of care."

Reliance on terms and conditions versus proof of sale

Terms and conditions are not an adequate proxy for proof of agreement at point of sale. The fact that the consumer may have been sent them, and may have had the chance to read them, does not mean that whatever they say has been accepted by the consumer. Legitimate sale requires that: a) consumers give clear agreement to go ahead; and b) they are given full and clear understanding of what they are agreeing to, including all material considerations regarding the terms and conditions of the contract.

This issue is dealt with well in one case, where CISAS states: "I find that it is necessary for the parties to agree specifically to a new contractual period before it can be enforced; this is not something which can be imposed unilaterally. It is not fair and reasonable, therefore, for the company to point to a provision in the terms and conditions as implying consent for a new minimum term to apply. I have not been presented with any evidence to show that the term in the contract imposing a new minimum period was brought to the consumer's attention at the time that he asked for his services to be moved to a new address. I find, therefore, that there is no evidence to show that the consumer specifically agreed to a new minimum period, and that in imposing such a period the company has acted in breach of the contract between them."

It is notable that there were a number of cases requiring interpretation of proof of sale / agreement in situations where a consumer subsequently moves house, and discovers that the CP does not cover the new home, with the consumer therefore obliged to pay an unexpected Early Termination Charge (ETC). This is a difficult situation, because it involves what could be considered a peculiarity of the CP's coverage and supply arrangements. Nevertheless, standard sales principles apply.

Reliance on process rather than evidence

Another occasional pitfall is the reliance on description of process rather than provision of evidence of what actually happened. It is not sufficient for a CP to state that they "would have" or "will have" done X, because it is standard procedure. It needs to be shown that they did do X on this occasion. Complaints often arise precisely because procedures are not followed. If the CP can't prove it, and the consumer contests it, then a middle ground must be found which acknowledges both possibilities.

Provision of incomplete evidence

There were instances in the cases detailed above where consumers claimed in their comments on a particular CP's Response that it had not provided a complete account of all the interactions they had experienced with that CP. Indeed, across all 83 cases, Mott MacDonald identified six cases in which consumers claimed something similar. For example:

- Case A: "I think the CP has a policy of picking and choosing those evidences go in their favour hence the CP has not provided here that information from my call history. Please ask the CP to furnish full non amended history of my account to establish who is right."
- Case B: "Why aren't all the correspondence included in their complaint response as if they're deliberately trying to mislead you or hide the issues I'm trying to have them address."

CISAS itself comments on it in two cases:

- Case C: "However, I acknowledge that I have not been supplied with a full set of the account notes and the company has selected those which it feels best supports its defence."
- Case D: "I also accept, on a balance of probabilities, that the customer has contacted the company on more occasions than are recorded in the company's defence document."

There is no evidence to suggest that this CP is indeed being deliberately mis-leading in the way it presents its evidence. We can't know what it has omitted – or indeed if it has omitted anything – but the fact remains that the way this CP presents its evidence lays it open to such accusations. The CP in question provided very full responses, the main body of which interlaced its own commentary with sections of cut and pasted screen shots and excerpts from correspondence. It is the cut and pasting which is contentious. Other CPs in their evidence to CISAS and OS tended to include what appear to be complete transcripts of system notes and correspondence – with supporting commentary and explanations provided alongside these. The fact that this CP chooses instead to cut and paste means one cannot get whole and uninterrupted view of the system notes, for example. One can only look to see what notes were recorded on a pertinent date if the CP has included that date in its transcript.

Mott MacDonald suggests that in future CISAS should be careful to consider the implications of this presentation of evidence when dealing with the CP's cases when weighing up the CP's evidence versus the evidence of the consumer. Ideally, the CP should also be encouraged to amend the way in which it presents evidence in future, by providing a full and uninterrupted transcript of system notes, to bring it into line with other CPs.

2.5 Quality of verdicts versus case characteristics

It is interesting to examine if the findings with regard to the quality of adjudications can be related to any of the characteristics of the sample. Are Questionable Decisions more prevalent in certain categories of case, or in mobile or business cases, for example?

In the case of OS, Mott MacDonald did not find any significant correlation between the quality of decision-making and key types of case characteristics. Regarding the 12 Questionable verdicts:

- Cases by CP: seven of the 12 cases related to BT (responsible for 50% of the sample overall), with the rest spread amongst other CPs – with only EE accounting for more than one case

- Service type: four of the cases related to mobile, four to fixed line and two to broadband – which together also made up over 80% of the cases across the sample as a whole
- Category: Billing, service quality, contract issues and consumer service made up most of the less than reasonable cases, and most of the whole sample of 82 cases. It is of minor note that there were two mis-selling cases (only 5% of the overall sample) but they were not prevalent enough in the less than reasonable cases for this to have any significance.

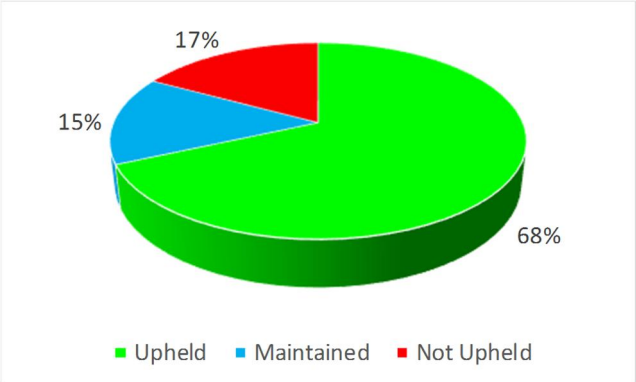
In the case of CISAS, Mott MacDonald also did not find any concrete correlation between the quality of decision-making and key types of characteristics, although mis-selling was again more prevalent than in the sample overall:

- Cases by CP: 14 of the 15 cases involved Virgin Media – which was responsible for 83% of cases overall. There was one case involving Plusnet, the second most prevalent CP overall. This therefore mirrors the composition of the overall sample closely enough.
- Service type: Triple bundles, double bundles, mobile and broadband made up the bulk of the cases in similar proportions to the overall sample
- Category: Contract Issues made up six of the 15 cases, and Billing and Mis-selling four cases each. As with OS, Mis-selling was therefore slightly more prevalent in the Questionable cases (27%) than in the sample overall (where it made up 11% of cases at CISAS). The numbers are not high enough to be certain that this represents a trend, but it is not inconsistent with Mott MacDonald's finding that there was a slight issue with adjudications regarding mis-selling.

2.6 Quality versus original case outcome

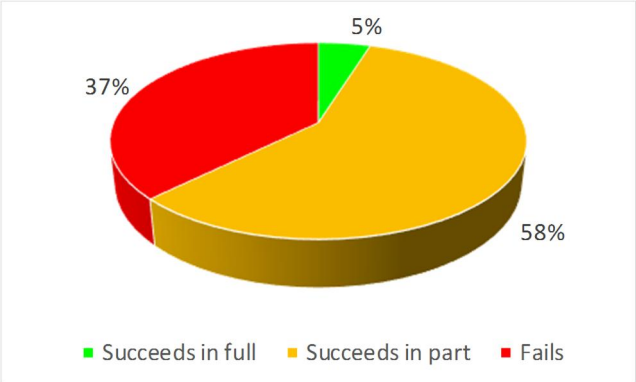
Another important perspective to consider is whether the quality of decision-making can be cross-related to cases with particular types of outcome. Figure 6 and Figure 7 show the pattern of outcomes recorded by the schemes:[7]

Figure 6: Cases by Outcome at OS (82 Cases)



Source: Mott MacDonald

Figure 7: Cases by Outcome at CISAS (83 Cases)



Source: Mott MacDonald

In the case of OS, nine of the 12 cases in which Mott MacDonald felt the Decision made was Questionable related to cases recorded by OS as "upheld", two of them related to "maintained" cases and one to a "not upheld" case. The spread of Questionable verdicts is therefore roughly in proportion to that found across the whole sample.

In the case of CISAS, there were 15 Questionable cases. None of these cases related to the 5% recorded by CISAS as "succeeds in full", six of them related to the 58% of cases recorded as "succeeds in part" and eight of them to the 37% of cases marked as "case fails". This suggests

[7] Shown previously in section 1.4

there may be slightly more of a decision quality issue than average with the “case fails” cases at CISAS.

Further comment on this is made in Section 3 which looks at Outcomes in more depth.

3 Analysis of Outcomes

3.1 Introduction

As mentioned in section 1.5, the schemes use different systems to record case outcomes. The aim of this section is therefore to outline some notable aspects of those differences, as well as presenting an alternative view of outcomes.

3.2 Analysis of current outcomes

3.2.1 Overview of Outcomes system at OS

On the basis of information from OS and discussions with Ofcom, Mott MacDonald understands that the system of outcomes at OS covers two questions:

1. Was the complaint justified?
   a. If the answer is “no” then the case is marked as “Not upheld”
   b. If the answer is “yes” then question 2 is triggered
2. When the (justified) complaint was made, did the CP do enough to resolve the case prior to OS accepting the complaint for investigation?
   a. If the answer is “no” then the case is marked “upheld” [and OS will award something to rectify the fact that the CP did not do enough]
   b. If the answer is “yes” then the case is marked “maintained” [and the original remedy outlined by the CP will stand – because its response to a justified complaint was sufficient]

According to this system, Ofcom has confirmed with OS that the following definitions can be applied to the 3 case outcomes:

Table 2: Definition of Outcomes at OS

Outcome	Definition
Not Upheld	• The CP had not made a mistake and had treated the complainant fairly. • There was therefore no basis for the complaint
Upheld	• The CP had made a mistake or had not initially treated the complainant fairly which led to the complaint being made. • When the complaint was made, the CP did not do enough to resolve the case prior to OS accepting the complaint for investigation
Maintained	• The CP had made a mistake or had not initially treated the complainant fairly which led to the complaint being made. • However, when the complaint was made, the CP put its mistakes right and made a reasonable offer to resolve the dispute prior to OS accepting the complaint for investigation

Source: Ofcom, OS

OS also emphasised that the codes are primarily of use for its data insight programme, and that it does not share the outcome with individual complainants.

By this interpretation, “outcome” should therefore not be taken to indicate the degree to which customers’ complaints are succeeding – but rather to reflect the degree to which their complaints are (a) justified and (b) being dealt with adequately by CPs.

