Communications Consumer Panel and ACOD response to Ofcom's review of Alternative Dispute Resolution Schemes – Call for Inputs

The Communications Consumer Panel (the Panel) and the Advisory Committee for Older and Disabled People (ACOD) welcome the opportunity to respond to Ofcom's Review of Alternative Dispute Resolution Schemes (ADR schemes) - Call for Inputs.

The Panel works to protect and promote people's interests in the communications sector, including the postal sector. We are an independent statutory body set up under the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and microbusinesses.

The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers.

Members of the Panel also represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. National Members liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues. Following the alignment of ACOD with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

Response

We welcome this review of the two ADR schemes - Ombudsman Services: Communications (OS) and the Communications and Internet Services Adjudication Scheme (CISAS) – particularly since the last review of this area was in 2012.

Evidence of the detriment suffered by consumers who have had cause to complain to their communications provider (CP) is clearly set out in research by the Panel ('Going Round in Circles', Inclusive Communications – 'We're Not All the Same', 'Realising the Potential - micro businesses' experiences of communications services'[1]) and Ofcom ('Quality of Service in Telecoms'[2], Comparing Service Quality[3]). The importance of easy and free access to an independent, effective and fair ADR scheme cannot be underestimated, as this provides a safety net for consumers who feel they have been let down by their CP.

Following Mott MacDonald's research in 2014, we believe there is a strong case for further independent research to establish the consumer journey through a CPs' complaints and

[1] http://www.communicationsconsumerpanel.org.uk/research-and-reports-introduction/research-and-reports
[2] http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/digital-commsreview/Jigsaw_quality_of_service_in_telecoms.pdf
[3] https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/quality-of-service/report

escalation processes. This should encompass awareness of, and access to, ADR and examine the barriers or hurdles that consumers may experience or perceive – which may well deter them from even bothering to complain.

Our view is that there remains much room for improvement. Inter alia, Ofcom's latest complaints figures (Q4) show an overall increase on Q3, itself an increase on Q2; and the detail in Ofcom's recent quality of service report shows how poorly some consumers are being served. For example, for mobile overall satisfaction with complaints was 57% - meaning that 43% were something other than satisfied; and the ease of getting through to the right person (by phone) was 54%. For broadband the result was even worse on this measure at 43%. These are not indicators of a market that is functioning well for consumers in terms of quality of customer service. We would also highlight the possibility that a poor experience may deter consumers from complaining again and so the level of service may be masking the true scale of the dissatisfaction. Complaint handling (and ADR) can become part of the problem if they are not an effective part of the solution.

It is in this context that ADR becomes ever more important. If a consumer is not happy with a CP's response to a complaint he or she should be proactively signposted to ADR and supported in that process – which should be easy, hassle free and not involve an undue wait once the ADR scheme has taken the case.

As stated in our workplan for 2017/18, the Panel will be commissioning its own independent research into customer service and complaints handling. This, though, should not be seen as a surrogate for further research and enquiry by Ofcom. In 2013, we urged the communications industry to raise the level of customer service it offers, based on the findings of our 'Going round in circles?' research into the consumer experience of dealing with problems with communications services. Since then, we have worked extensively with Ofcom and the communications providers. We now plan to assess what progress has been made.

Assessing performance of the ADR schemes in this review

We have been especially concerned about CPs' referral of complaints to the ADR Services and have called for the shortening of the eight week referral period, greater publicity of the Services and publication of information about the cases that the ADR Schemes receive.[4] We support Ofcom's proposals to assess the schemes' effectiveness under the following measures of performance, although there are some areas of overlap, as discussed below.

Accessibility

We welcome Ofcom's proposals to examine 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. There are we believe two issues here. First, the way in which the Schemes themselves are accessible to all consumers and micro businesses – especially those who may be in vulnerable circumstances, or needful of extra support. So the

[4] http://www.communicationsconsumerpanel.org.uk/news-latest/latest/post/524-communications-consumer-panel-calls-for-communications-providers-to-up-their-game

Schemes should have very easy access routes (for enquiries and assistance as well as actual complaints), which enable consumers to use their preferred method of contact (for example, e-mail, telephone, text and video relay). Second, the Schemes have a role to play in influencing and holding to account CPs in respect of how those CPs facilitate access to ADR for those who need it. We recommend that Ofcom looks at how, collectively, both Schemes might collaborate in this endeavour.

