



Review of Alternative Dispute Resolution Schemes

Call for Inputs

	Call for Inputs
Publication date:	31 March 2017
Closing Date for Responses:	12 May 2017

About this document

Alternative dispute resolution (ADR) is an important part of the protection available to consumers with complaints about their communications provider (CP). All communications providers are required to be members of an Ofcom-approved ADR scheme. Consumers can take their complaint to ADR eight weeks after they have complained or, before that, when their complaint has reached deadlock.

Under powers in the Communications Act 2003 (the “Act”) Ofcom currently approves two ADR schemes: Ombudsman Services: Communications (“OS”) and the Communications and Internet Services Adjudication Scheme (“CISAS”). We are required to keep this approval under review.

This Call for Inputs begins this review and asks for stakeholders’ comments about the operation of OS and CISAS since our last review in 2012. In particular, we are keen to have stakeholders’ views on how the schemes have performed against criteria set out in the Act, such as their accessibility and effectiveness, and whether the measures that we have put in place to ensure the effectiveness of the schemes remain appropriate.

Contents

Section		Page
1	Review of the approved Alternative Dispute Resolution schemes	1

Annex		Page
1	Responding to this Call for Inputs	6
2	Ofcom's consultation principles	8

Section 1

Review of the approved Alternative Dispute Resolution schemes

Background

1. The Communications Act 2003 (the Act) places a duty on Ofcom to secure the availability of appropriate dispute resolution (ADR) procedures. Through General Condition 14.5 we require all Communications Providers (CPs) to be a member of an ADR scheme. We currently approve two such schemes: Ombudsman Services: Communications (OS)¹ and the Communications and Internet Services Adjudication Scheme (CISAS)². All CPs are free to choose which of the two ADR schemes they belong to. The Ofcom ADR Checker provides information on the ADR scheme that each Communications Provider belongs to.³
2. Ofcom is obliged to keep our approval of the ADR schemes under review and we are now carrying out a review of the performance of both OS and CISAS (including the operations, structure and rules of both organisations). This Call for Inputs provides stakeholders with the opportunity to bring to Ofcom's attention any issues that they believe should be considered as part of this review.
3. Both OS and CISAS were also approved by Ofcom in 2015 as ADR schemes under the Alternative Dispute Resolution for Consumer Disputes Regulations 2015 (ADR Regulations)⁴. Approval under these Regulations must be carried out every two years. Therefore, as part of the current review, we will also be assessing whether OS and CISAS continue to meet the requirements of the ADR Regulations. Stakeholders are also invited to comment on this aspect of the review, should they wish to do so.

Scope of this Review

4. In this review, we are likely to have the following options open to us:
 - i) continue to approve both schemes with no suggested changes (i.e. the status quo);
 - ii) continue to approve both schemes but subject to either, or both, of them making changes to their rules and operations; or
 - iii) withdraw approval of one or both scheme(s).
5. During the previous review, completed in 2012⁵, Ofcom consulted and established a set of criteria that the schemes should meet in order for Ofcom to confirm our

¹ <https://www.ombudsman-services.org/communications.html>

² <https://www.cedr.com/cisas>

³ <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/problems/adr-schemes>

⁴ <http://www.legislation.gov.uk/uksi/2015/542/contents/made>

⁵ <https://www.ofcom.org.uk/consultations-and-statements/category-3/adr-review-12>

(re)approval of the schemes. We propose to use the same criteria as the basis of our assessment for this review⁶:

- Accessibility
- Independence
- Fairness
- Efficiency
- Transparency
- Effectiveness
- Accountability

Accessibility

6. The review will consider how accessible the schemes are. In particular, we will consider how straightforward it is for consumers, including consumers with disabilities and those in vulnerable circumstances, to make a complaint. We will review:

- how easy it is for consumers to access to all relevant information;
- the clarity of that information;
- the support available to those who have difficulties setting out their case; and
- any barriers to consumers making an application to the schemes.