The two things are, of course, related. If complaints are not justified, then they will not succeed (and the customer will receive no remedy during ADR); if they are justified, but are not dealt with appropriately before being brought to ADR, then the claim will succeed (and the customer will receive a remedy during ADR). They are essentially two sides of the same coin.

Mott MacDonald acknowledges, however, that the distinction is important when considering how the information may be used. OS reports regularly to Ofcom and one of the factors upon which it provides statistics in its report is the pattern of outcomes. For example, in its February 2017 Report it cites the percentage of complaints it investigates which it upheld – and comments on the degree to which it believes this suggests there is room for improvement within the sector, both in terms of reducing the reasons customers have to complain and the way in which complaints are dealt with.

Overall, Mott MacDonald notes the distinction made by OS regarding the system of outcomes – but would suggest that an understanding of this system is not being aided by the terms used. The word “outcome” implies a result; and the word “upheld” implies success in a claim. If these terms, or the statistics related to them, are reported outside of a knowledge of their context and particular definition, then there is scope for misinterpretation of their significance,

Further comments on findings with regard to the use of the “outcome” terms are made in the sections below.

3.2.2 “Upheld” cases at OS

According to the definition stated above, an “upheld” case at OS is one in which OS has found that firstly, the CP had made a mistake or had not initially treated the complainant fairly (which led to the complaint being made); and, secondly, that when the complaint was made, the company did not do enough to resolve the case prior to OS accepting the complaint for investigation. In other words, there has been a failing on the part of a CP which has not been adequately dealt with prior to ADR.

Mott MacDonald’s principal observation with regard to the use of this term is that it covers a wide range of degrees of failure in this regard – from cases in which the shortfall is slight enough to merit only an apology as rectification, to cases where significant sums are deemed suitable by OS because the failings have been substantial. Given OS’s clarified definition of “upheld” and the purpose of the outcomes system, this is reasonable: if the system is designed to show cases where the company has failed and not done enough to rectify, then all such instances – large all small – should be included.

However, it does raise a couple of issues which it is worth bearing in mind:

- Firstly, it applies a fairly broad brush to an understanding of the degree to which CPs are failing customers (as it doesn’t give a measure of how significant the failings are)
- Secondly, if the term is not well understood (as it wasn’t initially by Mott MacDonald) – and is taken to refer to the proportion of cases in which customers have “succeeded” in their claims, then this broad brush approach might give the impression that their cases are succeeding more than they really are.

To explain the latter statement, it is notable that OS calls a case “upheld” if the consumer receives any kind of remedy, even if this is a non-financial remedy such as an apology. Indeed, Mott MacDonald found 16 cases in which a case had been marked as “upheld” when the bulk of a consumer’s claims had been rejected. For example:

- The consumer received an apology and a goodwill payment of £10, instead of the £200 compensation requested
- The consumer received £30 goodwill and an apology – when they wanted their credit record to be cleansed; the consumer rejected the verdict
- The consumer was awarded £30 goodwill – when they wanted £230 compensation, in a case where the CP did not respond
- The consumer was awarded £30 and an apology – when he wanted his c.£500 balance cleared and markers removed from his credit file

- The consumer was awarded an apology, when he wanted a refund – the CP offered £30 goodwill but this was not maintained by OS.

Given the clarified intention of the use of the term, it is good that these cases are deemed upheld because they do reflect a failing by the CP – even if the customer would have liked to have been awarded a lot more. However, the fact that these cases are deemed upheld should not be confused with the implication that customers in such cases are receiving a remedy which is satisfactory to the customer. On the contrary, there are many cases deemed upheld in which the customer has received a fraction of the remedy they were seeking,

It is perhaps for Ofcom to note, therefore, that the use of the term upheld gives a sense of the number of cases in which a CP has failed a customer and failed to adequately address that fact (its intended purpose). But it does not give an accurate sense of the degree to which cases are being decided in favour of consumers – both because it covers situations when a consumer is likely to consider they have lost their case, and because it covers a wide range of degrees of success. This may not be its intended purpose, but is nevertheless important to be clear on this point – given other plausible meanings of the words “outcome” and “upheld”.

3.2.3 “Succeeds in full” versus “succeeds in part” at CISAS

The system of outcomes at CISAS, on the other hand, does overtly reflect the degree of success experienced by the customer in bringing their claim to ADR. In employing its system, it is notable that

CISAS seems to use “succeeds in full” sparingly, apparently only employing it in cases where the consumer receives absolutely all that they requested. At the same time, CISAS employs “succeeds in part” to cover the vast majority of verdicts in which the consumer receives some kind of remedy – even in cases where the consumer seems to have completely won the case, but for some small detail. For example:

- The consumer requested £1,170 in compensation and is awarded £1,000
- The consumer seeks a discount of over £4,000 and is awarded this; but CISAS does not consider that directing the company to provide certain explanations sought by the consumer would serve any further useful purpose
- The consumer seeks an apology, disconnection and reimbursement; they are awarded all of these, but CISAS does not believe that the further directions requested by the consumer would serve any useful purpose.
- The consumer seeks £460 in compensation and is awarded £425.

Of course, in the first and last examples cited it is arguable that the consumer has not received all of the compensation sought – and so the term “succeeds in part” could be deemed appropriate. However, consumers often don’t understand how the compensation system works and frequently ask for more than they are likely to receive at CISAS (see section 4.3 for further comment on this). Nevertheless, if a consumer asks for £650 and the Decision document upholds the vast majority of their argument and they are awarded £600, there is a fair chance they will consider their case to have been a success.

Likewise, in the second and third examples, it seems debatable whether the parts of the remedy not awarded – e.g. an explanation – are material to whether the case has been won or lost.

The examples raise questions about what should be considered success and how this should be reflected. Consumers using CISAS often make a number of requests, indeed the CISAS application form facilitates this. Because they make a range of requests it is less likely that all of the requests can be awarded – particularly as “actions” requested may be beyond the remit or powers of CISAS. In some cases, for example, consumers ask for undertakings by the industry; in others they request actions by third parties or for the CP to make process changes. This means that, if using a strict definition, very few of such cases are likely to be called “case

succeeds". There are also cases in which the term "succeeds in full" appears not to have been used because of semantics – for example, in one case the consumer wanted either to be given a certain package, or to leave without penalty. They are allowed to leave without penalty – yet this is labelled "partially upheld" on the grounds that they were not awarded the package, even though it would not have been possible to award both things.

Mott MacDonald believes that ideally the system used to communicate outcomes should reflect more accurately the degree to which the core requests made by the consumer have been awarded.

3.2.4 "Maintained" cases at OS

As indicated above in section 3.2.1, OS uses the term "maintained" in cases where the CP had made a mistake or not treated the complainant fairly; however, the CP put its mistakes right and made a reasonable offer to resolve the dispute prior to OS accepting the complaint for investigation. In these cases, OS will therefore decide the original pre-ADR proposal of the CP was adequate. Where that remedy has already been provided, e.g. a goodwill payment made, no further action will be required; where it has just been proposed but not provided, OS will require it to be implemented.

However, Mott MacDonald found that this definition had not been consistently applied by OS. For example, there were 12 cases at OS which were labelled as maintained. In 10 of these cases, Mott MacDonald found that OS had awarded the same remedy as proposed by the CP. However, in four of these cases the outcome maintained was to give no remedy or reward – meaning the cases ought to have been labelled "Not upheld" (as OS agrees with the CP that there was no merit in the complaint).

Mott MacDonald also found "maintained" used other situations when it did not seem appropriate, for example:

- The CP proposed no remedy, as the consumer had already had a refund and an explanation; OS awarded an additional £30 and an apology
- The CP did not respond to OS – although it had originally offered a £23 credit and £35 Goodwill (rejected by the consumer prior to the case being brought to OS); OS awarded £50 Goodwill

Mott MacDonald also found nine cases in which the outcome appeared to fit the definition of "maintained", but which had been labelled something else, including:

- The CP proposed £10, an apology, and confirmation that the friends and family mobile plan had been removed. This is exactly what OS awards – and yet this is case is labelled "upheld"
- The CP proposed £30 Goodwill; OS awards the same, but the case is labelled "Not upheld"
- The CP proposed £50 Goodwill and £100 refund; OS awards the same, yet the case is labelled "upheld"

In summary, a number of verdicts which fitted the definition of the term were not labelled "maintained"; and some cases were labelled "maintained" which didn't fit the definition.

However, it should be noted that Mott MacDonald has been informed that OS is aware of some of the quality issues with regard to the use of the term "maintained", and that some of the inconsistencies relate to operational issues it was experiencing during the time period studied. Mott MacDonald can only comment on the data it has seen – but is encouraged to learn that the above inconsistencies may only reflect a temporary issue.

OS has also emphasised the usefulness of the "maintained" category – in giving OS a sense of the effectiveness of the CPs' complaints processes and the degree to which they are dealing

with legitimate complaints effectively – whilst also allowing OS to analyse why cases which they do appear to deal with correctly still end up being referred by customers to ADR. Mott MacDonald acknowledges this may indeed be useful – however, if benefit is to be gained from using this classification, it is imperative that it is used accurately and consistently. Whilst this may be the case when operations are running smoothly, it was not the case during the period studied.

3.2.5 Conclusions on current systems of case outcomes

The systems of case outcomes used by the schemes are markedly distinct. OS's system of outcomes is not intended to reflect the result or degree of success of cases – unlike the system at CISAS – but the degree to which cases brought to ADR are (a) justified and (b) dealt with correctly by CPs pre-ADR.

The key points regarding this are:

- The fact that the two schemes use different systems to record outcomes does not lend itself to a simple comparison of outcomes across the schemes. For example, the terms "upheld" at OS and "succeeds in full" at CISAS might appear to the layman to reflect cases in which the consumer has won their case, but in reality they mean very different things
- As it stands, "upheld" gives a sense of the proportion of cases in which a legitimate complaint was not adequately dealt with by the ADR scheme originally – a useful factor to track – but it is important to realise that it covers a broad range of degrees of failing in this regard by CPs – by including both cases in which consumers have been awarded significant sums and all they asked for, and cases in which the consumer has all but lost their case, but for a token goodwill award or apology. Care needs to be taken, therefore, that upheld is not used to track the degree to which customers' claims are succeeding, because it does not give a full picture of this
- At the same time "succeeds in full" at CISAS appears too narrow in its scope by requiring 100% success and thereby excluding cases where the consumer has received everything they requested bar some minor or peripheral elements.
- The term "maintained" at OS was not being consistently applied during the period studied, undermining its value.

