



Queen Margaret University

CONSUMER DISPUTE RESOLUTION
CENTRE

On track for first-tier complaint handling:

**A review of organisational complaint handling
in regulated sectors with an Ombudsman for
the Office of Rail and Road**

30 October 2018

About the Centre

The Consumer Dispute Resolution Centre (CDRC) is a Centre of Excellence for continuing professional development (CPD), research and knowledge exchange in dispute resolution, complaint management and consumer policy. This Centre contributes to the evidence base for policy and practice, providing world leading multidisciplinary research. Through the provision of high quality CPD and consultancy, our research and knowledge exchange activities contribute to the professionalisation of complaint handling throughout the UK and internationally. Our activities influence policy and practice to enhance the consumer experience of dispute resolution. We contribute innovative thinking and analysis for policy makers and academic networks.

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For further information, please contact cdrc@qmu.ac.uk

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CONTENTS

Acknowledgements.....	4
Executive Summary.....	5
Introduction.....	16
Context for first-tier complaint handling.....	18
Literature Review.....	22
Complaint systems in regulated sectors.....	34
Essential principles.....	42
Conclusions and recommendations.....	63
Reference List.....	69
Annex 1 Summary of good practice.....	80
Annex 2 Summary of learning points.....	84
Research team.....	87

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The views and statements expressed in this report reflect the research team's independent views and do not necessarily represent the views of ORR.

Executive summary

Introduction

1. The Office of Rail and Road (ORR) is the combined economic and health and safety regulator for the GB rail network and the economic monitor for England's strategic road network. One of ORR's strategic objectives is to support **better rail customer service**. Effective complaint handling forms part of the customer experience and there is a strong business case for systems and processes to be of the highest quality.
2. In August 2018, Queen Margaret University was commissioned to conduct a critical review of complaint handling in regulated consumer sectors where there is an ombudsman scheme. A key objective is to ensure that ORR can learn from and apply any lessons to the rail sector. The research identifies good practice and learning points in complaint handling to inform how first-tier complaint handling can be improved in the rail sector. First-tier complaint handling is defined as complaint handling which takes place in-house usually at the organisation that is responsible for service delivery.
3. From the research, it was clear that significant design activity in relation to complaint handling procedures continues to take place. Regulators are taking an active role in relation to monitoring the market and designing new systems and processes, and amending rules and guidance.

Context for complaint system development in the rail sector

4. This is a **complex sector for consumers to navigate if they have complaints**. The rail landscape includes Train Operating Companies (TOCs), Station Operators, Network Rail, Transport Focus and London TravelWatch.
5. In the rail sector, train and station licence holders are currently required by their operating licence to have **Complaint Handling Procedures (CHPs)** which are approved by ORR. Published guidance sets out what ORR will review when approving these procedures and when exercising their monitoring role.
6. The **complaints rate of 29.3 per 100,000 journeys** in 2017-18 is broadly the same as the previous year, as is the figure for the total number of complaints at just over 500,000.
7. **Passenger satisfaction with rail companies' complaint handling is low (29%)**, with a majority of consumers (56%) reporting that the way their complaint was handled led to them feeling more negatively about the Train Operating

Company (TOC).¹ Some regulated sectors have higher levels of satisfaction in relation to complaint handling with broadband at 50%, mobile phones at 56%, and landline telephones at 53%². The energy sector has a similar rate of satisfaction to rail, with complaint handling at 32% in the domestic sector³.

8. **Levels of consumer and staff knowledge about compensation are consistently low**, and TOCs have provided consumers with inaccurate information about consequential loss arising from delayed and cancelled journeys.
9. Recent events surrounding major timetabling changes, which particular franchises have had trouble implementing⁴, are likely to lead to an increase in customer complaints. They have also received considerable media attention. **Issues with punctuality and reliability of services already account for over a quarter (27.4%) of all complaints** reported.
10. Surveys of **trust in rail travel** ranges from **27%** (Which? survey) to **40%** (Transport Focus).
11. Consumers are largely unable to respond to poor customer service, as they would do in a competitive environment, by switching provider, so the incentive on the industry to improve is weaker than in other sectors. As a result, the Rail Delivery Group plans to introduce an Alternative Dispute Resolution (ADR) scheme, in the form of a **Rail Ombudsman** and ORR is consulting on whether membership of this scheme should be made compulsory.
12. There is a strong business case for investment in **effective complaint handling** given the **significant return on investment** which can result in a reduction in cost such as staff time spent responding to complaints, lower compensation costs and a reduction in complaints as areas of consumer dissatisfaction are addressed.
13. A key learning point is that collecting and **utilising complaints data leads to improvements in service**, customer satisfaction and positive repurchasing intentions.

¹ *Passenger rail service complaints 2017-18 Q4 statistical release*. ORR. 2018.

http://orr.gov.uk/_data/assets/pdf_file/0012/28101/passenger-rail-service-complaints-2017-18-q4.pdf

² *Choosing the best broadband, mobile and landline provider: Comparing service quality 2017*. Ofcom. 2018.

https://www.ofcom.org.uk/_data/assets/pdf_file/0023/113639/full-report.pdf

³ *Customer satisfaction with energy supplier complaints handling 2018: Research report prepared for Ofgem*. Quadrangle Research. 2018.

https://www.ofgem.gov.uk/system/files/docs/2018/09/quadrangle_ofgemchs2018_researchreport.pdf

⁴ <https://www.independent.co.uk/travel/news-and-advice/rail-timetable-train-changes-may-journey-services-southern-brighton-london-thameslink-harpندن-east-a8356921.html>

Review of literature: benefits of effective complaint handling

14. There is agreement that effective complaint handling can offer many benefits to an organisation including⁵:
- increased customer trust, confidence and satisfaction;
 - increased loyalty;
 - helping organisations to understand and manage consumer expectations;
 - early warning of possible problems;
 - reduction of repeat complaints;
 - increased employee satisfaction and engagement;
 - enhanced reputation;
 - reduction on costs of dealing with complaints.

Review of literature: factors underpinning effective complaint handling

15. There is a high degree of consensus on the fundamental characteristics that should underpin good complaint handling.⁶

Good complaint handling should ⁷
• be customer focused
• be free, simple and easy to use
• be clearly communicated, and understood by all involved
• be responsive, timely and flexible
• be objective, impartial and fair
• be proportionate and consistent
• be open and accountable
• put things right so far as possible
• seek early resolution
• deliver continuous improvement

⁵ *Improving your complaints process for complainants and for you: A brief guide for organisations.* QMU. 2018.

⁶ See for example British Standards Institute (2015), British and Irish Ombudsman Association (2007), George et al, (2007), Hill (2012), Legal Ombudsman (2014), Parliamentary and Health Services Ombudsman (2009), Scottish Public Services Ombudsman (2011). See reference list for full details.

⁷ *Improving your complaints process for complainants and for you: A brief guide for organisations.* QMU. 2018.

Key learning points identified in the literature review

16. Short and long-term satisfaction are affected not just by the amount of compensation received/awarded, but by the **quality of the interaction**. Staff need to listen effectively to consumer complaints and treat customers with respect.
17. **Clear and timely communication** increases satisfaction with complaint handling. Clear standards of expectations around when and how communications should happen should be set.
18. Organisations should provide **guidance and training** to complaint handlers on making decisions, communicating findings effectively and persuasively and communicating with empathy.
19. Communications should be made in **plain English**.
20. Consumers should be made aware that **complaints are valued, will be acted upon and taken seriously**, and should feel encouraged to raise their concerns.
21. Apologies should be made after providing the complainant with the opportunity to voice their concerns in full, and the **organisation has demonstrated that they have fully understood the concerns**.
22. Significant attention has been paid to consumers at risk of vulnerability both in the academic literature,⁸ and by regulators, who have taken a proactive approach to address it⁹. There is recognition that **getting it right for consumers at risk of vulnerability leads to better outcomes for all**.
23. Organisations should have in place measures to effectively **support and value complaint handlers**, recognising especially the unique health and safety considerations surrounding the role.
24. Complaint handlers should have **appropriate decision-making authority** to enable effective, efficient resolution of complaints.
25. Learning from complaints can provide substantial benefits for organisations and their consumers. Organisations need to have in place **systems that capture the learning from complaints**.

⁸ For a discussion of the literature see Brennan, C., Sourdin, T., Williams, J., Bursteyner, N. and Gill, C. (2017). Consumer vulnerability and complaint handling: challenges, opportunities and dispute system design. *International Journal of Consumer Studies*.

⁹ George M. Graham C. Lennard L. and Scribbins K., 2015 *Tackling consumer vulnerability: regulators' power, actions and strategies*. University of Leicester Research Paper no 15-06.

Key features relating to first-tier complaint handling in regulated sectors

26. The regulated sectors reviewed in detail were **communications, energy, finance** and **legal** as they all have an ombudsman scheme.
27. Similar to ORR, The Financial Conduct Authority, Ofgem and Ofcom operate as a single regulator in the sector. In Legal Services in England and Wales, the Legal Services Board has oversight of a number of sectoral regulators and of the Legal Ombudsman.
28. **Regulators are generally under a duty to ensure that the interests of consumers are protected.** In some instances, this also includes an explicit **duty to ensure there are effective procedures in place for first-tier organisations to handle complaints.**
29. The approaches taken by each organisation were analysed, identifying: (1) what duties they have in relation to improving first-tier complaint handling; (2) how they influence complaint handling; (3) to whom the scheme applies; and (4) the definition of a complaint.
30. The **methods** by which these bodies regulate first-tier complaint handling vary but **typically consist of a combination of general principles and detailed rules.** One general principle is that suppliers **must** ensure that they **treat customers fairly.**
31. The methods by which regulators set out these rules vary. They include specific regulations, standards of conduct, general conditions, codes of practice and rule books. These all set out **minimum requirements** in relation to consumer complaint handling.
32. In the rail sector TOCs must have their complaint handling procedures (CHPs) approved by ORR. Those CHPs must satisfy guidance issued by ORR. **Other regulators have moved away from approving individual CHPs and have changed to setting minimum standards for complaint handling.** This provides consistency in standards, and is **easier to enforce.** Regulators do **take enforcement action in relation to poor complaint handling.**

Good practice in first-tier complaint handling in the Scottish Public Services Ombudsman

33. Rail shares some characteristics with the public sector where there is typically no option for consumers to change provider or supplier, and maintenance of a relationship with the service provider becomes more

important than it would be with many other consumer transactions. The **Scottish Public Services Ombudsman (SPSO)** is included in this review as it is considered to be a **leader in setting effective standards for first-tier complaint handling**.

34. Underpinned by legislation, a specific power to promote good practice in relation to complaints handling has led to the development of simplified and standardised complaint handling procedures in the public sector. **Model complaint handling procedures developed for each sector include a shared understanding of what is a complaint, a two-stage process** which encourages complaints to be resolved at the front line wherever possible (within five days) and a **final decision within 20 days**.
35. There is an emphasis on **early resolution** and active **learning from complaints**.
36. This approach recognises that there are benefits in having a standard approach across a sector. It also recognises that there **is a need for guidance and standards** and that **monitoring and training** may be necessary.

Essential principles and good practice

37. This framework of essential principles was drawn from a review of the complaint handling guidance and standards currently provided by the regulators:

- transparency
- accessibility
- effectiveness and efficiency
- responsiveness
- fairness
- accountability
- improvement

These principles reflect a high degree of consensus in the academic literature and draw on good practice in industry standards. They also reflect the principles listed in the BSI / ISO standard on customer satisfaction¹⁰. Likewise there is a degree of overlap with the well-established consumer principles which are used by consumer organisations to evaluate how particular policies or issues are likely to impact consumers.¹¹

¹⁰ International Organization For Standardization (ISO). 2018. 10002:2018 Quality management -- Customer satisfaction -- Guidelines for complaints handling in organizations. Geneva: ISO.

¹¹ For example the consumer principles have been used by the Legal Services Consumer Panels in England and Wales (2014) <http://www.legalservicesconsumerpanel.org.uk/ourwork/ConsumerEngagement/documents/UsingCon>

- **Transparency**

Publishing information on the complaint handling scheme

Transparency is generally recognised as an important principle for complaint handling in terms of having a **complaints policy which is clearly communicated, easy to find and signposted appropriately.**

Regulators **require** first-tier organisations to have in place **a written complaints handling procedure and information about the complaints procedure to be 'well publicised'.**

Regulators require a copy of the complaints procedure to be made available free of charge to any person who requests it. They also **ensure that consumers are advised of the complaints procedure at the time of making the complaint.**

Signposting to the relevant ADR scheme is particularly important due to low awareness of the availability of ADR.

Detailed requirements are found in many of the schemes. Regulators appear to closely monitor these requirements, and enforcement action for non-compliance has been taken in some schemes¹².

- **Accessibility**

The complaints process should be **easy to use, jargon free and there should be a choice of ways to make a complaint,**

The needs of **consumers at risk of vulnerability require** to be addressed within the complaints handling process.

Complaints can be made in a way that suits the consumer including over the phone and social media. . Twitter is widely used by passengers in the rail sector¹³, particularly younger age groups. While twitter may be used for feedback, in some cases the contact will be a complaint and should be treated as such. ORR should amend its guidance and extend this provision to all complaints, including those received via social media.

In designing the system, take a **user-focused approach**, putting 'the complainant at the heart of the system' and be 'flexible and responsive to those needs'.

[sumerPrinciples2014.pdf](#) and Scotland (2017)

https://www.scottishlegalcomplaints.org.uk/media/69926/consumer_principles_leaflet.pdf

¹² See for example FCA 2017 Letter to CEOs September 2017

<https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-consumer-credit-firms-handling-complaints.pdf>

¹³ *Tweet and tell: turning Twitter into a complaints megaphone.* 2018. The Guardian.

<https://www.theguardian.com/money/2018/jan/05/tweet-and-tell-turning-twitter-into-complaints-megaphone>

Most schemes now require companies to ensure that the complaints process can be accessed **free or low cost**.

- **Effectiveness and efficiency**

This is a broad category that includes a number of areas, spanning aspects of several other principles, and covers¹⁴:

- the user-friendliness of the complaints system;
- providing a complainant with the opportunity to be heard and understood;
- ensuring complainants feel respected;
- providing explanations and apologies where appropriate;
- resolving complaints without undue delay;
- appropriate delegation of authority and clear procedures allowing staff to deal with complaints and provide remedies;
- recording of complaint data;
- using complaint data to identify problems and trends; and
- utilising this data to improve service delivery.

The degree of prescription

Most regulators are at pains to emphasise that a more **principles-based approach to setting standards**, that allows the organisations affected to build complaint handling procedures which meet the needs of the organisation and the customer, is preferred. It is also recognised that, for some process issues, a degree of prescription may be necessary and regulators use a combination of both.

Regulators need to be in a position to **monitor and regularly review their rules** and to **make changes to address the consumer interest**. Clear rules also have the advantage of making enforcement action more straightforward. This may explain why enforcement action has focused on the failure to signpost to ADR organisations since these rules are easy to measure.

Some regulators' rules also recognise the importance of ensuring **staff are properly trained to deal with complaints**.

- **Responsiveness**

It is important to deal with complaints promptly as **consumer expectations around the time taken to resolve a complaint are relatively short**. Early resolution reduces the costs of dealing with complaints and maximises the opportunity for organisation learning.

¹⁴ This is adapted from a guide produced by the Office of Ombudsman, New Zealand Ombudsman, available from:
http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/427/original/effective_complaint_handling.pdf?1349121913

The point at which the complaint can be referred to an external redress scheme is consistent across **private sector** schemes **at 8 weeks** (or at the point when the dispute reaches 'deadlock', whichever is the earlier).

Eight weeks is a maximum for 1st tier complaint handling organisations to conduct an investigation, and delay by the consumer will not 'stop the clock' but can be taken into account by ADR bodies when considering what is fair and reasonable

ORR specifies targets for the percentage of complaints resolved within a specified timescale.

Some schemes **incentivise early resolution** by exempting complaints resolved within prescribed time scales (ranging from one to three days) from some of the requirements relating to providing information and complaints forwarding.¹⁵

In Scotland, **public services have a maximum of 20 days to investigate a complaint**. A distinction is made between straightforward complaints and those that will require a more detailed investigation. **Straightforward, easy to resolve complaints requiring little or no investigation should be resolved within 5 working days**.

- **Fairness**

Organisations should be required to resolve complaints fairly since ombudsman schemes use a fair and reasonable standard when resolving complaints. Fairness standards are also less prescriptive than legal ones and facilitate a more subjective approach that takes into account the circumstances of the individual complainant. Broad principles of **treating customers fairly** apply to all aspects of the regulators' approaches to service delivery including complaint handling.

