

Sent by email to: ADRreview@ofcom.org.uk

10 January 2024

Dear Sir / Madam,

Review of ADR in the telecoms sector

Thank you for the opportunity to respond to Ofcom's Review of ADR in the telecoms sector.

Summary

1. We welcome Ofcom's review of whether consumers and small businesses are receiving accessible, fair and consistent outcomes from the current ADR system in the telecoms sector.
2. The most effective way to facilitate Ofcom's key objective of achieving consistency of decision making and consumer experience when using ADR is to adopt the best practice approach of having a single provider.

Background

3. The Ombudsman Association (OA) is the professional association for ombudsman schemes and complaint handling bodies in the UK, Ireland, the British Crown Dependencies, and the British Overseas Territories.
4. The OA's membership criteria¹, including those relating to independence, are recognised both in the UK and internationally as representing best practice. This is reflected in the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*,² which addresses the point of when it is appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'.³
5. The Vision of the OA is that throughout the public and private sectors:
 - It is straightforward and simple for people to complain.
 - People making a complaint are listened to and treated fairly.
 - A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
 - People have access to an ombudsman in all areas of consumer and public services.
 - The learning from a complaint is used to improve services.

¹ www.ombudsmanassociation.org/about-us/join-ombudsman-association

² www.gov.uk/government/publications/new-ombudsman-schemes-guidance

³ www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

6. As the Lady Chief Justice set out in her speech at the Civil Justice Council Forum⁴, the civil justice system plays three key roles in society: (1) it prevents disputes by guiding behaviour; (2) it resolves disputes without the need to resort to the courts; and (3) in the last resort, the courts determine disputes by adjudication.
7. Whereas most ADR focuses solely on part (2) of that model, ombudsman schemes aim to deliver both (1) and (2), providing an independent redress model, free at the point of use, that can drive systemic change, tackle injustice, and help organisations to perform more efficiently and effectively.

Question 1: Do you agree with the areas we are planning to cover as part of this review? Are there additional areas we should take into account?

8. We agree that the broad areas that Ofcom intend to cover in the review – consumer access to ADR, the consumer experience of ADR schemes, and Ofcom’s oversight – are the correct ones.
9. In addition, we think that Ofcom should explicitly consider the option of adopting the best practice approach of having a single ADR provider in order to deliver the aim of ensuring consistent outcomes for consumers.

Question 2: Do you have any comments on the issues raised in relation to these areas? Please provide any supporting evidence that you think we should take into account.

10. As the Citizens Advice report *Confusion, Gaps, and Overlaps*⁵ identified, the experimental approach taken under the 2015 ADR Regulations to diverge from having a single redress provider per sector, and instead actively encouraging multiple competing providers, has not achieved the policy aim of improving access to redress and strengthening consumer confidence.
11. The UK Government’s 2022 Consumer Protection study estimated that £54 billion of aggregate consumer detriment goes unaddressed each year.⁶ In the current landscape outside telecoms, a consumer’s options to use ADR are often dictated by the product they purchase, the retailer they purchase it from, and even how they pay for it. Research undertaken by ICF and published alongside the UK Government’s Consumer Green Paper highlighted that 70% of consumers who went to the courts did so because the trader refused to participate in ADR.⁷ And when businesses in other sectors do choose to use ADR they are often able to pick their own ‘judge and jury’, opting for ADR bodies that do not take an inquisitorial approach or are not fully independent.
12. Whilst telecoms consumers are in the better position of having guaranteed access to one of two ADR schemes, it is the providers themselves that choose which ADR body consumers get access to. As the Review document highlights, the two providers have different processes and procedures, meaning that at the very least there is an inconsistency on whether a consumer has the right to appeal the ADR scheme’s initial decision, and as the Review alludes to there may be a lack of consistency in outcomes for consumers.