Mott MacDonald would recommend these systems are reviewed. As in other respects, ideally the schemes would employ a common system which allows cross comparison of outcomes, showing:

- The degree to which complaints are legitimate or not
- The extent to which legitimate complaints are being dealt with effectively by CPs
- the core thrust of a verdict and whether it has been determined in the consumer's favour – ideally meaning also reflecting a range of partial verdicts. An acid test for this should be whether the label would be recognised by the consumer as a fair reflection of the outcome.

Care should be taken to ensure that the labels used accurately reflect their meaning.

3.3 Mott MacDonald's system of case outcomes

Given the issues identified above, Mott MacDonald employed its own system for recording the outcome of cases – the same system used during MM's 2011 Review. This was in recognition of the fact that, from a consumer's perspective, there are varying degrees of success in a case, which did not all seem to be represented by the classes of outcome recorded by the schemes. Furthermore, given that both schemes use a different system with different nomenclature, Mott MacDonald thought it would be useful to apply a single system to the outcomes produced by the schemes, so that cross-comparisons can be made.

The Mott MacDonald system comprises five categories of result, as shown in Table 3.

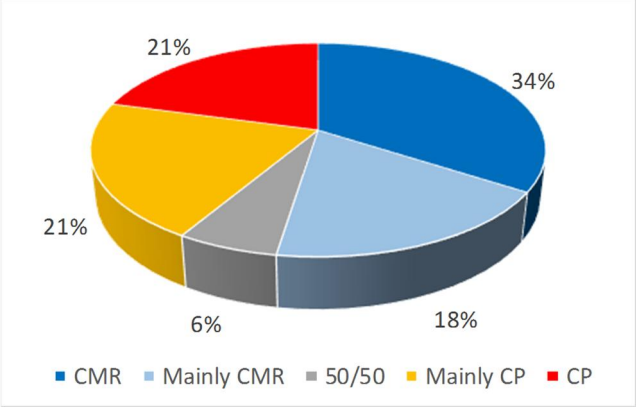
Table 3: Mott MacDonald system of outcomes

Category	Definition
CMR Only	• Case Succeeds – consumer wins the case, with all material elements decided in their favour
CMR Mainly	• Balance of verdict in favour of the consumer
50/50	• Verdict evenly weighted in favour of consumer and CP
CP Mainly	• Balance of verdict in favour of the CP
CP Only	• Case Fails – CP wins the case and consumer receives no remedy

Source: Mott MacDonald

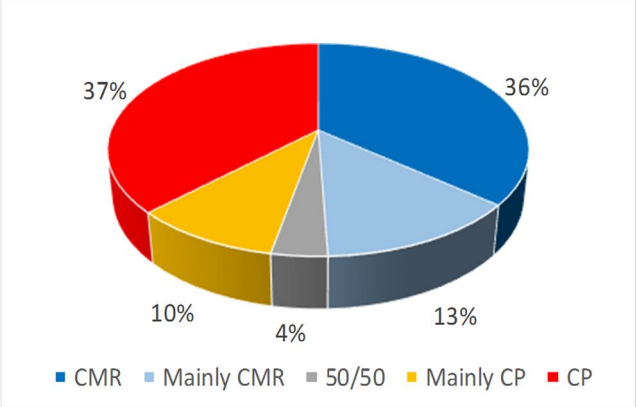
Mott MacDonald assessed the cases using this system, with the pattern of outcomes by scheme shown in Figure 8 and Figure 9.

Figure 8: MM view of outcomes at OS



Source: Mott MacDonald

Figure 9: MM view of outcomes at CISAS



Source: Mott MacDonald

The pie-charts show that the schemes found a similar proportion of cases entirely in favour of the consumer – 36% at CISAS and 34% at OS. It is interesting to view this breakdown alongside the original allocations made by OS and CISAS (shown in Figure 6 and Figure 7), whereby OS recorded 68% of cases as "upheld" and CISAS 5% as "succeeds in full". Whilst the number of CP Only cases for both schemes is similar under Mott MacDonald's system to the original allocations, the range of partial verdicts in between gives an alternative perspective on degree to which customers' claims are succeeding and failing.

3.4 Quality of Decisions versus Mott MacDonald's view of outcomes

At OS, the 12 Questionable verdicts were spread fairly evenly across the types of Mott MacDonald outcome. The balance was slightly biased towards the CP-centric verdicts, with five CP Mainly cases being ones with Questionable verdicts, but the pattern in this regard was not significant enough to be meaningful.

At CISAS, on the other hand, the cases deemed by Mott MacDonald to be Questionable were clearly more prevalent in the verdicts which favoured the CP. Mott MacDonald did not find any of the Decisions in Consumer Only or Mainly Consumer cases to be Questionable, and only found this to be the case with one of the 50/50 verdicts. 14 of the 15 Questionable verdicts concerned cases found in favour of the CP – nine of them being CP Only cases, and five of them CP Mainly.

This suggests that the quality concerns regarding CISAS adjudications can be clearly related to those cases in which the verdict is found by CISAS to favour the CP – reflecting issues

identified above such as an occasional tendency not to give the consumer's case adequate weight and to rely on terms and conditions rather than proof of what has been agreed.

4 Analysis of Remedies

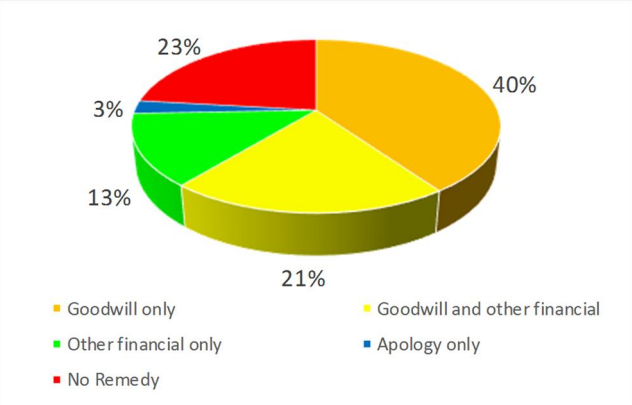
4.1 Introduction

The aim of this section is to analyse the remedies awarded by the two schemes in order to compare the frequency and nature of awards. The objective is thereby to compare policy and practice with regard to remedies at the two schemes, in order to characterise the behaviour of each and identify the degree of consistency between them.

4.2 Frequency of making awards

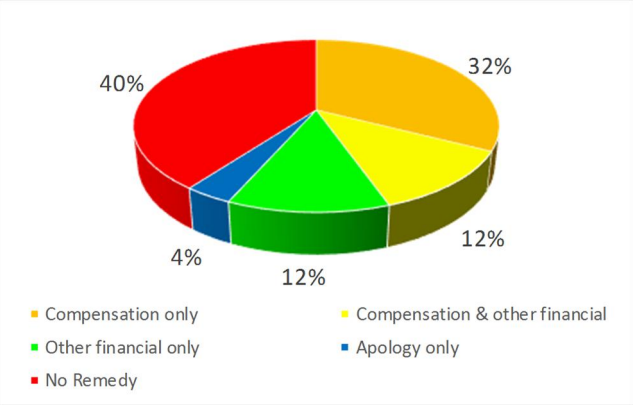
Figure 10 and Figure 11 below show the distribution of awards across the sample of cases at each scheme. It should be noted that OS and CISAS use different words to refer to awards given to compensate for stress and inconvenience. OS calls this type of award "goodwill" and CISAS calls it "compensation" – but past analysis by Mott MacDonald has shown that the two terms are synonymous.

Figure 10: Cases by award type at OS



Source: Mott MacDonald

Figure 11: Cases by award type at CISAS



Source: Mott MacDonald

OS made a financial award of some kind in 74% of cases. 40% of the time this was goodwill only, 21% of the time goodwill and another form of financial award and 13% of the time just another kind of financial award. By "other financial award" we mean a refund, waiver, credit or other form of redress. In a further 3% of cases the consumer received only an Apology.

CISAS on the other hand made a financial award of some kind in 56% of cases – a significantly lower proportion than at OS. 33% of the time this took the form of a compensation payment only, 11% of the time compensation and another form of financial award, and 12% of the time just another type of financial award. In 4% of cases the consumer received only an Apology[8].

Whilst the proportion of cases in which a financial award was made by CISAS was lower than at OS, it was higher than when compensation was studied by Mott MacDonald in 2013 – when

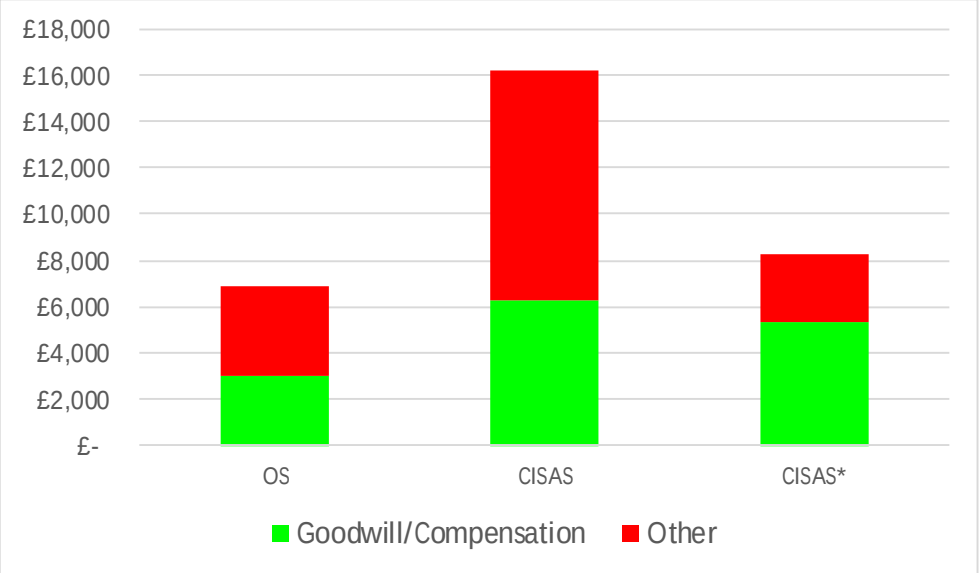
[8] It should be noted with regard to apologies that some customers taking cases to both OS and CISAS did also receive an apology in addition to goodwill/compensation and other types of award, but this has not been shown here in the interest of keeping the chart simple. However, analysis if apologies across all cases is undertaken in section 4.4

financial awards were made by CISAS in only 39% of cases. In contrast at OS the frequency of financial awards is similar to the past – 74% now versus 76% in 2013.