ORR's guidance states that train companies should resolve individual complaints promptly and fairly as well as act fairly and proportionately and investigate fully and fairly. ORR should consider whether it would be appropriate to create a **general duty for TOCs to treat passengers fairly and / or resolve complaints fairly**.

- **Accountability**

Accountability and governance arrangements are important elements underpinning effective complaint management. While they are linked to the desire to deliver improvement in service quality discussed below, good practice suggests that explicit provisions, that make this commitment clear, are desirable.

¹⁵ Financial Conduct Authority DISP 1.5.1

For markets where switching may not be possible, **publication of data** can be used to put pressure on the regulated business and improve the accountability of rail companies and the regulatory process. Publication of data is already required in the rail sector and is also found in other sectors. Publication of data can be extended to include **reporting on what action TOCs have taken to improve complaint handling and tackle systemic issues**.

- **Improvement**

Driving improvement in industry complaint handling standards is a clear priority for regulators. The experience of other regulators with an ombudsman scheme is that driving improvement is not easy and there is still much work to be done. Satisfaction with complaint handling in regulated sectors remains low. The publication of data by ombudsman schemes can also play an important role in relation to **transparency and driving wider improvement**.

Regulators have taken **enforcement action** in relation to failures relating to complaint handling, imposing significant penalties.

There is a need to be clear about the relationship between the regulator and the ombudsman scheme. Private sector ombudsman schemes can play an important role in sharing insight, promoting good practice and influencing improvements. However, the current UK framework makes a clear distinction between the role of the ombudsman to resolve individual complaints and the role of the regulator which is to address systemic issues. Private sector ombudsman schemes are expected to contribute to raising standards by the collection of data and feeding back of lessons that arise.

Conclusion

All regulators are engaged in raising standards of complaint handling and this continues to be 'work in progress'. Satisfaction levels with complaint handling remain low across a number of regulated sectors as does awareness of ombudsman and other ADR schemes.

Our review found that regulators currently adopt a combination of overarching principles and detailed rules. Broad, enforceable principles such as 'a duty to deal with complaints fairly' can offer comprehensive protection and provide a degree of future proofing which helps promote learning, innovation and competition. Detailed rules provide clarity and may be easier to enforce but may go out of date quickly, can lead to a tick box approach¹⁶ and do not focus on the outcomes sought. Most regulators are seeking to achieve a balance.

One of the takeaway lessons from this research is the proactive role regulators have taken in terms of leading service improvements in complaint handling. This has included: keeping the rules and practice under regular review;

¹⁶ *Thematic Review: Complaint handling TR 14/16*. FCA 2014.
<https://www.fca.org.uk/publication/thematic-reviews/tr14-18.pdf>

reporting on complaint handling in annual reports; specific reviews; requiring publication of data and collating it into a useful format for consumers to use; updating the rules, and taking enforcement action where necessary.

Our review has suggested that complaint handling procedures need to ensure that they address seven essential principles to be effective. These are: (1) transparency; (2) accessibility; (3) effectiveness and efficiency; (4) responsiveness; (5) fairness; (6) accountability; and (7) improvement. ORR's guidance already addresses many of these principles and includes a number of examples of good practice. For example it is one of the regulators whose guidance directly addresses the use of social media. While there are areas where ORR may wish to learn from others, it was not felt that there were any significant gaps.

The balance between guidance and requirements is one of the areas where ORR differs from other regulators. ORR currently provides guidance and then approves each of the organisations' complaint handling procedures. Ofcom moved away from a similar approach arguing that a single code would be more effective in setting minimum standards and easier to enforce. A code for complaint handling should include a combination of enforceable principles as well as any specific requirements.

As rail passengers come into regular contact with a range of rail companies, having a more consistent complaint experience could then result in a seamless consumer journey and help manage expectations.

It should be clear that complaints can be made using a variety of channels, including via social media. An inclusive approach should be taken particularly since Twitter is widely used by passengers in real time in the rail sector¹⁷.

Finally, it was noted that, unlike other regulated areas we reviewed, ORR will not have direct regulatory responsibility for the rail ombudsman scheme. An ombudsman scheme offers great potential for improving complaint handling of first-tier organisations. There are opportunities for ORR to work with the new ombudsman to ensure effective data sharing, learning from complaints and innovation in the development of services.

¹⁷ *Tweet and tell: turning Twitter into a complaints megaphone*. 2018. The Guardian. <https://www.theguardian.com/money/2018/jan/05/tweet-and-tell-turning-twitter-into-complaints-megaphone>

2. INTRODUCTION

The Office of Rail and Road is the combined economic and health and safety regulator for the GB rail network and the economic monitor for England's strategic road network. One of ORR's strategic objectives is to support **better rail customer service**. Effective complaint handling forms part of the customer experience and there is a strong business case for systems and processes to be of the highest quality.

In August 2018, Queen Margaret University was commissioned to conduct a critical review of complaint handling in regulated consumer sectors where there is an ombuds scheme. A key objective is to ensure that ORR can learn from and apply any lessons to the rail sector. The research identifies good practice and learning points in complaint handling to inform how first-tier complaint handling can be improved in the rail sector. First-tier complaint handling is defined as complaint handling which takes place in-house usually at the organisation that is responsible for service delivery.

Aims and objectives

This report provides a good practice review of complaint handling, in regulated sectors where there is an ombudsman scheme, in order to identify what lessons can be applied to the rail sector. It examines the factors and essential principles that apply to complaint handling in these sectors and identifies good practice. The report sets out to deliver the following objectives:

- to identify the specific circumstances within which the rail sector currently operates which impacts on complaints;
- to provide a short literature review on the key characteristics of effective complaint management systems in organisations;
- to review current practice on complaint handling in regulated sectors where there is an ombudsman scheme to identify good practice in relation to the structures, essential principles and processes that drive the improvement of first-tier complaint handling; and
- To make recommendations to enable the application of those principles to the rail sector.

The report consists of seven chapters. In the next chapter the context is provided for the development of complaint systems and processes in the rail sector. Chapter 4 reviews literature on complaint handling summarising some

of the current thinking on effective complaint handling. Chapter 5 is the first of two chapters which contrasts and compares the approach to complaint handling in other regulated sectors with an ombudsman scheme. The focus of chapter 5 is explaining which other sectors were examined and some of the important characteristics of those schemes. Chapter 6 explores in more detail the essential principles which apply to complaint handling in organisations with an ombuds scheme, highlighting best practice. Finally, chapter 7 sets out conclusions highlighting the key lessons arising from this review, and makes recommendations to enable the application of these lessons to the rail industry.

3 CONTEXT FOR FIRST-TIER COMPLAINT HANDLING IN THE RAIL SECTOR

The approach to complaint handling in the rail sector is currently a matter of concern due to high rates of consumer dissatisfaction and low levels of trust¹⁸.

- The complaints rate of 29.3 per 100,000 journeys in 2017-18 is broadly the same as last year, as is the figure for the total number of complaints at just over 500,000¹⁹.
- Passenger satisfaction with rail companies' complaint handling is low (29%), with a majority of consumers (56%) reporting that the way their complaint was handled led to them feeling more negatively about the Train Operating Company (TOC)²⁰. Some regulated sectors have higher levels of satisfaction in relation to complaint handling with broadband at 50% mobile phones at 56%, and landline telephones at 53%²¹. The energy sector has a similar rate to rail of satisfaction with complaint handling at 32% in the domestic sector²².
- Trust in complaint handling by TOCs is also low. More consumers than ever are referring their complaint to Transport Focus or London Travel Watch. They are concerned about the way their complaints have been handled and there has been a 40% increase in appeals closed by them in 2017-18 compared to the previous year²³. In 40% of cases Transport Focus achieves successful outcomes in favour of the customer²⁴. A Transport Focus survey found that trust in the rail sector was 40%²⁵. Which? found that only 27% of users said they trusted train travel²⁶.

¹⁸ *Modification to Passenger Licence Condition 6 (Complaints Handling): a consultation*. ORR 2018. http://orr.gov.uk/_data/assets/pdf_file/0006/28419/2018-07-26-consultation-on-licence-condition-6-complaints-handling-modification.pdf

¹⁹ *Measuring up: annual rail consumer report*. ORR. 2018. http://orr.gov.uk/_data/assets/pdf_file/0003/28245/measuring-up-annual-rail-consumer-report-july-2018.pdf

²⁰ *Passenger rail service complaints 2017-18 Q4 statistical release*. ORR. 2018. http://orr.gov.uk/_data/assets/pdf_file/0012/28101/passenger-rail-service-complaints-2017-18-q4.pdf (sample size 41,789).

²¹ *Choosing the best broadband, mobile and landline provider: Comparing service quality 2017*. Ofcom. 2018. https://www.ofcom.org.uk/_data/assets/pdf_file/0023/113639/full-report.pdf

²² *Customer satisfaction with energy supplier complaints handling 2018: Research report prepared for Ofgem*. Quadrangle Research. 2018. https://www.ofgem.gov.uk/system/files/docs/2018/09/quadrangle_ofgemchs2018_researchreport.pdf

²³ *Modification to Passenger Licence Condition 6 (Complaints Handling): a consultation*. ORR. 2018. http://orr.gov.uk/_data/assets/pdf_file/0006/28419/2018-07-26-consultation-on-licence-condition-6-complaints-handling-modification.pdf.

²⁴ *Annual report and accounts 2017-18*. Transport Focus. 2018. <http://d3cez36w5wymxi.cloudfront.net/wp-content/uploads/2018/07/17151136/ARA-final-12-July-2018.pdf> P12

²⁵ Cited in http://orr.gov.uk/_data/assets/pdf_file/0006/28419/2018-07-26-consultation-on-licence-condition-6-complaints-handling-modification.pdf.

²⁶ Cited in http://orr.gov.uk/_data/assets/pdf_file/0006/28419/2018-07-26-consultation-on-licence-condition-6-complaints-handling-modification.pdf

- Despite the introduction of fixed compensation schemes, consumers have little or no awareness of their rights to compensation²⁷. Following a Which? Super-complaint in 2015 that highlighted concerns about compensation arrangements for passengers, ORR found that only 11% of passengers always or usually claimed the compensation to which they were entitled for delays. Transport Focus ran a further survey in 2016 and found that this figure had risen to 35%²⁸. Concerns persist that levels of knowledge about compensation remain low.
- It has been suggested that more could be done by TOCs to make consumers aware of their rights.²⁹ Research for the Office of Rail and Road (ORR) found that staff knowledge and understanding³⁰, and the provision of written or visual information on delay compensation, was poor.³¹ Recent research by Which? (2018) indicated that TOCs are providing incorrect information to consumers regarding the liabilities they hold regarding consequential losses arising from delayed and cancelled journeys³².
- Recent events surrounding major timetabling changes, which particular franchises have had trouble implementing³³, are likely to lead to an increase in customer complaints. They have also received considerable media attention. Issues with punctuality and reliability of services already account for over a quarter (27.4%) of all complaints reported³⁴.

In the rail sector, train and station licence holders are currently required, by their operating licence, to have Complaint Handling Procedures (CHPs) which are approved by ORR. ORR has published guidance on what will be reviewed when approving these procedures and when exercising its monitoring role³⁵. In

²⁷ *Guidance on complaints handling procedures for licence holders*. ORR. 2015. http://orr.gov.uk/_data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf

²⁸ *Transport: passenger rights, compensation and complaints*. House Of Commons. 2016 Available from: <https://www.parliament.uk/commons-library> p10

²⁹ *Guidance on complaints handling procedures for licence holders*. ORR. 2015. Para 3.47. http://orr.gov.uk/_data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf

³⁰ *Rail delay compensation mystery shopping report of findings*. ORR 2016. http://orr.gov.uk/_data/assets/pdf_file/0009/21105/rail-delay-compensation-mystery-shopping-findings-report.pdf

³¹ *Rail compensation – update report*. http://orr.gov.uk/_data/assets/pdf_file/0020/23555/rail-compensation-update-report-december-2016.pdf

³² *Train companies persist in skirting the law on consequential loss*. Which? 11 June 2008. <https://press.which.co.uk/whichpressreleases/train-companies-persist-in-skirting-the-law-on-consequential-loss/>

³³ *Train timetable changes: what will they mean for your journey?* The Independent 20 May 2018 <https://www.independent.co.uk/travel/news-and-advice/rail-timetable-train-changes-may-journey-services-southern-brighton-london-thameslink-harpenden-east-a8356921.html>

³⁴ *GB passenger rail service complaints 2017-2018 Q3 statistical release*. ORR 2018. http://orr.gov.uk/_data/assets/pdf_file/0018/27405/passenger-rail-service-complaints-2017-18-q3.pdf

³⁵ *Guidance on complaints handling procedures for licence holders*. ORR 2015 http://orr.gov.uk/_data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf

order to address concerns in relation to poor complaint handling in the rail sector, the industry trade body, the Rail Delivery Group (RDG), has developed proposals to introduce an Alternative Dispute Resolution (ADR) scheme, in the form of a Rail Ombudsman.³⁶

ORR is currently consulting on its proposal to change its licence conditions to make membership of the scheme compulsory. Unlike the position with other regulated sectors, ORR is not a Competent Authority under the Alternative Dispute Resolution for Consumer Dispute Regulations (Competent Authorities and Information) 2015. There is therefore no statutory requirement for the regulator to approve the redress scheme operator. The introduction of an ombudsman scheme into the rail sector is being led by industry.

ORR aims to achieve similar regulatory objectives to other regulated sectors via licensing conditions by making membership of the ombudsman scheme compulsory.³⁷ ORR proposes that the Complaint Handling Guidance will set minimum criteria that the ombudsman scheme must meet.³⁸

BACKGROUND TO THE UK RAIL INDUSTRY

While the rail sector is essentially a consumer market in nature, in that the ORR has jurisdiction over privately-run rail franchises, it has a number of characteristics which must be considered when drawing comparisons with other sectors and schemes.

- The rail sector in the UK is operated on a franchisee basis by train operating companies (TOCs), awarded by the government following a competitive tendering process. These franchises cover a defined geographical area or service type, leaving minimal opportunity to compete directly with one another. Competition in terms of passenger franchises is therefore restricted to being for the market, as opposed to within it³⁹.
- Passengers have little agency in terms of shopping around, or choosing another provider, when they experience a poor service or suffer detriment. This removes some of the impetus, felt acutely by other private sector organisations, on franchise operators to improve their service, and provide redress where appropriate, in order to retain and gain customers⁴⁰.

³⁶ <https://www.raildeliverygroup.com/media-centre/press-releases/2018/469774228-2018-07-18.html>

³⁷ *Modification to Passenger Licence Condition 6 (Complaints Handling): a consultation*. ORR 2018.. http://orr.gov.uk/_data/assets/pdf_file/0006/28419/2018-07-26-consultation-on-licence-condition-6-complaints-handling-modification.pdf

³⁸ As above para 2.6.

³⁹ *Competitive tendering of rail services*. European Conference of Ministers of Transport. pg. 199 <https://www.itf-oecd.org/sites/default/files/docs/07tenderingrail.pdf>

⁴⁰ See for example *Quality of Customer Service – Complaint handling*. ORR. 2011.

- The relationship between train operators, station operators and others involved in the rail industry such as Network Rail adds an additional layer of complexity to the rail landscape in relation to where liability for complaints may lie.
- As with other natural monopolies, this places greater emphasis on regulatory bodies to proactively monitor and take action using complaints data in order to drive improvement.

A review (2014) of the Victorian Transport Ombudsman in Australia identified some particular characteristics of complaints in the transport sector that also appear relevant here.⁴¹

- In any mass transit system, which includes a degree of public subsidy, there will always be some decisions made on service delivery which reflect what is better for the majority rather than an individual. This inevitably leads to complaints. A proportion of these complaints are likely to point to a need for systemic improvements.
- Complaints about rail are often about a short-term inconvenience. Complainants can therefore quickly lose interest in pursuing their complaints if they do not receive a swift response or if barriers are placed in their way.
- The impact of social media on complaining behaviour in this sector reflects the younger demographic of many transport users.

In summary, there are a number of specific characteristics of the rail industry that are likely to impact on complaints handling. The next chapter will explore key findings from a review of the literature on effective complaint handling.

http://orr.gov.uk/data/assets/pdf_file/0018/5373/public_passenger_information_may2011.pdf

⁴¹ *Independent Review of the Public Transport Ombudsman*. Cameron Ralph Navigator 2014.
https://www.ptovic.com.au/images/PDFs/2014_1009_PTO_Final_Report_09102014.pdf

4 LITERATURE REVIEW

INTRODUCTION

Based on a literature review of current developments in complaint handling we have identified a range of key areas of interest: (1) benefits to the organisation; (2) factors underlying good complaint handling; (3) theoretical frameworks; and (4) current issues. They represent areas that may be particularly relevant to TOCs and the ORR when thinking about how to design effective complaint handling at organisational level. There is a high degree of consensus in relation to issues that are relevant to complaint handling; there is less agreement on how those issues can be resolved.

