Future services: putting things right
complaints handling and dispute resolution
in the utilities

Report for the Consumer Action Network
Centre for Utility Consumer Law
University of Leicester

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1. Introduction

The types of help that people may need regarding their dealings with utility providers vary depending on the nature of the problem, their own circumstances and confidence, and the ease or hassle involved in getting the matter sorted out. Some issues may be very serious and immediate, such as the threat of disconnection from energy supply or safety issues. Others may be less time sensitive. But the essential nature of utility services makes it vital that matters are put right as soon as possible if problems arise, especially as the costs of utility services bear disproportionately on low income households.

If things go wrong, consumers cannot necessarily switch to another provider: this is impossible in the water and sewerage sector and, in the energy or communications sectors, changing supplier can be a confusing and off-putting experience. In energy, consumers who have debts over a certain amount are usually not able to change supplier. Despite much of the current emphasis on competition, the situation here is very different from other markets - such as those for food or household products - where the ‘shopper’ has much more discretionary power. Few, if any, other companies have such a level of ‘capture’ of their customers. In any case, even if a consumer does switch to another provider, they may well still need to resolve their complaint with the original supplier.

The actions of energy and water companies can result in a real threat to people’s lives, health and well-being, as well as cause damage to their homes and possessions, for instance, because of gas leaks, power failures or sewer flooding. Lack of access to a telephone service can present a risk to people’s lives or health in times of crisis, or undermine their ability to participate in society. The postal services may not be so essential to people’s lives but failures to deliver mail can nevertheless cause serious inconvenience or distress.

Households are billed for energy, telephone and metered water services based on calculations made by suppliers of what they are owed when bills are estimated. This places consumers at risk of receiving inaccurate - possibly very high - bills, and potentially at real or perceived risk of having their fuel or telephone supply cut off. Such actions cause understandable distress and anxiety. The emotional distress experienced by a low income household struggling to pay to maintain supplies can be considerable and damaging.

These factors make it even more necessary to ensure that structures are in place to help consumers navigate their way through the services and to offer assistance when things go wrong and complaints need to be resolved.

The DTI is proposing to restructure consumer representation in the utility services, and these proposals will have implications for the future of complaints-handling and dispute resolution. The changes present a major challenge in ensuring that the new arrangements will meet the breadth of consumers’ needs. However, the changes also present an opportunity to ensure that the new arrangements are built on solid foundations that learn
from the best and most effective aspects of current schemes in the utility sectors and elsewhere.

So it is timely to draw together both the key points about what customers want and need when they have a problem and make a complaint, and about the processes and results of relevant advocacy and alternative dispute resolution (ADR) arrangements.

This report examines the key aspects of what consumers need if they have problems in their dealings with utility providers, drawing - where possible - on evidence about constructive or useful aspects of current advocacy/ADR schemes, as well as identifying problem areas. We have put these points side-by-side with a fairly brief but comprehensive review and analysis of the underlying rules and models applicable to ADR matters in an attempt to clarify the framework within which any future arrangements will ‘sit’. To present a set of ‘ingredients’ which should be used in the construction and use of any future arrangements. Finally, we have presented a number of recommendations arising from this review and analysis, including a set of tests to help in assessing whether planned changes will meet consumers’ needs regarding complaints-handling and dispute resolution.

Energy, postal, and water services constitute the main focus of this report, due to the likelihood of proposals in the near future for changes in the structure of consumer representation in these sectors. We refer to them here as the utility sectors and sometimes as ‘essential services’. However, the research undertaken for the report also covered related areas such as communications, rail and financial services.
2. **Typology: rules and models**

The purpose of this section is to set out the different institutional options which are available for ADR and set them against the type of rules which they may enforce. The result gives an idea of the possibilities for reform but this only gives a general indication. The details of how any one reform is implemented become critical because various elements can be combined.

2.1 **Types of rules**

One of the issues for any dispute resolution body is the status of the rules on which it is adjudicating. A distinction can be drawn between legal rules, Codes of Practice and company policies. Part of the distinction relates to where they can be enforced; legal rules can be enforced in the courts, unlike Codes of Practice and company policies, although a court might take a Code of Practice into account as evidence of commercial practice and a policy might constitute a legally binding promise for a company. This also gives rise to important differences between these rules. Legal rules, because they are legally enforceable, ideally have to be clear and precise. In terms of contractual relationships, they are best thought of as setting down minimum standards for the relationship between the contracting parties. The rules themselves can only be changed by the courts or by legislation. A consumer dispute resolution body will be bound by these rules, its job is to apply or interpret the legal rules to the cases which arise before it. Although it can develop an interpretation of legal rules, it cannot in principle change them.

Codes of Practice and company policies can be seen as industry minimum standards and company standards, which exist on top of the legal minimum rules. Typically, these Codes of Practice and company policies will go beyond the legal minimum or spell out how a company might go about enforcing its legal rights. So the procedures for contacting customers, who are in debt to a utility company, in order to discuss the matter before proceeding to disconnection, can be seen as an example of what a company might promise to do before enforcing its strict legal rights. They might also employ broader concepts, such as “making all reasonable” efforts, which are not generally considered suitable for legal definition. A dispute resolution body here has the ability to change a Code of Practice in this context, either through the pattern of its decisions, which serve as the case law for the Code of Practice or sometimes explicitly, as for example ICSTIS may do. In terms of company policies, its powers may be more limited but it could seek to ensure that companies live up to their explicit promises to consumers.

In practice, these distinctions can become blurred. Courts may give interpretations as to what counts as reasonable. Most utilities are required, as a condition of their licence, to act in accordance with Codes of Practice which are approved by their regulators, so an important breach or breaches of the Code may lead to enforcement action by the regulators, for example, in the case of doorstep selling of energy services.

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1. Ignoring for the moment that these obligations are normally tied into a company’s licence.
Typically, within the utility sectors, there will be a regulator and the company will operate under a licence. This means that the rules under which a company relates to its customers will be a mix of legal obligations, both general and related to the particular regulatory regime, Codes of Practice approved by the regulator and company policies. From the consumer perspective, it is important that there is a clear division of responsibilities between the ADR body and the regulator. Nevertheless it is also important that the ADR body is able to identify individual cases which raise broader policy concerns, as well as trends which may be of interest to the regulator. In addition, the ADR body and the regulator should take consistent approaches to particular issues, even though an ADR body needs to be seen as independent in order to have the credibility to carry out its dispute resolution functions.

One question is what appeal structure, if any, should exist for decisions of the ADR body. If appeals go to the regulator, this raises some concerns in principle about the ADR body. If appeals went to a court, or a higher level tribunal, this allows greater participation by the courts in one aspect of the regulatory system.

2.2 Types of dispute resolution

There are a number of different models for complaints handling and dispute resolution, and it is important to appreciate the distinctions as some are better suited for different sorts of complaints and disputes than others, and some combinations of procedures do not work well in certain contexts.

The first important distinction that has to be made is between consumer advocacy and dispute resolution. A consumer advocate is someone who takes the consumer’s side, either on an individual or a collective basis. A dispute resolution body, to function effectively, has to be seen as impartial by both sides; it cannot take sides. Independence does not imply that the only acceptable procedure is an adversarial one with the ADR body acting as a referee between the parties; Ombudsmen in this country and courts in the civil law system quite regularly use investigative procedures and are still seen as impartial.

Dispute resolution systems are typically classified into four categories: arbitration, conciliation, mediation and Ombudsman schemes. To this we would add a fifth: tribunals.

The commonest characteristics of arbitration are that both parties agree to an independent third party making a decision on their case, the procedure is adversarial, although not as formal as a court, the hearing is private and the decision is legally enforceable. There will be limited grounds for challenging the arbitral decision. Typically for consumer schemes, the process takes

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2. See http://www.adrnov.org.uk/go/Section_1.html for an example of this classification and an explanation of the different types. Much of the material in this section is drawn from there.
place on the basis of written submissions and there will be costs involved, although lower than court costs.

Conciliation and mediation can usefully be taken together. Both of these involve an independent third party helping the parties to resolve their dispute voluntarily. What differs in these processes is the extent to which the parties meet together and the extent to which the third party feels that it is appropriate to propose possible solutions to the dispute. Conciliation and mediation can be used as the first stage of a dispute resolution process and therefore can be combined with other techniques. Neither are necessarily concerned with arriving at a solution which is consistent with the parties’ legal rights and duties.