⁴ [Speech by the Lady Chief Justice: Civil Justice Council’s 12th National Forum - Courts and Tribunals Judiciary](#)

⁵ [Confusiongapsandoverlaps-Original1.docx.pdf \(citizensadvice.org.uk\)](#)

⁶ [Consumer protection study 2022 - GOV.UK \(www.gov.uk\)](#)

⁷ [Resolving consumer disputes: alternative dispute resolution and the court system - GOV.UK \(www.gov.uk\)](#)

13. An ombudsman is different to the many basic transactional ADR bodies identified in the *Confusion, Gaps, and Overlaps* report,⁸ which simply pick a ‘winner’ in a dispute. Resolving an individual dispute is of course key to those individuals involved, but the real value in the ombudsman model is their role in feeding back the lessons from their work in order to help secure redress for others in a similar situation, and to improve service delivery and complaints management for the future (part (1) of the three roles of the civil justice system). For that reason, an ombudsman is often described as being more like a doctor than a police officer, diagnosing what is wrong and making recommendations to improve. And it is in that guise, as an ‘agent of change’, that an ombudsman plays a role in rebuilding trust and consumer confidence.
14. The key aspect to unlocking the benefits of that approach, both for consumers and businesses, is to replace competing multiple redress providers with a single ombudsman within each sector. As the Cabinet Office’s *Guidance for government departments on setting up Ombudsman schemes* highlights, Departments should “Avoid multiple redress schemes within individual industry sectors, which may confuse consumers and may introduce uneven practices in investigation and redress”.⁹
15. In line with that Guidance, the Government has recently announced its intention not to create a separate ombudsman body for the private rented sector, but rather to expand the jurisdiction of the existing Housing Ombudsman. And work is also currently being taken forward by the Department for Culture, Media and Sport to replace the eight existing ADR bodies in the gambling sector with a single ombudsman.
16. That there should only be one redress provider within a sector, and preferably an ombudsman, is also supported by academia and the advice and advocacy sector.¹⁰ Evidence compiled by *Which* highlights the issues caused in the aviation sector by having multiple redress providers.¹¹ And when Ofgem consulted on whether to introduce an additional redress provider alongside the Energy Ombudsman, both consumer representatives and energy companies themselves stressed that having multiple redress providers would not benefit either consumers or businesses.¹²
17. Those reports, and others, are clear that it is in the interests of consumers for access to redress to be simple and straightforward and that confusion is caused by having multiple providers, without any clear evidence of the benefits.
18. There is also a benefit for policy makers and oversight bodies, such as Ofcom, in having a single provider; they can focus their oversight on ensuring that one body is effectively meeting the relevant KPIs and delivering the necessary outcomes. It is easier to ensure consistency of decision making and consumer outcomes within a single organisation, rather than attempt to ensure consistency between different organisations with different processes.

⁸ [AppendixD-MapofADRProvidersintheUK.docx \(3\).pdf \(citizensadvice.org.uk\)](#)

⁹ [www.gov.uk/government/publications/new-ombudsman-schemes-guidance](#)

¹⁰ [Confusiongapsandoverlaps-Original1.docx.pdf \(citizensadvice.org.uk\)](#)

¹¹ [www.which.co.uk/news/2020/10/more-airline-passenger-misery-as-court-cases-could-take-years/](#)

¹² [www.ofgem.gov.uk/publications-and-updates/application-utilities-adr-be-certified-adr-provider-energy-sector-ofgem-decision-following-responses-our-open-letter](#)

19. In addition, any drive to harmonise processes and procedures between two different organisations, in order to ensure consistency, calls into question the value of having two different providers delivering the same role in the first place.

Question 3: Do you consider there are additional sources of information we should consider when undertaking our assessment of these areas?

20. Alongside the consumer experience study that Ofcom intends to undertake, we think that it would be beneficial to also consider existing evidence that consumer advice and advocacy organisations hold on the experience of consumers in the telecoms sector, as well as that already analysed by academics.
21. We also think it would be beneficial to compare the experience of telecoms consumers with that in other sectors in terms of facilitating access to ADR, and the effectiveness, fairness, and consistency of decision making, in order to identify learning that can be translated across to the telecoms sector.
22. We have referenced above several sources of evidence that demonstrate the prevailing view that it is in the best interests of both consumers and business for there to be a single ADR body in a sector, and preferably an ombudsman.
23. We are not aware of any published evidence that supports a counter view that better outcomes can be achieved for consumers, particularly around consistency for consumers, by having multiple ADR providers rather than a single ombudsman. However, if following the review a policy decision is taken to continue to have multiple providers, Ofcom will probably need to be able to quote credible externally published evidence that does demonstrate that having multiple ADR providers produces better outcomes for consumers than having a single ombudsman, in order to justify a decision to continue to diverge from Cabinet Office guidance, recognised best practice, and the current direction of policy across Whitehall.

We are happy to meet and to provide any further information if that would be helpful.

Yours sincerely



Donal Galligan
Chief Executive