(1) BENEFITS TO THE ORGANISATION

There is agreement that effective complaint handling can offer many benefits to an organisation including⁴²:

- increased customer trust, confidence and satisfaction;
- increased loyalty;
- helping organisations to understand and manage consumer expectations;
- early warning of possible problems;
- reduction of repeat complaints;
- increased employee satisfaction and engagement;
- enhanced reputation; and
- a reduction in the cost of dealing with complaints.

Despite widespread recognition of the benefits of good complaint handling, many organisations find evidencing these benefits is more difficult. While there is some evidence that organisations may differentiate themselves based on customer service⁴³, measuring how complaint systems and processes can provide a return on investment (ROI) and improve reputation and profitability is complex.


⁴² See QMU (2018) Improving your complaints process for complainants and for you: A brief guide for organisations)

⁴³ For example Ofcom commented as follows "3.13 Our consultation noted that there was evidence that many CPs will try to differentiate themselves based on the quality of their customer service offerings and that consumers may switch provider if they are unhappy with the way that their complaint has been handled." *A Review of consumer complaints procedures*. Ofcom. 2010. https://www.ofcom.org.uk/data/assets/pdf_file/0028/58690/statement.pdf

One recent attempt from Australia sought to assist organisations in demonstrating that complaints departments are not just 'cost centres'.⁴⁴ Using hypothetical examples, developed alongside industry, they found that the return on investment (ROI) for individual complaints can vary from 76% - 1019%, depending on the impact of the complaints process. Their findings highlighted the complexity of gathering information on this, and they stress the need for real-time collection of data around the types of incidents that occur, the types of complaints that are received, and the rates of customer retention, in order to effectively track ROI for specific organisations. They highlight that effective complaints handling:

- improves repurchase intentions;
- increases positive word-of-mouth behaviour; and
- gains strategic insight into areas that require improvement.

For the rail sector, although there is less opportunity for a passenger to switch rail provider, a significant minority (ORR 2014) compare rail with different modes of transport when planning their journey, indicating that repurchasing intention is still an important factor to consider when encouraging greater investment into complaint handling.⁴⁵ Further, one of the hypothetical scenarios discussed in the study focuses on a utility provider, where 'exit' is not feasible. Here, cross or upsell purchase behaviour, recommendations to others through positive word-of-mouth behaviours, and, critically, the provision of feedback with which to conduct systemic improvement, remain as factors which lead the report to conclude that investment in complaint handling provides a significant ROI. In carrying out systemic improvement in addition, outlay on costs such as staff time spent on handling complaints and direct costs such as providing compensation, can be avoided as service improvements are implemented and complaints regarding the issue reduce.



Learning point

- Collecting and utilising complaints data leads to improvements in service, customer satisfaction, repurchasing intentions, and a reduction in direct and indirect costs associated with handling complaints of a similar type.

⁴⁴ *Return on investment of effective complaints management*. SOCAP. 2018. <http://socap.org.au/wp-content/uploads/2018/03/SOCAP-ROI-Effective-Complaints-Management-Report-Full-March-2018.pdf>

⁴⁵ *Rail passenger experience report*. ORR. 2014. http://orr.gov.uk/_data/assets/pdf_file/0003/11748/rail-passenger-experience-report.pdf

(2) FACTORS UNDERLYING GOOD COMPLAINT HANDLING

There is a high degree of consensus on the fundamental characteristics that should underpin good complaints handling.⁴⁶

Good complaints handling should ⁴⁷
• be customer focused
• be free, simple and easy to use
• be clearly communicated, and understood by all involved
• be responsive, timely and flexible
• be objective, impartial and fair
• be proportionate and consistent
• be open and accountable
• put things right so far as possible
• seek early resolution
• deliver continuous improvement

(3) THEORETICAL FRAMEWORKS

The dominant paradigm at the current time relating to resolving complaints and service recovery appears to be justice theory. For two meta-analyses of the literature in this area see Gelbrich and Roschk (2011)⁴⁸ and Orsingher et al (2010)⁴⁹. Justice theory suggests that satisfaction with complaint handling depends, not just on **distributive justice** (the level of compensation received), but also on **procedural justice** (the extent to which the processes used are viewed as being fair), and on **interactional justice**, the extent to which the consumer considers that the interaction was handled fairly (e.g. were employees polite and respectful and did they demonstrate appropriate empathy?).

Gelbrich and Roschk (2011) found distributive justice has the greatest effect on complaint satisfaction for immediate service recovery (or transaction specific satisfaction). When cumulative satisfaction is examined, interactional justice

⁴⁶ See for example British Standards Institute (2015), British and Irish Ombudsman Association (2007), Hill (2012), George et al, (2007), Legal Ombudsman (2014) Listen, Inform, Respond: A Guide to good complaint handling, Parliamentary and Health Services Ombudsman (2009), Scottish Public Services Ombudsman (2011). See reference list for full details.


⁴⁷ QMU (2018) Improving your complaints process for complainants and for you: A brief guide for organisations

⁴⁸ Gelbrich K. and Roschk H. 2011. A meta-analysis of organizational complaint handling and customer responses. *J of Serv Res* 1491 24 – 43.

⁴⁹ Orsingher C., Valentini, S., and De Angelis M. 2010. A meta-analysis of satisfaction with complaint handling in services. *J of the Acad Mark Sci.* 38: 169 – 186.

was more important in driving consumer loyalty. Interactional justice was also more important when failure is non-monetary (for example the complaint was about customer service). Orsingher et al's (2010) meta-analysis also found that satisfaction by customers with complaint handling was affected most by distributive justice (e.g. outcome) then by interactional justice and only weakly by procedural justice.

There is also an extensive literature in the socio-legal field highlighting similar findings. Based on work by Thibault and Walker (1975), and Lind and Tyler (1988)⁵⁰, the theory of procedural justice essentially says that citizens are more likely to accept the outcome of a decision if they perceive the process as fair even if the outcome is not in their favour. In this literature, procedural justice includes interactional justice. Some studies have found that procedural justice is even more important when outcomes are not in favour of the complainant. For a discussion of the most recent research on this see Grootelaar and van den Bos 2018⁵¹. Overall despite the fact that there is little crossover between the organisational justice literature and the socio-legal literature on justice, their findings are similar. They both highlight the importance of people being treated with respect, being given the opportunity to voice their complaint and to being listened to.



Learning point

- It seems clear that short and long-term satisfaction are impacted, not just by the amount of compensation, but by the quality of the interaction.
- Staff need to listen effectively to consumer complaints and treat customers with respect.
- Staff training is important to ensure highly effective communication with customers.

(4) CURRENT ISSUES IN COMPLAINT HANDLING

Following on from this review of the literature, including research carried out by other UK regulators, the issues that emerged as particularly relevant to first-tier organisational complaint handling are: (a) the importance of communication; (b) managing expectations; (c) the importance of apology; (d) consumers at

⁵⁰ Thibault J. and Walker L. 1975. *Procedural Justice: A psychological analysis*. Hillsdale NJ: Erlbaum. .Lind E. and, Tyler T. 1988. *The social psychology of procedural justice*. New York: Plenum.

⁵¹ Grootelaar H. and Van Den Bos. 2018. How litigants in Dutch courtrooms come to trust judges: The role of perceived procedural justice, outcome favourability, and other socioloegal moderators. *Law and Society Review*. 52:234 – 266.

risk of vulnerability; (e) designing effective complaint systems; (f) supporting employees; and (g) learning from complaints.

(a) Importance of communication

Effective communication underpins interactional justice. There is strong recognition on the importance of effective communication. Research from Ofgem (2016) reported that:

*'Poor on-going communication sits at the heart of dissatisfaction and complainants describe their experience negatively when they feel compelled to manage the process themselves (e.g. by repeatedly chasing for information due to a lack of regular updates and lack of knowledge of what to expect from the supplier and when).'*⁵²

Recent legal services research also found that the majority of complaints to law firms are either about delays or failures in communication.⁵³ It emphasises that clear and timely communication increases satisfaction with complaint handling.

Legal Ombudsman research on the language of complaints found that common problems in communication from legal providers were the use of 'pretentious' language and 'jargon' which felt intimidating to the customer, communications that implied the complaint was not being taken seriously, and apologies which did not sound genuine⁵⁴. This research also makes suggestions on how service providers can improve their communication, including re-framing to make it clear that complaints will be taken seriously and emphasising the positive aspects of complaining; clear signposting of the complaints process, and to the relevant ombudsman; and paraphrasing the customer's complaint to show that each element of the complaint has been considered.

The Legal Ombudsman research draws on an increasing body of research by linguists which examines how language can impact on complaining behaviour⁵⁵. It also links in with findings that the lack of visibility of complaints procedures, and information on any action taken as a result, reinforces the impression that nothing will happen, as a consequence, of making a complaint, and can act as a barrier to making a complaint.⁵⁶ For any

⁵² *Customer satisfaction with energy supplier complaints handling 2016*. Research report: Prepared for Ofgem. OFGEM 2016. <https://www.ofgem.gov.uk/ofgem-publications/103815>

⁵³ *Research into the experiences and effectiveness of solicitors' first-tier complaints handling processes*. London Economics. 2017. Available at <http://www.sra.org.uk/sra/how-we-work/reports/first-tier-complaints.page>

⁵⁴ *The Language of Complaints*. Legal Ombudsman. 2017. <http://www.legalombudsman.org.uk/wp-content/uploads/2014/09/Language-of-complaints-Report-.pdf>

⁵⁵ For example. Orthaber, S. And Márquez-Reiter, R., 2011. "Talk to the hand". *Complaints to a public transport company.. Journal of Pragmatics*. vo.1 43, no 15 pp3860-3876.

⁵⁶ Slater, K. and Higginson, G. . 2016. *Understand Consumer Experiences of Complaint Handling*.

[Online] Available at: <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20complaints-handling.pdf>

organisation aiming to improve complaint handling, this linguistic research has potential to offer rich opportunities to drive improvement since it offers practical insight on what works, much as work on behavioural economics has done in other areas.

Learning point

- Communications should be made in plain English
- Consumers should be made aware that complaints are valued, will be acted upon and taken seriously, and should feel encouraged to raise their concerns

(b) Managing Expectations

Consumer expectations influence satisfaction and therefore understanding those expectations is important. Research for Citizens Advice (2016) found that consumer expectations are that they will be treated fairly, with respect, courtesy and empathy and as a valued customer⁵⁷. They also expected that complaints would be resolved within a reasonable time. In practice the average resolution time was up to three months but on average they expected the time taken to resolve their complaint to be less than one month. Managing expectations has also been found to be particularly important in relation to ombuds schemes⁵⁸.

Drawing from the work of Gilad (2008) on the Financial Ombudsman Service, and adapting it to first-tier complaint handling, expectations management involves managing the gap between a complaint handlers' analysis of the complaint, and the complainant's perceptions of what has taken place and their resultant expectations of redress. Effective expectations management is likely to involve:

- setting out likely complaint outcomes at the start of the complaint process;
- demonstrating an understanding of the complainants position, and appropriate empathy with their experiences;

[20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20\(2\)%20\(1\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20(2)%20(1).pdf)

⁵⁷ *Understand Consumer Experiences of Complaint Handling*. Slater and Higginson. 2016.

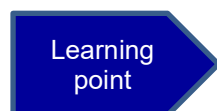
[https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20\(2\)%20\(1\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20(2)%20(1).pdf)

⁵⁸ Gilad, S., 2008. Accountability or expectations management? the role of the ombudsman in financial regulation", *Law and Policy*, vol. 30, no. 2, pp. 227-253. Creutzfeldt, N. 2016. *Trusting the middle man – impact and legitimacy of ombudsmen in Europe*. Available at: https://www.law.ox.ac.uk/sites/files/oxlaw/ombuds_project_report_nc_2.pdf

- establishing and sticking to timescales for communication and resolution;
- communicating the decision-making process that the complaint handler will follow from the outset, including what evidence they will be analysing, how they will analyse it, and what service standards or other appropriate rules will be drawn upon when making their decision; and
- ensuring that the decision made is communicated with reference to the outcomes and processes communicated to the complainant previously, as well as the position and experience of the complainant.

Expectations management draws upon good procedural and interactional justice practice, and as such is a critical element of ensuring satisfaction where the customer's expectations of distributive justice are not met – where they do not receive a positive outcome, or where the positive outcome is not of the size or scope sought. It relies upon a complaint handling culture that is open and empathetic, and effective guidance and training for complaint handlers to ensure consistent and effective customer experience of the complaints process.

Formal processes should be designed and communicated to consumers on: how and when communication should take place; the complaints process itself; how decisions on complaint investigations will be made; and when and how the complaint can be escalated. The design of complaint procedures should take account of the needs of all consumers: consumers should be encouraged to voice their complaints and their expectations regarding the complaints process; and the importance of effective communication at all levels of the organisation should be recognised.



- Clear standards of expectations around when and how communications should happen should be set.
- Organisations should provide guidance and training to complaint handlers on making decisions, communicating findings effectively and persuasively, and communicating with empathy.

(c) The importance of apology

Another area of research that is of potential of interest here is the work done on what makes an effective apology. For instance, Fehr and Gelfand (2010)⁵⁹ emphasise that giving an apology is not enough, and that to be effective, an apology must include the specific components that the person who has been harmed needs to hear and not just the aspects that the person delivering the apology thinks are important. Research by Rosch and Kaisers' (2012)⁶⁰ found that three factors influenced whether an apology was effective: (1) the degree of empathy shown; (2) the intensity of the apology which was defined as including the number of times the apology says the word sorry or its equivalent; and; (3) the timing of the apology.

Frantz and Bennisson (2005)⁶¹ found that apologising too early can limit the ability of an offended party to adequately express their view of what has taken place. They may then feel that decisions reached are less likely to be fair, and as such the timing of an apology can have consequences for a consumer's perception of procedural and interactional justice. They found that satisfaction with the outcome of a dispute, insofar as it is related to the timing of apology, was highest if, before apologising, the offended party had been able to voice their concerns, and the offender had expressed an understanding of the offended party's concerns. Apologising too early, before opportunities for voice and understanding had been utilised, meant that apologies were more likely to be viewed as insincere. As a result, apologising too early can be ineffective, although Frantz and Bennisson highlight that apologising too late can also have a negative effect on outcome satisfaction (as do Rosch and Kaiser 2012). This research is likely to be relevant to the timeliness and effectiveness of complaint handling which is discussed later in this report.

Learning point

- Apologies should be made after providing the complainant with the opportunity to voice their concerns in full, and the organisation has demonstrated that they have fully understood these concerns.

⁵⁹ Fehr, R., and Gelfand, M. 2010. When apologies work: How matching apology components to victims' self-construals facilitates forgiveness. *Organizational Behavior and Human Decision Processes*. vol 113 pp 37-50.

⁶⁰ Rosch H. and Kaiser S. 2013. The nature of an apology: An experimental study on how to apologize after a failure. *Mark Lett* vol, 24, Pages 293-309 .

⁶¹ Frantz, C. M., and Bennisson, C. 2005. Better late than early: The influence of timing on apology effectiveness. *Journal of Experimental Social Psychology* [online]. vol. 41 (2), pp. 201-207.

(d) Consumers at risk of vulnerability

Significant attention has been paid to consumers at risk of vulnerability both in the academic literature,⁶² and by regulators, who have taken a proactive approach to it⁶³. There is recognition that getting it right for vulnerable consumers leads to better outcomes for all consumers, but there is limited research on the experiences and perceptions of consumers at risk of vulnerability in relation to complaint systems, and whether the policies and procedures that are being put in place are effective in practice⁶⁴. Forthcoming research is examining the experience of vulnerable consumers with ADR in the energy sector across Europe⁶⁵.



- Carefully consider the needs of consumers at risk of vulnerability and design complaint handling systems and processes to achieve better outcomes.

(e) Designing effective complaint systems

In many sectors, the design of complaint systems has happened in an ad hoc and piecemeal fashion. The literature is increasingly interested in effective design of complaint systems and there is a significant body of literature on this from the USA and Canada⁶⁶. Much of the focus of existing literature is about workplace disputes. However, it has recently been applied in the context of designing effective consumer ADR systems and there is great potential for the learning from this to be applied to internal complaint handling systems⁶⁷.