Ombudsmen are independent bodies who investigate and resolve complaints about public and private bodies. Typically their process is inquisitorial and they are free for the complainant (private sector ombudsmen are usually funded by some form of levy on the participating members of the industry). A distinguishing characteristic is that they encourage good practice in complaint handling by the members. As regards the public sector ombudsman, their decisions are not binding on the bodies investigated. There is usually no appeal against Ombudsman decisions, although public sector ones are subject to judicial review and decisions of private sector Ombudsman are often not binding on the consumer, who retains the right to go to court.

Tribunals are independent bodies, usually set up by statute, which decide on disputes in particular areas, such as employment or social security. Their procedure is somewhat less formal than the courts and there may be costs involved for complainants, although not necessarily. The process is adversarial, public and usually involves an oral hearing. Their decisions are legally binding and there will be, limited, grounds for appeal. The workings of most statutory tribunals are overseen by the Council on Tribunals. The shape of the tribunal system is currently under review by the government.

Conclusion

Although all dispute resolution schemes favour “repeat players”, that is, companies or people who are involved in the process on a regular basis, research indicates that complainants will get better results from an adversarial process if they have representation and if they appear before the body concerned. Ombudsmen attempt to overcome this through the use of an investigative procedure. Adjudicative processes usually require some attempt to have been made to resolve the complaint before it is brought to the body for decision. This is typically made explicit in the rules of an Ombudsman.

Research also indicates that there is a pyramid of complaints, with the dispute handling body at the apex. The effectiveness of company complaints procedures is therefore crucial for the consumer.

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3. The involvement of an independent third party distinguishes this from negotiation.
Conciliation and mediation can work well but can also be awkward when combined with a decision taking process where there is insufficient separation between the stages of conciliation and adjudication. Adding another stage to any procedure will inevitably cause more cases to drop out before a final decision. These procedures have also been criticised for focusing too much on getting a result, rather than getting the right result. In addition, conciliation and mediation are probably more suitable where there complex long term relationships are in issue, such as family matters, rather than consumer disputes. Although a consumer’s relationship with, for example, a water and sewerage company may be long-term, it is not usually a complex one.

Arbitration schemes have tended to be very low profile, although ABTA may be an exception here, and typically do not see it as their role to offer general lessons on improving complaint handling. Arbitration schemes focus on the legal rules surrounding the contract\(^4\) and impose costs on the consumers using them (ABTA’s range from around £72 to just over £164, depending on the level of the claim).

A rough typology combining types of rules with enforcement can be found in Table 1, “X” indicating those rules which are not enforced by that institution.

Table 1

<table>
<thead>
<tr>
<th>Legal rules</th>
<th>Arbitration</th>
<th>Conciliation</th>
<th>Mediation</th>
<th>Ombudsman</th>
<th>Tribunal</th>
</tr>
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<tbody>
<tr>
<td>Code of practice</td>
<td>X</td>
<td>√</td>
<td></td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td>Company Policy</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
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A certain amount of care needs to be taken with the classification. In particular, because conciliation and mediation schemes are concerned with reaching a mutually acceptable result for the parties, they are less concerned with the legal rules. That is not to say that they will ignore legal rules, but their primary rationale is not the enforcement of the legal rules. Arbitration is at the other end of the scale and focuses almost exclusively on the legal rules.

In the context of consumer disputes with utility companies, we would suggest some preliminary points. First, arbitration schemes are not suitable here because of their lack of visibility, cost to the consumer and inability to raise awareness of wider issues. Secondly, conciliation and mediation do not, on their own, provide a consumer with access to a binding decision in a dispute with a company. However, such schemes are often usefully combined with Ombudsman or some other type of binding dispute resolution. Thirdly, tribunals, tend to be more costly for the consumer than an Ombudsman, the consumer will need representation to make their best case and are not equipped, like arbitration, for raising awareness of wider issues. This leads to

\(^4\) See http://www.abta.com/benefits.html which makes this clear in relation to ABTA.
a preliminary conclusion that an Ombudsman scheme would be appropriate in this area with, however, an important warning. There are many different schemes that are labelled as Ombudsman; what is important is not the label but that the working of the scheme meets consumer needs and this is something that we turn to address in the next section.
3. **Putting things right - what consumers need**

3.1 **Why it matters to consumers**

If things go wrong in their dealings with utility providers, consumers want and need to know how best to complain: what to expect from any complaints process, and what to do if they feel their complaint has not been taken seriously or is somehow 'stalled'. They want the matter to be put right, or if this cannot be done, a proper explanation of why it cannot. They may want an apology. They may want recompense for any expenses incurred because of the original failure in service, or some form of compensation.

The consequences of mistakes or poor standards of service in the utility sectors can be much more serious for consumers than, for instance, having to grapple with inadequate instructions for flatpack furniture or buying a can of baked beans. Someone who is wrongly deprived of their fuel supply could face not only a lot of distress but also significant health risks. The same consequences can apply if a customer is erroneously deprived what may be their only phone line. Large unexpected fuel bills - through billing errors or failure to read the meter - are stressful and distressing especially if people lack the money to pay.

When things go wrong with these services, it can have a serious impact if people are already in a vulnerable situation, for example because of low income, disability, caring responsibilities, mental health problems, or unemployment. It is vital to avoid making stereotypical assumptions about people's ability to cope and engage with utility services but equally we must not under-estimate the extent of vulnerability in relation to essential services, and the potential seriousness of the effects when things go wrong.

Consumers do not want the process of sorting out a complaint to be a big problem in itself, and add insult to injury.

Where competition is developing in the utility sectors – such as energy and communications - the markets are not perfect and are often very confusing even if consumers are confident and assertive. So it is frequently necessary to have 'specialist' knowledge to sort out a complaint if the company is not helpful or fails to resolve the issue satisfactorily. People cannot necessarily walk away from a poor supplier: domestic consumers cannot change their water or sewerage supplier; consumers cannot switch to another energy supplier if they have a debt over a certain amount; and it is still often very confusing to switch with confidence in the telecomms sector because of the difficulties of making price and other comparisons. Overall, however, if consumers are in a difficult position because of a mistake in their bill or their supply has been cut off, switching will not solve the basic problem or right the wrong.
3.2 Why it matters to suppliers

Complaints should be an invaluable source of feedback for suppliers on how well they are meeting customers’ needs. All complaints provide an essential resource for suppliers to inform quality improvements: for example alerting them to specific problem areas in particular operations, or perhaps highlighting areas where, for instance, there is inadequate staff training and support. This includes those complaints that may be considered to be unjustifiable as the information can still inform service improvements, for instance, they may identify an unmet consumer need for a particular product or indicate that minimum quality levels are set too low. Note that the latest Annual Report of the Parliamentary and Health Service Ombudsman is entitled simply, Complaints Matter.

Complaints handling data should also be used systematically by suppliers to measure their complaints handling performance (for instance, the key performance indicators in social services, the performance assessment framework used to assess a wide range of local authority functions) – again in order to identify and if necessary rectify poor performance.

3.3 Why it matters to government and regulators

At the most basic level, if complaints mechanisms for essential services are not perceived to be working well by consumers, they will turn to government or the industry regulators for redress. This will both disrupt the regulatory structure and encourage micro-management of company issues, both of which are best avoided. More positively, a good complaint handling scheme will give a regulator information about the quality of service offered by the companies and may give warning of more widespread issues. Where a regulated monopoly with price controls is concerned, this information can be fed directly into the price setting process.

3.4 What consumers need if things go wrong

In this section of the report we set out a series of principles which ADR services must meet in order to meet consumer needs. The majority of these principles are not controversial: they are contained, for example, within the criteria for recognition of the British and Irish Ombudsman Association and the Australian Federal government’s benchmarks for industry-based customer dispute resolution schemes. The two that are new relate to the support and involvement of consumers and we would hope that these are not, at the level of principle, controversial. What is important to stress again, however, is that it is the detail of how these principles are implemented that is critical.

a) Information

First, consumers need to be able to obtain easily sufficient information or advice in order to judge whether they are likely to have a legitimate complaint:

essentially this is about knowing what a customer has a right to expect, but also guidance about whether their query should or should not be treated as a complaint.

Consumers need clear information and advice about the processes required to make a complaint, their rights in relation to suppliers and what to expect from complaints-handling and dispute resolution services. If a complaint is investigated, consumers need to be kept in touch with progress and any action being taken on their behalf.

