



## **NON CONFIDENTIAL**

### **Ofcom's Review of Alternative Dispute Resolution Schemes**

#### Summary

Virgin Media welcomes the opportunity to respond to Ofcom's CFI relating to the Alternative Dispute Resolution ("ADR") schemes. This is an important review in light of the increased focus by Ofcom on the complaints resolution process and the need to ensure that complaints which go through the ADR process are dealt with efficiently, fairly, quickly and in a transparent manner.

In summary, we are concerned about continued failings in ADR services which are causing inefficiencies, generating perverse incentives and leading, ultimately, to unnecessary costs. This is a consequence of three key factors.

First, there is very limited choice and lack of competition in the market for ADR services. There are only two ADR providers available to Communication Providers ('**CPS**') to fulfil their General Condition 14 requirements, with little differentiation between them.

Second, the quality of decision making by ADR providers is variable, there is a lack of diligence and no possibility for review of their practices and decisions. This has led to numerous incorrect rulings, an inconsistency in decision making and the acceptance of erroneous complaints.

Third, the process as currently structured generates perverse incentives. CPs must pay ADR providers for every case accepted. ADR providers have absolute discretion over which cases to accept which, when combined with the lack of oversight of ADR providers and their decisions, gives rise to a strong incentive to accept every referral.

An increasing number of complaints are sent to ADR due to more visible sign-posting and logging of complaints. It is therefore imperative that the schemes offer a good service that not only ensures the right cases are adjudicated upon but that the ADR providers make consistent and cogent decisions so that any findings can drive business improvements.

This CFI therefore provides a good opportunity for Ofcom to review how the ADR schemes are operating, not only for consumers, but also for CPs who fund the schemes and have to implement and manage the decisions which are made by the ADR providers. We set out our specific comments, together with some examples of the failings of the current schemes below.

### Specific Comments

Virgin Media raised in 2014 concerns relating to the ADR providers' ability to make consistent decisions and the need to ensure that misguided and vexatious complaints do not cause CPs to incur unnecessary cost (which, ultimately, is recouped from all consumers). We also noted that robust steps needed to be put in place to avoid incorrect decisions in fact or law being made by an individual adjudicator without any route to review that decision.

None of these issues have been addressed. We consider that the problems identified will only be exacerbated as more cases are sent to ADR. We attach for Ofcom's reference a sample of cases from 2014 and 2016/17 which provide examples of issues that Virgin Media has found with the ADR scheme.

We agree that Ofcom's criteria for review cover the key factors on which any ADR system should be judged. We consider there is significant scope for improvement of the schemes to ensure that: (i) only the right cases go to ADR; (ii) vexatious or misguided complaints are not reviewed; (iii) there is consistency in decision making; (iv) there is an opportunity for both parties to review the decision before it is finalised. This will benefit both CPs and consumers by ensuring that cases are dealt with quickly and efficiently, with additional rigour and at reduced cost for industry.

We have considered in particular the criteria of fairness, efficiency and effectiveness and have included below some examples of, and possible resolutions to, the issues that we have identified.

- **Fairness:** We consider that Ofcom should focus on whether there are sufficient points of review for the cases which are adjudicated upon and the overall fairness to both sides. For example, CISAS does not have any mechanism for the parties to review a decision

before it is issued. This has meant that a case where an adjudicator has made an error of fact or in law has to be applied and upheld regardless of its merit. By way of example, a customer claimed [CONFIDENTIAL] for loss of business revenue on a residential account [CONFIDENTIAL]. No evidence of loss was provided by the customer and CISAS awarded [CONFIDENTIAL] to the customer despite him using a residential account for business. A similar case occurred in 2016/17 relating to use by a business customer of a residential account. It is clear that a customer cannot be compensated for business loss of earnings when paying for a residential account. Our terms and conditions are clear in this regard.

- *Action:* Ofcom to require the ADR schemes to build in a review process for complaints prior to a decision being made to give both the consumer and the CP the opportunity to correct any obvious errors in fact and law.
- *Action:* Ofcom should also provide far more guidance to the schemes with clear benchmarks describing what consistent decision making looks like and a robust process for when a mistake has occurred and the steps required to rectify it.
- ***Efficiency - Conflict of interest.*** The way the ADR schemes operate mean that there is every incentive for the ADR providers to review a case regardless of its merits and whether it is vexatious. For every case which goes to ADR, Virgin Media has to pay in excess of [CONFIDENTIAL]. This has resulted in a broken system where we are often forced to resolve complaints before going to ADR, even when the complaint is not justified and we are confident of being vindicated. [CONFIDENTIAL]. This is because the cost of letting an unjustified complaint go to ADR are often far greater than the amount being disputed.
  - *Action:* It is imperative that Ofcom sets out clear guidance on how and when ADR providers can reject cases to ensure that not every complaint needs to be adjudicated. This should include detailed guidelines on when a complainant is bringing a similar complaint to one which has already been adjudicated upon to ADR (we set out an example in 2017 of such a case where the customer brought a case against us 5 times). Virgin Media is unaware of any complaints which have been rejected

on the basis of being vexatious by CISAS on initial review and without the ADR provider charging Virgin Media.

- **Effectiveness:** For an effective ADR system to work, it needs to ensure that only genuine, legitimate complaints are reviewed and that customers who are using the ADR system for unmerited financial reward have their cases immediately dismissed without any financial cost to the CP.
  - *Action:* Ofcom should consider if complaints for a small value should be simply handed back to the CP to resolve e.g. if the claim is less than £50 it should not qualify for ADR. This would allow cases to be settled by the CP, but limit the ability for low value claims (even when rejected) to cause the CP to incur [CONFIDENTIAL] in cost, which would ultimately be passed through to other consumers as a cost of business. The loss to consumers of the right to ADR would be limited to complaints of very low materiality.

We have included additional examples of the failings of the current schemes in the attached annexes.

**Virgin Media, May 2017.**