4.3 Financial awards

Figure 12 below shows the total financial awards made by the two schemes. Two graphs are shown for CISAS – because one particular business case involved a very large waiver of £6,900, and Mott MacDonald believes it is pertinent to view the total awards made both including and excluding this case (the latter is shown with an asterisk).

Figure 12: Financial awards made by OS and CISAS



Source: Mott MacDonald

As can be seen from the graph, CISAS awarded a higher quantity of goodwill / compensation than OS, and a higher quantity of financial awards overall. However, if setting aside the single large business case, OS awarded more in terms of other forms of financial award.

However as indicated above, CISAS made far fewer awards than OS – so it is also important to examine the average level of award made (across the cases which did receive an award):

Table 4: Average level of award made at each scheme

	All Awards	Goodwill/Compensation	Other Financial
OS	£113	£61	£137
CISAS	£344	£170	£495
CISAS*	£180	£106	£157

Source: Mott MacDonald

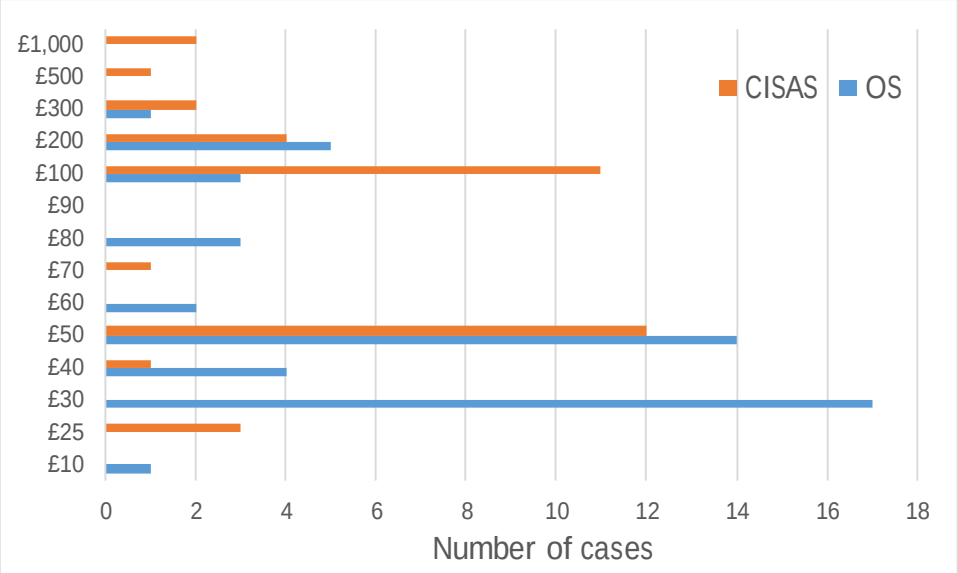
Mott MacDonald has again shown two sets of values for CISAS – both including the business case with a large waiver, and excluding it (shown with an asterisk).

It is clear that, both overall and with regard to each type of financial award, CISAS on average awards higher sums that OS.

The contrast in the average size of awards made is particularly notable with regard to goodwill/compensation – both because of the size of the difference, and given that this type of award is entirely at the discretion of the adjudication scheme. This contrasts with the size of other financial awards, such as refunds and waivers, which is largely dictated by the circumstances of the case. In order to understand what is driving the difference in average

goodwill/compensation award size, Mott MacDonald has shown the distribution of these awards by size in Figure 13.

Figure 13: Distribution of Goodwill / Compensation awards



Source: Mott MacDonald

It is apparent that both schemes made a significant number of awards at the £50 level – but whereas OS made 22 awards lower than this, including 17 at £30, CISAS made only four awards under £50. On the other hand, CISAS made 20 awards of £100 and over, whereas OS made nine such awards. CISAS made 11 awards at £100 and two awards at £1,000. OS made three awards at £100 and its largest award was £300.

It would appear that either the characteristics of cases adjudicated by OS and CISAS are very different – with the CISAS cases causing far greater levels of stress and inconvenience that at OS – or the companies have different policies when it comes to making goodwill/compensation awards.

One factor of the sample make-up which could potentially drive a difference in the complexity of cases – and a corresponding increase in compensation levels – would be if the larger awards related to business cases. However, only 2% of the cases at CISAS related to business cases – so this cannot be the reason for the difference.

In order to understand the difference between the levels of goodwill / compensation awarded, Mott MacDonald believes it is useful to cite some examples from the Decisions made by each scheme. Table 5 below includes some examples from each scheme for different levels of award.

Table 5: Examples of Goodwill / Compensation Awards

Size	OS	CISAS
c.£30	• Mis-selling a MIFI device • Two identified shortfalls in customer service • Miscommunication and delay in responding to letters	• £25 for customer service failings (had already received £25)
c.£50	• One shortfall in service • Incorrectly applied an out of bundle add-on; and applying the incorrect bar to account • Mis-advice and a failed call-back	• Consumer misadvised and loses their number • Mis-advice re insurance cover for phone, reiterated several times • Engineer did not contact consumer, no call-back, not escalating complaint

Size	OS	CISAS
	• £25 for not adding a TV channel when it should have, and £30 to say sorry for the experience	• Wrongly instructing a debit collection agency to chase money that was not owed by the consumer
c. £100	• Loss of broadband service, multiple engineering visits, missed engineering visits, lack of help from CP • Number of times contacted the CP in relation to the fault, more than one failed call-back, engineers arrived without notice • £75 service delay over nine weeks, and £50 for missed engineering visits (£125 total) • Time taken to activate services (several months), failing to update consumer on progress	• Mistakes dealing with account and subsequent complaint (including stating had no complaints procedure) • Delay in responding to consumer's complaints, having to call the company and being kept on phone for lengthy periods of time, change of visit timeslot • Sending final bill to wrong postal and email addresses; failing to tell consumer it could email a copy of bills free of charge; deactivating consumer's email before 90 days • Inconvenience of being unable to check roaming usage from the bill and for the time taken contacting the company in respect of the complaint.
£150	• Delays in service provision, billing errors, order cancelled in error, poor communication, misinformation • Charging incorrectly, multiple failings to respond to correspondence, failure to address the complaint appropriately, failed to signpost OS service once eight weeks had elapsed (business case)	
c.£200	• £175 for multiple engineer visits, multiple cancelled visits and loss of service over several months (business case)	• TV service freezing - not rectified nor making adequate efforts to resolve; three failed call-backs; late engineer's visit (£100 compensation already paid) • Failed to cancel SIM only contract; failed to refund charges; failed to contact the consumer re contract cancellation; failed to record complaints or act on them
£250		• £100.00 for failures which resulted in losing landline number; £150.00 for failures in the company's duty of care and the mis-selling of the contract
£300	• Delays in restoring the phone and broadband service for three months, eight different dates given for fixing the fault, need to contact CP multiple times (business case)	•
£1,000		• Loss of service, loss of landline number, failure by CP to take ownership and respond (£1,000 offered by CP) (business case)

Source: Mott MacDonald

Without more detailed analysis, it is difficult to draw firm conclusions on the pattern of compensation awards at each scheme. At the £50 and £100 level, the triggers for an award look broadly similar at each scheme. It is perhaps at the lower and higher ends of the scale that differences emerge. CISAS tends to start making awards at the £50 level – OS slightly lower at around £30. This may be because CISAS sets the bar a little higher in terms of what merits an award but this is hard to confirm without further study.

At the higher end of the scale there do appear to be differences. The £200 and £250 awards by CISAS compensate for multiple failings – but it is not immediately apparent that these failings are two or three times worse than the issues identified at the £100 level. This may not only represent a difference between OS and CISAS but might also be a reflection of a degree of inconsistency within the awards made by CISAS. Also, the cases in this bracket at OS seems to be largely business cases, which one would expect to be more complex and deserving of a higher compensation payment. At CISAS they are residential cases. A complex business case at CISAS receives a much higher award – £1000 – although it is important to note that this amount maintained an offer made by the CP (and so we can't know what CISAS might have offered if left to its own devices).

In relation to the awards made it is interesting to note the language used by the two schemes. For example, in one case CISAS states: "The company has failed in its duty of care in several ways, and I acknowledge that this has caused the consumer inconvenience, for which it is

reasonable that he should be paid a *moderate* sum of financial compensation [Mott MacDonald's italics]. Given the nature and number of the failures in the company's duty of care, I find it fair and reasonable that the compensation should be in the amount of £200.00"

In contrast, OS states: "the CP offered £250 as a gesture of goodwill. I can advise that I consider this a very generous offer..."

Of course, it is not fair to read too much into the language used in isolated cases, especially without giving more context. An offer considered "very generous" in one context, might be seen to be insufficient in another. Nevertheless, differences are notable in the overall and average sums awarded by the schemes.

On a final note, it is also conceivable that the sums awarded by the schemes are affected by the amounts requested by consumers. At CISAS for example, consumers applying to the scheme frequently request large sums in compensation – hundreds or sometimes thousands of pounds. Mott MacDonald counted 45 cases in which the consumer requested some form of compensation for stress and inconvenience or the trouble associated with their complaint, with the total amount requested across these cases being just under £40,000 – an average of £885 per case – although this average was inflated by a few very high claims. The median value was £250. The sums requested are notably far higher than consumers are likely to be awarded in many cases (something which also, as already noted above, implies their cases are unlikely to completely succeed). It is notable that the CISAS application form asks applicants to state the amount they wish to claim in compensation – stating a limit of £10,000 – and it may be that the visibility of this amount and the way the request is phrased encourages some consumers to claim high amounts.

