

Ofcom

Review of Alternative Dispute Resolution Schemes – Call for inputs

Focus of the call for inputs

The Advisory Committee for NI notes that the focus for the call for inputs is around the operation and performance of the two Alternative Dispute Resolution (ADR) schemes - Ombudsman Services: Communications (OS) and the Communications and Internet Services Adjudication Scheme (CISAS) - since the last review of this area in 2012.

In particular, Ofcom are keen to have stakeholders' views on how the schemes have performed against criteria set out in the Communications Act 2003 (the Act) and in terms of the ADR Regulations¹, such as their accessibility and effectiveness, and whether the measures that Ofcom have in place to ensure the effectiveness of the schemes remain appropriate. In addition, the 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.

The Advisory Committee for NI wish to make the following comments:

Scope of the review

The Advisory Committee for NI note that Ofcom propose to use the same set of criteria (emanating from the review in 2012) as a basis for the forthcoming review; these are: accessibility, independence, fairness, efficiency, transparency, effectiveness and accountability. Whilst there appears to be good reason to continue using this set of criteria, the Advisory Committee for NI suggests that the following additional or extended criteria may also be relevant and useful for the review: **consistency** – as there is some evidence that different customers are obtaining different outcomes in relation to very similar complaints.

In addition, the Advisory Committee for NI has a number of comments on what Ofcom proposes to look at under each of the listed headings.

Outcomes

The Advisory Committee would like to stress that the design of ADR schemes should be on the process as well as the outcomes.

Accessibility

The Advisory Committee for NI suggests that external research is commissioned to review, from a consumer perspective, the ease of access to all relevant information, the clarity of available information, the support available to those with difficulties and any barriers in making an application to the ADR schemes. In addition, the Committee suggests that cognisance is taken of the level of initial interest or requests for ADR information, and the drop-off rates at each stage. Follow-up should be undertaken with those who have dropped out to ascertain the main reasons for this.

¹ 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).

Under this heading we also suggest that the needs of those most disadvantaged and vulnerable should be specifically taken into account; with reference to those with hearing and sight loss, where English is a second language and those who are vulnerable as a result of illness, old age, mental health. This part of the review should engage with relevant professional and umbrella bodies representing those with additional needs, e.g. Action on Hearing Loss, RNIB etc. In addition, the fact that ADR is accessed online needs to be taken into account; with a review of whether alternative formats and access routes would also be helpful, in particular for the most vulnerable consumers. This is particularly important if the cause of the initial and ongoing complaint is the customer's broadband, meaning that there should be an option to access the process off line as well as online.

Independence

The Advisory Committee accepts the items listed under this heading; and would also suggest that the review looks at specific cases where conflict of interest has been disclosed to establish lessons from this, and options to strengthen mechanisms to identify potential and actual conflict of interest.

Fairness

A measure of fairness and reasonableness is in some ways quite subjective, depending on the consumers understanding of the service they had hoped to received and/or had contracted, and the problems/difficulties they have encountered, and in the light of what resolutions have been proposed and/or actioned.

Whilst we accept the need to review the process by which both parties are given an opportunity to submit all relevant arguments, evidence and documents, we would also note, in some cases, the need placed by the CP on the customer to prove there are significant errors in the facts or produce significant new evidence of material difference. Placing the responsibility on the consumer to provide evidence, may mean that some consumers – who perhaps lack investigative will and capacity – drop out of the ADR process at an early stage. Whilst the process may therefore be deemed to be fair, the decision reached may not be sensible or fit for purpose or indeed no conclusion may have been reached if the consumer dropped out of the process. The lack of investigatory powers and scope of any evidence gathering means that those providing ADR lack the opportunity to more thoroughly investigate what has gone wrong and how to fix it.

We welcome the reference to review the opportunity for consumers to have a complaint independently reviewed, and suggest that the clarity of information and ease of process for this needs to be examined.

We welcome the opportunity to examine a sample of cases; we would strongly suggest that the size of the sample enables both a geographical coverage to be looked at as well as samples from each industry as well as individual providers. In addition, we suggest that this focusses on cases closed with different outcomes for the customer, including feedback from customers who have interacted with the ADR process.

