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Enterprise Court
Downmill Road
BRACKNELL
RG12 1QS

25th May 2016

Call for Evidence on Improving the Consumer Landscape and Quicker Switching

Dear Sirs,

This written evidence aims to tackle only Alternative dispute resolution. i.e. Q5 and Q6. I would be happy to provide oral evidence if that is of any assistance. I am happy for this submission to be published.

Andrews & Arnold Ltd is an Internet access provider, and also a provider of telephony services via voice over IP (VoIP) and mobile.

As an ISP we have had only one experience of ADR, and it was the most egregiously unjust process I have experienced in every possible aspect. The ombudsman did not make any attempt to actually resolve the dispute between the parties, refusing even to provide us with full details of the complaint. The actual request made by the complainant (to be let out of contract with no penalty) had demonstrably already been provided months before. Most unjust of all was that the ombudsman found in our favour, agreeing no breach of contract on our part with our business customer but none the less ordering we pay a good will payment (a contradiction in terms) and write off invoices which actually posted dated the dispute date (so out of scope) and for which we had never received a complaint. To top it all we have to pay for the ADR process regardless.

If ADR is to continue it needs some much clearer ground rules to make the process fairer all around. I fully appreciate ADR may have uses in some cases where telcos are not prepared to resolve disputes properly.

I would suggest, at the very least:-

- Some formal point defined as to when a complaint that could later go to ADR actually starts. We attempt to define this in our T&Cs but the current way ADR works means we cannot be sure this exists. It means someone simply making an observation about our service, of "having a moan". or even appearing to offer constructive criticism, could then lead to ADR (and associated costs) with no warning. We have no way to say "ah, we did not realise that was a 'dispute', please give us time to resolve it before ADR".
- Some requirement on the quality of the complaint - e.g. if the claimant is asking for money as compensation - how much and why. We had an issue that a complaint simply said they were unhappy, and no more. We need to be able to reject a complaint initially, and via ADR, if it is not actually specific on the problem, or the resolution being requested.
- Some requirement that the case that is taken to ADR is the case we have already tried to address. In the one ADR case we had, the final ruling attempted to cover a load of points about which we had never had any complaint or any chance to resolve without ADR. It even included matters that post dated the date of complaint and so could not have been the subject matter without the aid of a time machine. However, we had no recourse whatsoever.
- A formal process for an ISP to agree a complaint is resolved with a customer. At present, there seems to be no way to lodge this in any way or by any standard form of words such that the customer cannot then take the complaint to ADR. In the one case we had, we felt that we had

resolved a complaint, and issued a credit, even having an email from the customer saying they "are happy", only to come back and haunt us over 6 months later as an ADR case.

- Recognition that a complaint may not actually constitute a "dispute" and so not be valid to take to ADR. This is a concept that CISAS (one of the ADR providers) seem unable to grasp. For example, if a customer says they have received poor customer service, they may be correct, and the telco may fully agree (and not dispute or disagree) that is the case, meaning no actual "dispute" exists. However, agreed contract terms may mean that there is no compensation for poor customer service, and so no justification for such a complaint actually going any further. Bear in mind that, as an ISP, we have a reputation to uphold and we would be under pressure to resolve such complaints from a PR point of view - we do not need ADR to force that.
- Excluding "customers" that do not have a contract - the current regulations mean that someone that is considering getting a broadband service can take a case to ADR. This puts the ombudsman in a difficult situation as there are no agreed contract terms as a frame of reference and not even the default "reasonable skill and care" requirements in a contract. It is pointless to try and cover cases like this and opens telcos to ADR from anyone.
- Essentially, all of the above mean some initial vetting process against a set of rules when an ombudsman receives a complaint, and a chance for the telco to rebuff that initial complaint without cost for that case (cost of such checks perhaps being part of annual charges or a fee from customer). i.e. if the ISP can show the ADR case does not match the complaint or is a resolved complaint, then the case can be discarded without any charges.
- Recognition that the contract is the benchmark for any complaint, and (providing that it is actually fair within contract and consumer law) the ombudsman must respect it. In the one ADR case we had the contract terms were totally ignored.
- A requirement of a clear decision on the matter, either "for" the claimant or "for" the telco. In the one case we had, the ombudsman agreed we were not in breach of contract, which should have been the end of the matter as the case decided in our favour. If a case is decided in one parties favour there should be no option to them penalise that party. In our case we were forced to pay good will payments and write off other unrelated debts.
- Some fairer arrangement on costs - as a barrier to abuse. Even if this was a specified small cost such as £50 up front, and the ISP pays the remainder even if they win the case. Having a small risk of cost like this would stop the frivolous claims and reduce risk for ISPs.
- Fairer or regulated costs - why is it that ADR costs as much as TEN TIMES the cost of using the county court for the same complaint, especially when the court process may even involve an ADR process at no extra cost?!
- Perhaps even allow a telco to opt for the county court to be used as ADR, or, rather, where the county court includes an ADR (such as a one hour dispute call) in their process (as is the case where I live), why can this not be the ADR the telco chooses, if following the costs rules (e.g. if has to be free for claimant then telco pays for case fee regardless). It is a fraction of the price, binding BOTH ways, and a lot fairer.
- Finally, and perhaps the most important, and option for the telco to appeal the ombudsman decision, perhaps to the county court. I would be happy if this option meant the ISP had to pay for the appeal, and that the consumer would not have costs. Ideally the ombudsman would have to pay costs if the appeal was successful as it would be their mistake. Why is it that one cannot sue the ombudsman when they clearly get it wrong? Courts have appeals, why don't the ombudsman? It puts them above any recourse and allows for such unjust cases as the one we had. This is particularly important as the one ADR case we had we can demonstrate that the provider did not even follow their own published rules in many areas.

A better way?

On a practical note, there is a possible technical process that may make things like this a lot clearer. As an ISP I would be happy to be involved in designing such a system. It could be done by ISPs, or by ombudsman service providers, or even as a wider “consumer complaint” process by government perhaps.

It would be relatively simple to have an on-line complaints process. This could allow a customer to lodge a complaint which is then sent to the ISP, and lodge the interaction and resolution of the fault. This is akin to complaint and ticket trackers in many ISPs already.

The process could enforce some clear rules, such as the start point of the complaint being recorded, and actual details of requested resolution including amount of money claimed.

It could automate the “clock” for resolving the dispute, and then, ultimately, allow the dispute to be escalated by the customer to ADR.

This would allow the ombudsman to see all of the details of the dispute without requesting more data. It could provide a forum for the ombudsman to discuss with both parties, and review evidence, and then formally record a decision.

It would also allow disputes to be formally recorded as resolved before ADR, giving the telco peace of mind that the matter is now closed.

Is this one case where some simple technology such as the above could reduce costs massively for all parties and simplify the process for everyone?