In contrast, at OS there were only 15 cases in which consumers specifically requested a sum for "time and trouble" or alike – because in many cases they simply requested something such as "a gesture of goodwill for time and trouble", leaving the amount of the award at the discretion of OS. The total amount requested in the 15 cases in which the consumer did request a specific sum was £5,540 – an average of £369 per claim. The median value requested was £200. It should be acknowledged that this is not that much higher than the median at CISAS, in spite of the hypotheses suggested above.

4.4 Apologies

It is also interesting to analyse the tendencies at each scheme with regard to apologies. Figure 10 and Figure 11 above showed the percentage of cases in which consumers received *only* an apology – but this is slightly misleading, as there were also other cases in which consumers received both an apology and a financial award of some kind. Figure 14 and Figure 15 show a breakdown cases in which apologies were received as well as financial awards.

Figure 14: Apologies and awards at OS

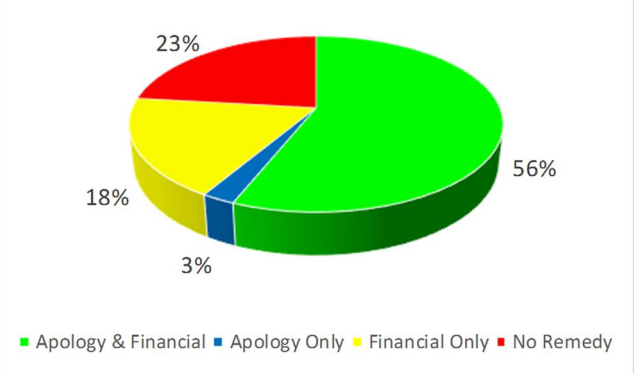
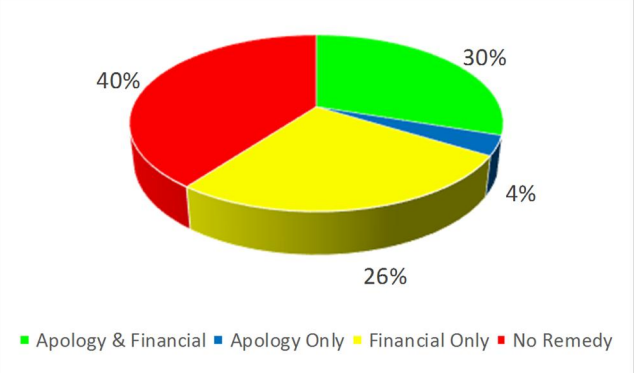


Figure 15: Apologies and awards at CISAS



Source: Mott MacDonald

Source: Mott MacDonald

The graphs show that neither scheme awarded many apologies on their own, but there was a significant difference in the number of apologies handed out in conjunction with financial awards. In 56% of cases OS awarded both an apology and a financial award, whereas this was only the case 30% of the time at CISAS.

It is also interesting to note how the number of apologies given out compares to the number requested.

At OS consumers requested an apology in nine cases. In five of these cases they did receive an apology, and in four cases they didn't. In three of those four cases with no apology they did receive a financial award – suggesting this wasn't a reflection of the case being rejected. There is no indication why an apology was not awarded in these three cases. There were also 43 cases in which an apology was awarded without being requested. It should be noted that OS does not directly ask consumers if they do or don't want an apology.

At CISAS consumers requested an apology in 54 cases. In 27 of these cases they did receive an apology and in 27 of them they did not. In the 21 of the cases in which they didn't receive an apology despite requesting one they also did not receive a financial award – in other words the case failed, so not receiving an apology is understandable. That leaves six cases in which they did receive a financial award, and did also request an apology, but didn't receive one. There was only one case in which a consumer received an apology without asking for one. It should be noted that CISAS does directly ask people to state on its application form if they would like an apology as a remedy.

Mott MacDonald does not believe there is any great cause for concern with regard to the above patterns. The differences

between the number of apologies allocated partly reflects different policies with regard to request and award – with CISAS requiring consumers to be more specific about whether they wish for a particular remedy and OS leaving this more to its own discretion. It is clear that OS exercises this discretion in many cases where consumers have not explicitly asked for an apology, which is perfectly reasonable. However, it does raise a question regarding the cases which did receive a financial award but in which OS did not decide to give an apology. Was an apology not awarded in these cases because of particular criteria being in place? Or is this something simply left to the discretion of the adjudicator? If an apology is deemed to be an important component of remedies, one would expect this to be governed by policy, so that apologies are handed out with consistency.

The fact that a few consumers at both schemes requested an apology and don't receive one – despite receiving a financial award is also worth noting. It may have been because they had already received one; or because this is again governed by specific criteria; but it may be that policy on this needs to be tightened.

5 Analysis of Process Aspects

5.1 Introduction

Ofcom also asked Mott MacDonald to review aspects of the case review process, in order to indicate how well the process is functioning from a consumer's perspective. The aim of this section is to present findings on three such aspects:

- Case Review times
- How well consumers are kept informed of the progress of the adjudication process
- How well Decisions are communicated to consumers.

5.2 Case review times

5.2.1 OS

OS provided Mott MacDonald with a spreadsheet of case data, which indicated two dates for each case:

- Acceptance date
- Decision date.

The supporting documents provided by OS with regard to each case were comprehensive, but they did not contain any date information with which to verify or cross reference the two dates stated in the spreadsheet. Mott MacDonald also did not have access during this project to OS's internal systems – which might show particular milestones regarding case receipt and processing. Mott MacDonald has therefore taken the dates provided at face value, assuming the review time at OS to equal the number of days between the Acceptance date and the Decision date. Mott MacDonald does not have any visibility of whether there is any process time before the Acceptance date – for example, if there is an earlier Application date.

By this measure, the average case review time across all 82 cases was 53 days. The time taken ranged from 17 days to 136 days – with a median value of 43 days. This is considerably faster than the time encountered during the MM 2011 Review – when OS took an average of 135 days between application and Decision.

Interestingly, the average time taken for MAS cases was 52 days, only one day faster than overall (ranging from 18 to 136 days, with a median value of 42 days).

5.2.2 CISAS

CISAS provided Mott MacDonald with a spreadsheet of case data which indicated a "Decision Published" date for each case, but which did not specify the application date. However, the case materials provided included documents with the following case date information:

- Application form: date of application (filled in by the consumer), and in some cases a date stamp showing when the form had been received by CISAS
- Decision document: date of claim, and date of Decision.

Mott MacDonald found that the date of Decision in the Decision document matched the Decision Published date in the spreadsheet. The date of claim in the Decision document also matched the date of application on the application form. Mott MacDonald therefore took these two dates as the start and finish of the process.

Based on these indicators, the average case review time at CISAS was 52 days. The time taken ranged from 31 days to 102 days – with a median value of 48 days. This is slightly faster than

encountered during the 2011 ADR Review – when CISAS took an average of 56 days between application and Decision.

5.3 Communication with applicants

Ofcom was interested to understand how effectively the schemes communicated with consumers in relation to progress with their case.

In the case of CISAS, Mott MacDonald was only provided with a set of documents specifically related to the key case interactions: the application, CP response, consumer comments, and Decision. As a result, it was not possible to discern anything about the interactions between the scheme and the consumer which took place during the process of adjudication.

In the case of OS, Mott MacDonald received a case file which contained not only the key documents but also a number of other documents which recorded interactions with the consumer. As a result, it was possible for Mott MacDonald to infer something of the quality of communication with consumers – although perhaps not as much as might have been apparent had Mott MacDonald had sight of OS's internal systems.

Mott MacDonald found that in 95% of cases communication with consumers in terms of keeping them informed was good. In only four of 82 cases were there any signs that the consumer was dissatisfied.

5.4 Communication of verdicts

Ofcom was also interested to understand how effectively the schemes communicated the Decision made to consumers and the degree to which this had been well explained. In the case of OS, Mott MacDonald found that in 98% of cases the verdict had been clearly and effectively explained. In the case of CISAS, Mott MacDonald found that this was the case 100% of the time. It was particularly notable that CISAS Decision documents had a clear and consistent structure.

6 Findings on Early Resolution at OS

6.1 Introduction

In addition to the review of OS cases which had been adjudicated via MAS/OSD, Mott MacDonald analysed a sample of 41 cases which had been settle via Early Resolution (ER). The objective of this was to examine the quality of any initial triaging, to see if the right cases were put forward for informal closure or for full adjudication at the beginning of the process.

6.2 The decision to route via ER

At this point it is worth outlining how ER fits into the adjudication process at OS. The following explanation was provided by OS:

> *Once complaints are accepted for investigation they are assessed to determine whether they could be resolved quickly, without the need for a formal investigation. These are likely to be straightforward cases where the issues appear clear cut and where the outcome doesn't seem to be contentious – perhaps the complainant wants an apology, a small goodwill payment or confirmation their account has been closed. If the complaint is deemed to be suitable for Early Resolution, we contact the participating company and ask whether it is prepared to agree the remedy the complainant has stipulated on the complaint form (or something similar). If the participating company agrees, then we contact the complainant to confirm that they are prepared to accept the remedy in full and final settlement of their complaint. Complainants can decide to accept or decline the remedy. If either the participating company or complainant is not prepared to agree a remedy, then the complaint moves to the next stage of the investigations procedure.*
>
> *Participating companies are also invited to nominate complaints for Early Resolution. If a participating company nominates a complaint for investigation, the Enquiry Officer will review the remedy offered to determine whether it is appropriate and, if it is, they will contact the complainant to ask whether they would be prepared to accept it in full and final settlement of the complaint. Again, if the complainant is not prepared to agree the remedy then it will move to the next stage of the investigations procedure.*
>
> *If the complainant and participating company agree a remedy then this becomes the binding resolution of the complaint and the company has 20 working days to implement the final Decision.*

As can be inferred from the explanation above, a case can be put forward for ER either by OS or by the CP. When it is put forward by OS, this should happen in cases where the particulars of the case and claim appear straightforward. In order for Mott MacDonald to evaluate whether this is done correctly and consistently, some record would be needed of the thinking employed or the criteria applied. However, unfortunately this kind of information is not recorded. Mott MacDonald does not wish to imply this is a failing on the part of OS – it may simply be a reflection of the fact that deciding which cases should go to ER is straightforward, meaning there is no need for criteria or justifications to be documented. Nevertheless, it means that it was not possible to critique this area of decision-making.