(f) Supporting employees

The positive impact that employees can have on customer satisfaction is well-recognised in the literature (for example Hennig-Thurau 2004)⁶⁸. The technical

⁶² For a discussion of the literature see Brennan, C., Sourdin, T., Williams, J., Bursteyner, N. and Gill, C. (2017). Consumer Vulnerability and complaint handling: challenges, opportunities and dispute system design. *International Journal of Consumer Studies*. vol. 41, no. 6, pp. 638-646.

⁶³ *Tackling consumer vulnerability: regulators' power, actions and strategies*. Centre For Consumers And Essential Services. 2014.
https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/tackling-consumer-vulnerability.pdf

⁶⁴ Graham, C., 2018. Tackling consumer vulnerability in energy and banking: Towards a new approach. *Journal of Social Welfare and Family Law*. vol. 40, no. 2, pp. 241-261.

⁶⁵ For information see <https://qtr.ukri.org/projects?ref=ES%2FP010237%2F1>

⁶⁶ For a review of the literature see Gill, C., Williams, J., Brennan, C., Hirst, C. 2016. Designing Consumer Redress: a Dispute System Design (DSD) Model for Consumer-to-Business Disputes. In *Legal Studies*, Vol. 36, No. 3, pp. 438-463.

⁶⁷ As above . See also Williams, J. and Gill, C. 2016. . A Dispute System Design Perspective on the Future Development of Consumer Dispute Resolution. In *The Transformation of Consumer Dispute Resolution in the EU*, Pablo Cortes (ed.), Oxford: Oxford University Press.

⁶⁸ Hennig-Thurau, T. 2004. Customer orientation of service employees: Its impact on customer satisfaction, commitment, and retention. *International Journal of Service Industry Management*, Vol 15, no. 5, pp. 460-478.

skills, motivation, social skills (including empathy), and decision-making authority of customer-facing staff have a direct impact on customer satisfaction. Another emerging area of research is analysing the impact that complaint handling can have on individual employees who are the subject of a complaint, and any barriers to learning that result from this.

Much of the literature on this area relates to the health sector. Results from these studies suggest that receiving a complaint is associated with feelings of anxiety, depression, and reduced job satisfaction, although the impact varies from moderate to severe⁶⁹. There is also evidence that complaints can lead to defensive practices and as barriers to learning.⁷⁰ Recent research with Housing Associations and Planning departments⁷¹ provided similar findings although the researchers found that areas such as defensiveness and avoidance were less prevalent. They also found that the impact was more likely to include positive effects. There is limited research in other sectors.

Learning point

- Organisations should have in place measures to effectively support and value complaint handlers, recognising especially the unique health and safety considerations surrounding the role
- Complaint handlers should have appropriate decision-making authority to enable effective, efficient resolution of complaints

(g) Learning from complaints

Finally there is a significant literature more generally on learning from complaints. While full consideration of this area is beyond the scope of this short review it should be noted that the literature suggests that whereas there are enormous benefits in learning from complaints, there are significant challenges in delivering systemic change, although the benefits can be considerable.

Vos et al (2008), for example, highlight the importance of emerging complaint types for analysis, improvement and the elimination of the organisational

⁶⁹ Bourne, T., Wynants, L., Peters, M., Van Audenhove, C., Timmerman, D., Van Calster, B., & Jalnbrand, M. 2015. The impact of complaints procedures on the welfare, health and clinical practise of 7926 doctors in the UK: a cross-sectional survey. *BMJ open*, 5(1), (1-12). Bruers, J. J. M., van Dam, B. A. F. M., Gorter, R. C., & Eijkman, M. A. J. 2016. The impact of a formal complaint on Dutch dentists' professional practice: a survey study. *BMC Oral Health*, 16, 104.

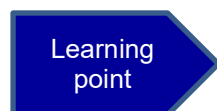
⁷⁰ Adam, M., Maben, J. and Robert, G. 2017. 'its sometimes hard to tell what patients are playing at': How healthcare professionals make sense of why patients and families complain about care. *Health*. see also Bourne *et al.*, 2015; Bruers *et al.*, 2016 above.

⁷¹ Gill,, C., Hirst, C., Sapouna, M. and Williams, J. . 2017. *How do Complaints Affect those Complained About? An Empirical Investigation Into the Effects of Complaints on Public Service Employees*. <https://esrcjustenergy.files.wordpress.com/2018/01/how-do-complaints-affect-those-complained-about.pdf>

practices that have led to the complaint. In discussing the benefits to an organisation of effective complaint handling, we highlighted the importance of collecting and utilising complaints data in order to encourage systemic improvement at an organisational level, and the benefits that this brings directly to an organisation. This collection of data is also critical in terms of informing regulatory action, alongside more holistic complaints data captured by the relevant ombudsman.⁷²

The initial focus of providing an effective and timely response to a complaint, however, can impede the ability of an organisation to allocate sufficient resource to indirect complaint management processes, such as analysing complaints for systemic learning opportunities.⁷³ Research conducted for Nesta shows an alternative very positive approach to using the learning from complaints to drive innovation in services. Using a series of case studies, the research results demonstrate that complaints provide a powerful form of knowledge that can be used to: identify and prioritise need; highlight opportunities to change; challenge established wisdom; uncover system failures and co-create and co-produce solutions⁷⁴.

With reference to our previous discussion on the effective design of complaint systems, the practice of learning from complaints needs to be explicitly organised within companies, alongside the complaint system, to enable learning to take place. In order to effect both local (within TOC) and sector-wide (conducted by the ombudsman scheme and regulator) systemic improvement formal processes for collecting data and encouraging systemic improvement are recommended. As the practice, especially within regulated consumer markets, is still developing, there is scope for greater sharing of good practice through case studies which show where learning from complaints has created opportunities to drive innovation in services. Workshops and roundtable events would enable sharing of good practice within and across sectors.



Learning point

- Organisations needs to have in place:
 - systems that capture the learning from complaints;

⁷² For a fuller discussion of the developing role of private-sector Ombuds schemes in effecting systemic improvement see: Gill, C., Williams, J., Brennan, C. and O'Brien, N. 2013. *The future of ombudsman schemes: drivers for change and strategic responses*. <https://www.legalombudsman.org.uk/downloads/documents/publications/QMU-the-future-of-ombudsman-schemes-final-130722.pdf>.

⁷³ Vos, J.F.J., Huitema, G.B. and De Lange-Ros, E. 2008. How organisations can learn from complaints. *The TQM Journal*, Vol. 20, No. 1, pp. 8-17.

⁷⁴ Simmons, R. and Brennan, C. 2013. *Grumbles, gripes and grievances: the role of complaints in transforming public services*. London:Nesta https://media.nesta.org.uk/documents/grumbles_gripes_and_grievances.pdf

- approaches to share ways of using the learning from complaints to drive improvements and innovation in services;
- strategies to equip employees with the necessary skills and qualities to deliver effective complaint handling; and
- support for employees where they are subject to complaints.

In summary, there is a significant body of research to inform organisations aiming to improve first-tier complaints handling. This chapter draws on some of the key learning that could be applied to rail sector systems, principles and processes. Using a framework of essential principles, the next chapter reviews current practice on complaint handling in regulated sectors where there is an ombudsman scheme to identify good practice.

5 COMPLAINT SYSTEMS IN REGULATED SECTORS

INTRODUCTION

This chapter is the first of two chapters that takes a comparative approach to explore how different regulated industries with an ombudsman scheme approach first-tier complaint handling. Good practice and the lessons learned are identified to influence the system and processes for first-tier complaint handling in the rail sector.

For this report, first-tier complaint handling is defined as complaint handling which takes place in-house usually at the organisation that was responsible for service delivery. Second tier complaint handling takes place in external organisations such as an ombudsman or other industry watchdog.

These chapters also refer to the Scottish Public Services Ombudsman (SPSO) which is widely recognised as being a leader in the public sector in relation to driving improvement of first-tier complaint handling.

SCOPE

The sectors discussed in this report are set out in Table 1 below:

Table 1. Organisations reviewed

Sector	Regulator	Ombudsman
Communication	Ofcom	Ombudsman Services Communications Communications and Internet Services Adjudication Service (CISAS)
Energy	Ofgem	Ombudsman Services Energy
Finance	Financial Conduct Authority (FCA)	Financial Ombudsman Service
Solicitors (England and Wales)	Legal Services Board (LSB) Solicitors Regulation Authority (SRA)	Legal Ombudsman
Public Sector (Scotland)	N/A	Scottish Public Services Ombudsman

Like the ORR, regulators in these sectors are tasked with clear objectives to protect the consumer interest. Financial, energy, communication and legal are all regulated sectors with an ombudsman scheme. In addition, the

Financial Conduct Authority, Ofgem and Ofcom are also sectoral regulators who have much in common with ORR in terms of the industry they regulate and as they operate as a single regulator in the sector.

In the legal sector, the regulatory structure is different. For this report, England and Wales was selected as it includes an ombudsman scheme. In England and Wales, the Legal Services Board (LSB) approves a number of sectoral regulators such as the Solicitors Regulation Authority (SRA). It is the LSB who holds to account the sectoral regulators, (of which there are a number) as well as the Office for Legal Complaints, which is responsible for the Legal Ombudsman. Like ORR, this is a relatively new regulatory structure and the LSB and the sectoral regulators have also taken a proactive approach to first-tier complaint handling. Of interest for this report was the combined approach of the Legal Services Board and the Solicitors Regulation Authority.

Rail shares some characteristics with the public sector where there is typically no option for consumers to change provider or supplier, and maintenance of a relationship with the service provider becomes more important than it would be with many other consumer transactions. Therefore, due to the hybrid nature of transport provision we also reviewed the Scottish Public Services Ombudsman (SPSO), which is recognised as being a leader in the design and development of first-tier complaint handling in the public sector.

Where relevant, the research also draws on an international example from Australia Public Transport Victoria, which regulates a privatised transport system. The regulatory framework in Australia is different with external redress schemes expected to play a much greater role in relation to systems improvement than is traditional in the regulated sector in the UK where the regulator is expected to play a greater role. (Calluna Consulting 2010⁷⁵).

KEY FEATURES OF OTHER REGULATED SCHEMES

This section sets out the background to the approaches taken by each organisation and identifies:

- what duties they have to improve first-tier complaint handling;
- how they influence complaint handling;
- to whom the scheme applies; and
- the definition of a complaint.

⁷⁵ *External dispute resolution schemes and systemic issues: Examination of the Telecommunications Industry Ombudsman's systemic issues function against best practice.* Calluna Consulting, 2010. <https://www.acma.gov.au/Home/Industry/Telco/Reconnecting-the-customer/Public-inquiry/external-dispute-resolution-research-reconnecting-the-customer-acma>

Table 2: Key characteristics of complaint handling practice in selected sectors

	ORR	Ofgem	Ofcom	FCA	Legal Services	Scottish Public Services Ombudsman
Duties	Duty to promote improvements in railway service performance; and to protect the interests of users of railway services	Duty to protect the interests of gas and electricity consumers	Duty to further the interests of citizens in relation to communication matters and consumers in relevant markets, where appropriate, by promoting competition.	Operational objectives include securing an appropriate degree of protection for consumers	Approved regulators must require approved persons to have effective procedures in place for the resolution of complaints ⁷⁶	Duty to promote best practice in relation to complaint handling ⁷⁷
How do they influence complaint handling?	Licence conditions Guidance Notes on complaints handling	General Standards of conduct are set out in licensing conditions The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 also prescribe complaint handling standards and some information requirements ⁷⁸	Operators must comply with Ofcom's General Conditions which impose certain conditions relating to complaint handling and require organisations to comply with Ofcom's Approved Code of Practice for Customer Service and Complaints Handling ⁷⁹	FCA Handbook DISP 1 Dispute resolution: Complaints	SRA Handbook Legal Services Board have also issued section 112 requirements and section 162 guidance for approved regulators ⁸⁰	Model complaints handling procedures published for various sectors
When did the rules commence?	2015	2008	2011 Most recent changes are October 2018 (reference to the changes are included in this report)	2006	2010	2012 Local Authority, Housing, Further and Higher Education Sectors 2013 Scottish Government and Public Authorities 2016 Social Work and NHS

⁷⁶ Section 112 Legal Services Act 2007. The Legal Services Board can also specify requirements that these arrangements must satisfy in relation to first-tier complaints procedures.

⁷⁷ Scottish Public Services Ombudsman Act 2002 as amended by the Public Services Reform (Scotland) Act 2010

⁷⁸ <http://www.legislation.gov.uk/uksi/2008/1898/regulation/3/made>

⁷⁹ *Review of the General Conditions of Entitlement Revised General Conditions*. Ofcom. 2017. C4.4 https://www.ofcom.org.uk/_data/assets/pdf_file/0023/106394/Annex-14-Revised-clean-conditions.pdf

⁸⁰ See for example

https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2016/201607_Version_2_Requirements_Guidance.pdf

A number of points can be noted. Firstly, in common with the ORR, regulators are generally under a duty to ensure that the interests of consumers are protected. In some instances this also includes an explicit duty to ensure there are effective procedures in place for first-tier organisations to resolve complaints (see Ofgem, Legal Services Board and the SPSO).

Secondly, the method by which the regulators set out requirements relating to first-tier complaint handling principles vary.

- In the case of Ofgem the rules have statutory force and have been implemented by means of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008. These standards operate in addition to general principles that apply to energy providers in their Standards of Conduct.⁸¹ For example energy suppliers must ensure that they treat customers fairly. This replaced a requirement to take reasonable steps to treat customers fairly.
- Ofcom General Conditions require communication providers to have procedures for handling complaints that comply with the Ofcom approved code of practice for customer service and complaints handling⁸². The Code of Practice was introduced in 2011 and a revised code was introduced in October 2018.
- In financial services, detailed rules and guidance are found in the Financial Conduct Authority's Handbook - Dispute resolution: Complaints.⁸³ There are approximately 80 pages of rules on first-tier complaint handling. These are a combination of overarching principles to inform complaint handling practice as well as specific rules. Like energy, businesses are also subject to a number of general principles including a principle which requires them to pay due regard to the interests of its customers and treat them fairly⁸⁴
- The Legal Services Board (LSB) have also issued guidance which approved regulators must have regard to when regulating first-tier complaint handling⁸⁵. They have also specified requirements that

⁸¹ The domestic standards of conduct are set out in standard licence condition of the gas and electricity supply licences. For a guide see *Licence guide: Standards of Conduct*. OFGEM 2017. https://www.ofgem.gov.uk/system/files/docs/2017/10/standards_of_conduct.pdf

⁸² *General conditions of entitlement: Unofficial consolidated version*. OFCOM. 2018. https://www.ofcom.org.uk/data/assets/pdf_file/0021/112692/Consolidated-General-Conditions.pdf

⁸³ The FCA handbook can be accessed via this link: <https://www.handbook.fca.org.uk/handbook>

⁸⁴ PRIN 2.1.1 Principle 6

⁸⁵ *First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators*. Legal Services Board. 2016. https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2016/201607_Version_2_Requirements_Guidance.pdf

approved regulators must ensure authorised persons they regulate comply with regarding signposting. The Solicitor Regulation Authority (SRA) then sets out standards on the outcomes and indicative behaviour they expect when solicitors deal with complaints in their Code of Conduct⁸⁶.

In the rail sector TOCs must have their complaint handling procedures (CHPs) approved by ORR. Those CHPs must satisfy guidance issued by ORR. Ofcom previously used a similar system but changed in 2011 to an approved code of practice rather than relying on guidance alone. Ofcom noted that this would bring telecommunications into line with the energy, financial services and water sectors which have already established minimum standards for complaint handling (para 4.7). They argued:

'4.8 The benefits of a single Ofcom Code are that it will ensure minimum standards in how CPs [communication providers] handle complaints across the industry, it will provide consistency in standards, and it will be easier to enforce against.'⁸⁷

Ofcom has recently reviewed its Code and further tightened up on a number of provisions which came into force in October 2018. Reference is made to these changes throughout this report.

The Scottish Public Services Ombudsman (SPSO) provides an interesting contrast to these approaches. The organisation is not a regulator. However, the SPSO was given a specific power under the Public Services Reform (Scotland) Act 2010 to promote best practice in relation to complaints handling and to lead the development of simplified and standardised complaints handling procedures in the public sector. As a result, they published the SPSO Statement of Complaints Handling Principles⁸⁸ and then, taking a sectoral approach, have since developed, in collaboration with the relevant public sector organisations, model complaint handling procedures (CHPs). Public authorities are required to cooperate with the Ombudsman in the exercise of these functions⁸⁹. Currently there are six CHPs in existence covering local authorities (2012), the housing sector (2012), further and higher education (2012), Scottish Government and associated public authorities (2013), the NHS (2016) and Social Work (2016)⁹⁰.