Information on making a complaint needs to be clear and easy-to-understand. Consequently, publication of such information should take into account the different needs of consumers regarding language, comprehensibility, and format. This includes making provision for people who do not have English as their first language. The way that information is presented also needs to take account of the needs of people with basic skills difficulties. There are also large numbers of people who have learning disabilities, sensory impairments, mental health problems, or acquired brain injury or other difficulties in comprehending and responding to information on a temporary, episodic or long-term basis. As a result, many consumers will require information presented in different formats, or require advice and support (possibly including face-to-face contact) in order to be able to start and follow through complaints.

The following figures illustrate some of the issues that need to be taken into account in providing information about complaints-handling and dispute resolution services:

- **Basic skills:**

  The Basic Skills Agency suggests that at least one in five adults have significant literacy and numeracy skills deficits: skill levels among adults are ‘spiky’ – meaning that, through work or other life experiences, some people may be very adept in terms of numeracy in certain contexts but not in others, such as checking and working out bills from utilities.

  A survey by the National Institute of Adult Continuing Education found that 29% of those over 50 had difficulty with gas bills, due to problems with financial literacy. (NIACE Briefing Sheet, *Financial Literacy and Older People – moving on*)

  Around 17.8 million adults have literacy skills at Level 1 or below (as defined by the National Qualifications Framework); 23.8 million adults had numeracy skills at Level 1 or below. Level 1 skills are sufficient for many everyday tasks, but only as long as text and figures are presented in a ‘straightforward’ way. 5.2 million adults have literacy skills below this level, and 15 million adults have numeracy skills below this level. (DfES, *The Skills for Life Survey: A National Needs and Impact Survey of Literacy, Numeracy and ICT Skills*)
• Disabilities/sensory impairments:

There are 8.7 million deaf or heard of hearing people in the UK; some 700,000 are profoundly deaf, another half a million are almost deaf and, for example, are likely to have problems in using an ordinary telephone (Rnid estimate).

There are over 2 million blind or partially sighted people in the UK (Rnib estimate).

• Learning disabilities

There are around 1.5 million adults and children with learning disabilities in the UK (Mencap, Department of Health).

• Mental health

At any one time one in six adults is experiencing significant mental distress (Office for National Statistics). The most common mental health problem among those of working age - affecting nearly 14% - is depression and/or anxiety (Mind).

Consumers need high quality levels of 'signposting' so that they are aware of available options, the duties and powers of complaints handling and dispute resolution services, and the extent and possible overlaps of jurisdiction. Such information needs to be given in a timely and appropriate fashion, for example, on company bills and other communications from providers.

Consumers need clear information about all stages involved in handling their complaint, including seamless arrangements for referring consumer complaints to the appropriate body if consumers have initially started in the wrong place.

Similarly, consumers need to know the differences between conciliation, mediation, and arbitration, for instance, whether by taking a particular step they are forfeiting their right to take a matter further (such as the courts). Consumers need to be informed at all stages about how their complaint is being dealt with, including provisional findings and final determinations, together with clear information about what they can do if they are dissatisfied with how their complaint has been handled.

Clear, appropriate, well-presented and easily-understood information about the numbers and nature of complaints is also necessary to provide a picture of how well providers are performing their task, to give feedback to the industry and regulators of how well the relevant service is meeting people’s needs, and to inform any necessary changes in legal rights or codes of practice. Trend information is crucial, for all parties, not only in order to plan and effectively manage workloads but also in order to recognise at an early stage important and emerging problem areas.
b) **Accessibility**

Cost should not be a barrier – if consumers have a problem with essential services, the process for sorting out a complaint should be free of charge. However, we also need to recognise that there can be hidden costs in pursuing complaints. Consumers can incur expenses, for instance in travelling to a town or village in order to photocopy documents, or in telephoning suppliers or advice services. If a free 0800 number is not available, it means there are real costs for consumers especially if they get ‘stuck’ in a call centre or have to make frequent and/or lengthy calls. Efforts should be made to minimise these consequential costs.

Consumer awareness is a basic criterion of accessibility: if a service is to be of use to consumers they must be aware of its existence, and have clear information on what it can offer and how to use it. Services need to be fully accessible by all consumers: this should be integral to any scheme or service, not an add-on.

This means that complaints-handling and dispute resolution services need to develop policies to ensure they are fully accessible to people in vulnerable situations. Such policies should avoid definitions of vulnerability that treat a particular group of people as though they are homogenous. A more helpful approach is to define vulnerability according to a set of criteria that take account of factors such as the characteristics of the market and the nature of the transaction, as well as the individual’s attributes or circumstances.6

Consumers need to be assured that even if their complaint involves complex issues or contains complex elements (for instance, multi-utility problems), they will be enabled to pursue it without the process itself being complicated or burdensome.

Once systems of advice, support, and conciliation have been exhausted, consumers need seamless and easy access to dispute resolution systems. Here too they need clarity regarding the nature of such dispute resolution, whether the results are binding, and what options are available regarding redress and compensation.

Moreover, the jurisdiction of an independent complaint handling body or dispute resolution service needs to be made clear in consumer information material, including to what extent it covers the problems that consumers have in the sector.

c) **Consumer support and empowerment**

Information, advice, advocacy, and education are essential ingredients to support and empower consumers in their dealings with providers. Clear and accurate information and advice need to be available that comprehensively cover the range of consumer rights. Consumers also need to be able to call

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on support in the form of consumer advocacy where they need help in sorting out problems with suppliers.

Some consumers want and need to feel ‘empowered’ by advisers or others in order to take through all aspects of their complaint. In other instances, the complexity of the issue or other difficulties involved may hinder individual consumers from pursuing a complaint themselves, or they may lack the confidence or skills to do so. Consequently they would welcome an agency to take up the complaint on their behalf. Consumers may be facing crises or sudden upheavals in other aspects of their lives, for example, people who have just become caregivers, or are newly bereaved or unemployed. In these instances, they may well feel unable to pursue a complaint about utility services without external help.

d) Effectiveness and performance

Any arrangements need to operate efficiently and effectively to provide high quality services to individual consumers and to consumers in general. In terms of helping individual consumers, the service should work effectively and rigorously on behalf of consumers to resolve complaints. The service should aim to deal with complaints in a timely way.

Consumers need to know the relevant ‘timetables’ for complaints handling and dispute resolution. Furthermore, the processes need to take account of people’s circumstances and the potential seriousness of the problem, for instance, where a consumer or household is in distress as they are facing an unexpectedly high bill or may be in danger of the service being cut off.

Data from complaints should be monitored and analysed to achieve positive changes in company quality of service in order to tackle systemic failures and maximise benefits for the generality of present-day and future consumers. Complaints data could and should be configured to provide both consumers and suppliers with an assessment of performance and trends. This might include an assessment of both suppliers’ delivery performance and efficiency and efficacy of complaints handling – including performance in relation to consumers who are in vulnerable or difficult circumstances.

Both suppliers and complaints handling bodies should also ensure that their systems are robust enough to tackle future consumer detriment: performance assessment is essential. This aspect of performance monitoring and auditing should not only be based on raw quantitative data (such as number of complaints), but should also be used in a more sophisticated way, for instance certain complaints, or a particular pattern of complaints, may signify an important but previously-unexplored performance issue.

e) Resolution and redress

For the individual consumer the core purpose of pursuing a complaint is to right a wrong (for instance, incorrect billing, wrongful disconnection). The importance of this should never be under-estimated especially in terms of
essential services. For some consumers, for example those on low incomes, a large unexpected and incorrect bill may be frightening; an interruption in supply could put a consumer who is frail or in poor health in jeopardy through lack of heating. In addition, there is ample evidence of the extra costs incurred by disabled individuals, and households containing one or more disabled people – including the costs of essential services.

Consumers may simply want an apology and recognition of the legitimacy of their complaint. However, redress systems also need to cover the possibility of financial compensation. This may arise if consumers have suffered a direct financial loss, for instance, because of a wrong bill. However, consumers may be entitled to financial redress if they have suffered distress or in recognition of the time and inconvenience they have been caused.

Complaints-handling and dispute resolution need to make provision for a range of remedies to be available to offer redress to individual consumers, including a straightforward apology and recognition of the problem, and putting matters right through to the possibility of financial redress for actual losses and for distress and inconvenience.

Consumers may wish the ‘offending’ supplier to be ‘named and shamed’ in some way, not only for themselves but as a warning to other consumers. Such a process can also help people to feel less isolated.