Efficiency

We are concerned that one of the ADR schemes – OS – has faced challenges in meeting some of the Key Performance Indicators (KPIs) over the course of the last year, albeit that this was as a spike caused as a direct result of complaints about one provider together with a general increase in complaint numbers as 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. We strongly suggest that the review examines in more depth the range and type of information available to ADR schemes about complaint volumes, potential trends, and options for responding to complaints, fundamentally so that they can respond to and adjust their workload capacity accordingly.

We agree with the statement at paragraph 16 that it is not acceptable for consumers who may have been seeking to resolve a complaint with their CP for eight weeks to have to wait for a long period for the scheme to decide on their case. This leaves the consumer without an efficient and effective service for longer; and the lack of opportunity to promptly resolve the issue.

In reviewing the role of the independent person (Independent Reviewer at CISAS and Independent Assessor at OS), the Advisory Committee for NI suggests that external research is commissioned to review the number and type of undue delays, the nature of apology and financial award provided as a result of undue delay and to capture the current consumer experience in this area, in order to make recommendations to improve the role of the independent person.

Transparency

The Advisory Committee for NI welcomes the proposal that the ADR schemes are planning to expand the information on case numbers and complaint types, to give more details about cases on a provider-specific basis. We suggest that this expansion and widening of transparency, in terms of information being made public, will in part act to ensure providers become more interested in resolving recurring problems with their service, or problems which are particularly service specific.

In addition, the Advisory Committee welcomes the proposal in the review to look at whether decision-making processes are clear to consumers. This approach of ensuring transparency of information on making complaints is not new to Ofcom. In October 2014 Ofcom fined Three £250,000 for failing to comply with their rules on handling customer complaints, and in particular the fact that Three did not make customers (who had been through the complaints process) sufficiently aware of their right to escalate a complaint to ADR. As a result of this investigation Three took steps to ensure it is now compliant with its complaints handling obligations.

We suggest that transparency of information on ADR, decision-making processes and decisions is paramount in firstly ensuring the consumer has the right information on which to act and engage in the ADR process, and secondly by publishing provider specific information to act as a push mechanism to ensure CP's comply with obligations in this area.

Effectiveness

The Advisory Committee for NI accept the proposed remit for the review to examine the effectiveness of ADR schemes. However, we would suggest the reference to ensuring cases are effectively investigated needs to be further developed in terms of a clear definition – and as broad a definition as possible – of what it means to investigate a case. For example some CPs indicate that they check to see if a service is restored; this is only a half-way measure which does not require a CP to look further into why the service was broken in the first place and what lessons can be learnt from this. In these cases, we would be of the view that some approaches, using the principles of ADR, need to be further developed to ensure they are not toothless in their nature.

In some cases, where a CP gives a final solution after they have taken what they consider to be all the steps to investigate a complaint – the two parties can reach deadlock quite rapidly – with a consumer feeling that further steps could have been taken to further investigate their complaint. At this point, as noted above it is clear that in the case of some CPs the customer is required to prove there are significant errors in the facts or produce significant new evidence of material difference. Again placing the responsibility on the consumer to provide evidence may mean that some consumers – who perhaps lack investigative will, capacity and determination – drop out of the ADR process at an early stage.

We welcome the opportunity in the proposed review to look at further options to identify trends in complaints and trends in those that move to ADR, with a focus on looking at complaint drivers and triggers and opportunities to manage complaints and work towards resolution prior to the need for ADR. In particular we would suggest that data needs to be recorded properly so assessments of the ADR schemes efficacy are meaningful, and that if complaint data from ADR schemes shows a need for improvements, that Ofcom put in place measures and timescales to ensure improvements happen.

Accountability

The Advisory Committee for NI welcomes this approach; of assessing which is the best approach in terms of KPIs, but would urge that the goal is set high in terms of consumer protection balanced with the best results for all coming out of ADR. Whilst we acknowledge the timeframe of 90 days under the ADR regulations, this contrasts with the current timescale in the KPIs of 8 weeks. Whilst a longer timescale will provide more time for production and consideration of evidence, it may also elongate final decision making, to the detriment of the consumer.

Summary

In conclusion, the Advisory Committee for NI welcome the approach proposed for this review; but would also welcome a broadened perspective – to ensure that the review focuses not just on the process of ADR – and the hygiene factors of the process – but fundamentally on the results and desired outcomes for all parties.

Overall, whilst we welcome the opportunity for review and consultation on this, we would also set this against a high standard for consumers, the need to bring the systems and processes that surround ADR up to date and to ensure they are aligned with new DCR automatic compensation processes.