⁸⁶ *SRA handbook*. Solicitors Regulation Authority. 2018.

<https://www.sra.org.uk/solicitors/handbook/code/part2/rule1/content.page>

⁸⁷ *A Review of consumer complaints procedures*. Ofcom. 2010.

https://www.ofcom.org.uk/_data/assets/pdf_file/0028/58690/statement.pdf

⁸⁸ *Statement of complaints handling principles*. SPSO. 2011.

<http://www.valuingcomplaints.org.uk/sites/valuingcomplaints/files/resources/principles.pdf>

⁸⁹ Section 16G Scottish Public Services Ombudsman Act 2002.

⁹⁰ *Statement of complaints handling principles*. SPSO. 2011.

<http://www.valuingcomplaints.org.uk/sites/valuingcomplaints/files/resources/principles.pdf>

All of the model CHPs follow the same format including a shared understanding of what is a complaint, a two stage process which encourages complaints to be resolved at the front line (within five days) wherever possible, a final decision within 20 days, and active learning from complaints. The SPSO has set up a Complaints Standards Authority (CSA) which supports the development of CHPs and monitors compliance.

TO WHOM AND WHAT DO THE SCHEMES APPLY?

This section considers definitions of a complaint and examines the range of customers to which the schemes apply.

Table 3: Definition of complaint

Definition of complaint	
ORR	'Any expression of dissatisfaction by a customer or potential customer about service delivery or company or industry policy' ⁹¹
Ofgem	'Any expression of dissatisfaction made to an organisation, related to anyone or more of its products, its services or the manner in which it has dealt with any such expression of dissatisfaction, where a response is either provided by or on behalf of that organisation at the point at which contact is made or a response is explicitly or implicitly required or expected to be provided thereafter' ⁹²
Ofcom	'Complaint' means: (a) an expression of dissatisfaction made by a Domestic or Small Business Customer to a Communications Provider related to: (i) the Communications Provider's provision of Public Electronic Communications Services to that Domestic or Small Business Customer; (ii) the complaint-handling process itself; or (iii) the level of customer service experienced by the Domestic or Small Business Customer; and (b) where a response or resolution is explicitly or implicitly expected; ⁹³
FCA	'Any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service or a redress determination, which: (a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and (b) relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products, which comes under the jurisdiction of the Financial Ombudsman Service' ⁹⁴
Legal services	'An oral or written expression of dissatisfaction, which alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or other detriment' ⁹⁵

Table 3 demonstrates a degree of consistency across the definitions of complaints with many including reference to 'any expression of dissatisfaction'.

⁹¹ *Guidance on complaints handling procedures for licence holders*. ORR. 2015. P8 2.7
http://orr.gov.uk/_data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf

⁹² The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008

⁹³ *General Conditions of Entitlement Revised General Conditions*. Ofcom. 2018.
https://www.ofcom.org.uk/_data/assets/pdf_file/0021/112692/Consolidated-General-Conditions.pdf

⁹⁴ *Glossary*. Financial Conduct Authority <https://www.handbook.fca.org.uk/handbook/Glossary.pdf>

⁹⁵ *First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators*. Legal Services Board 2016.
https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2016/201607_Version_2_Requirements_Guidance.pdf

It also reflects the BSI/ISO definition of a complaint⁹⁶. This definition has the advantage of taking an inclusive approach to complaints. Despite this, Ofcom has amended its approved code from October 2018 to clarify the definition to expressly include poor customer service because some communication providers did not consider this to be a service failure⁹⁷. In contrast, others have found that that this definition may encourage firms to take a broad approach to complaints, so that feedback is being included within complaints data when that may not be appropriate⁹⁸.

Ensuring that all staff are trained to understand the definition of complaint is important⁹⁹. It helps to provide clarity regarding what is and is not a complaint. A culture, which encourages early resolution, can help to prevent feedback from escalating into complaints and this is something that good complaint handling procedures can help to encourage. Staff training is an element that some of the regulators as well as the SPSO require. For example, Ofcom's new rules will require all staff who deal with complaints (including front line staff) to be trained on how to identify a complaint, and to be fully informed and understand their Customer Complaints Code and how to access it¹⁰⁰.

Table 4: To whom does the complaints procedure apply?

	ORR	Ofgem	Ofcom	FCA	Legal Services	Scottish Public Services Ombudsman
To whom it applies	Customer or potential customer	Consumers and microbusinesses Microbusiness defined as a business with up to 9 employees with a turnover of no greater than £2million p.a.	Domestic or small business customer Small business defined as 10 or fewer employees	Consumer, micro enterprise, charity annual income less than 1 million, trust with a net value of less than 1 million,	Legal Ombudsman will accept complaints from individuals and small businesses, charities, clubs, societies, associations and trusts. ¹⁰¹	Any individual or body of persons (whether incorporated or not) other than a number of public sector bodies. ¹⁰²

⁹⁶ 10002:2018 *Quality management -- Customer satisfaction*. International Organization For Standardization (ISO). 2018. - Guidelines for complaints handling in organizations. Geneva: ISO Definitions available from <https://www.iso.org/obp/ui/#iso:std:iso:10002:ed-3:v1:en>. A complaint is an "expression of dissatisfaction made to an organization, related to its products or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected".

⁹⁷ *Review of the general conditions of entitlement statement and consultation*. Ofcom. 2017. <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions>

⁹⁸ FCA 2014. Thematic Review: Complaint handling TR 14/16 <https://www.fca.org.uk/publication/thematic-reviews/tr14-18.pdf> p15


⁹⁹ As above p24

¹⁰⁰ *General Conditions of Entitlement Revised General Conditions*. Ofcom. 2018. https://www.ofcom.org.uk/data/assets/pdf_file/0021/112692/Consolidated-General-Conditions.pdf

¹⁰¹ See <https://www.legalombudsman.org.uk/?faqs=who-can-use-our-service>

¹⁰² Section 5 (6) of the Scottish Public Services Ombudsman Act 2002. In terms of water complaints they can deal with complaints from any customer of a licensed water or sewerage provider within their jurisdiction <https://www.spsso.org.uk/faqs#t57n6392>

The complaints handling requirements tend to apply not just to consumers but also to microenterprises as illustrated in Table 4. The FCA recently conducted a consultation on whether to extend its ombudsman scheme to businesses with up to 50 employees¹⁰³.



Learning point

- Regulators are generally under a duty to ensure that the interests of consumers are protected. In some instances, this also includes an explicit duty to ensure there are effective procedures in place for first-tier organisations to resolve complaints (see Ofgem and Legal Services Board).
- The methods by which these bodies regulate first-tier complaint handling slightly vary but typically consist of a combination of general principles and detailed rules. One general principle is that suppliers must ensure that they treat customers fairly.
- Regulators may use an approved code of practice with minimum standards for complaint handling. This will provide consistency in standards, and it will be easier to enforce. Regulators do take enforcement action in relation to poor complaint handling.

This chapter has summarised key characteristics of complaint handling practice in each of the regulated sectors with an ombudsman scheme. The next chapter builds on this and provides a comparative approach to analysing a framework of essential principles to gain insights to those which should be considered for the rail sector.

¹⁰³ *Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services*. Financial Conduct Authority. 2018.
<https://www.fca.org.uk/publications/consultation-papers/cp18-3-consultation-sme-access-financial-ombudsman-service>

6 ESSENTIAL PRINCIPLES

Using a framework of essential principles, this chapter provides an analysis of the approach to complaint handling taken by each organisation. The following principles were drawn from a review of the complaint handling guidance and standards currently provided by the regulators:

1. transparency;
2. accessibility;
3. effectiveness and efficiency;
4. responsiveness;
5. fairness;
6. accountability;
7. improvement.

These principles reflect a high degree of consensus with the factors identified in the academic literature as good practice in Chapter 4. They also reflect the principles listed in the BSI / ISO standard on customer satisfaction¹⁰⁴. Likewise there is a degree of overlap with the well-established consumer principles, first set out by JFK Kennedy in 1962, which are used by consumer organisations to evaluate how particular policies or issues are likely to impact consumers.¹⁰⁵

¹⁰⁴ *10002:2018 Quality management -- Customer satisfaction*. International Organization For Standardization (ISO). 2018.

¹⁰⁵ For example the consumer principles have been used by the Legal Services Consumer Panels in England and Wales (2014) <http://www.legalservicesconsumerpanel.org.uk/ourwork/ConsumerEngagement/documents/UsingConsumerPrinciples2014.pdf> and Scotland (2017) https://www.scottishlegalcomplaints.org.uk/media/69926/consumer_principles_leaflet.pdf

1. TRANSPARENCY

PUBLISHING INFORMATION ON THE COMPLAINT HANDLING SCHEME

Transparency is generally recognised as an important principle for complaint handling with regard to having a complaints policy which is clearly communicated, easy to find and signposted appropriately. Citizens Advice research highlights that a lack of visibility of complaints procedures reinforces the impression that nothing will happen¹⁰⁶. A degree of consistency in relation to transparency was found across the various schemes. As Table 5 shows, all of the regulators and the SPSO required first-tier organisations to have in place a written complaints handling procedure.

Table 5: Transparency

	ORR	Ofgem	Ofcom	FCA	Legal Services	Scottish Public Services Ombudsman
Requirement to have a written CHP	Yes	Yes	Yes	Yes	Yes	Yes
Duty to make CHP available	Yes	Yes	Yes	Yes	Yes Not on website ¹⁰⁷	Yes
Duty to include availability of ADR	Yes	Yes	Yes	Yes	Yes	Yes
Duty to advise of ADR at time of complaint ¹⁰⁸	N/A at current time		Yes	Yes		

Most of these organisations also required information about the complaints procedure to be published and made available to the public. For example SPSO and Ofcom require it to be ‘well publicised’. As a minimum, some schemes specify it must be publicly available via the website. Some schemes such as ORR and FCA also require their providers to display, on their premises, information indicating where a copy of the complaints procedure may be

¹⁰⁶ *Understanding Consumer Experiences of Complaint Handling*. Slater, K. and Higginson, G. . 2016. [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20\(2\)%20\(1\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20(2)%20(1).pdf)

¹⁰⁷ *First-tier complaints handling: Section 112 requirements and section 162 guidance for approved regulators*. Legal Services Board. 2016. https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2016/201607_Version_2_Requirements_Guidance.pdf

¹⁰⁸ SPSO guidance states that “ Information about the CHP should be easily accessible at all times, not just made available when a service user wishes to complain” (para 73). However, there does not appear to be an explicit requirement to make the information available when someone does complain (para 71-74) <http://www.valuingcomplaints.org.uk/sites/valuingcomplaints/files/resources/Guidance-on-a-Model-Complaints-Handling-Procedure.pdf> . Legal Services have to advise of the availability of Legal Ombudsman at time of engagement and at end of complaint <https://www.sra.org.uk/solicitors/handbook/code/content.page>

found. All of the regulators require a copy of the complaints procedure to be made available free of charge to any person who requests it.

The only exception to the requirement to publicise the complaints procedure on the website is legal services. The Legal Services Consumer Panel have lobbied to have this changed but the LSB concluded that there was insufficient evidence to suggest, at that time, that publicity would improve complaint handling for consumers in the legal market¹⁰⁹. Instead, people are told about the complaints procedure at the point they first engage a solicitor's firm (usually in the client letter). Research for the Solicitors Regulation Authority and the Legal Ombudsman found that, despite this requirement, many people did not recall this information.¹¹⁰ As a result the SRA has recently consulted on the issue (June 2018) and has indicated that it will now require firms to publish their complaints policy on their website¹¹¹.

It can be noted that while visibility is important the availability of a complaints procedure may not of itself lead to increased awareness of the opportunity to complain. The SRA/LeO research found it would be helpful for complainants to receive information about the complaints procedure at the time they expressed dissatisfaction. Good practice, therefore, points to ensuring that citizens are advised of the complaints procedure at the time of the complaint. Ofcom's complaint handling code, from October 2018, requires businesses to 'proactively' inform a customer who complains about the process and its timeline¹¹². Similar provisions already exist in other schemes (FCA and Ofgem).

GOOD PRACTICE EXAMPLE

INFORMATION TO THE COMPLAINANT ABOUT PROCESS AND TIMEFRAME: OFCOM ANNEX TO CONDITION C4. (IN FORCE OCTOBER 2018)

After having received a Complaint, the Regulated Provider must promptly inform the Complainant of:

- a) the process it will follow to investigate the Complaint with a view to resolving it to the Complainant's satisfaction; and**
- b) the timeframes in which the Regulated Provider will endeavour to carry out its investigation of the complaint.**

¹⁰⁹ *First-tier complaints handling: Section 112 requirements and section 162 guidance for approved regulators*. Legal Services Board. 2016.

https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2016/201607_Version_2_Requirements_Guidance.pdf

¹¹⁰ *Research into the experiences and effectiveness of solicitors' first-tier complaints handling processes*. London Economics. 2017. Available at <http://www.sra.org.uk/sra/how-we-work/reports/first-tier-complaints.page> piv/v

¹¹¹ For consultation documents see <http://www.sra.org.uk/sra/consultations/litf-better-information-consultation.page#headingTwo>

¹¹² *General Conditions of Entitlement Revised General Conditions*. Ofcom. 2018. https://www.ofcom.org.uk/_data/assets/pdf_file/0021/112692/Consolidated-General-Conditions.pdf

SIGNPOSTING TO ADR

Signposting to ADR has been seen by regulators as particularly important for transparency and detailed requirements are found in many of the schemes¹¹³. Levels of awareness of ADR remain stubbornly low and without effective signposting consumers are unlikely to access ADR¹¹⁴. Even where there is signposting, research for Ofgem found that both consumers and micro-businesses thought that suppliers did not provide enough information about ADR, increasing the stress for those whose complaints are not resolved quickly.¹¹⁵ Effective signposting can also play an important role in ensuring that the complaints that reach ADR are not premature and are within jurisdiction. Providing information on ADR entities in a clear, comprehensive and easily accessible way on websites is important. The *EU's Directive on Consumer Alternative Dispute Resolution 2013/11/EU* requires all consumers to be signposted to approved ADR organisations whether or not the trader is a member in order to raise awareness of ADR more generally¹¹⁶.

Despite the emphasis regulators have placed on signposting, non-compliance is a common issue. A number of regulators have taken enforcement action in relation to the failure to signpost to ADR, including the FCA, Ofgem and Ofcom¹¹⁷. Recent research commissioned by the SRA and LeO found that solicitors were failing to signpost complainants to the ombudsman at the end of the complaints procedure.¹¹⁸ Ofcom recently highlighted that there was very low consumer awareness of complaint handling procedures, particularly in relation to when they can refer complaints to ADR. Research for Ofgem previously found that only 7% of those eligible referred the complaint to Ombudsman Services: Energy in the twelve months afterwards¹¹⁹. Ofgem's

¹¹³ For example this is the one area the Legal Services Board for board has used its powers under s112 (2) of the Legal Services Act 2007 to prescribe signposting requirements rather than leaving it to the regulators under its control.

¹¹⁴ *Understanding Consumer Experiences of Complaint Handling*. Slater and Higginson. 2016. [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20\(2\)%20\(1\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20(2)%20(1).pdf). More recent research found some improvement in awareness rates see *Gaps, overlaps, and consumer confusion: A consumer perspective on the UK's alternative dispute resolutions (ADR) landscape*. Gill, C. Creutzfeldt, N., Williams, J. O'Neil S. and Vivian N. 2017.

<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Gaps%20overlap%20consumer%20confusion%20201704.pdf>

¹¹⁵ *Customer satisfaction with energy supplier complaints handling 2016. Research report: Prepared for Ofgem*. OFGEM 2016. <https://www.ofgem.gov.uk/ofgem-publications/103815> p4.

¹¹⁶ Article 13.

¹¹⁷ See for example FCA 2017 Letter to CEOs September 2017 <https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-consumer-credit-firms-handling-complaints.pdf>

¹¹⁸ *Research into the experiences and effectiveness of solicitors' first-tier complaints handling processes*. London Economics. 2017. Available at <http://www.sra.org.uk/sra/how-we-work/reports/first-tier-complaints.page>

¹¹⁹ *Complaints to Ombudsman Services: Energy*. GFK. 2013. https://www.ofgem.gov.uk/sites/default/files/docs/2013/12/ofgem_gfk_complaints_to_ombudsman_services_energy_report_2013_0.pdf

most recent customer satisfaction survey still found that few complainants received information about alternative resolution routes¹²⁰.

There are three possible stages at which signposting can take place; (a) before a complaint is made, as part of the published complaint procedure; (b) at the time of the complaint, and (c) at the point the complaint is concluded or remains unresolved at the end of the prescribed time limit (usually 8 weeks).