To give an example, the evidence regarding the decision to route a claim via ER tended to state:

> *"We have identified this case as suitable for early resolution. Mr X has suggested the following resolution to their complaint:"*

As there is no indication of why the case was “identified as suitable” it is not possible to examine the quality of the triaging involved.

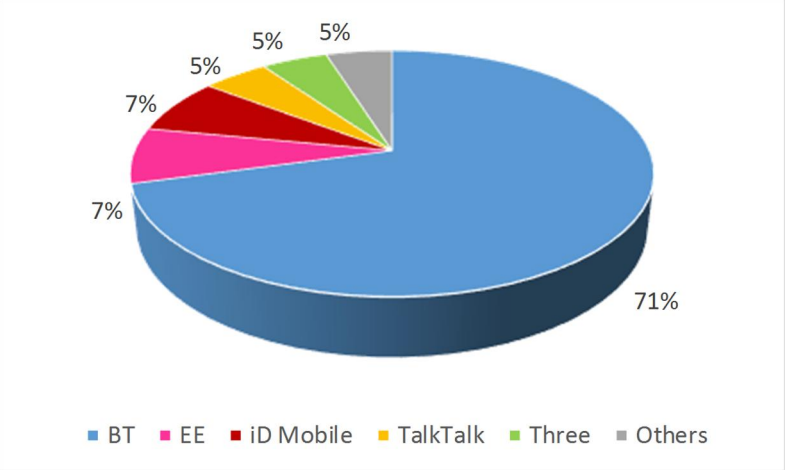
However, Mott MacDonald still believes it is interesting to look at some of the characteristics of cases routed via ER, to see how they compare to some of the characteristics of cases adjudicated via MAS/OSD.

6.3 Characteristics of ER cases

6.3.1 Cases by CP

Before looking into the case characteristics themselves, it is worth noting the mix of CPs in the ER sample – in case this has any bearing on the settlements reached. A breakdown is shown in Figure 16.

Figure 16: ER cases by CP (41 cases)



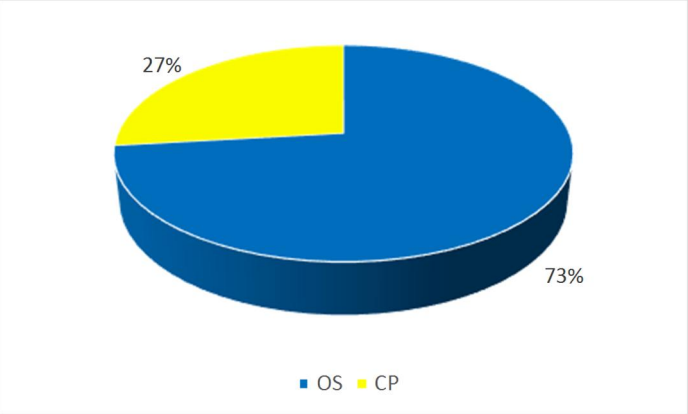
Source: Mott MacDonald

BT was responsible for 71% of cases – a higher proportion of cases than for MAS/OSD, which may suggest it slows a slightly greater propensity to settle cases than displayed on average by CPs. Given the small size of the sample it is not possible to draw any firm conclusions on this or on the relative incidence of other CPs, although it is notable that iD Mobile was responsible for three settlements (7%), despite being a relatively small player in the market.

6.3.2 Route to Early settlement

As mentioned above, there are two ways in which a case can be routed by ER – as a result of proposal by OS or by the CP. Figure 17 below shows the proportion of proposals from each source.

Figure 17: Source of ER proposal



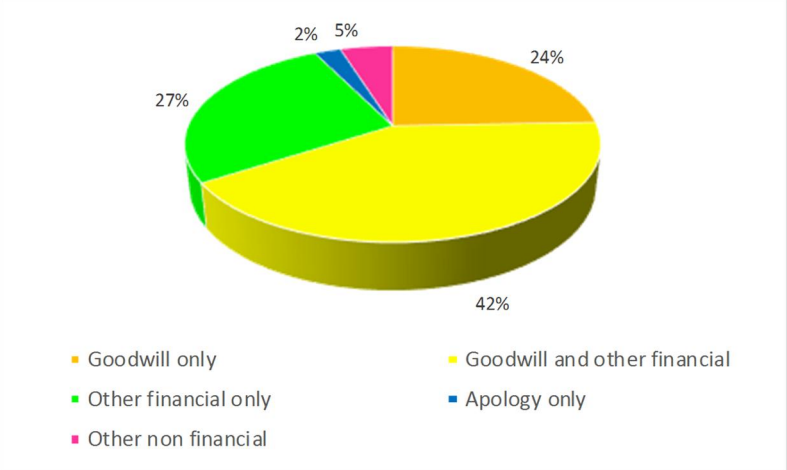
Source: Mott MacDonald

There were 11 cases in which the CP had initiated the ER proposal (27%). In eight of these cases, the CP in question was BT – proportionately the same as its share of ER cases overall.

Naturally, all of the cases involved a settlement, which meant that the consumer received some kind of remedy. It is interesting, therefore, to example the composition of these remedies.

6.3.3 ER remedies

Figure 18: Breakdown of ER remedies



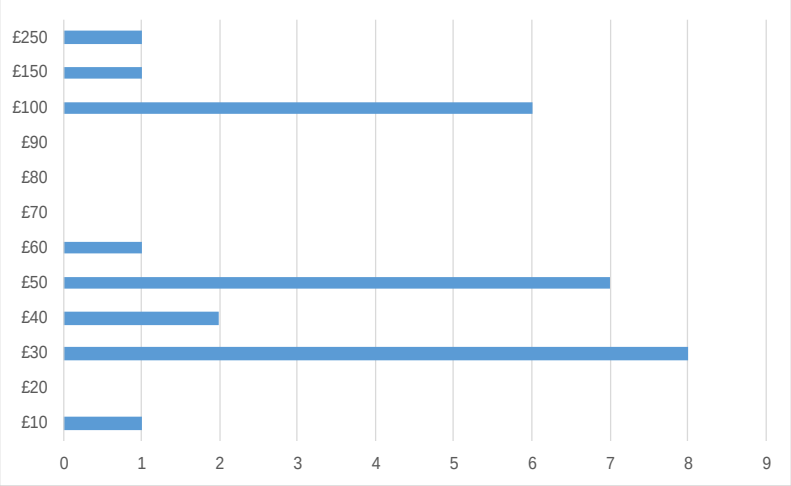
Source: Mott MacDonald.

In comparison to the pattern of remedies for the MAS/OSD cases, it is notable that there was a greater proportion of cases involving “other financial” remedies – either separately or in conjunction with goodwill. This is probably because the case involved a relatively straightforward dispute over a refund or waiver which the CP was prepared to cede. There were also a few cases in which a non-financial remedy other than an apology was awarded – such as providing written confirmation of account closure.

It is also interesting to examine the size of financial awards made in ER cases, to see how this compares with MAS/OSD cases. Goodwill was awarded in 27 cases, totalling £1,775 – an average of £66 per case. This is similar to the MAS/OSD cases where the average was £61. £2,597 of other financial payments were made in 28 ER cases, at an average of £93 per case, slightly lower than the £137 for the MAS/OSD cases – consistent with the logic that CPs may have found it more acceptable to cede refunds and waivers for relatively smaller amount via ER.

It is also pertinent to look at the distribution of ER goodwill awards by size, shown in Figure 19.

Figure 19: Distribution of Goodwill awards in ER cases



Source: Mott MacDonald

As can be seen from the graph, there is evidence of a degree of standardisation in the awards given with multiple awards at the £100, £50 and £30 level. This is interesting given the lack of intervention in these cases by OS itself. In many of these cases the customer had requested “a goodwill gesture for the time and trouble caused” and the CP had determined that £30 or £50 was appropriate. With regard to this tendency it should be noted that awards at these “standard” levels were made by several of the CPs settling cases – in other words it was not something particular to one CP alone. This could be taken to imply that the way the compensation system is set up is somehow fostering consistency – with CPs awarding goodwill at consistent levels even when OS is not directly involved in setting the award. This could also be owing to communication between OS, CPs and consumers which cannot be discerned from the documentary evidence.

7 Conclusions

Degree of reasonableness in the adjudication of cases

Mott MacDonald found that the quality of decision-making at the schemes was high, with Good Decisions in 85% of cases at OS and 82% of cases at CISAS. Mott MacDonald did not find any instances of Poor Decisions at the schemes, although there were a number of Questionable Decisions at each (defined as Decisions which are "consistent with the Decision Guidelines in part, and raise issues which merit further consideration by the scheme").

This represented a slight improvement on the level of performance to that encountered in Mott MacDonald's 2011 Review, when OS made Good Decisions 83% of the time and CISAS 82% again. The lack of Poor Decisions was also a positive development, given that OS made Poor Decisions in two cases in 2011 and CISAS did so in one case.

Mott MacDonald found no systemic issues with the quality of adjudications at the schemes.

Patterns and characteristics with regard to Decisions – both those previously identified but also any new developments

There were 12 Questionable Decisions at OS and 15 at CISAS. Mott MacDonald did not find that these Decisions could be cross-related to any particular CP or type of service (e.g. mobile, broadband etc). However, in terms of case categories, Mott MacDonald found a slight tendency to make Questionable Decisions in mis-selling cases (with this tendency slightly more pronounced at CISAS). In terms of case outcomes, with regard to OS, Mott MacDonald found that the Questionable Decisions were evenly spread across upheld, not upheld and maintained cases (using OS's own definition of outcomes) and that they were also evenly spread across the types of outcome identified by Mott MacDonald's own system. However, regarding CISAS, Mott MacDonald found that Questionable Decisions were more prevalent in cases where the case had been decided solely or mainly in favour of the CP.