Participants in our 2015 research[5] had made few formal complaints, but those who had, said that they appreciated not only information in specific accessible formats, such as braille, or by specific communications methods, such as text relay – but also the flexibility of CPs' complaint-handlers to give extra time to look into their concerns. One example of good practice (taken from our "We're not all the same" report) is illustrated below:

"She must have had ten minutes extra on the phone waiting for me to do one thing and then another thing, you know, it was so comfortable to do that, and she was so good. Because it wasn't a pressurising complaint, it wasn't a complaint even, we were just having a conversation to improve my service." (Paul, 62, blind, urban North England)

It is vital that the ADR schemes encourage CPs to develop a culture that promotes flexibility to adapt to the needs of their customers. This in turn can help customers to feel more empowered and valued in the market.

Through our engagement with CPs we have learned that many seek advice from charities and consultancies on adapting their services to their customers' specific communications needs and we welcome and encourage this. We would also encourage CPs and ADR schemes to ensure that their complaints processes are accessible to consumers who do not have access to the internet – either permanently, or temporarily, due to this being the source of their complaint. The proposed changes to the methods by which complaints can be made set out in Ofcom's Review of the General Conditions should help in this respect.

Independence

We support Ofcom's intentions to ensure independence, so that no member of either scheme is able to unduly influence decision-making by the ADR schemes. We agree that the schemes' rules should be clear and ensure any potential conflict of interest is disclosed and addressed. This is essential in terms of trust and consumer confidence.

Fairness

It is important that fairness is taken into account at every stage of the Review of the schemes. One way of looking at this may be in the consistency of the handling and outcome of similar types of case. The fairness of case-handling will also have been a factor examined when looking into the accessibility of a Scheme's processes and the transparency of information provided on complaints, so that a complainant knows what to expect and knows whether the outcome they receive is as per the average complainant with that concern.

[5] http://www.communicationsconsumerpanel.org.uk/research-and-reports/we-re-not-all-the-same-inclusive-communications

At the same time, however, fairness does not mean treating everybody exactly the same. Every consumer will have a unique experience to him or her. So a balance needs to be struck between consistency and reasonable expectations, and individuality. The 100th similar complaint for one for the Schemes will be the one and only such complaint for that consumer and its impact will be wholly personal as a result. In terms of fairness, there needs to be room to take this into account alongside a broad overall approach.

While it is important that the complainant is able to provide their own evidence of harm, we believe it is also fair, as stated above, that the burden of proof in providing evidence for/against wrong-doing lies with the CP, as opposed to the complainant, especially in cases where the complainant is restricted (for example, by not being able to get online).

The CP should have easy access to complaint records and should therefore share them in a straightforward and timely manner (if not live) with the complainant and we believe the ADR schemes should do the same. We would also encourage the schemes to give feedback to CPs and Ofcom on root causes of complaints even where the complainant chooses not to progress with their complaint and would urge the schemes to ask complainants why they have chosen not to follow the case through to conclusion.

We support the proposal to examine a sample of cases. We would encourage Ofcom to ensure that the sample covers a range of complainants from different backgrounds, CPs and with different communications needs, including some that are not online. It is vital that Ofcom examines both the end-to-end processes that were followed and the outcome of the complaint.

We also support the possibility of having a case independently reviewed if there is a complaint about a Scheme's performance, and for the handling of these cases to form part of Ofcom's review. However, we believe it is already confusing for consumers that there are two ADR schemes (over which they have no choice). For consistency, and to facilitate shared learning, we would suggest that instead of separate independent reviewers at each scheme, an independent reviewer/team is used to review cases from both schemes.

Efficiency

We have long argued that it is not acceptable for consumers who may have waited for an outcome to a complaint with their CP for anything up to eight weeks to then have to wait a long time for a decision from the ADR scheme, especially if their service is not restored during that time or they are paying for a sub-standard service.

We would also urge the Schemes to publish their own KPIs for all to see. These should include but not be limited to: time to answer calls; speed of acknowledgement of e-mails and correspondence; volumes of cases; and speed of resolution.

Transparency

We welcome Ofcom's proposal to look at whether decision-making processes are clear to consumers. This is important as any information asymmetry risks placing greater power in the hands of the CPs to the detriment of affected consumers. As well as being transparent, all information should be plain and simple to understand – thus achieving an

"equality of arms" between the consumer and the CP. Transparency is paramount in redressing this imbalance and empowering consumers.