Independence

7. The Act requires that the schemes are administered by those who are independent of both Ofcom and CPs. Our review will include considering:

- the governance procedures in place to ensure that member companies do not unduly influence decision making;
- the measures both schemes have in place to ensure that ADR officials discharge their duties in a way that is not biased as regards either party to the dispute;
- the schemes' rules to ensure any potential conflict of interest is disclosed and addressed.

Fairness

8. We will consider the extent to which the schemes' procedures and decisions reached are fair and reasonable. Our review will include ensuring that:

⁶ We will also satisfy ourselves that the schemes meet the requirements set out in schedule 3 of the ADR Regulations, with which these criteria are broadly consistent.

- the schemes give parties to the disputes an opportunity, within a reasonable period of time, to submit all relevant arguments, evidence and documents;
 - there are appropriate points of review for cases, that staff are appropriately trained, and that there are appropriate internal guidelines in place for how decisions should be reached in particular cases;
 - the parties are notified of the outcome of the case including information on the grounds on which the outcome is based;
 - consumers have an opportunity to complain about the process followed by the schemes in the examination of the cases, including the opportunity to have that complaint independently reviewed.
9. Our review will include an examination of a sample of cases to assess the extent to which the decisions on those cases were reasonable and fairly reached, and whether decisions made on similar cases are broadly consistent (within and between the schemes).⁷

Efficiency

10. The review will consider:
- the timeliness of the schemes in handling cases; and
 - the extent to which their processes, including their fee structures, are efficient and incentivise CPs and the schemes to arrive at appropriate and efficient outcomes.
11. In terms of the timeliness of handling cases, both schemes are required to report their performance against Key Performance Indicators (KPIs) to Ofcom on a monthly basis. Current KPIs include that:
- more than 80% of calls to be answered in less than two minutes;
 - more than 90% of calls to be answered in less than five minutes;
 - 100% of written correspondence to be replied to within ten days;
 - more than 90% of case decisions issued within six weeks; and
 - less than 1% of case decisions issued later than eight weeks⁸.
12. During the course of the last year, OS in particular has faced challenges in meeting some of these KPIs. OS has identified a large spike in complaints about one provider as the main cause for the failure to meet KPIs. This spike has coincided with a more general increase in complaint numbers which may in part be a result of CPs issuing more notifications to consumers about the right to go to ADR when a case reaches deadlock or after eight weeks.

⁷ We have appointed an external consultancy – Mott MacDonald – to carry out this assessment.

⁸ <https://www.cedr.com/cisas/reports> and <https://www.ombudsman-services.org/annual-reports-os.html>

13. When the number of cases going to ADR increases significantly, the schemes need to increase their resources – either by employing more staff or by outsourcing the work. It takes several months for new staff (including in outsourced organisations) to be trained and be fully effective, so it is important that the schemes can identify likely significant increases in cases as far in advance as possible. To do this, schemes need reliable information from CPs – and potentially other sources – about trends in complaint volumes.
14. As part of the review, we will consider whether the information available to the schemes about complaint volumes can be improved and, if so, how this might be achieved. For instance, in some other sectors companies whose case volumes exceed their forecast pay higher ADR case fees than those where volumes are within forecast. Such arrangements are not common in the communications sector and we will consider whether they would be appropriate and, if so, how any barriers to their introduction might be overcome.
15. We will also consider whether the schemes have the necessary arrangements and incentives to identify and address risks that they may cause them to miss their KPIs. For instance, where KPIs are missed over a sustained period, there may be a role for schemes to involve third parties to provide additional advice on their processes, or for a review of the approval of the scheme(s) by Ofcom to be triggered.
16. It is not acceptable that consumers who may have been seeking to resolve a complaint with their CP for eight weeks have to wait for a long period for the scheme to decide on their case. We will consider whether consumers are made sufficiently aware of the standard timescales for an ADR case to be considered, whether they are kept informed of any delays and of their right to complain about undue delays by the schemes.
17. Both schemes have an independent person – the Independent Reviewer at CISAS and the Independent Assessor at OS – who will ultimately consider a complaint made about the relevant scheme’s handling of a case, including undue delays (but not the case decision), and can require the schemes to make an apology or a financial award. We will consider whether the role of the Independent Reviewer/Assessor is made sufficiently clear to consumers by the schemes, whether their remit is adequate, and whether the Independent Reviewer/Assessor has sufficient ability to make wider recommendations about the schemes’ processes.