Evidence from complaints also needs to be used by regulators to deal with any systemic or serious service failures, and thereby raise performance levels across a sector for the benefit of consumers in general. This implies the need for regulators to have powers to impose sanctions to penalise suppliers for poor performance and, where appropriate, to link price regulation to performance. Moreover, consumer organisations need to have powers to pursue redress on behalf of consumers collectively where there are significant or widespread service failures, for instance, through ‘supercomplaints’.

f) Independence

Consumers need to be confident that any services to help them with complaints or dispute resolution are independent of those providing the service. Although funding may come from industry to help finance such services, rule-setting and handling of complaints and disputes need to be clearly independent of influence from providers.

Consumers also need to have access to an independent and clear route through which to complain if they are dissatisfied with how their complaint has been handled.

g) Fairness

Consumers need to be confident that they will be treated fairly if they have a complaint against a utility provider. Processes and decisions need to be fair and be seen to be fair. Any arrangements need to be based on clear and
publicly available criteria and procedures, including any criteria used to
determine priorities in dealing with complaints.

It is also essential to ensure that vulnerable consumers are not treated
unfairly because of failures to take account of and meet their needs, for
instance, by failing to provide information in different forms or languages or
through the absence of assistance for people with learning disabilities.

h) **Accountability**

For consumers and other stakeholders to have confidence, services need to
be publicly accountable. This includes accounting for how money is spent
and how it is used: whether there is value for money. To fully reflect the value
of any service, this should include an assessment of the benefits as well as
the costs, and take full account of the reduction in consumer detriment for
individuals and for present-day and future consumers in general.

Governance is another essential dimension of accountability. Information
should be publicly available on who is responsible for governance, the
arrangements for appointments to governing bodies, what has been achieved,
and the plans for future work. Appointments to governing bodies need to be
carried out through open and public recruitment processes.

i) **Resources**

If services are to operate efficiently and effectively, they need adequate
resources. This means that realistic assessments have to be carried out to
determine what level of resources will be necessary to ensure the
organisation can fulfil its role. Any arrangements also need to be flexible so
that they can respond to and cope with previously-unanticipated future
change. Consumer interests and needs can be influenced by company or
market behaviour, or changes in factors such as disposable income or
demography. Moreover, developments such as changes in legislation or
impending EU Directives may affect the framework within which complaints-
handling and dispute resolution systems have to operate.

j) **Consumer involvement**

Complaints-handling and dispute resolution systems need to be informed by
consumers’ views and experiences if they are to provide services
appropriately, in ways which meet the diversity of people and their needs, and
to play their proper part in ensuring that people can use these essential
services. It is not only about using data from consumer complaints to inform
improvements in service provision but going further by involving consumers in
policy-making and processes.

This is not simply a general ‘feelgood’ aspiration but is based on a substantial
evidence base. Consumer involvement has been shown to:

- Improve the quality of decision-making.
- Improve standards.
- Help ensure that different parties’ interests are balanced.
- Build confidence.\footnote{Involving Consumers, National Consumer Council, 2002}

There are several approaches to involving consumers, which vary in terms of the actual extent of involvement:

- Information gathering – this should include information on how well consumers feel their complaint has been handled in addition to routine analysis of complaints data. However, given that a substantial proportion of consumers encountering problems with their supplier do not make a formal complaint, this needs to include research with consumers who have not previously pursued a complaint as well as with those who have done so.
- Consultation – this more formal and structured approach could be considered as a feature to embed into complaints-handling and dispute resolution bodies’ operations. It would also need to embody a system for feedback on how the results of consultation have been used to inform policy-making and processes.
- Participation – this should be considered as a logical progression in helping to ensure that service provision reflects consumers’ needs. It can consist of direct participation by individual consumers or consumer representative organisations in processes for policy-making or service provision in an ongoing form, through regular deliberative research, and/or as part of the governance structure.

Conclusion

A clear and comprehensive principles-based framework is essential to ensure that the range of consumer needs can be met. This approach should be used as a basis for shaping future arrangements for complaints-handling and dispute resolution in the utility and related services. The framework should include the following principles:

- Information.
- Accessibility.
- Consumer support and empowerment.
- Fairness.
- Effectiveness and performance.
- Resolution and redress.
- Independence.
- Accountability.
- Resources.
- Consumer involvement.
4. Future services: key ingredients

4.1 Introduction

In this section, we use the framework of basic principles set out earlier to develop an initial view of the minimum ingredients that are essential to underpin future complaints-handling and dispute resolution services. The aim is to demonstrate the range of issues to be addressed if these services are going to meet the breadth and diversity of consumer needs.

Our views have been informed by an examination of current practices in the areas covered by CAN member organisations as well in some other sectors. This comprised desk research and analysis of relevant reports and websites, together with information obtained through telephone and e-mail correspondence. We give some examples below of current practice, which are intended to act as illustrations rather than providing a comprehensive picture, given the short time available for this research.

4.2 Learning from current practice

a) Information

The consumer advocacy bodies and ADR schemes that were looked at for purposes of this report all publish information on what they can and cannot do in terms of complaints handling and dispute resolution. However, there are variations in the amount of information and level of detail provided to consumers, and the form in which the material is offered. For instance, some organisations tend to rely more on their websites than paper-based material. There are differences both within and across sectors with regard to giving consumers basic information about the existence of complaints-handling services. In some sectors, companies are required to publicise the options open to consumers for taking forward a complaint on their customer bills. However, this is not a universal requirement or practice even where the bill may be the most regular form of communication between providers and their customers.

Ensuring that consumers have easy access to information about their rights is a particular challenge in sectors where routine customer bills do not exist. In the rail sector, for instance, the Rail Passengers Council has been exploring the provision of consumer advice material to go to passengers when they renew their season tickets.

In terms of wider information about consumer rights, this is commonly provided by consumer advocacy organisations but less commonly - if at all - by ADR schemes. However, an interesting example is provided in public services: the Parliamentary and Health Service Ombudsman has worked with a number of healthcare bodies to produce a good practice guide on consent in cardiac surgery teams aimed at strengthening the patient’s role in the
decision-making process. Whilst the main part of the guide is aimed at health professionals, it also contains information for patients.\(^8\)

It is normal practice for organisations to publish information on the nature and types of complaints but there are variations in the degree of detail provided and in the regularity of publication. Some organisations publish this type of information regularly on their websites, whilst others only do so once a year in their annual reports. However, publication of complaints data is a formal requirement for some organisations but not for others, which may explain the variations in practice.

In some sectors, broader consumer information is produced by regulatory authorities, for instance, the Financial Services Authority publishes a range of information material for consumers. However, regulators will inevitably differ in their approach to provision of consumer information as a result of differences in their duties, or possibly because of the existence of a consumer advocacy body that undertakes this task instead.

Another critical issue concerns the role of providers in processing complaints and informing consumers about options available to resolve the matter, including the availability of external dispute resolution services. The Financial Ombudsman Service (FOS) has issued a booklet for companies with whom it does not generally have much contact, outlining its approach and procedures. Among other information, the booklet describes what should be in the `final response' letter that companies are required to send to customers who have complained.\(^9\) Although rule-setting is the responsibility of the Financial Services Authority (FSA), the FOS has also produced a technical briefing note to explain the rules and to encourage firms to take a wider approach than the strict letter of the law when informing customers about its service.

However, problems have been identified in the communications sector where there is currently a lack of common understanding of what constitutes a complaint among companies’ frontline staff, according to Ofcom’s recent review of the two communications ADR schemes.\(^10\) This must have a knock-on effect in making the process more confusing for consumers, and indeed Ofcom has reported that it has meant that a majority of consumers approach the schemes prematurely. The results of Ofcom’s consultation on this review were awaited at the time of writing.

In summary, a range of factors must be included in considering information provision if the new arrangements are to meet the needs of consumers, providers and regulators, and also provide public accountability. Equally, we need to be clear at the outset about who is responsible for producing and publicising such information.

\(^8\) Consent in cardiac surgery: a good practice guide for agreeing to and recording consent, Parliamentary and Health Service Ombudsman.