We have consistently argued that accurate complaints data from the ADR services is an important measure of service quality and should be published regularly in a form that is digestible and useful to consumers, so that all consumers and micro businesses can be aware of the performance of their providers and engage more with the market[6]. The publication of such data could also incentivise CPs to improve; and/or be used to show how supportive they are of consumers who require access to independent redress.

We believe the data should be in a common format across the ADR Schemes and should include:

- The number of complaints referred to ADR per CP (equalised to reflect market share or consumer numbers);
- The main types of complaint;
- The number of complaints upheld;
- The average financial award;
- The number of complaints accepted where a communications provider has failed to provide either a "deadlock letter", or an "eight week" notification of the consumer's eligibility to use ADR.

This would in turn help them make informed decisions about their choice of provider, switching and exercising their right to redress. It would also raise awareness of the ADR services and help improve transparency in the ADR schemes' services. We are pleased to see that the two ADR schemes are planning to expand this information - working with Ofcom - to give more details about cases on a provider-specific basis. We are however both surprised and disappointed that this has not been possible yet, given that the information is already in the hands of the schemes.

Raising awareness of the existence of the ADR Schemes and their purpose amongst telecoms consumers is a vital first step and we would encourage Ofcom to explore methods by which this can be achieved. In terms of timeliness, consumers can currently take their complaints to ADR eight weeks after they have complained, or sooner if their complaint reaches 'deadlock' – although this relies on the CP's willingness to issue a "deadlock letter". We believe that eight weeks is far too long and have encouraged CPs to reduce this timescale to four weeks. In short, if a consumer's complaint is not resolved or "deadlocked" we cannot see why that consumer should have to wait two months before the next step (that is, ADR) can be taken. Four weeks is ample time for CPs to handle a complaint, unless there are very exceptional circumstances. We urge Ofcom to look at this as part of its review of the Scheme's overall effectiveness for consumers.

[6] http://www.communicationsconsumerpanel.org.uk/press-releases/press-releases/post/114-transparency-is-key-to-successful-adr-schemes-panel-says

Effectiveness
We fully support the notion of testing the effectiveness of the schemes. In order to do this, however, it is necessary to identify first what 'effective' looks like – particularly to consumers. To be effective, we believe that the scheme needs to know where the CP has failed – so, whether the CP's complaints processes have been effective. CPs should be learning from previous case adjudications, but additionally, we believe the ADR schemes could do more to set the standards in complaints handling, by publishing information on what is expected of the CPs. This would encourage a consistent high level of complaint handling, with no excuses for failure; and would make it easier for CPs to identify gaps in their processes and aim higher. The burden should not be on the complainant to prove what went wrong, especially where the complainant is in a vulnerable situation and may find it difficult to articulate the details of their complaint. Complaints should be clear for the ADR schemes to assess, so that they are able to give certainty to the complainant in a timely fashion. The ADR schemes have the experience and data from past cases to be able to give guidance proactively to the CPs in addition to analysis that we hope they provide on each case.

Any assessment of effectiveness of the schemes needs to begin from a point of accurate record-keeping, so that referral dates, investigations, conflicts of interest, and outcomes – and where relevant, reasons for referral to independent review - are well documented and can be learned from and trends can be identified. As part of its review therefore, we would urge Ofcom to satisfy itself beyond any doubt that the Schemes maintain verifiably accurate records and data. Without this, any notion of effectiveness is meaningless.

Accountability
We believe that ADR schemes need to be held more firmly to account when and if they under perform – particularly in terms of KPIs and accuracy of data. We urge Ofcom to focus on this in its review so that high standards can be achieved and maintained; and to consider what measures can be taken should the Schemes fail to meet those standards. As explained above, having waited up to eight weeks to access the ADR scheme, it is unacceptable that a consumer should suffer further delays for reasons beyond that consumer's control, such as complaint volumes or operational issues that are part of the Schemes' role to handle.

Summary
- We support Ofcom's focus on the listed areas of performance for this review but would also encourage a review of methods by which consumers' awareness of the ADR schemes can be improved;
- We would encourage further research of the complainant's journey, including barriers, reasons for not following a complaint through to completion and use of independent reviewers; and
- We keenly await publication of the ADR schemes' statistics and believe that these will help to highlight trends in consumer harm that need to be tackled by the industry overall and individual CPs.