Table 6: Signposting to ADR

	ORR	Ofgem	Ofcom	FCA	Legal Services	Scottish Public Sector Ombudsman
As part of published complaint procedure	Yes	Yes	Yes	Yes	Yes	Yes
At time of complaint			Yes	Yes		
At eight weeks (SPSO 20 days) or / final decision reached (whichever is the earlier)	Yes	Yes	Yes	Yes	Yes	Yes

As shown in Table 6, all regulators require information regarding ADR to be provided as part of published complaint handling procedures. In some cases, it must also be included in bills or at the point of entering a contract (legal services for example). Service providers must also signpost at the conclusion of the process, or at the end of the prescribed time limit (see section on responsiveness). Until recently only the FCA required information on ADR to be supplied at the time the complaint is made. From October 2018, Ofcom rules will require complainants to be advised of the complaints process and timelines at both the start of the process and at the conclusion. Ofcom have also changed the terminology so that the notification of ADR is to be an ‘ADR letter’.

GOOD PRACTICE EXAMPLE

It is noted that the Financial Conduct Authority (FCA) requires firms to include a Financial Ombudsman leaflet with their ‘final response’ letter. The Financial Ombudsman Service is the scheme which has the highest levels of consumer awareness (88%).¹²¹

¹²⁰ *Customer satisfaction with energy supplier complaints handling 2018*. Ofgem. 2018 https://www.ofgem.gov.uk/system/files/docs/2018/09/quadrangle_ofgemchs2018_researchreport.pdf

¹²¹ *Annual report and accounts for the year ended March 2018*. FINANCIAL OMBUDSMAN SERVICE. 2018. <http://www.financial-ombudsman.org.uk/publications/directors-report-2018.pdf> . Awareness relates to both prompted and unprompted (20%).

2. ACCESSIBILITY

Regulators, including ORR, generally require complaints handling procedures to be accessible. Criteria include ensuring that the complaints process is easy to use, is jargon free and provides a choice of ways to make a complaint, in order to ensure that the process of making a complaint does not unduly deter people from complaining. It also includes ensuring the needs of vulnerable consumers are being met within the complaints handling process.

GOOD PRACTICE EXAMPLE

SPSO STATEMENT OF COMPLAINT HANDLING PRINCIPLES¹²²

An effective complaints handling procedure is appropriately and clearly communicated, easily understood and available to all.

Complaints should be welcomed by informed and empowered staff.

A complaints procedure should be well-publicised.

A complaints procedure should be easily understood, without any specialist knowledge.

A complaints procedure should be designed with regard to the needs of minority and vulnerable groups. Where appropriate, service providers should make available material and support to help people access and use the procedure.

Good practice in this area ensures that complaints can be made in a way that suits the consumer and complaints should be able to be made over the phone. SPSO refers to the need to be user focused putting 'the complainant at the heart of the process' and being 'flexible and responsive to those needs.'

From October 2018, Ofcom's code of practice for customer service and complaint handling states that as a *minimum* customers must be able to make a complaint by phone, post or mail. The rules do not prevent service providers from accepting complaints via new technologies such as web chat or messaging, but ensures that consumers can also use established methods. The FCA rules allow complaints to be made by any reasonable means and in our view this appears to reflect good practice. This includes complaints via social media. Twitter is widely used by passengers in the rail sector¹²³, particularly

¹²² *Statement of complaints handling principles*. SPSO. 2011. P2
<http://www.valuingcomplaints.org.uk/sites/valuingcomplaints/files/resources/principles.pdf>

¹²³ *Tweet and tell: turning Twitter into a complaints megaphone*. 2018. The Guardian.
<https://www.theguardian.com/money/2018/jan/05/tweet-and-tell-turning-twitter-into-complaints-megaphone>

younger age groups. While twitter may be used for feedback, in some cases the contact will be a complaint and should be treated as such. ORR's current guidance states that *face-to-face* complaints that are resolved on-the-spot are not subject to data management requirements.¹²⁴ In order to address concerns on the impact that accepting complaints via twitter may have, it is suggested that ORR amends its guidance and extends this provision to all complaints, including those received via social media.

GOOD PRACTICE EXAMPLE

FCA HANDBOOK: DISP 1 DISPUTE RESOLUTION: COMPLAINTS¹²⁵

1.3.2 Further requirements for all respondents

These procedures should:

- (1) allow *complaints* to be made by any reasonable means; and**
- (2) recognise *complaints* as requiring resolution.**

Another issue which has caused difficulty over the years is the cost of accessing complaints processes. Most schemes now require companies to ensure that the complaints process can be accessed free or low cost. FCA amended their rules in 2016 limiting the costs of calls to basic rate, and other schemes make reference to a similar requirement.¹²⁶ The SRA's solicitors handbook states that the complaints process must 'not involve any charges to clients for handling their complaints.'¹²⁷

Accessibility also includes ensuring that the complaints process is accessible to all consumers, including those who may be considered vulnerable. FCA reviews of complaint handling have found that in around one in eight cases firms did not handle vulnerability issues adequately.¹²⁸ Most of the regulators include requirements on providers to ensure that complaint handling procedures address vulnerability. Ofcom already had rules relating to disability and from October 2018 these rules were extended to vulnerable customers¹²⁹. While there is no direct reference in the FCA rules on complaints handling to vulnerability, financial services providers are under a general duty to establish and implement clear and effective policies and procedures to identify

¹²⁴ *Guidance on complaints handling procedures for licence holders*. ORR. 2015. Para 3.33
http://orr.gov.uk/_data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf

¹²⁵ *FCA Handbook*. DISP: <https://www.handbook.fca.org.uk/handbook>

¹²⁶ *Regulator Assessment: Qualifying Regulatory Provisions*. Financial Conduct Authority 2016.
https://www.fca.org.uk/publication/impact-assessments/improving-complaints-handling_1.pdf

¹²⁷ *SRA handbook*. Solicitors Regulation Authority. 2018.
<https://www.sra.org.uk/solicitors/handbook/code/part2/rule1/content.page>

The solicitors handbook has outcomes (I) and indicative behaviours (OB)

¹²⁸ *Thematic Review TR16/8: Packaged bank accounts*. Financial Conduct Authority. 2016. P22.
<https://www.fca.org.uk/publication/thematic-reviews/tr16-8.pdf>

¹²⁹ *General Conditions of Entitlement Revised General Conditions*. Ofcom. 2018.
https://www.ofcom.org.uk/_data/assets/pdf_file/0021/112692/Consolidated-General-Conditions.pdf

particularly vulnerable customers and to deal with them appropriately¹³⁰. The FCA also has a broader 'Treating Customers Fairly' initiative. An explicit reference to vulnerable consumers in the complaint handling rules has the advantage of making this requirement transparent, and some regulators have both (e.g. Ofgem and Ofcom as of October 2018).

3. EFFECTIVENESS AND EFFICIENCY

This is a broad category which includes a number of areas, spanning aspects of several other principles, and covers:

- the user-friendliness of the complaints system;
- providing a complainant with the opportunity to be heard and understood;
- ensuring complainants feel respected;
- providing explanations and apologies where appropriate;
- resolving complaints without undue delay;
- appropriate delegation of authority and clear procedures allowing staff to deal with complaints and provide remedies;
- recording of complaint data;¹³¹
- using complaint data to identify problems and trends; and
- utilising this data to improve service delivery.¹³²

While a more focused appraisal is given of several of these areas elsewhere, particularly in terms of time and fairness, this section will concentrate on the ways in which regulatory bodies go about ensuring that complaints processes meet the overall objective of 'effectiveness'. It will address the degree of prescription that regulators take, drawing on experiences in other sectors, and will highlight areas of good practice in relation to this as well as current issues relating to effectiveness and efficiency.

Detailed rules v general principles

Most regulators are at pains to emphasise that a more principles-based approach is preferred as it can offer comprehensive protection and provide a degree of future proofing which helps promote innovation and competition. Detailed rules provide clarity and may be easier to enforce but may go out of date quickly, can lead to a tick box approach¹³³ and do not focus on the

¹³⁰ FCA Handbook CONC 8.2.7

¹³¹ In terms of record keeping, all regulators and the SPSO have requirements on the record keeping. Where timescales are required, they varied from 6 months (Ofcom) to five years (FCA for collective portfolio services). Ofcom plan to increase the 6 month limit to 12 from October 2018.

¹³² This is adapted from a guide produced by the Office of Ombudsman, New Zealand Ombudsman, available from:

http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/427/original/effective_complaint_handling.pdf?1349121913

¹³³ *Thematic Review: Complaint handling TR 14/16*. FCA 2014. <https://www.fca.org.uk/publication/thematic-reviews/tr14-18.pdf>

outcomes sought. For some issues a degree of prescription may be necessary and regulators are therefore using a combination of both approaches. For example, Ofgem previously relied on relatively prescriptive minimum standards referring to a relatively limited range of process issues as found in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008. Ofgem has increasingly moved towards more principles based rules which are found in their Standards of Conduct while retaining some detailed rules.¹³⁴

A similar approach is found within the FCA and although there is more detail on what a complaints process is expected to consist of (particularly around timescales and signposting) these are also phrased in terms of outcomes. For example, complaints should be investigated competently, diligently and impartially and they should be assessed fairly, consistently and promptly. Where appropriate, any remedy offered should be explained in a way that is fair, clear and not misleading.

GOOD PRACTICE EXAMPLE

FCA HANDBOOK: DISP 1 DISPUTE RESOLUTION: COMPLAINTS

1.4.1 Investigating, assessing and resolving complaints

Once a *complaint* has been received by a *respondent* it must:

- (1) Investigate the *complaint* competently, diligently and impartially, obtaining additional information as necessary;
- (2) Assess fairly, consistently and promptly:
 - (a) the subject matter of the *complaint*;
 - (b) whether the *complaint* should be upheld;
 - (c) what remedial action or redress (or both) may be appropriate;
 - (d) if appropriate, whether it has reasonable grounds to be satisfied that another *respondent* may be solely or jointly responsible for the matter alleged in the *complaint*;

¹³⁴See *Final Decision - Standards of Conduct for suppliers in the retail energy market*. OFGEM. 2017. <https://www.ofgem.gov.uk/publications-and-updates/final-decision-standards-conduct-suppliers-retail-energy-market>

In relation to the model complaint handling procedures introduced by the SPSO, despite the use of generic principles the procedures, in practice, do include quite a high degree of prescription (5 days for front line resolution, 20 days for investigation). While there was a degree of compulsion¹³⁵ the models were developed very much in partnership with the public sector and recent research suggests that this aspect was particularly effective (Mullen et al, 2017).¹³⁶ The SPSO Model Complaints Handling Procedure can be viewed in Annex 1. The SPSO continues to facilitate engagement across the public sector through its Complaint Standards Authority. Whether the same degree of collaboration is possible in the private sector is debatable given the variations between the approaches of different regulators and competition between service providers. From the consumer perspective, the SPSO's model has the advantage of simplicity; its emphasis on front line resolution and clear timescales is also a strength.

Other important issues that emerged from examining effectiveness and efficiency were:

- the value of early resolution and the desirability of front line resolution where possible;
- the benefit of streamlined processes including the need for the procedure to be simple with as few stages as possible;
- training: some regulators recognise the importance of ensuring staff are properly trained to deal with complaints. The FCA also requires firms to feedback to employees the outcomes of ombudsman decisions affecting them and incorporate the learning into their training where appropriate¹³⁷;
- automatic compensation schemes: where statutory compensation schemes exist, regulators are increasingly considering whether consumers should need to complain at all. For example Ofgem are going to require automatic compensation if switching goes wrong¹³⁸ and Ofcom for delayed repairs, installations and missed appointments.¹³⁹ For the Rail Sector, this could be effective regarding compensation for delayed services, for example.


¹³⁵ The legislation required public sector organisations to engage too.

¹³⁶ Scotland's Model Complaint Handling Procedures: Exploring recent developments and the usefulness of complaint data for administrative justice research. Mullen, Gill, and Vivian. 2017. https://www.gla.ac.uk/media/media_555877_en.pdf ¹³⁷ DISP Rule 1.3.2.A *FCA Handbook*. <https://www.handbook.fca.org.uk/handbook>

¹³⁷ DISP Rule 1.3.2.A *FCA Handbook*. <https://www.handbook.fca.org.uk/handbook>

¹³⁸ See <https://www.ofgem.gov.uk/publications-and-updates/consumers-receive-automatic-compensation-switching-problems>

¹³⁹ See <https://www.ofcom.org.uk/consultations-and-statements/category-1/automatic-compensation>


 Learning point

- A combination of enforceable principles and detailed rules on particular issues is necessary.
- Regulators need to regularly monitor and review their rules and to make changes where necessary to address the consumer interest.

Overall, it was clear that a significant amount of design activity in relation to complaint handling procedures continues to take place. Regulators are taking an active role in relation to monitoring the market and in amending rules and guidance where necessary. While there is an important role for principle based outcomes, Ofcom's recent experience appears to be that there is also a need to increase the level of specificity on some issues. SRA has also recently consulted on new rules introducing more specific requirements. Clear rules also have the advantage of making enforcement action more straightforward. This may explain why enforcement action has focused on the failure to signpost to ADR organisations since these rules tend to be prescriptive.

4. RESPONSIVENESS

Research suggests that timeliness is important to consumers and delays have a negative impact on satisfaction¹⁴⁰ as does a lack of clarity around resolution timescales.¹⁴¹ Traditionally, organisations were asked to resolve complaints in a 'timely' manner. There has been a move from this to require complaints to be resolved 'promptly' and Ofcom is the latest regulator to move to this requirement from October 2018.

Ensuring that cases are responded to promptly and without undue delay is important not only for customer satisfaction with the complaints process, but also for ensuring that complaints are escalated efficiently to an ADR body or ombuds, and that opportunities for organisational learning, and potentially sector-wide systemic improvement, are not lost. Therefore, though it is critical that cases are resolved promptly, and that this is actively encouraged, an ultimate limit by when a complaint should be able to be progressed to an ombuds should be available. Critically, as with other sectors, if the complainant wishes to allow an organisation to continue to work to resolve a complaint, that should be permitted, but the opportunity should be made available to them,

¹⁴⁰*Understanding Consumer Experiences of Complaint Handling*. Slater and Higginson. 2016. [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20\(2\)%20\(1\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20(2)%20(1).pdf)

¹⁴¹*Customer satisfaction with energy supplier complaints handling 2018: Research report prepared for Ofgem*. Quadrangle Research. 2018. https://www.ofgem.gov.uk/system/files/docs/2018/09/quadrangle_ofgemchs2018_researchreport.pdf

and notification provided, that their complaint is now eligible for escalation to the appropriate body.

Table 7: Timescales

	ORR	Ofgem	Ofcom	FCA	Legal Services	Scottish Public Services Ombudsman
Timescales	95% within 20 working days ¹⁴²	Efficient and timely manner and allocate and maintain such level of resources as may reasonably be required to do so ¹⁴³	Promptly	Promptly	LSB: Complaints must be dealt with swiftly SRA: Complaints are dealt with promptly	Resolve timely Straightforward and easy to resolve complaints requiring little or no investigation 5 working days If not resolved at frontline, complex, serious or high risk complaints 20 working days
Timescale: ADR	8 weeks	8 weeks	8 weeks	8 weeks	8 weeks	5 days front line resolution 20 days investigation stage

All the private schemes we examined have an eight-week limit to resolve complaints after which the complainant can refer their complaint to the relevant ADR scheme. The complainant may refer their complaint earlier if the complaint is ‘deadlocked.’

A number of additional steps are taken to incentivise the prompt resolution of complaints. ORR for example sets a target which makes clear its expectations that 95% of complaints should be dealt with within twenty working days. This is useful in our view for highlighting that eight weeks should be seen as a maximum and not the norm.

The FCA incentivises early resolution by exempting complaints resolved within three days from some of the requirements relating to providing information and complaints forwarding.¹⁴⁴ Ofgem’s reporting requirements do not apply to complaints that are resolved by the first working day after the complaint is received. Ofcom’s new rules also seek to make clear that the provider should be proactive in relation to resolving complaints as shown below:

¹⁴² ORR’s guidance also states in para 1.7 that “ A good complaints handling should resolve individual complaints promptly and fairly, taking account of the reasonable interests of the complainant, including providing compensation as appropriate”. The timescales may also be revised if they receive a sudden or unexpectedly large increase in complaint volumes and instead TOCs will be asked to use reasonable endeavours to resolve complaints *Guidance on complaints handling procedures for licence holders*. ORR. 2015. http://orr.gov.uk/data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf

¹⁴³ Regulation 8 The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008

¹⁴⁴ DISP 1.5.1 *FCA Handbook*. <https://www.handbook.fca.org.uk/handbook>

GOOD PRACTICE EXAMPLE

OfCOM 2018: REVISED GENERAL CONDITIONS¹⁴⁵

TAKING STEPS TO RESOLVE COMPLAINTS

7 A Regulated Provider must take, and continue to promptly take active steps to resolve the Complaint to the Complainant's satisfaction until the Complaint has been resolved or otherwise closed.