Minimum ingredients:

- Clear and comprehensible information on consumer rights regarding providers’ services, available in a wide range of formats and languages.
- Clear acknowledgement of the existence of complaints by providers so that consumers know they have a recognised complaint.
- Clear and easily accessible consumer information on how to take forward a complaint including: providers’ complaints-handling processes; where to get further advice and assistance; what independent consumer advocacy and dispute resolution processes are available and how they interact.
- Consumer information on what to expect from complaints-handling and dispute resolution including: extent and limits of powers; time and other performance targets; provision of clear explanations on why a complaint is not being taken up; information on the progress of individual complaints; consumer options regarding resolution and redress.
- Consumer rights to information from providers to enable complaints-handling and dispute resolution services to intervene and adjudicate on individual complaints.
- Information on sectoral complaints and dispute resolution by number, type and provider to be published on a regular basis, showing trends and comparisons.
- Clear and robust means to ensure that consumer advocacy and complaints-handling bodies, dispute resolution services and regulatory authorities share information on the nature and volume of complaints and on systemic service failures, as well sharing information about good practice.

b) Accessibility

Accessibility of complaints-handling and dispute resolution services include notions of financial cost; consumer awareness; and ease of access. All the services covered by this report are free for consumers to use. However, as we outlined previously, we need to be aware of the existence of indirect or hidden costs for consumers, and to consider whether there are ways of minimising such costs. For instance many schemes offer an 0845 number (a local rate which varies between operators) but even this can give rise to costs which might be considerable - perhaps untenable - for those on low incomes. It should also be remembered that, for some consumers the sheer time required in taking forward a complaint may be off-putting, for instance, if they have substantial caring responsibilities or are facing other difficult circumstances in their lives.

Consumer awareness of current external complaints-handling and ADR schemes varies between existing services. Some organisations undertake regular analyses of consumer awareness of their services, whilst others do so from time to time but not necessarily as a routine matter. Obviously some customers will be unaware because they have not had cause to complain, or
do not know anyone else who has complained. There may also be ‘environmental’ reasons, in particular some sectors or companies could operate to very high standards, and/or have well-publicised and very efficient internal complaints-handling systems, necessitating little recourse to external systems.

Nevertheless, although there have been improvements in the levels of consumer awareness of complaints-handling and ADR services, it is clear that more could and should be done, especially among consumers in vulnerable situations. There is growing recognition of the need to raise consumer awareness and a number of organisations are currently engaged in profile-raising exercises, which should provide useful data to inform future initiatives.

In general, ADR schemes commonly seek to make their services better known through advisers, rather than directly to consumers. The rationale appears to be based on the need to avoid consumers approaching ADR schemes prematurely. In addition, ADR schemes may also prefer to encourage their member companies to publicise information about their existence, rather than doing so themselves.

However, the deficiency of this type of approach is underscored by the relatively low levels of consumer awareness of some ADR schemes, and the tendency for them to attract a comparatively narrow cross-section of complainants – traditionally, white middle-class consumers. Instead, it should be possible for all these routes to be used: to communicate information on ADR schemes direct to consumers as well as through advisers and suppliers. If the information is clearly presented and sets out the various stages in an understandable way, this should minimise the risk of consumers approaching an ADR scheme too early in the process.

The way in which information is presented is critical in encouraging consumers to access and use complaints-handling and dispute resolution services. A number of organisations routinely make information available in different languages and formats, and use of an interpretation service is also common for telephone callers, offering a variety of foreign languages. However, some organisations do not offer written information in different forms and languages, preferring to do so on request. This begs the question as to how many consumers are going to demand this type of material if it is not perceived to be easily accessible.

Any discussion of ease of access also needs to take account of the existence of rules that might in effect erect barriers to access. For instance, access to ADR schemes is normally only available once a specified time period has elapsed – 3 months in the communications sector or 2 months in financial services – or only if the consumer has received a so-called ‘deadlock’ letter from the company stating that it cannot take the complaint further. However, this type of rule is not seen as necessary in some other countries, for instance, the Energy and Water Ombudsman in Victoria, Australia does not impose such restrictions.
In order for access to be meaningful, future arrangements for complaints-handling and dispute resolution must avoid putting up cost and other barriers and seek to be as accessible as possible. Consumer information should be routinely available in different languages and formats, together with the provision of interpreters, Typetalk and Minicom systems. The imposition of unnecessary or unjustifiable rules should be avoided, especially consumer complaints with utility services may well require immediate and urgent resolution. Given the electronic systems that providers maintain, it is highly questionable whether more than a few days is necessary to allow for companies to respond to complaints.

Minimum ingredients:

- Wide promotion of what complaints-handling and dispute resolution services are available to consumers in easily-understandable language and through a range of formats and languages.
- Accessible services so that consumers can make contact with ease and confidence through a range of means, both non-electronically as well as electronically.
- Mainstreaming of services so that they are fully accessible for all consumers including people who are in a vulnerable situation or have specific needs such as language, disability, comprehensibility.
- Free access to complaints-handling and dispute resolution services for consumers, and minimisation of related costs such as telephone contact.
- Clear and seamless systems for referral of complaints and unresolved disputes to the appropriate body.
- Avoidance of unjustifiable rules regarding when complaints-handling bodies or dispute resolution schemes are able to take up or investigate unresolved consumer complaints.
- Clear rules on the content and timing of `deadlock letters’ from providers to avoid consumers being denied access to complaints-handling or dispute resolution services as a result of any company failures.

c) Consumer support and empowerment

There is considerable variation between different service sectors in terms of the extent of assistance that is provided to individual consumers: some organisations have an advice and ‘hand-holding’ scheme, others do not. For instance, in the energy and water sectors and in rail and postal services, consumer bodies are able to take up complaints with providers on behalf of individual consumers. There is no comparable service in the communications sector.

ADR schemes do not intervene on behalf of individual consumers as they have an Ombudsman role. However, ADR schemes - such as CISAS and Otelo - will normally assist consumers in making their complaint in order to ensure that their case is fully presented. The Parliamentary and Health
Service Ombudsman is able to assist complainants first hand, and sometimes face-to-face.

Consumer education is fundamental to consumer empowerment: in some areas, it is the duty of the regulatory authority, whereas in others it is carried out by consumer advocacy bodies. These variations may, however, be explained by differences in the underlying duties of the respective organisations.

Regulators can perform a key consumer support function in raising performance levels across a sector and in tackling consumer detriment, for instance, by penalising sub-standard performance by a supplier or through other forms of regulatory action. It is therefore imperative that there are clear and robust processes to share information between advice and complaints-handling bodies, dispute resolution services, and regulators about cases that may have a wider significance or point to underlying problems. In the financial services sector, the Financial Ombudsman Service (FOS) has agreed a process whereby it will alert the Financial Services Authority (FSA) to complaints with ‘wider implications’: where there is a widespread issue or issues that could give rise to significant consumer detriment. The agreement includes the key factors that need to be taken into account in deciding whether a case has wider implications, and it also clarifies the respective roles and responsibilities of the FOS and FSA.

Staff employed in complaints-handling and dispute resolution need to be trained to recognise where complaints may constitute a breach of a licence condition, and take the appropriate action. For instance, energywatch works closely with Ofgem to ensure that company performance issues are monitored and evidence is provided, where appropriate, to trigger investigations and/or enforcement action. The organisation has a structured compliance and enforcement process with trained case builders who will do initial trend analysis and compile evidence of potential breaches. energywatch and a number of other consumer advocacy bodies are also now able to take ‘super-complaints’ to regulators on behalf of consumers in general.

In terms of encouraging collaborative working in dispute resolution, it is worth drawing attention to current government proposals for reform of public sector Ombudsmen. These proposals include enabling the Ombudsmen to work collaboratively on cases and issues that are relevant to more than one of their jurisdictions, and providing powers to enable the Ombudsmen to issue advice and guidance on good administrative practice and other matters.¹¹ The changes will be made through a Regulatory Reform Order and so they will not involve a fundamental restructuring of the public sector Ombudsmen system. However, the proposals provide a useful illustration of the need for a formal basis for collaborative working in dispute resolution.

Future arrangements will need to provide accessible information and advice to support and empower individual consumers on taking forward a complaint,

and be able to intervene with providers on behalf of complainants, depending on people’s needs and circumstances. This should include support and advice when complaints are being dealt with through ADR to ensure that cases are fully and properly presented. Sound and robust processes will be required to ensure speedy and clear communication between all parties involved to deal with cases of potentially wider significance. Any new arrangements will also need to make provision for consumer advocacy bodies to take ‘super-complaints’ to regulators.

