

[NON-CONFIDENTIAL VERSION]

Review of ADR in the telecoms sector

Consultation on Ofcom's review of Alternative Dispute Resolution (ADR) procedures established under the Communications Act 2003

Comments submitted by TalkTalk

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Introduction

TalkTalk welcomes the opportunity to respond to Ofcom's consultation document setting out the outcome of the regulator's review of ADR in the telecoms sector.

We are focusing our comments on Ofcom's proposal to reduce the timeframe before consumers can access ADR from 8 weeks to 6 weeks. As set out in its consultation document, Ofcom argues this change is necessary to ensure that the ADR regime remains effective and gives consumers prompt access to dispute resolution.

We are concerned about Ofcom's proposal for the following reasons:

- Ofcom has imposed a substantial range of additional consumer protection measures in recent years which have significantly increased the cost of serving customers for communications providers during a period in which price competition has only increased. Ofcom's proposal would only serve to further increase those costs and thereby run contrary to the Government's aim of stimulating growth in the UK communications sector and the UK economy as a whole.
- Ofcom's proposal is inconsistent with other regulated sectors including energy, water and most financial services where the timeframe before consumers can access ADR remains at 8 weeks. There is no clear reason why the communications sector should be singled out and treated differently in this regard.
- Ofcom's proposal fails to consider that some complaints may simply take longer to resolve due to their inherent complexity, e.g. because a communications provider may rely on more information from an underlying network operator to offer a resolution to the customer. **[REDACTED]** Reducing the timeframe before consumers can access ADR to 6 weeks may mean that communications providers would not be able to complete all necessary investigations in time before the matter is referred to ADR.

We set out our objections to Ofcom's proposal in more detail in the following sections.

1. Ofcom's proposals would hinder economic growth in the communications sector

In the last five years, Ofcom has imposed a range of new regulatory obligations, changes to best practice guidance and alterations to codes of practice on communications providers to strengthen consumer protection, in addition to significant changes in the preceding decade including gaining provider led switching and changes to number translation services billing. By way of overview, the measures in the past five years include:

- End-of-contract and annual best tariff notifications (2020)
- Alternative formats for communications (2021)
- Customer usage notifications (2021)
- Machine-readable formats of websites (2021)
- Information sharing with price comparison websites (2021)
- Availability of services during network breakdown (2021)
- Right to exit contracts (2022)
- Contract summary and information documents (2022)
- Emergency video relay service (2022)
- Changes to broadband speed code of practice (2022)
- Right to port number during 30-day window (2023)
- One-touch switching (2023-2024)
- Broadband information requirements (2024)
- Prohibition of inflation index linked price increases (2025)

Each of these consumer protection measures have imposed costs on communications providers in terms of implementation and ongoing maintenance as well as compliance monitoring. Taken together, they represent a significant burden on businesses, [REDACTED].

Ofcom's central duty – set out in Section 3 of the Communications Act 2003 – is to further the interests of citizens and consumers, where appropriate by promoting competition, and having regard, amongst other things, to encouraging investment and innovation. This requires Ofcom to balance carefully the investment the country needs for the future against concerns of fairness and affordability in the present. Ofcom needs to consider whether and, if so, how any regulatory intervention contributes to or indeed hinders economic growth across the UK. It is not clear to us how this proposal reflects this duty, given the significant impact on communications providers for what appears to us to be of limited consumer benefit.

Ofcom's proposal to reduce the timeframe before consumers can access ADR from 8 weeks to 6 weeks will impose yet another cost on TalkTalk and other communications providers. Although this change in isolation may appear small, it adds to the total regulatory cost burden on communications providers. Ofcom estimates that its proposal would cost the 6 main providers as much as £3.5million in additional annual spend on managing complaints

referred to ADR already at 6 rather than 8 weeks.¹ This cost figure is significant, but Ofcom also concedes that the figure is likely to be even larger because:

- (i) it has not been able to “*estimate the one-off costs of changing the timeframe to six weeks*”²; and that
- (ii) “*[i]t is also difficult to know what the knock-on impacts of these changes would be, such as whether consumers would increase the rate at which they went to ADR, which would raise costs.*”³

Ofcom appears to accept that these additional costs would likely be incurred by providers. The fact that Ofcom has not been able to provide any estimates injects a potentially large degree of uncertainty in Ofcom’s cost impact analysis meant to support its proposal.

[REDACTED]

2. Ofcom’s proposals are inconsistent with the approach taken by other sectoral regulators

We are concerned that Ofcom’s proposals are inconsistent with other sectoral regulators. By way of example, the timeframe before consumers can access ADR is currently 8 weeks in energy, most financial services as well as for estate agent complaints. As far as we are aware, there is no indication that any other UK economic sector has demonstrated any inclination to reduce the period to a 6-week period (or indeed any other period). There is no apparent practical reason why the period should be shorter in communications markets than in other markets which may also risk causing unnecessary consumer confusion. Ofcom’s proposal places an undue burden on a sector where the consumer impact involved is much more limited, due to smaller sums involved than say financial services or the housing market, than those in other sectors where the ADR timeframe remains at 8 weeks.