The eight week time limit is sufficiently generous that businesses should not 'stop the clock' on the basis that they are waiting for a response from the customer. Schemes do not permit the organisation to extend the timescale on the basis they are waiting for the customer to get back to them. Instead, organisations are under a proactive duty to resolve complaints promptly. This may require organisations to make decisions with incomplete information, based on the balance of probabilities. This is reasonable, in our view, as relevant information is often held by a business, or is at least accessible to them, which will allow them to make a decision. Organisations often have much greater power in terms of recording and storing data about customers, than consumers do themselves. It should be reasonably expected that they utilise this power when resolving complaints. We would expect the Ombudsman to seek and utilise all additional information available when coming to a decision and, as such, if TOCs wish to minimise the escalation of complaints, and resulting adverse decisions, they do the same.

Complainants are, in the vast majority of cases, seeking a quick resolution and do not seek to delay it unreasonably. If the time period has been unreasonably impacted by consumer actions, this can be taken into account if the complaint is escalated to the Ombudsman scheme, where they are able to determine a fair and reasonable outcome, specific to the particular circumstances of the case. For instance, where a customer has not provided specific information to the TOC, which the TOC would not otherwise have been able to obtain, which legitimately prevented the TOC from resolving the complaint, the Ombudsman could determine that no award regarding additional distress and inconvenience caused by the delay should be made. In some cases (such as particularly complex cases), it will be reasonable to extend the time period, though critically only where there is sufficient reason to do so, and with the consent of the complainant.

Private sector scheme timescales are notably more generous than those for the public sector in Scotland where complaint handling standards set a

¹⁴⁵ *Review of the General Conditions of Entitlement Revised General Conditions*. Ofcom. 2017. https://www.ofcom.org.uk/data/assets/pdf_file/0023/106394/Annex-14-Revised-clean-conditions.pdf

maximum of 20 days. The SPSO also makes a distinction between straightforward complaints and those that will require a more detailed investigation. Straightforward complaints requiring little or no investigation should be resolved within five working days. If they are not resolved at the frontline and / or are complex, serious or high-risk complaints then they should be resolved within twenty working days.

These timescales are very challenging for public organisations in Scotland. Many of their complaints are not straightforward. They can include a range of local government departments and can be from particularly vulnerable citizens. Health complaints in particular can involve life-changing situations including death of a patient. In complex cases, these timescales are unlikely to be achieved. This is recognised by the SPSO who advise that where an investigation is likely to take longer the citizen must be kept up to date.

The idea that different types of complaints should be subject to different time scales is not unique to the SPSO. While all reasonable efforts must be made to resolve complaints as quickly as possible, Transport Victoria, also permits transport providers to vary time limits depending on how the complaint is prioritised. For instance, in the case of V/Line Transport¹⁴⁶, the highest priority is for complaints where there are immediate customer safety and security concerns. Cases in this category will be acknowledged within three business days of receipt, with a further response provided within a further two business days if required. For all other complaints, V/Line will provide an acknowledgement and response within seven business days of receiving the complaint.

Learning point

- Investigating complaints promptly is important: consumer expectations around the time taken to resolve a complaint are relatively short and early resolution reduces the costs of dealing with a complaint and maximises the opportunity for organisation learning.
- Eight weeks is a maximum for 1st tier complaint handling organisations to conduct an investigation, and delay by the consumer will not 'stop the clock' but can be taken into account by ADR bodies when considering what is fair and reasonable.
- It may be possible to incentivise early resolution by reducing regulatory requirements for complaints resolved quickly.

¹⁴⁶ See <https://www.vline.com.au/About-V-Line/Additional-pages/Complaints-handling-procedure>

5. FAIRNESS

It makes sense for organisations to be required to resolve complaints fairly since ombudsman schemes use a fair and reasonable standard when resolving complaints. Fairness standards are also less prescriptive than legal ones and facilitate a more subjective approach that takes into account the circumstances of the individual complainant. This is not to suggest that consistency is not important – indeed the FCA also requires organisations to be consistent in their decision-making, but it does facilitate some flexibility where appropriate.

The requirement in the schemes we reviewed to resolve complaints fairly is achieved in a number of different ways. Both FCA and Ofgem require organisations within their jurisdiction to treat their customers fairly. Broad principles of treating customers fairly apply to all aspects of the regulators approaches to service delivery, including complaint handling. Ofgem does not repeat the requirement to resolve complaints fairly in their complaint handling regulations. In contrast, the FCA also requires firms to assess complaints fairly.

Table 8: Fairness

	ORR	Ofgem	Ofcom	FCA	Legal Services	Scottish Public Services Ombudsman
Fairness	Guidance states that a good complaints handling procedure should resolve individual complaints promptly and fairly" (para 1.7)	Standards of Conduct require providers to treat every customer fairly	"Resolve the Complaint to the Complainant's satisfaction" ¹⁴⁸ .	DISP rules state that complaints must be dealt with fairly ¹⁴⁹ .	LSB: CHP are fair SRA Outcomes Treat your clients fairly ¹⁵⁰	Effective CHP must be objective, impartial and fair Fairness includes employees ¹⁵¹

¹⁴⁸ Rule 7. *Ofcom approved complaints code of practice for customer service and complaints handling*. https://www.ofcom.org.uk/data/assets/pdf_file/0023/106394/Annex-14-Revised-clean-conditions.pdf. Note that Rule 3 of the 2011 *Ofcom approved code of practice for complaints handling* previously stated that communication providers must ensure the fair and timely resolution of complaints.

¹⁴⁹ In addition there are rules which require complaints to be assessed fairly (1.4.1) as well as FCA Principle 6 which says: 'A firm must pay due regard to the interests of its customers and treat them fairly' See <https://www.fca.org.uk/firms/fair-treatment-customers>

¹⁵⁰ *SRA handbook*. [online]. Solicitors Regulation Authority. 2018. <https://www.sra.org.uk/solicitors/handbook/code/part2/rule1/content.page>

¹⁵¹ *Statement of complaints handling principles*. SPSO. 2011. <http://www.valuingcomplaints.org.uk/sites/valuingcomplaints/files/resources/principles.pdf>

	The guidance also states that licence holders should act fairly and proportionately (para 3.3) and investigate fairly (para 3.39) ¹⁴⁷					
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Unusually, Ofcom's recent changes to its Code has removed the general requirement to resolve complaints fairly and replaced it with a requirement to 'resolve the Complaint to the Complainant's satisfaction'¹⁵². In the response to its consultation there was little comment on this change and it remains to be seen what effect this will have. New licence conditions have been introduced for communication providers to have 'clear and effective policies and procedures for the fair and appropriate treatment of consumers whose circumstances may make them vulnerable'. There also provisions relating to treating consumer fairly in relation to termination rights and when they have not paid their bills¹⁵³.

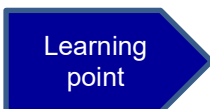
It also includes a general requirement relating to acting fairly and proportionately, and investigating complaints fully and fairly. However, there is potential for a degree of ambiguity over whether businesses are under a duty to deal with complaints fairly in light of the wording in paragraph 1.7 and it may be appropriate to make this requirement more explicit as a result of the introduction of the ombudsman scheme which is likely to use a fair and reasonable test.

GOOD PRACTICE EXAMPLE

ORR'S GUIDANCE STATES THAT:

1.7. A good complaints handling procedure should:

- resolve individual complaints promptly and fairly, taking account of the reasonable interests of the complainant, including providing compensation as appropriate; and
- lead to continuous improvement, so that in the medium term the root causes of complaints are addressed and systemic solutions are put in place.



¹⁴⁷ http://orr.gov.uk/_data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf

¹⁵² Ofcom approved complaints code of practice for customer service and complaints handling. Para 7 https://www.ofcom.org.uk/_data/assets/pdf_file/0023/106394/Annex-14-Revised-clean-conditions.pdf

¹⁵³ C1 and C3 https://www.ofcom.org.uk/_data/assets/pdf_file/0023/106394/Annex-14-Revised-clean-conditions.pdf

- ORR may wish to consider whether it would be appropriate to make a **duty to resolve complaints fairly** explicit to bring ORR requirements in line with the requirements in other schemes

6. ACCOUNTABILITY

Accountability and governance arrangements are important elements underpinning effective complaint management. While they are linked to the desire to deliver improvement in service quality, discussed below, good practice suggests that explicit provisions that make this commitment clear are desirable as demonstrated by the example from the FCA below.

GOOD PRACTICE EXAMPLE

FINANCIAL CONDUCT AUTHORITY¹⁵⁴

1.3.3 A respondent must put in place appropriate management controls and take reasonable steps to ensure that in handling *complaints* it identifies and remedies any recurring or systemic problems, for example, by:

(1) analysing the causes of individual *complaints* to identify root causes common to types of complaints;

(2) considering whether such root causes may also affect other processes or products, including those not directly complained of; and

(3) correcting, where reasonable to do so, such root causes.

7. IMPROVEMENT

Driving improvement in industry complaint handling standards is a clear priority for regulators. The experience of regulators with an ombudsman scheme is that this task is not easy and there is still much work to be done. Satisfaction levels with complaint handling in some other sectors remain low. Ofgem undertakes reviews into complaint handling and they found that only 32% of complainants are satisfied with the way their complaint has been handled in the domestic market in 2018¹⁵⁵.

ORR's guidance states that good complaints handling should lead to continuous improvement, ensuring that in the medium-term, root causes are addressed and systemic solutions are put in place. This view is shared by others. SPSO's guidance on complaint handling standards states that 'an effective complaints handling procedure is driven by the search for improvement.'¹⁵⁶

¹⁵⁴ FCA Handbook. <https://www.handbook.fca.org.uk/handbook>

¹⁵⁵ *Customer satisfaction with energy supplier complaints handling: Research report prepared for Ofgem*. Quadrangle Research. 2018. https://www.ofgem.gov.uk/system/files/docs/2018/09/quadrangle_ofgemchs.

¹⁵⁶ *Guidance on a model complaints handling procedure*. SPSO. 2011. <http://www.valuingcomplaints.org.uk/sites/valuingcomplaints/files/resources/Guidance-on-a-Model-Complaints-Handling-Procedure.pdf>

Publication of data is one method of catalysing improvement by which the regulators and the SPSO seek to increase transparency. It helps inform decision making and strengthens competition by facilitating comparison, thereby incentivising businesses to improve their performance (FOS 2016¹⁵⁷ UKRN 2014¹⁵⁸).

For markets where switching may not be possible, publication of data can be used to put pressure on the regulated business and improve the accountability of rail companies and the regulatory process¹⁵⁹. Publication of data is already required in the rail sector and is also found in the energy sector, finance and public sectors. It is not required in the communication sector, although Ofcom does provide an annual service quality publication reporting on their customer satisfaction tracker, which since 2016 has focused on complaint handling¹⁶⁰. Legal firms are not currently required to publish data– perhaps reflecting the differences in industry size that exist in that market.

GOOD PRACTICE EXAMPLE

In addition to the publication of complaint statistics on their websites, on a quarterly basis, Ofgem also require organisations to publish their 'top 5' reasons for complaints and the measures they are taking to improve how they handle customer complaints. Statistics are also published on Ofgem's website facilitating comparison

The publication of data by ombudsman schemes can also play an important role in relation to transparency and driving wider improvement. Practice varies – The Financial Ombudsman Service publishes full decisions which name the businesses. Other schemes publish some data that includes naming the business complained about ¹⁶¹.

Firms are also required to analyse their own complaints data to drive improvements, with the aim of continuous improvement. This includes root cause analysis. In relation to ombudsman decisions, the FCA requires firms to ensure that its decisions are taken into account by advising individuals

¹⁵⁷ Consultation: *Financial Ombudsman Service complaints data publication*. FOS 2016.

https://www.financialombudsman.org.uk/publications/technical_notes/QG6.pdf

¹⁵⁸ *The use of data publication to enable reputational regulation*. UKRN 2014.

<http://www.ukrn.org.uk/publications/page/5/>

¹⁵⁹ *Putting rail information in the public domain*. ORR. 2011

http://orr.gov.uk/_data/assets/pdf_file/0018/5373/public_passenger_information_may2011.pdf

¹⁶⁰ *Choosing the best broadband, mobile and landline provider Comparing Service Quality 2017*. Ofcom. 2018. <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/quality-of-service/report>

¹⁶¹ See for example <https://www.ombudsman-services.org/for-consumers/complaints-data/energy-complaints-data-2018>

concerned within the business of outcomes and using them in their training (FCA).

It is worth noting regulators have at times taken a proactive approach in relation to this area. Monitoring by the regulators in the finance sector has included a number of reviews by the FCA of complaint handling. Ofgem and Ofcom carry out regular customer satisfaction surveys. All three have taken enforcement action in relation to failures relating to complaint handling, imposing significant penalties (see Ofgem 2016, 2017¹⁶², Ofcom 2014, 2015, 2016¹⁶³ FCA 2011¹⁶⁴, 2013, 2016).

One issue to consider is the need to be clear about the relationship between the regulator and the ombuds scheme. Private sector ombuds schemes can play an important role in sharing insight, promoting good practice and influencing improvements (Gill and Hirst 2016)¹⁶⁵. However, the current UK framework makes a clear distinction between the role of the ombuds to resolve individual complaints and the role of the regulator which is to address systemic issues (Gilad 2008¹⁶⁶, Calluna Consulting 2010¹⁶⁷).

Private sector schemes are expected to contribute to raising standards by the collection of data and feeding back of lessons that arise. However, research by Gill et al (2013) found that the extent to which private sector ombudsman schemes engaged with this role varied and that not all schemes thought this role appropriate¹⁶⁸. In recent years some private sector ombudsman schemes have been criticised as being too cautious in using their data to drive service improvements and engage in addressing systemic issues (Brooker 2008, Graham 2012,; see also the two reviews of the Energy Ombudsman¹⁶⁹). This

¹⁶² <https://www.ofgem.gov.uk/publications-and-updates/investigation-scottishpower-s-compliance-standards-conduct-slc-25c-slc-27-provision-final-bills-and-gas-and-electricity-consumer-complaints-handling-standards-regulations-chrs-2008> and <https://www.ofgem.gov.uk/publications-and-updates/investigation-npower-s-compliance-standards-conduct-standard-licence-condition-25c-standard-licence-condition-27-provision-final-bills-and-gas-and-electricity-consumer-complaints-handling-standards-regulations-2008>

¹⁶³ https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01101

¹⁶⁴ <https://www.telegraph.co.uk/finance/personalfinance/bank-accounts/8252180/NatWest-and-RBS-fined-2.8m-for-poor-complaint-handling.html>; <https://www.fca.org.uk/news/press-releases/fsa-fines-co-operative-bank-plc-failing-handle-ppi-complaints-fairly>; <https://www.fca.org.uk/news/press-releases/fca-fines-ct-capital-ltd-failures-related-ppi-complaint-handling>.

¹⁶⁵ *Defining Consumer Ombudsmen: A Report for Ombudsman Services*. Gill C. and Hirst, C. 2016. <https://www.ombudsman-services.org/downloads/Defining-Consumer-Ombudsmen-Report-2016.pdf>

¹⁶⁶ Gilad, S., 2008. Accountability or expectations management? The role of the ombudsman in financial regulation", *Law and Policy*, vol. 30, no. 2, pp. 227-253.

¹⁶⁷ *External dispute resolution schemes and systemic issues: Examination of the Telecommunications Industry Ombudsman's systemic issues function against best practice*. Calluna Consulting. 2010. <https://www.acma.gov.au/Home/Industry/Telco/Reconnecting-the-customer/Public-inquiry/external-dispute-resolution-research-reconnecting-the-customer-acma>

¹⁶⁸ *The Future of Ombudsman Schemes: drivers for change and strategic responses*. Gill, C., Williams, J., Brennan, C., O'Brien, N. 2013. <http://www.legalombudsman.org.uk/downloads/documents/publications/OMU-the-future-of-ombudsman-schemes-final-130722.pdf> P45

¹⁶⁹ *Independent Review of the Energy Ombudsman: Report commissioned by OFGEM*. Sohn Associates. 2010. <http://www.ofgem.gov.uk/Sustainability/Cp/Cr/Documents1/Independent%20review%20of%20the%20Energy%20Ombudsman.pdf>. *Independent Review of Ombudsman Services: Energy*. Lucerna

may be due in part to concern over encroaching on a regulator's territory (Gilad 2008; Lucerna Partners 2015). In contrast, in Australia driving systems improvement is said to be 'firmly entrenched in the operations of Australian External Dispute Resolution schemes'¹⁷⁰. The Public Transport Ombudsman remit therefore includes 'monitoring general trends and systemic issues' and drawing these issues to the attention of the operators, regulators or the Minister of Transport¹⁷¹.