**Minimum ingredients:**

- Provision of advice and support to help consumers take forward complaints.
- Ability to intervene and advocate on consumers’ behalf to help resolve complaints.
- Provision of advice and support to assist consumers in pursuing complaints through dispute resolution processes so that their cases are fully and adequately presented.
- Provision of an effective source of consumer education about utility markets and consumer rights.
- Effective communication links between consumer advocacy, ADR schemes and regulators, including alerts to cases of wider significance.
- Powers to ‘name and shame’ providers whose services give rise to high levels of complaints or cause significant consumer detriment.
- Powers for consumer advocacy bodies to pursue complaints through representative actions on behalf of groups of consumers or consumers in general, including super-complaints under the Enterprise Act.

d) **Fairness**

Fairness covers the way in which decisions are made and how consumers are treated. Some existing complaints-handling and dispute resolution services deal with complaints on a ‘first come, first served’ basis, whereas others have decided to fast-track certain types of complaints – most obviously where consumers are in an especially vulnerable or urgent situation – or to prioritise complaints that have an immediate impact. If complaints are to be prioritised, the rationale for doing so should be publicly available so that consumers can be confident that the process is fair.

Any complaints-handling or dispute resolution process will need to ensure that it has information from consumers about their complaint, as well as seeking information from providers. Moreover, if consumers are to be confident that they are receiving fair treatment, they need to be given an opportunity to see and comment on provisional decisions, and be given reasons for final decisions, in cases where complaints are subject to formal adjudication. These are common practices for existing ADR schemes.

Ensuring that services are fully accessible to all consumers is an essential part of fair treatment: the points made earlier concerning access are highly
relevant here, and also serve to highlight the ways in which these basic principles are inter-linked.

Minimum ingredients:

- Clear, open and consistent criteria and procedures for complaints-handling bodies and dispute resolution services.
- Provision of explanations for any prioritisation of complaints-handling or dispute resolution.
- Systems to ensure that consumers’ views are given equal weight as those of providers by dispute resolution services.
- Equality of access for vulnerable consumers and for consumers with specific needs to complaints-handling and dispute resolution services.
- Notification of provisional decisions to consumers by dispute resolution services and provision of opportunity to comment on provisional decisions.
- Provision of clear reasons for final decisions by dispute resolution services.
- Provision of opportunity for consumers to accept or reject decisions on individual complaints and to use the court process or an effective appeal mechanism.

e) Effectiveness and performance

Efficient and high quality complaints-handling services need to be available for consumers when things go wrong in their dealings with utility providers. The arrangements must provide full coverage. At present, there are gaps in terms of the type of provision available. For instance, consumer advocacy bodies in the energy, postal services, and water sectors can advise consumers and take up individual complaints on their behalf with providers. However, there is no route available for formal dispute resolution as there is in the communications sector where communications providers are required to be members of ADR schemes that are approved by Ofcom (namely, CISAS or Otelo). On the other hand, there is no consumer advocacy body for communications complaints equivalent to the ones in the other sectors.

Robust and appropriate performance indicators are needed to measure how well advice, complaints-handling and dispute resolution schemes work. We have not undertaken performance comparisons of existing services primarily because this was not the object of the work: our aim is to ensure that the central focus of the new arrangements is on meeting consumers’ needs. In addition, such exercises are not as straightforward as they may appear because performance can vary as a result of many different factors. The unit costs for handling complaints may vary between organisations because of different methods of calculation or the complexity of cases. Volumes of complaints received can vary because of changes in company practices. These kinds of factors do not present insuperable barriers to comparing service performance but they need to be taken into account for comparison exercises to be valid and informative.
Whilst we have not engaged in a comparison exercise, the issues involved in performance monitoring and evaluation are discussed here in order to assess what ingredients are necessary to ensure that it is done effectively. It is common practice for existing services to publish information on the numbers and types of complaints they handle, as well as statistics regarding annual total amounts of compensation secured for consumers and, in the case of ADR schemes, the levels of award. Some organisations also publish information on the unit costs of their schemes.

The use of key performance indicators (KPIs) is widespread among complaints-handling bodies and dispute resolution services as a means of monitoring and improving their own performance. Most organisations publish these indicators, together with information on actual performance against specified targets, at least on an annual basis. However, this is not always the case as some organisations regard this information as an internal matter.

The criteria chosen for KPIs largely depend on the organisation’s perception of what are the most useful indicators of its performance. In some instances, the choice of KPIs has been informed by research among consumers who have used the service.

It is very common for performance targets to be related to timeliness issues, for instance, speed of response to enquiries, and/or resolution of complaints. Some organisations also monitor aspects such as customer satisfaction with their services, levels of consumer awareness about their existence. In energywatch’s case for instance, the KPIs include broader aspects such as championing the interests of vulnerable consumers and creating confident and assertive consumers.

Care needs to be taken to ensure that KPIs do not have unintended or perverse consequences. For instance, targets aimed at achieving speedy handling of complaints should not militate against proper investigation of what might be quite complex matters. Recently publicised examples of possible unintended consequences of performance targets can be seen in the health service, where targets for making an appointment with a GP have led to reductions in availability of advance appointments. In social care, for example, managers and staff in local authorities have frequently complained about the ways in which sets of KPIs in effect determine providers’ and commissioners’ priorities, even though in particular areas, services not covered by KPIs may need to be given a higher priority.

To summarise, if future arrangements are to be effective in meeting consumers’ needs when they have an unresolved complaint, they should offer a full range of services that encompass expert information and advice provision, advocacy, and dispute resolution. Effectiveness also means providing full coverage of relevant sectors, with binding rules for providers and speedy regulatory action to deal with failures to comply. Robust processes are essential to monitor and evaluate performance, based on clear and realistic performance indicators that are grounded in and informed by consumers' needs and experiences. Performance targets should seek to
avoid perverse effects, and indicators should also take account of wider impacts on consumer benefit. Information on all aspects of performance in complaints-handling and dispute resolution should be published as a matter of routine. Independent reviews of performance should be carried out periodically and the results should also be published.

**Minimum ingredients:**

- Efficient and robust systems to handle complaints and resolve disputes that are accessible, timely, competent, and knowledgeable.
- Binding requirements on providers to adhere to regulatory or scheme rules on complaints-handling processes and to abide by independent adjudication decisions.
- Accurate and up-to-date databases on the numbers and types of consumer complaints and disputes that are received and handled.
- Systems to ensure that complaints data are used to identify and publicise systemic service failures or complaints with wider implications, and to inform decisions on necessary action to achieve improvements in services - underpinned by clear communication and liaison channels between consumer advocacy bodies, dispute resolution schemes, regulatory and enforcement agencies, and government departments.
- Regular customer satisfaction surveys, including helpfulness, speed, thoroughness, accessibility of complaints-handling and dispute resolution services.
- Regular consumer awareness surveys of complaints-handling and dispute resolution services, including socio-economic, disability, ethnicity, age and gender factors.
- Regular monitoring and evaluation of the effectiveness of complaints-handling and dispute resolution services in terms of their impact for consumers, especially for consumers in vulnerable situations and with specific needs.
- Systems that measure performance against appropriate key performance indicators that are informed by consumer research and public consultation, subjected to regular reviews, and that avoid perverse effects through inappropriate choice of performance targets.

**f) Resolution and Redress**

The situation at present is that help with complaints is available in the energy and water sectors, and in rail and postal services. The existing consumer advocacy organisations are able to advise consumers and take up complaints on their behalf, with the possibility of achieving resolution and potentially financial compensation or other types of redress. However, if this process fails, individual consumers do not have another route available unless they choose to go to court.

In the water sector, some WaterVoice Committees had agreements with suppliers in their area for the Committees to act as mediators in cases that lend themselves to this process, with the agreement of the complainant and
company concerned. (The Committee members involved had undergone training in mediation by ACAS.) Such arrangements are likely to continue when the new Consumer Council for Water takes effect.

Very limited help is available for individual consumers in the communications sector, where there is no sector-specific consumer body that can take up complaints on their behalf. On the other hand, two Ofcom-approved ADR schemes - CISAS and Otelo - provide dispute resolution services, either informally or through a formal decision. These processes can result in financial compensation or other forms of redress.

Any future arrangements should offer a full range of services to help resolve consumer complaints from provision of information, advice and intervention on behalf of consumers, through to independent dispute resolution processes. Similarly, a wide range of redress and compensation options should be available, and consumers should continue to be able to choose whether to accept the outcomes of dispute resolution or to go to court.

Minimum ingredients:

- Provision of a full range of complaints-handling and dispute resolution services.
- A range of redress options, including an apology and other company action to put things right, change of decision, and clear and straightforward compensation for the loss.
- The possibility of interest payment for losses over a period of time.
- Recognition of distress and inconvenience through compensation.
- Binding nature of decisions on dispute resolution for providers.

**g) Independence**

The existing consumer representative organisations in the utility and transport sectors are independent bodies whose terms of reference are set out in Acts of Parliament. Some are funded through company licence fees but this does not affect their independence. It is normal practice for the appointments to their governing bodies to be carried out through a process of open recruitment.