3. Ofcom’s proposal fails to consider more complex complaints

We would like to express our further concerns regarding the proposed 6-week period for the ADR process. While we understand the need for timely resolution, we believe that a 6-week timeframe may not be sufficient for several reasons:

- Many disputes in the telecoms sector are complex and require thorough investigation and analysis. A 6-week period may not allow enough time to gather all necessary information and evidence. Rushing the ADR process to meet a 6-week deadline could compromise the quality of the resolution. It is important that decisions are well-considered and based on comprehensive information.
- Some cases may require coordination with third parties, such as other service providers e.g. Openreach. This can take additional time, and a longer timeframe would accommodate these interactions. **[REDACTED]**

¹ Ofcom consultation document, para. 3.94.

² Ofcom consultation document, para. 3.95

³ Ofcom consultation document, para. 3.96.

- ADR providers may face resource constraints that make it challenging to resolve all cases within 6 weeks. Extending the timeframe would help ensure that each case receives the attention it deserves.
- A flexible timeframe can help ensure consistency in the handling of cases, as ADR providers can allocate appropriate time based on the complexity and specifics of each case.
- A short timeframe can add unnecessary stress to consumers, especially those dealing with personal or financial difficulties, due to the time needed to liaise with their ADR case handler. Allowing more time can help reduce this pressure.
- Allowing more time for the ADR process can enable better consumer participation and feedback. Consumers can provide more detailed input and engage more effectively in the resolution process.

Ofcom suggests that the data gathered from providers indicates that *“providers make good use of the 4-to-6-week period to resolve complaints or refer them to ADR.”*⁴ In this basis, Ofcom asserts that *“when a consumer has a complaint that reaches the 6-week mark, the likelihood of achieving resolution or referral to ADR ahead of the 8-week threshold is low.”*⁵

This conclusion is unwarranted as it fails to consider the nature of complaints that may take longer to resolve than others. We would argue that the data merely shows the fact that more complex complaints take longer to resolve than less complex ones. There could be many reasons why a complaint may take relatively longer to resolve, e.g. a fault issue, complex billing issue, customer fails to respond promptly to reasonable requests for information from their provider, etc.

Ofcom does not however appear to have considered any of these underlying factors or reasons for the nature of the data that it collected from providers. Ofcom will appreciate that not all complaints are the same and, as already observed by Ofcom, most complaints are resolved by providers in time periods much shorter than 8 weeks. The reason for this fact however is plainly that those complaints are much more straightforward to resolve and, in line with the obligation in GC4, providers are obliged to resolve complaints as quickly as possible.

The fact that a much smaller proportion of complaints are resolved after 6 weeks but before 8 weeks have passed simply means that those complaints take longer to resolve. There is no evidence available to suggest, nor has Ofcom been able to point to any in its proposals, that shortening the ADR referral time will mean that those complaints will be resolved any more quickly than they are today.

By giving customers the opportunity to refer the matter to ADR after 6 weeks will only mean, in our view, that complaints that have not been fully considered by the communications service provider based on the evidence available to them would then have to be considered by the ADR provider. This might lead to additional time pressure on the ADR provider to

⁴ Ofcom consultation document, para 3.37.

⁵ Ofcom consultation document, para 3.38.

reach a fair and reasonable decision in these cases or even to incorrect decisions which consumers may consider unfair or unreasonable.

4. Concluding remarks

We do not believe that reducing the ADR threshold to 6 weeks is an appropriate regulatory policy option in the current economic climate. The Government has made it clear that it wants sectoral regulators to prioritise economic growth and reduce the regulatory burden on companies.

Ofcom's proposal would achieve the opposite by increasing the cost of doing business and increasing the compliance burden. Its own analysis shows that the proposal would load another £3.5 million of costs onto the largest providers alone (and therefore more if one were to consider the entire communications sector). Additionally, this cost estimate does not consider additional one-off costs of adapting complaint handling processes to the shorter ADR threshold or the cost of any potential increase in the number of customers who may seek ADR redress.

Ofcom argues that its research suggests that consumers are not satisfied with the current 8-week timeframe for access to ADR.⁶ We appreciate that consumers may want an ever-speedier resolution to their complaint but would equally argue that research to this effect will in practice always show that the consumers want a shorter ADR timeframe. To this end, we would argue that such research risks being inherently flawed as consumers would always want something better or quicker.

[REDACTED]

For the above reasons, we would urge Ofcom to reconsider its proposal and find better ways of making customers aware of ADR, which we would be supportive of, so they are able to make full use of existing, efficient complaint handling procedures in the communications sector.

⁶ Ofcom consultation document, paras. 3.39 to 3.40.