Transparency

18. The review will consider the extent to which decisions and the decision-making processes are clear to consumers and to CPs. We also consider the information that the schemes provide about the cases they receive. Currently the schemes publish aggregated information about case numbers and complaint types. Working with Ofcom, the schemes are now planning to expand this information to give more details about cases on a provider-specific basis.

Effectiveness

19. The review will consider whether the schemes are effective in:
 - ensuring cases are effectively investigated;
 - keeping accurate records of cases accepted, case details and of decisions made; and

- monitoring the implementation of decisions.
20. An important part of the schemes' role is to work with CPs and with Ofcom to identify trends in complaints and problems in complaints handling. In particular, the schemes can assist the industry to manage complaints better by working with CPs to understand complaint drivers and to identify where complaints might have been addressed earlier by the CP, so avoiding the need for the consumers to take their case to ADR. We will consider how the schemes are currently carrying out this function and whether there are areas where they could be more effective.

Accountability

21. The review will consider whether the KPIs set out above are reasonable, or whether adjustments need to be made, and whether the requirements for the schemes to report on their performance remain appropriate. As part of this consideration, we will take account of the new performance requirements set out in the ADR Regulations.
22. For example, the ADR Regulations require that cases should be completed, other than in exceptional circumstances, within 90 days of the submission of the case file by both parties, whereas our KPIs have timeframes that begin when the consumer makes the complaint. We will consider whether the KPIs should be amended or added to, in light of the additional requirements in the ADR Regulations.
23. The ADR Regulations requires the schemes to publish an annual activity report, for example covering the number and types of complaints received by the schemes. We will consider whether this report is adequate to address all accountability and transparency needs or whether additional reporting is needed.

We would welcome stakeholders' comments on the scope of this review including whether there are any additional issues we should consider. In particular, we invite comments and evidence from stakeholders on the issues and areas of performance identified.

Next steps

24. We will take account of the comments received through this Call for Inputs and of the results of the consultancy study by Mott Macdonald, to inform this review. We will also have discussions with the ADR schemes, stakeholders and with other regulators, and review complaints we have received from consumers about the schemes, before reaching any conclusions.
25. We aim to complete this review and publish our conclusions by autumn 2017. If we are proposing significant changes to the operation of ADR or of the schemes, we will consult on those proposed changes before deciding whether all, or any of them, should be made.

Annex 1

Responding to this Call for Inputs

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, **by 5pm on 12 May 2017**
- A1.2 We strongly prefer to receive responses via the online form at <https://www.ofcom.org.uk/consultations-and-statements/category-2/adr-review-17>. We also provide a cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>) for responses sent by email or post; please fill this in, as it helps us to maintain your confidentiality, and speeds up our work. You do not need to do this if you respond using the online form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to ADRreview@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this Call for Inputs only, and will not be valid after 12 May 2017.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the Call for Inputs.
- Liz Roberts
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 If you would like to submit your response in an alternative format (e.g. a video or audio file), please contact Liz Roberts on 020 7981 3060, or email ADRreview@ofcom.org.uk.
- A1.6 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.7 If you want to discuss the issues and questions raised in this consultation, please contact Liz Roberts on 020 7981 3060, or by email to ADRreview@ofcom.org.uk.

Confidentiality

- A1.8 Call for Inputs are more effective if we publish the responses before the response period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.

- A1.9 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.10 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.11 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <http://www.ofcom.org.uk/terms-of-use>

Next steps

- A1.12 On completion of the review, Ofcom plans to publish a statement by autumn 2017.
- A1.13 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <http://www.ofcom.org.uk/email-updates>

Ofcom's consultation processes

- A1.14 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.15 If you have any comments or suggestions on how we manage our consultations, please call our consultation helpdesk on 020 7981 3003 or email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601
Email steve.gettings@ofcom.org.uk

Annex 2

Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)