

Emailed to: ADRreview@ofcom.org.uk

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Dear Sir/Madam

Review of Alternative Dispute Resolution Schemes – Call for Inputs

I write in response to your call for inputs in respect of the proposed review of alternative dispute resolution (ADR) schemes.

About Ombudsman Services:

Established in 2002, The Ombudsman Service Ltd (TOSL) is a not for profit private limited company which runs a number of discrete national ombudsman schemes across a wide range of sectors including energy, communications, and property. Each scheme is funded by the participating companies under our jurisdiction and our service is free to consumers. We currently have in the region of 10,000 participating companies. Last year we received 246,274 initial contacts from complainants and resolved 72,652 complaints. The company currently employs more than 650 people in Warrington and has a turnover in excess of £30 million.

We are ‘Good for Consumers and Good for Business’.

For consumers, we offer a free, fast and accessible form of civil justice with no requirement for legal representation or specialist knowledge, and with a particular focus on access for vulnerable consumers. We ensure that complaints are dealt with swiftly in an impartial manner, and we make decisions based on what is fair and reasonable rather than the narrow remit of the law.

For businesses, we offer a fast and low-cost alternative to the courts, and make decisions based on industry expertise. By looking to resolve disputes, we promote brand loyalty and repeat purchasing as well as building reputation and trust. We offer guidance on improving standards of service, sharpening competition for the benefit of consumers. We collect and analyse data on complaints, enabling us to go beyond individual complaints to find broader trends which can be a source of innovation.

More broadly, we provide an efficient and effective means of addressing consumer detriment and building business capability without recourse to the public purse. We take pressure and cost away from small claims court and legal system and help to build consumer confidence which bolsters the economy.

Ombudsman Services' (OS's) Comments

OS welcomes the proposed review and agrees that the high-level criteria developed by Ofcom at the time of the last review in 2012 (Accessibility, Independence, Fairness, Efficiency, Transparency, Effectiveness and Accountability) remain appropriate. We have the following comments to make:

Accessibility

We agree that this is an important consideration for any ADR scheme. We note that under this particular criterion the review will consider, amongst other things, the support available to those who have difficulties setting out their case.

In addition to the facilities that the ADR schemes have in place to assist those who may have sight, hearing or speech difficulties, we would also encourage Ofcom to look at the process for logging an initial complaint and the advice and support available to consumers at the initial stage of the process.

Our experience tells us that consumers can often find it difficult to explain the issues they are complaining about, particularly where their case is complex or of a technical nature, as is commonly the case in the communications sector. It is our view that consumers should have the opportunity to talk about their case with a member of staff who is trained to identify the key issues, ask the complainant the relevant questions, and then prepare a written summary of their complaint for them to approve. This ensures that consumers are not disadvantaged by a lack of technical knowledge or difficulties articulating their complaint clearly, and provides a smoother consumer journey at the initial stage of the process. This type of front-end supports vulnerable consumers in particular.

We would also suggest that, under this criterion, the review considers the activities undertaken by the ADR schemes to encourage greater take up by consumers. As highlighted in the September 2015 Mott McDonald report 'Facilitating Access to ADR', commissioned by Ofcom, there appears to be a general low awareness and usage of ADR among eligible complainants. Independent research indicates that this figure could be as low as around 5% -10%.

This means that a significant number of consumers are currently reaching the end of the provider's complaint handling process without a resolution to their complaint, resulting in a high degree of unaddressed consumer detriment. As well as leaving communications customers inconvenienced or financially disadvantaged, this ultimately damages trust and engagement in the sector. We therefore believe that it is important that ADR schemes make efforts to reach out to consumers to encourage more people to exercise their right to ADR, and we would ask Ofcom to take this type of work into account as part of its review.

Efficiency

As the call for inputs highlights, during the last 12 months OS has faced challenges in meeting some of its regulatory KPIs, largely driven by an unexpected spike in complaint numbers from a small number of suppliers. While we agree that timeliness is an important metric when considering the efficiency of ADR schemes, we would highlight that responding to unpredictable case volumes is a common challenge for ADR schemes across all consumer markets. While OS is continuing to develop ways to increase its flexibility in order to deal with fluctuating volumes, as well as improving how it predicts future case numbers, it is our view that improved forecasting and sharing of complaint data from the industry would enable ADR schemes to deal with spikes

more effectively. We would ask Ofcom to consider how it might encourage companies to work more actively with ADR schemes on this area.