This reflected a slight tendency at CISAS to attach insufficient weight to the word of the consumer – and to place too heavy a burden on the consumer, as the claimant, to substantiate a case, rather than distributing this weight equally between the parties. This was sometimes associated with a propensity to rely on the terms and conditions put forward by a CP rather than requiring the CP to show evidence of what had been agreed at point of sale. Occasionally, unrealistic expectations were also placed on consumers with regard to the evidence required to substantiate their case, and faith placed in the usual processes of the CP in terms of what would usually happen, rather than requiring evidence of what actually did happen. It was also occasionally the case that the CP's failure to respond did not adequately weigh in favour of the consumer.

OS showed some similar tendencies occasionally with regard to attaching insufficient word to the word of the consumer, not requiring adequate proof of sale from the CP, and not adequately adjusting the evaluation of the weight of the consumer's case when the CP had not responded. There were also two cases in which Decisions had not taken adequately into account the claims of elderly consumers who had entered into inappropriate agreements. There was also an occasional tendency to accept the CP's argument that the wholesale provider was to blame for issues experienced by the consumer, when the duty of care is owed to the consumer by the CP itself – with whom the consumer has a contractual relationship.

It should be noted, however, that as the overall percentages show – the above issues at OS and CISAS were encountered in a relatively small percentage of cases. There were many examples of very good Decisions, sometimes in complex cases, and of wording and

explanations which showed a good understanding and sound judgement regarding many of the above issues.

Findings on the system of outcomes

Mott MacDonald found differences in the current systems used by the schemes to express the outcomes of cases. At the moment, the systems do not give a clear view of the degree to which consumers are succeeding or failing in their claims.

OS uses the term “upheld” to cover cases in which a CP has made a mistake or not initially treated a complainant fairly, and has not done enough to resolve the case prior to OS accepting the complaint for investigation. This is perfectly reasonable in principle. However, it does raise a couple of issues which it is worth bearing in mind:

- Firstly, it applies a fairly broad brush to an understanding of the degree to which CPs are failing customers (as it doesn’t give a measure of how significant the failings are)
- Secondly, if the term is not well understood (as it wasn’t initially by Mott MacDonald) – and is taken to refer to the proportion of cases in which customers have “succeeded” in their claims, then this approach might give the impression that their cases are succeeding more than they really are (because in many cases the remedy awarded is far less than the customer was seeking).

It is important to be clear on this – given that intuitively the words “outcome” and “upheld” imply something about the result.

In contrast, the outcome terms at CISAS do explicitly relate to the result of the case. In its usage, CISAS employs the term “succeeds in full” very sparingly, only using it in case where a consumer has been successful in 100% of their claim. This can mean that a consumer can secure all the core elements of a claim, but because CISAS may not be able to award a peripheral request (such as a change to industry practices) – a claim is deemed only to have succeeded in part. This is particularly pertinent as the CISAS application form invites consumers to request products / services and actions they might like as a remedy – which leads to some requesting remedies beyond CISAS’s powers. The application of “succeeds in full” thus seems somewhat narrow.

OS uses the term “maintained” to reflect cases in which the adjudicator found that the customer’s complaint was justified, but adheres to the original remedy proposed by the CP prior to the case coming to ADR. However, Mott MacDonald found some inconsistencies in the way it was used during the period studied – although this may be because of operational anomalies at that time.

Mott MacDonald suggests that the systems used to record outcomes should be reviewed, with a view to employing a single system which reflects whether a complaint was justified and dealt with correctly, as well as the core outcome of a case and whether it succeeded or failed in its principal components – and ideally the fact that there are a range of degrees of success.

Patterns in the awarding of compensation

OS was found to award compensation more frequently than CISAS – with some kind of financial award given in 74% of cases including goodwill in 40% of cases. CISAS allotted a financial award in 56% of cases with compensation (equivalent to goodwill) given in 32% of cases. However, the sums awarded at CISAS were significantly higher than at OS, with CISAS found to award significantly higher levels of compensation than OS, with the average goodwill/compensation award being £106 versus £61. An examination of the spread of goodwill/compensation awards showed that both schemes make a significant number of awards at the £50 and £100 level, but that OS makes many awards at £30, which are rare at CISAS and CISAS make a greater number of awards above a £100. Whilst these tendencies were less

pronounced than found when compensation was analysed in 2013, it can be inferred that the policy with regard to making goodwill/compensation awards still differs between the schemes.

A factor which may be related to this is that there was a different pattern between the schemes with regard to the sums requested by consumers on their application forms – with consumers taking cases to CISAS requesting awards in 45 cases versus 15 at OS – and with those CISAS requests being in many cases for larger sums. It is hard to know if this itself has an impact on the sums awarded.

On a related note, there were also found to be different patterns with regard to apologies. OS awarded an apology in 57% of cases versus 34% of cases at OS. There were slight inconsistencies with regard to when apologies were given out, both in cases where they had been requested and where they had not – and it would seem that policy in this area should be tightened a little at both schemes.

The degree to which it can be inferred that the past recommendations with regard to the use of a Decision Guidelines and a framework for compensation awards have been implemented and / or have made a difference

It is encouraging to note that both schemes reference a version of the Decision Guidelines in a prominent position on their websites, although both versions are a slightly amended version of the original common set of guidelines. The CISAS version now includes six principles rather than the original nine. Nevertheless, the thrust of the guidelines has been retained.

Nevertheless, Mott MacDonald found that there were still some instances of the tendencies that the guidelines were intended to address – particularly regarding giving adequate weight to the word of the consumer, and the requirement for an equal level of substantiation from both parties, with the CP equally required to show evidence of agreements made, rather than relying on T&Cs or normal process as a defence. It is still a stated position at CISAS that the consumer brings the claim and so it is therefore for them to prove their case – when the policy ought to be that it is for both parties to prove their case. It should be noted, however, that many verdicts at CISAS did exercise the right balance in their judgements and expressed that balance with great clarity in the Decision document.

The differences with regard to goodwill/compensation were less pronounced than found during MM's 2011 Review – when OS, for example, showed a tendency to award small sums of compensation frequently and sometimes when cases had been all but lost. The consistency found with regard to £50 and £100 awards was also commendable. However, there are still differences in the sums awarded at the lower and higher ends of the scale.

Time taken to reach verdicts on cases

The average time taken to reach verdicts on cases was 53 days at OS and 52 days at CISAS. This was an improvement on the time taken in 2011 when CISAS took 56 days and OS 135 days – meaning a significant change at OS in particular.

The quality of communications

The quality of communications with regard to keeping consumers informed of progress was found to be good at OS in 96% of cases. There was no information to analyse regarding the performance of CISAS.

The quality of communication in the Decision documents of both schemes was good in 98% of cases at OS and 100% of cases at CISAS. The structure and clarity of expression at CISAS were particularly notable.

8 Recommendations

The aim here is to make recommendations on issues to be examined further and / or addressed by Ofcom to achieve further harmonisation.

1. Undertake dialogue with the schemes regarding findings on Questionable cases

Mott MacDonald has highlighted some issues with Decisions particularly relating to:

- The weight attached to the word of the consumer
- The burden of proof / degree of substantiation expected of the consumer
- The requirement for proper substantiation by CPs of sale or agreement (rather than reliance on T&Cs or usual process)
- The division of responsibility between the wholesale supplier and CP serving the consumer
- Treatment of cases relating to elderly and / or vulnerable consumers
- Policy for treating cases where the CP has not responded to the scheme.

Mott MacDonald believes it would be useful to engage in dialogue with the schemes on these aspects of decision-making to understand their view of correct policy in these areas. There is evidence that on many of the above issues some adjudications did take the interpretation which Mott MacDonald believes is correct, suggesting this is an issue largely to do with consistency rather than policy.

2. Reconfirm or amend a common set of Decision Guidelines

Mott MacDonald believes the Decision Guidelines serve a useful purpose and it is laudable that the schemes have both put a version of the guidelines on their websites, albeit in a revised form. From a consumer perspective, it is useful to be able to see the principles that will guide a Decision – and particularly to see that the schemes pledge to give equal consideration to both parties in a dispute. However, ideally there should be a single common set of guidelines – which can serve as a consistent foundation for Decisions made and the statements explaining them.

3. Revisit the guidance produced on compensation

There have certainly been improvements in consistency with regard to goodwill/compensation awards, with a greater degree of standardisation particularly at the £50 and £100 level. However, there are still differences between the schemes at the lower and higher ends of the scale. Mott MacDonald recommends that the schemes revisit the guidance produced with regard to a framework for compensation – bearing in mind step seven in particular, which stated: “Ideally the two schemes should confer and collaborate on the development of this framework, including with regard to the production and use of a shared matrix to set stress and inconvenience awards.”

4. Review and tighten policy with regard to Apologies

The schemes seem to approach this differently and Mott MacDonald also inferred a need for greater clarity within each scheme. There should be clear criteria on when and why to give apologies – as they can form an important part of a verdict. Again, ideally the same system would be used by both schemes.

5. Review and harmonise the systems used to record outcomes

Mott MacDonald believes it would make sense to develop a system for expressing outcomes which a) is consistent across the schemes and b) reflects the degree to which complaints have been dealt with effectively as well as the degree of success achieved with regard to core

elements of the claim. There are a range of degrees of success – and ideally the system should reflect this. Ultimately the labels used should be an accurate and intuitive reflection of their meaning.

6. Harmonise application forms / procedures

It is recognised that the schemes have different processes and cultures with regard to interactions with the consumer. However, an upshot of this is that currently their application processes are posing different questions to consumers in different ways. Ideally the material aspects of the information sought by the application forms and procedures would be similar, thus laying a consistent foundation for the adjudication processes which follow.

7. Clarify what constitutes good evidence

Mott MacDonald is not privy to the internal guidance in place at the schemes with regard to the quality of evidence, but it can be inferred that it might be worthwhile tightening this guidance. For example, such guidance might clarify:

- What is / isn't required of consumers as proof of having sent a letter (a copy of the letter; proof of postage; proof of receipt?)
- What is required of CPs to prove sale and / or cancellation
- What is required of CPs in terms of the way in which they present their evidence (i.e. complete system notes versus notes cut and pasted into their narrative.

By sharing such guidance with consumers and CPs the schemes could also help them to present their evidence in the most effective way.