In the communications sector, the two ADR schemes - CISAS and Otelo - receive industry funding but operate independently. Otelo’s governing body includes a majority of independent members who are openly recruited. CISAS is administered by the Dispute Resolution Scheme of the Chartered Institute of Arbitrators (CIARB) which is a registered charity. There is no public advertising of its management board as it is a CIARB committee and its members are drawn exclusively from CIARB.

Independence is vital if consumers are to have confidence in complaints-handling and dispute resolution services. It should be a prerequisite that any new services are set up to be completely independent of providers’ interests and operate at arms-length from regulators and government departments. If
the service is to receive any funding from industry, governance arrangements must be such as to ensure that it operates independently of the sources of funding. In such situations, independent non-industry members should form the majority on the governing body.

**Minimum ingredients:**

- Independence of governance of services from industry, regulators and government.
- Majority of governing body to be consist of independent members where scheme is industry funded.
- Clear separation between the process of complaints handling and the sources of funding.
- Independent complaints-handling and dispute resolution criteria and procedures.

**h) Accountability**

The existing consumer advocacy bodies and dispute resolution schemes all publish annual reports, and it is common for this to be a formal requirement. Most of the consumer bodies publish forward work programmes and also consult on draft work plans. As stated earlier, it is normal practice for appointments to governing bodies to be made through open recruitment.

If consumers are dissatisfied with the services provided by the existing consumer bodies and dispute resolution schemes, there is normally a route available for them to make a formal complaint. In the energy, rail, postal and water sectors, these consist of internal complaints processes and consumers also have ultimate recourse to the Parliamentary Ombudsman in such situations. Complaints about Otelo or CISAS are dealt with internally, and consumers can also make a complaint to Ofcom, to be addressed at the next Ofcom review of the ADR schemes. The process for making complaints is normally available on organisations’ websites but some also publicise the process in paper form.

As well as offering an internal review process for dissatisfied complainants, the board of the Financial Ombudsman Service (FOS) has appointed an independent assessor who is responsible for carrying out a final review of the service provided by the FOS if a complainant remains dissatisfied. The assessor is authorised to make findings and recommendations for redress if this is considered to be justified. The assessor’s annual report is published in full (in the FOS’ annual report). As well as providing information on complaints, his latest report raised a number of broader issues for consideration by the FOS.

In terms of broader public accountability, those organisations that were established under legislation are normally required to make annual reports to Parliament. It is also common for representatives of consumer advocacy bodies or ombudsmen to give evidence to parliamentary committees.
Future arrangements for complaints-handling and dispute resolution will need to be accountable in a variety of ways: to individual consumers, the public, and Parliament. This must include open and independent processes for recruitment of members of governing bodies. Services should be required to provide an accessible and ultimately separate means through which complaints can be made about their work, including publication of the number and broad nature of complaints and how the information has been used to improve performance.

All services should be required to publish annual reports as a matter of course, as well as future work programmes. It would be useful to learn from best practice in the publication of annual reports and other documentation, especially to ensure that content and formats meet the range of needs of consumers and other stakeholders. Any new arrangements should be open to regular scrutiny by Parliamentary Select Committees. This not only provides an essential form of public accountability and useful feedback but can also help to raise public awareness and confidence.

**Minimum ingredients:**

- Publication of annual reports with full information on performance.
- Publication and consultation on forward work plans.
- Open and fair procedures for appointments to governing bodies.
- An independent route for complaints about the service and publication of information on complaints received and action taken to improve service quality.
- Periodic reviews of performance both on an individual and sectoral basis.
- Regular scrutiny by stakeholders.

i) **Resources**

We have not sought to evaluate or compare the resources available to existing consumer advocacy bodies or dispute resolution schemes. This would be a lengthy and complex process that would need to take into account the specific features of each scheme and sector, and any factors that affect the nature of the work being carried out.

However, we have some general observations on resources. The central focus should be on ensuring that income levels are sufficient to provide efficient and effective services to consumers across information and advice provision, advocacy, and dispute resolution, with some room for flexibility to cope with unanticipated increases in the volume of complaints or changes in the nature of complaints that require additional expertise.

If a scheme receives industry funding, for instance through case fees, it is essential that resource decisions are made independently. Consequently, such decisions should be taken by a governing body that has a majority of independent members, and by making provision for external input from the regulator.
If the above safeguard is in place, there are potential advantages in sourcing revenue for an ADR scheme from companies through the charging of case fees. This arrangement can provide some flexibility, and can incentivise companies to improve their own complaints-handling processes. However, care must be taken to ensure that such an arrangement does not provide a perverse incentive for companies to avoid alerting customers to the existence of the ADR scheme in order to keep down their costs.

**Minimum ingredients**

- Resource allocation to be based on an assessment of the resources required to ensure that services will be equipped to meet the range of consumer needs, including provision of information, advice, advocacy, consumer education, and dispute resolution, according to satisfactory performance standards.
- Resources should be available to ensure that information from complaints can be used to identify systemic failures and achieve positive change in supplier performance.
- Value for money assessments that take into account broader impacts on consumer benefit and reductions in consumer detriment, as well as performance in terms of individual complaints.
- Scope for flexibility to cope with unanticipated changes in demand for complaints-handling and dispute resolution services.
- If a scheme is industry-funded, resource decisions to be taken by a majority of independent members of governing bodies, with external input for example from regulators.
- If a scheme is funded on the basis of case fees, this should not be allowed to act as a disincentive for providers to publicise its existence.

**j) Consumer Involvement**

It is common practice for consumer advocacy bodies and dispute resolution schemes to consult complainants about levels of satisfaction with their services. The regularity and nature of such surveys varies between organisations. A number of bodies have undertaken or are currently engaged in projects to consult consumers in order to inform their work plans, or to find out consumer views on current sectoral issues. Methods include quantitative and qualitative research, interactive websites, and public meetings. Some organisations have also embarked on initiatives to involve consumers or consumer representatives more directly in their work.

Future arrangements should ensure that complaints-handling and dispute resolution services consult and involve consumers as a matter of course. This should include consultation to inform future work plans and policy-making, as well as issues such as customer satisfaction. Organisations should be required to establish a strategy for consumer involvement, including arrangements for direct involvement of consumers and/or consumer representatives.
Minimum ingredients

- A comprehensive strategy to involve consumers in governance and policy-making processes that reflects the diversity and breadth of consumers’ backgrounds and experiences.
- Monitoring and evaluation of the effectiveness of any opportunities for consumers or their representative organisations to be involved in governance and policy-making of complaints-handling services and dispute resolution schemes.
- Strategy to elicit from customers their experiences, and views, about complaints-handling and dispute resolution arrangements.
5. Conclusions and recommendations

5.1 Conclusions

Possible changes in the structure of consumer representation raise critical questions about the nature and adequacy of services to help consumers when things go wrong in their dealings with providers in the utility and related sectors.

Consumers need free, accessible and fair processes to resolve any complaints with providers. In some situations, consumers may only need information or advice to enable them to pursue a complaint themselves. In other circumstances, consumers will need more detailed ‘hands-on' assistance to achieve informal resolution of a complaint through intervention or advocacy on their behalf, for example if the issue is complex, or because of personal circumstances, or if they lack confidence or skills to pursue the complaint directly. Consumers also need the option of a non-court-based and free process for dispute resolution based on independent adjudication.

Re-structuring of consumer representation in the utility sectors must include provision for independent services that can meet the range of consumers’ needs in terms of consumer advocacy, complaints-handling and dispute resolution. The new arrangements should also ensure that action can be taken on behalf of consumers collectively to improve consumer benefit and to deal with issues that are of wider significance.

Such services should be based on principles that reflect the breadth and diversity of consumers’ needs and contain minimum ingredients to meet consumers’ requirements, as suggested in this report. To ensure this happens, we have put together a set of tests to help in assessing the adequacy of the proposals (see below - section 5.2).

The form of the new arrangements should follow the key functions: they must offer accessible and seamless services that are firmly based in the reality of people’s situations and needs, and meet the full breadth and diversity of need. There is a confluence of interests in following this approach to the design and implementation of any new arrangements: a clear, effective and streamlined system can bring benefits and efficiency gains for all concerned: consumers, suppliers, regulators and policy-makers alike.

We stress that the future arrangements must meet the full span of consumers’ needs. As a result, we do not believe that consumers’ interests will be served by eliminating or reducing the level of help that is currently available through expert consumer advocacy services. The nature of the services under discussion means that this type of help should continue to be available: that is, services that can offer specialist advice and are able to intervene directly on consumers’ behalf with utility providers where appropriate.