Transparency

The call for inputs states that Ofcom will consider as part of its review the information that ADR schemes provide about the cases they receive. This document also highlights that the schemes are currently working closely with Ofcom to expand data publication from aggregated industry data to provider-specific performance information. As Ofcom is aware from our previous discussions on this topic, OS strongly supports plans to publish provider-specific information. It is our view that empowering consumers through greater availability of data is an essential part of promoting consumer engagement in the market and driving improved standards by stimulating competition.

The UK Customer Satisfaction Index 2016, published by the Institute of Customer Service, identifies the biggest differentiators between the best performing 50 companies across all sectors and the rest. Three of these six key drivers related to good complaint handling; the speed of resolving complaints, how complaints were handled and the outcome of complaints. Similarly, research published by Populus in 2016 highlighted that customer service rather than price was the attribute with the strongest correlation with customer retention. We therefore believe that data on complaints escalated to ADR is a key metric which gives consumers an indication of the quality of company complaint handling and allows them make informed comparisons between providers.

We would make the point, however, that in a multi ADR provider environment, it is essential that both schemes co-ordinate data publication so that consumers are seeing the same data sets, covering the same time periods. This ensures that customers are able to make like for like comparisons across the whole market, even where providers are signed up to different ADR schemes.

Effectiveness

We note that the call for inputs highlights that an important part of the ADR schemes' role is to work with companies and with Ofcom to identify broader complaint trends and issues with complaint handling. The document states that schemes should work with the industry to manage complaints better, thereby avoiding the need for the consumers to escalate their case to ADR.

OS agrees that this should be a key focus of Ofcom's review. One of the principal features of an ombudsman scheme is that it goes beyond the primary complaint handling role carried out by all ADR bodies, and uses the information it collects to identify wider issues within individual companies as well as more systemic, industry-wide issues. The ombudsman then works closely with industry and regulators to improve the consumer landscape.

We believe that active engagement with the industry is vital to this type of work, whether through regular sector liaison panels or by ombudsmen and relationship management teams visiting companies to discuss trends and identify areas for improvement. An ombudsman also shares risks and trends identified through its data with the industry regulator. These efforts form part of an approach designed at tackling consumer detriment upstream in a preventative manner.

As highlighted earlier in our response, the proportion of eligible consumers who utilise their right to ADR is relatively low and this is why the more systemic, preventative work that an ombudsman carries out is crucial.

While resolving individual complaints can benefit individual consumers who choose to bring their complaint to an ADR provider, the wider role of the ombudsman, in identifying and tackling systemic issues within individual companies and whole sectors, can bring benefits for all consumers, even those who are not aware of ADR.

Other comments

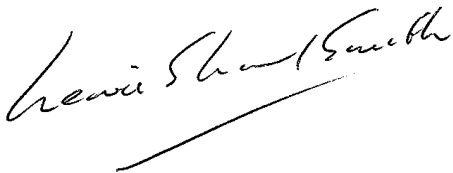
We are pleased to note that, under paragraph 4 of the call for inputs, there is no suggestion that Ofcom is proposing to approve any additional ADR schemes in the communications sector. It is our view that, this would make the redress process more confusing for consumers, further fragment data and insights, and would also increase the risk of a 'race to the bottom' from providers. We note that the Gambling Commission report published in March 2017 entitled 'Complaints processes in the gambling industry – A review one year after the introduction of the Alternative Dispute Resolution (ADR) scheme' highlighted a number of issues seen in this sector with the multi ADR provider approach.

While we acknowledge that some communications companies might wish to have a wider selection of ADR providers to choose from in order to benefit from greater competition on pricing, we would highlight that in order for ADR providers to carry out the wider, preventative work that Ofcom is requesting, ADR schemes must be appropriately funded. Funding this type of work would be made all the more difficult by adding further ADR competition in the sector. However, we fully acknowledge the importance of ADR schemes monitoring their costs carefully and, where possible, seeking opportunities for efficiencies, particularly as the costs of the scheme are ultimately passed on to consumers via their bills.

It is our view that, regardless of who the provider is, the communications sector would benefit from having a single ADR scheme. Having a single scheme in a sector makes it easier for consumers to know who to go to, and promoting an individual sector-wide scheme does not risk confusing consumers, where competing efforts by multiple schemes may do so. The wider preventative approach described in the previous section is also carried out most effectively when the ADR scheme is afforded a view of the entire sector rather than only a part, as this ensures that the scheme has as broad an evidence base as possible to assist in identifying key risks and issues for systemic work. This model has worked effectively in a number of industries including financial services and energy and we believe that Ofcom should give consideration to replicating this approach in the communications sector.

If you have any questions about our response please don't hesitate to get in touch.

Yours sincerely,



Lewis Shand Smith
Chief Ombudsman and Chief Executive, Ombudsman Services