Appendices

A. Decision Guidelines

The Outcomes Agreement produced by Mott MacDonald in January 2012 contained the following Decision Guidelines:

In achieving a fair and reasonable outcome for both parties, the outcome will:

1. Demonstrate a level playing field between the CP and the consumer so that neither is disadvantaged
2. Promote neither the position of the consumer nor the CP
3. Consider the evidence presented by the parties, the specific circumstances, and other information directly relevant to the dispute
4. Be mindful of, but not bound by, past rulings in similar cases
5. Have regard to the relevant regulations, law and terms and conditions
6. Recognise that both parties must provide evidence to support their position
7. Be based on the balance of probabilities in the absence of conclusive evidence
8. Take account of, but not rely on the usual behaviour or practices of either the CP or consumer
9. Give equal credence to the word of the consumer and the word of the CP.

B. Sample Composition

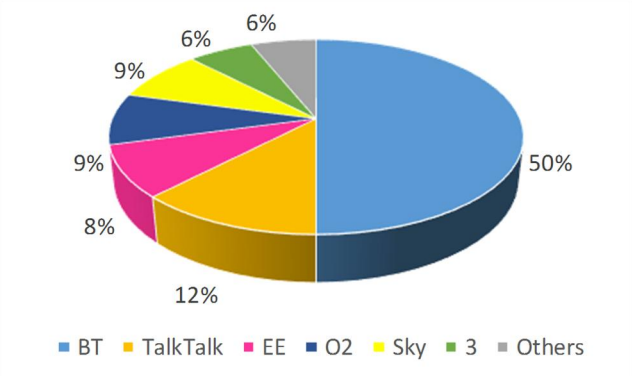
B.1 Introduction

Mott MacDonald believes it is pertinent to look at the composition of the data sample analysed – in case any differences in the data set might shed light on the findings on decision-making. As noted in the Introduction, the sample was designed to match the characteristics of the raw case data for the two months from which the data was taken (January and February 2017). The sections below therefore look at different aspects of these characteristics in relation to the 82 OS cases and 83 CISAS cases reviewed.

B.2 The proportion of cases by CP

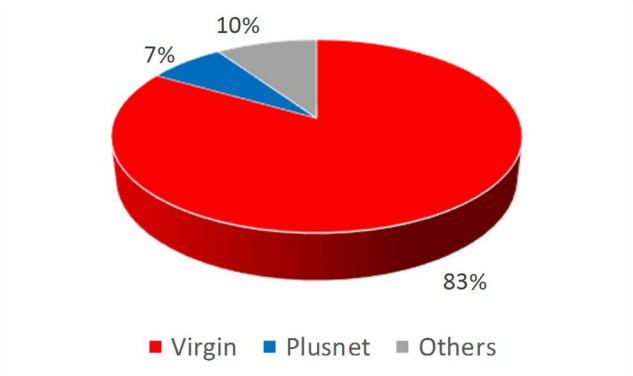
Firstly, it is interesting to look at the mix of communications providers represented in the sample, shown in Figure 20 and Figure 21.

Figure 20: OS cases by CP (82 Cases)



Source: Mott MacDonald

Figure 21: CISAS cases by CP (83 Cases)



Source: Mott MacDonald

It is clear from Figure 21 that the majority of CISAS cases – 83% of them – relate to a single CP. Whilst the identity of the CP should not affect the quality of decision-making, the nature of a CP's business and the ways in which it relates to consumers can have in impact on the type of cases which trigger disputes. This in turn can affect the situations that an adjudicator will have to evaluate. It is important to bear this in mind when considering the quality of Decisions made at CISAS – particularly given the degree to which one CP dominates its case load. In theory, the dominance of one CP could work both ways: if cases from that CP are more complex, it could make decision-making harder; on the other hand, it could imply less variety in the situations encountered, meaning that adjudicators ought to be well rehearsed in dealing with a particular type of case.

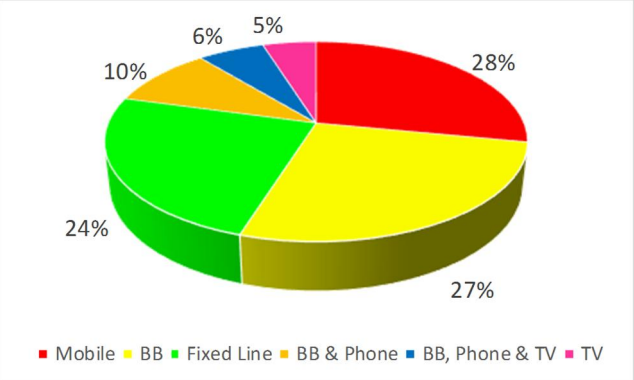
A single CP also dominated the cases at OS, though not to the same degree. Nevertheless, it is still pertinent to consider the impact this might have on the type of cases OS adjudicates and whether this has any impact on the quality of Decisions made.

Further comment on this subject, with regard to both OS and CISAS adjudications, is made below in section 2.5.

B.3 Cases by service type

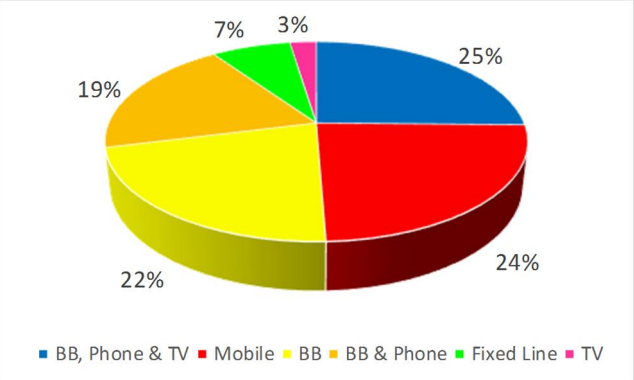
It is also pertinent to observe the mix of cases by service type – a characteristic recorded by the schemes regarding each case. The breakdown is shown in Figure 22 and Figure 23.

Figure 22: Cases by service type at OS



Source: Mott MacDonald

Figure 23: Cases by service type at CISAS



Source: Mott MacDonald

It should be noted that Mott MacDonald found the case type allocated to each case by both schemes to be accurate – meaning that the above pie charts are a faithful reflection of the make-up of cases at the schemes.

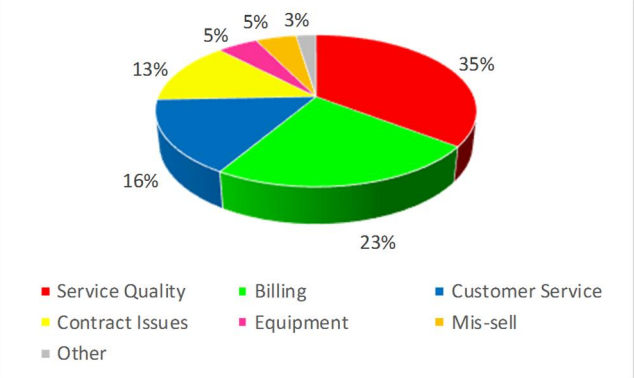
The graphs show that there are were some differences in the composition of the sample – with the CISAS cases involving a lot more bundles than those at OS, and fixed line cases a lot less common. This pattern is probably a reflection of the fact that 83% of CISAS cases involved a CP which often sells bundles. At OS, cases involving mobile issues, broadband issues and fixed line issues each accounted for a significant proportion of cases, with double and triple bundles less prevalent. Cases simply involving fixed telephony were a lot less common at CISAS.

In principle, these differences should not affect the quality of decision-making, but they are worth bearing in mind when looking at the case situations encountered at the schemes and any variations found in the quality of Decisions or nature of verdicts in particular types of case.

B.4 Cases by category

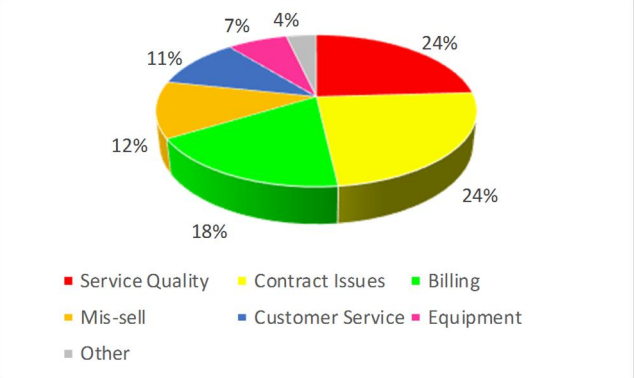
OS allocated a "Case Category" to each case and CISAS identified a "Parent Complaint Type" [9]. These headings included the same categories, meaning that a cross-comparison can be made between the types of case making up the sample at each scheme – shown in Figure 24 and Figure 25.

Figure 24: Cases by category at OS



Source: Mott MacDonald

Figure 25: Cases by category at CISAS



Source: Mott MacDonald

[9] It should be noted also that CISAS recorded a sub-category of "Dispute Type" under each Parent Complaint Type heading.

Service quality was the most significant category at both schemes, with Billing also significant. At CISAS cases concerning Contract Issues made up nearly a quarter of cases; at OS Customer Service cases were significant in number.

On the whole Mott MacDonald found that the categories allocated to the cases at both schemes were accurate, reflecting the consumer's view of the key issue at the crux of the case as well as Mott MacDonald's view. There were occasional instances where the category allocated was appropriate to a degree but where it was arguable a different category might have been preferable (for example, where there was indeed a contract issue – but this was the result of mis-selling). There was also evidence of potential over-lap in the categorisation system used. For example, cases where charges were being disputed were found under "Contract Issues" and "Billing". However, given the categories used were largely appropriate Mott MacDonald has not performed detailed analysis of case categorisation nor has it sought to re-categorise cases. The patterns indicated in Figure 24 and Figure 25 are a fair enough reflection of the make-up of cases, given the primary focus of this project is not on categorisation but the accuracy of decision-making.

B.5 Other sample characteristics

Some other characteristics of note were:

Residential versus business cases

- 89% of the cases at OS were residential cases and 11% business cases
- 98% of the cases at CISAS were residential cases and 2% business cases.

MAS versus OSD cases at OS

- 49% of the OS cases were determined by MAS and 51% by OSD

Where pertinent, comments are made during the analysis regarding the impact of these factors in the accuracy of Decisions.

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