Proposals for future services must include consideration of the potential for changes in our approach to the way that services are construed. For
instance, in the UK, dispute resolution schemes – or Ombudsmen services – tend to be characterised as a last resort option, with strict rules governing when they are able to consider complaints from consumers. The example of other Ombudsmen, for instance, the Energy and Water Ombudsman in Victoria, Australia, shows that this is not the way it has to be. (In section 6, we recommend further research, including examples of good practice in other countries.)

Above all, consumers do not want the process of sorting out a complaint to make matters worse and add insult to injury. Contrary to assumptions, most people do not enjoy making a complaint. The bottom line is ensuring that people are treated fairly when things go wrong; they should not be denied justice because they do not understand a licence condition or the complexities of industry responsibilities, or because they lack the confidence or skills to pursue a complaint.

5.2 Recommendations: tests for future services

Whatever structures are planned for future consumer advocacy and dispute resolution services, they need to meet the breadth and diversity of consumer needs. This is essential if we are to be confident that these services will be of intrinsic value to consumers and other stakeholders: both in putting matters right for individual consumers and in helping to improve the overall quality of service.

Our research has resulted in a set of tests that the new arrangements will need to meet to ensure efficient delivery of what is required. This is an initial attempt at setting some benchmarks for the proposals. If it appears that the proposals will fail to meet some of these tests, the consequences for consumers should be made explicit by policy-makers, especially for consumers in vulnerable situations.

Our suggested tests are as follows:

Information

1. Consumers’ requirements for information will need to be fully met regarding: consumer rights; the availability of complaints-handling and dispute resolution services, what services can do and how they inter-act; how complaints are progressed; and the options available for resolution and redress.

2. Any future services will need to have a right to access to relevant information from providers about consumer complaints.

3. Complaints-handling bodies and dispute resolution schemes will need effective powers and duties to ensure that adequate information is regularly published on the volume and nature of consumer complaints, including possible ‘naming and shaming’ of providers (ability to name and shame
should not be subject to any unjustified or unnecessary restrictions on the grounds of confidentiality).

4. Consumer advocacy bodies, dispute resolution schemes and regulatory authorities will need set procedures so that they routinely share information on the volume and nature of complaints and on systemic service failures.

**Accessibility**

5. Best practice standards will need to be implemented to ensure that the existence of complaints-handling and dispute resolution services is widely promoted to consumers in easily-understandable language and in a range of formats and languages.

6. Consumers should be able to use complaints-handling and dispute resolution services with ease through a range of electronic and non-electronic means, and in ways that meet consumers’ needs in terms of language, format and comprehensibility.

7. Future arrangements should provide consumers with seamless and easily accessible information, complaints-handling, consumer advocacy, and dispute resolution services, without excluding consumers through financial cost, complexity or lack of clarity of access.

8. There should be no imposition of unjustifiable rules that prevent timely access for consumers to complaints-handling and dispute resolution services; on the other hand, there should be requirements to aid consumer access, such as minimum requirements for company responses to complaints.

9. Future arrangements for complaints-handling and dispute resolution must reflect and encompass the DCA’s goal of promoting easier access to justice as well as the government’s general goal of reducing social exclusion.

**Consumer support and empowerment**

10. Any new services will need to meet the breadth and diversity of consumers’ needs with regard to information, advice, support and advocacy, and access to independent adjudication services for unresolved complaints.

11. Dispute resolution services must be required to ensure that consumers are given appropriate advice and support in order that they can fully present their case when making a complaint.

**Fairness**

12. Complaints-handling and dispute resolution services must be required to adopt clear and consistent criteria and procedures for dealing with consumer complaints, and operate in ways that are fair and transparent.
13. All practicable steps must be taken to ensure fair treatment of consumers who are in vulnerable situations, or who have specific needs; procedures must be put in place to investigate any discriminatory practice and to provide remedial action.

**Effectiveness and performance**

14. Complaints-handling and dispute resolution services must be able to provide effective coverage for consumers’ needs, and include binding requirements on providers regarding their participation in and adherence to rules and decisions.

15. There must be clear and speedy processes for communication between consumer information and advocacy bodies, dispute resolution schemes, regulatory and enforcement agencies, and government departments to deal with complaints that involve significant consumer detriment or raise wider issues. Memoranda of Understanding or equivalent means must be employed to help ensure that all of these bodies have a common understanding of which complaints are likely to fall within this category.

16. Consumer advocacy services should have the powers and resources to take forward complaints and pursue redress on behalf of groups of consumers.

17. Complaints-handling bodies and dispute resolution services need to be required to carry out and publish regular consumer awareness and consumer satisfaction surveys (of an agreed and high standard), and to ensure that such surveys take account of the interests of vulnerable consumers and of consumers with specific needs.

18. Any new arrangements must incorporate and build on current good practices in dealing with consumer complaints and dispute resolution, and on any current plans for improvements in the level and quality of these services.

19. Any and all new performance indicators must be tested rigorously and robustly to ensure that they reflect the breadth and diversity of consumers’ needs, encompass broader measures to assess the impact on wider consumer benefit and reductions in consumer detriment, and avoid the imposition of perverse incentives that militate against consumers’ interests.

**Resolution and redress**

20. There needs to be clarity - following proper investigation, analysis and consultation - about the reasons for any decisions regarding the appropriate model/s for future complaints-handling and dispute resolution services.

21. Any future dispute resolution services need to be able to provide consumers with a full range of options regarding redress and compensation, and be able to ensure that adjudication decisions are binding on providers.
Independence

22. The governance of future complaints-handling and dispute resolution services must be independent of providers, operate at arms-length from regulators and government, and demonstrate that there is a clear separation between complaints-handling and dispute resolution processes and the sources of funding.

Accountability

23. Complaints-handling and dispute resolution services will need to be situated within a coherent, transparent and understandable framework so that they are fully accountable to consumers, Parliament, and to other stakeholders.

24. Consumers should be able to have recourse to independent appeal systems if they are dissatisfied with how their complaint has been handled or how decisions have been reached on their complaint.

Resources

25. Decisions as to the level of resources to be made available for complaints-handling, consumer advocacy and dispute resolution services need to be based on robust and rigorous analysis, including information on the breadth of consumer needs especially those of consumers in vulnerable situations.

26. Resource allocation arrangements must allow room for flexibility to enable speedy and effective responses to deal with unanticipated increases in the number or complexity of complaints or in the extent of consumer detriment.

27. Decisions made on resource allocation and assessments of value for money must take account of the potential wider impacts to reduce consumer detriment that may be achieved by complaints-handling, consumer advocacy and dispute resolution.

28. If dispute resolution schemes are to be wholly or partially funded by providers, there must be external input on the level of resources required, including input from regulatory authorities and consumer bodies, as well as measures to ensure that providers do not seek to reduce consumer complaints referrals in order to reduce their costs.

Consumer involvement

29. Consumer involvement needs to be built into the policy-making processes of complaints-handling and dispute resolution services.
6. **Action points**

To ensure that future arrangements for complaints-handling and consumer representation are founded on a robust evidence base, we recommend that the following work is undertaken prior to finalisation of the plans:

6.1 **Consumer research**

Research should be carried out to establish what consumers want and need in terms of services that provide initial information, consumer advocacy and support, through to dispute resolution. The aim would be to ensure that future services reflect and are underpinned by a clear and comprehensive picture of consumer need and by the experience and views of consumers with regard to existing services.

We recommend that a range of research models is used including: quantitative research on levels of awareness about consumer rights regarding complaints in these sectors and knowledge about existing services; and qualitative in-depth deliberative research to inform the development of future services. The research should include consumers who have used existing services and those who have not. It should cover a wide range of consumer backgrounds and experiences, especially people on low incomes, people without English as a first language, people with basic skills difficulties, and people with disabilities.

6.2 **Building on best practice**

Further research is required to ensure that future services safeguard and build on existing good practice and fill any current gaps in the utility and related sectors, including learning from other sectors that may provide interesting or innovative examples.

This report has shown that a range of good practices exists in current complaints-handling and dispute resolution services. More in-depth research would be useful on specific issues to identify good practices - and the existence of any current gaps in provision - in order to inform the development of future services. This should include evidence of advocacy services, complaints-handling and dispute resolution in other relevant sectors. It is also recommended that information is gathered on relevant examples from other countries with respect to complaints-handling and dispute resolution.