Unlike the other regulated areas we analysed, ORR does not have direct responsibility for external redress schemes in the rail sector. Therefore developing effective relationships between the ombudsman and the regulator including arrangements for data sharing may require more creativity than other sectors but will be essential in order to maximise the opportunity to drive improvements in first-tier complaint handling.

Learning point

- Driving improvement in industry complaint handling standards is a clear priority for regulators. The experience of other regulators with an ombudsman scheme is that this task is not easy and there is still much work to be done.
- The publication of data by regulators, the regulated businesses and ombudsman schemes can play an important role in relation to transparency and driving wider improvement.
- Regulators take an active role in relation to monitoring performance and have taken enforcement action in relation to failures relating to complaint handling, imposing significant penalties.
- There is a need to be clear about the relationship between the regulator and the ombudsman scheme.

SUMMARY

In summary, this chapter has examined the key principles relevant to improving complaint handling in regulated sectors. It is difficult to identify a single best practice example as the approach taken by individual regulators has evolved over time and reflects characteristics of the industry concerned. However, a number of common issues emerge. The final chapter will set out our conclusions

Partners. 2015.

https://www.ofgem.gov.uk/sites/default/files/docs/2015/09/review_of_ombudsman_services_energy_2.pdf Accessed 26 January 2016.

¹⁷⁰ P4. *External dispute resolution schemes and systemic issues: Examination of the Telecommunications Industry Ombudsman's systemic issues function against best practice*. Calluna Consulting. 2010. <https://www.acma.gov.au/Home/Industry/Telco/Reconnecting-the-customer/Public-inquiry/external-dispute-resolution-research-reconnecting-the-customer-acma>

¹⁷¹ <https://www.ptovic.com.au/about-the-ptov>

on what this means for the rail sector and make a number of recommendations.

7. CONCLUSIONS AND RECOMMENDATIONS

A number of conclusions are drawn from this review of complaint handling in regulated sectors where there is an ombudsman scheme. All regulators are engaged in raising the standards of complaint handling in these sectors where this continues to remain 'work in progress'. Satisfaction levels with complaint handling remain low across a number of regulated sectors as does awareness of ombudsman and other ADR schemes.

The literature review revealed a high degree of consensus on the factors that should underpin good complaint handling. Many of these are well-established, and may appear to be self-evident. Implementing effective complaint handling has proved to be far more challenging in practice.

Our review found that regulators currently adopt a combination of enforceable overarching principles and detailed rules. Broad, enforceable principles such as 'a duty to deal with complaints fairly' can offer comprehensive protection and provide a degree of future proofing which helps promote learning, innovation and competition. Detailed rules provide clarity and may be easier to enforce but may go out of date quickly, can lead to a tick box approach¹⁷² and do not focus on the outcomes sought. Most regulators are seeking to achieve a balance.

One of the takeaway lessons from this research is the proactive role regulators have taken in terms of leading service improvements in complaint handling. This has included: keeping the rules and practice under regular review; reporting on complaint handling in annual reports; specific reviews; requiring publication of data and collating it into a useful format for consumers to use; updating the rules, and taking enforcement action where necessary.

Our review has suggested that complaint handling procedures need to ensure that they address seven essential principles to be effective. These are: (1) transparency; (2) accessibility; (3) effectiveness and efficiency; (4) responsiveness; (5) fairness; (6) accountability; and (7) improvement. ORR's guidance already addresses many of these principles and includes a number of examples of good practice. For example, it is one of the regulators whose guidance directly addresses the use of social media. While there are areas where ORR may wish to learn from others, it was not felt that there were any significant gaps.

One of the areas where ORR differs from other regulators is in relation to the balance between guidance and requirements. Unlike other regulators, ORR

¹⁷² *Thematic Review: Complaint handling TR 14/16*. FCA 2014.
<https://www.fca.org.uk/publication/thematic-reviews/tr14-18.pdf>

currently provides guidance and then approves each of the organisations' complaint handling procedures. Ofcom moved away from a similar approach arguing that a single code would be more effective in setting minimum standards and easier to enforce. This would place the onus more fully on TOCs to ensure their complaint handling complies with the code on an ongoing basis rather than relying on individual approval. It may also save ORR time in approving each organisation's complaint handling procedure. Ofcom has recently (2018) further updated this code and it would be worthwhile exploring with the regulator how successful these changes have been.

A code for complaint handling should include a combination of enforceable principles as well as any specific requirements. A general duty to treat customers fairly is used by other regulators. Arguably, ORR requirements to deal with complaints fairly could be more explicit and incorporated into the code. Good practice also strongly suggests that signposting to the TOC's complaint handling procedure and to the ombudsman should be detailed requirements. There is also merit in ensuring that the general principles are set out in a concise and user friendly document, and in this respect the SPSO's 'Statement of Complaints Handling Principles' is highlighted as being a good example.¹⁷³

As rail passengers come into regular contact with a range of rail companies having a more consistent complaint experience could then result in a seamless consumer journey and help manage expectations. Support with this approach could be facilitated by ORR and the new ombudsman scheme, for example in providing guidance on making apologies and managing expectations of the service, with the potential of holding cross TOC workshops to share experiences and knowledge.

It should be clear that complaints can be made using a variety of channels, including via social media. An inclusive approach should be taken particularly since Twitter is widely used by passengers in real time in the rail sector¹⁷⁴. While twitter may be used for feedback, in many cases the contact will be concerning a complaint and should be treated as such. ORR's current guidance states that face-to-face complaints that are resolved on- the-spot are not subject to data management requirements.¹⁷⁵ In our view this should be extended to all complaints, including those received via social media, in order to incentivise early resolution.

¹⁷³ <http://www.valuingcomplaints.org.uk/sites/valuingcomplaints/files/resources/principles.pdf>

¹⁷⁴ *Tweet and tell: turning Twitter into a complaints megaphone*. 2018. The Guardian. <https://www.theguardian.com/money/2018/jan/05/tweet-and-tell-turning-twitter-into-complaints-megaphone>

¹⁷⁵ para 3.33 *Guidance on complaints handling procedures for licence holders*. ORR. 2015. http://orr.gov.uk/_data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf

On the issue of the prompt resolution of complaints, an eight-week period is typical in the private sector. This timescale should be kept under review and eight weeks should be viewed very much as the maximum. The fact that public sector bodies in Scotland are subject to much shorter timescales also suggests that the eight week time period is not unreasonable.

This eight-week time limit also means that TOCs cannot 'stop the clock' on the basis that they are waiting for a response from the customer, and that TOCs should be placed under a proactive duty to resolve complaints. This is reasonable as often the essential information required to resolve a complaint should be held by an organisation, or accessible by them. Customer satisfaction reviews suggest that complainants already perceive complaints as taking too long to resolve and this has a negative impact on satisfaction with complaint handling. Other schemes do not permit organisations to extend escalation timescales on the basis that they are waiting for a response from a customer. If the time period has been negatively impacted by consumer action or inaction, then this can be taken into account by the Ombudsman scheme in determining a fair and reasonable outcome.

Finally, it was noted that, unlike other regulated areas we reviewed, ORR will not have direct regulatory responsibility for the rail ombudsman scheme. An ombudsman scheme offers great potential for improving complaint handling of first-tier organisations. However, not all ombudsman schemes actively engage in standard raising activities, and may instead focus on resolution of individual complaints. We would have hoped that ORR would have taken up this role, given its position within the rail sector, and subsequently recommend that ORR undertakes to ensure that there are robust mechanisms put in place to ensure data sharing and cooperation between the two organisations, particularly if the ombudsman scheme is expected to deliver systemic improvements in first-tier complaint handling.

Recommendations for ORR

1. Introduce minimum complaint handling standards in addition to the current guidance using dispute design principles which include a combination of enforceable principles focused on outcomes and detailed rules where appropriate which focus on:
 - transparency
 - accessibility
 - effectiveness and efficiency
 - responsiveness
 - fairness
 - accountability
 - improvement

While the complaint handling schemes in different sectors reflect their own particular industry and circumstances making recommending any individual scheme difficult, the accessibility and simplicity of the generic principles found in the SPSO's Model Complaints Handling Procedure could provide a useful starting point.

2. In light of the introduction of the ombudsman scheme, ensure the minimum complaint handling standards include an explicit general requirement to treat passengers fairly.
3. Prescribe detailed signposting requirements to the rail ombudsman scheme to include the organisation's complaint handling procedures: (1) at the time a complaint is made; and (2) at the end of the prescribed period or when the complaint is deadlocked (whichever is earlier).

Drawing on good practice, the signposting requirements should:

- ensure that the communication is provided in plain English and in a durable form;
 - summarise the complaint, setting out the results of the TOC's investigation and their final view on the issue the consumer has raised;
 - give details of any offer the TOC has made to settle the complaint, with a clear explanation of how they arrived at that offer;
 - tell the complainant they have the right to refer the complaint to the ombudsman scheme, at no cost, within six months of this communication;
 - give a link to the ombudsman's website and their contact details
 - include a copy of a leaflet from the ombudsman setting out their role, who they are and how to make a complaint to them. If the parties are communicating via email or another electronic form, a link to the leaflet on the website will be sufficient rather than providing a hard copy of the leaflet.
4. Incentivise early resolution by reducing the regulatory burden in terms of reporting requirements for complaints resolved swiftly, including those received via social media such as Twitter¹⁷⁶. Complaints that are resolved within three working days should not be subject to the same data management requirements.¹⁷⁷

¹⁷⁶ Currently complaints resolved on the spot are not considered to be a complaint for compliance of data recording purposes (para 2.11)

¹⁷⁷ Para 3.33 *Guidance on complaints handling procedures for licence holders*. ORR. 2015. http://orr.gov.uk/_data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf

5. Complaints that are received via other channels such as social media or over the phone should be treated the same as face-to-face complaints that are resolved on- the-spot.
6. In the short term, monitor the eight week time limit to ensure that it remains appropriate and is applied correctly by TOCs.

In the medium to long term, consider the case for moving closer to the five days front line resolution / twenty days investigation time limit in the public sector in Scotland.

7. Set minimum requirements for the rail ombudsman scheme including a requirement to have entered into a memorandum of understanding to facilitate data sharing with the ORR, and with rail companies, to drive improved complaint handling standards, as a licence condition.
8. Keep current reporting of complaints data, but require TOCs to publish an annual complaints report. This will include:
 - data on the number of complaints;
 - time for investigating complaints;
 - information on the causes of complaint (for example, drawing on good practice from Ofgem it could require reporting on the top five reasons for complaints and what action the organisation has taken to improve how complaints are handled)
 - how complaints were resolved;
 - identify the root cause of complaints, learning, action taken and systemic improvement;
 - customer satisfaction with complaint handling;
 - the number of complaints referred to the ombudsman and their outcome;
 - lessons learnt from the complaints escalated to the ombudsman .
9. Require the ombudsman to publish data on the number of complaints referred to the scheme and the outcomes, including how many are resolved early. The ombudsman scheme should also report on trends identified and action taken to address systemic issues.
10. Require the scheme to publish all ombudsman decisions and name the companies.

11. Provide guidance and assistance to TOCs on processes to learn from complaints, and promote the communication of systemic learning from complaints to customers, and where appropriate to specific complainants, as well as the regulator.
12. Consider driving efficiency by implementing automatic compensation based around: (1) set service standards, for instance delay repay; and (2) not responding to complaints within the required timescales.
13. Take a proactive approach to monitoring compliance and be prepared to use enforcement where necessary.

B. Recommendations for Train Operating Companies

1. Raise awareness of access to complaint handling process, and require information on the escalation process to be clearly displayed everywhere (including stations and on trains). This should be available via all appropriate channels, including leaflets in stations and on trains.
2. Passengers should be informed about the availability of the ombudsman scheme at the time they make their complaint as well as with the final response/at eight weeks (whichever is earlier).
3. Empower all staff to resolve complaints.
4. Ensure ombudsman decisions are fed back to complaint handling staff.
5. To help address low levels of satisfaction with complaint handling, include a requirement for employees who deal with complaints to receive training. This should include training in recognising a complaint across multiple platforms and effective communication that plays such a key role in resolving complaints.
6. Consider the specific health and safety requirements that complaint handling roles present, and provide appropriate training and support.
7. Continue to allow multiple ways of contact, to ensure accessibility, but consider increasing call centre opening hour requirements to include peak travelling times, to reflect the fact that passengers experience problems outside of normal working hours.

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<https://press.which.co.uk/whichpressreleases/train-companies-persist-in-skirting-the-law-on-consequential-loss/>

ANNEX 1: SUMMARY OF GOOD PRACTICE

This Annex brings together some of the examples of good practice highlighted in this report by sector. Please note they represent only a small selection of the many examples of good practice identified throughout this report and in our research.

1. **Financial Conduct Authority**

Example 1: Signposting to ADR

The Financial Conduct Authority (FCA) requires firms to include a Financial Ombudsman leaflet with their 'final response' letter. The Financial Ombudsman Service is the scheme which has the highest levels of consumer awareness.

Example 2: Making a complaint

FCA Handbook¹⁷⁸

Complaint procedures should:

- (1) allow *complaints* to be made by any reasonable means; and
- (2) recognise *complaints* as requiring resolution.

Example 3: Investigating, assessing and resolving complaints

FCA Handbook¹⁷⁹

Once a complaint has been received by a respondent, it must:

- (1) Investigate the complaint competently, diligently and impartially, obtaining additional information as necessary;
- (2) Assess fairly, consistently and promptly:
 - (e) the subject matter of the complaint;
 - (f) whether the complaint should be upheld;
 - (g) what remedial action or redress (or both) may be appropriate;
 - (h) if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint;

Taking into account all relevant factors;

- (3) Offer redress or remedial action when it decides this is appropriate;

¹⁷⁸ 1.3.2 FCA Handbook: DISP 1 Dispute Resolution: Complaints

¹⁷⁹ 1.4.1 FCA Handbook: DISP 1 Dispute Resolution: Complaints

(4) Explain to the complainant promptly and, in a way that is fair, clear and not misleading, its assessment of the complaint, its decision on it, and any offer of remedial action or redress; and

(5) Comply promptly with any offer of remedial action or redress accepted by the complainant.

Example 4: Accountability¹⁸⁰

A *respondent* must put in place appropriate management controls and take reasonable steps to ensure that in handling *complaints* it identifies and remedies any recurring or systemic problems, for example, by:

(1) analysing the causes of individual *complaints* so as to identify root causes common to types of complaint;

(2) considering whether such root causes may also affect other processes or products, including those not directly complained of; and

(3) correcting, where reasonable to do so, such root causes.

Ofcom

Example 1: Information to the complainant about process and timeframe

Ofcom approved complaints code of practice for customer service and complaints handling¹⁸¹

After having received a Complaint, the Regulated Provider must promptly inform the Complainant of:

- a) the process it will follow to investigate the Complaint with a view to resolving it to the Complainant's satisfaction; and
- b) the timeframes in which the Regulated Provider will endeavor to carry out its investigation of the Complaint.

Example 2: Taking steps to resolve complaints

Ofcom approved complaints code of practice for customer service and complaints handling¹⁸²

A regulated providers must take and continue to promptly take, active steps to resolve the complaint to the complainant's satisfaction until the complaints has been resolved or otherwise closed.

¹⁸⁰ 1.3.3 FCA Handbook: DISP 1 Dispute Resolution: Complaints

¹⁸¹ Rule 6. https://www.ofcom.org.uk/data/assets/pdf_file/0023/106394/Annex-14-Revised-clean-conditions.pdf

¹⁸² Rule 7. https://www.ofcom.org.uk/data/assets/pdf_file/0023/106394/Annex-14-Revised-clean-conditions.pdf

Ofgem

Example 1: Publication of complaints data

In addition to the publication of complaint statistics on their websites, on a quarterly basis, Ofgem also require organisations to publish their 'top 5' reasons for complaints and the measures they are taking to improve how they handle customer complaints. Statistics are also published on Ofgem's website facilitating comparison¹

Scottish Public Services Ombudsman (SPSO)

Example 1: Accessibility.

SPSO Statement of Complaint handling Principles

An effective complaints handling procedure is appropriately and clearly communicated, easily understood and available to all.

Complaints should be welcomed by informed and empowered staff.

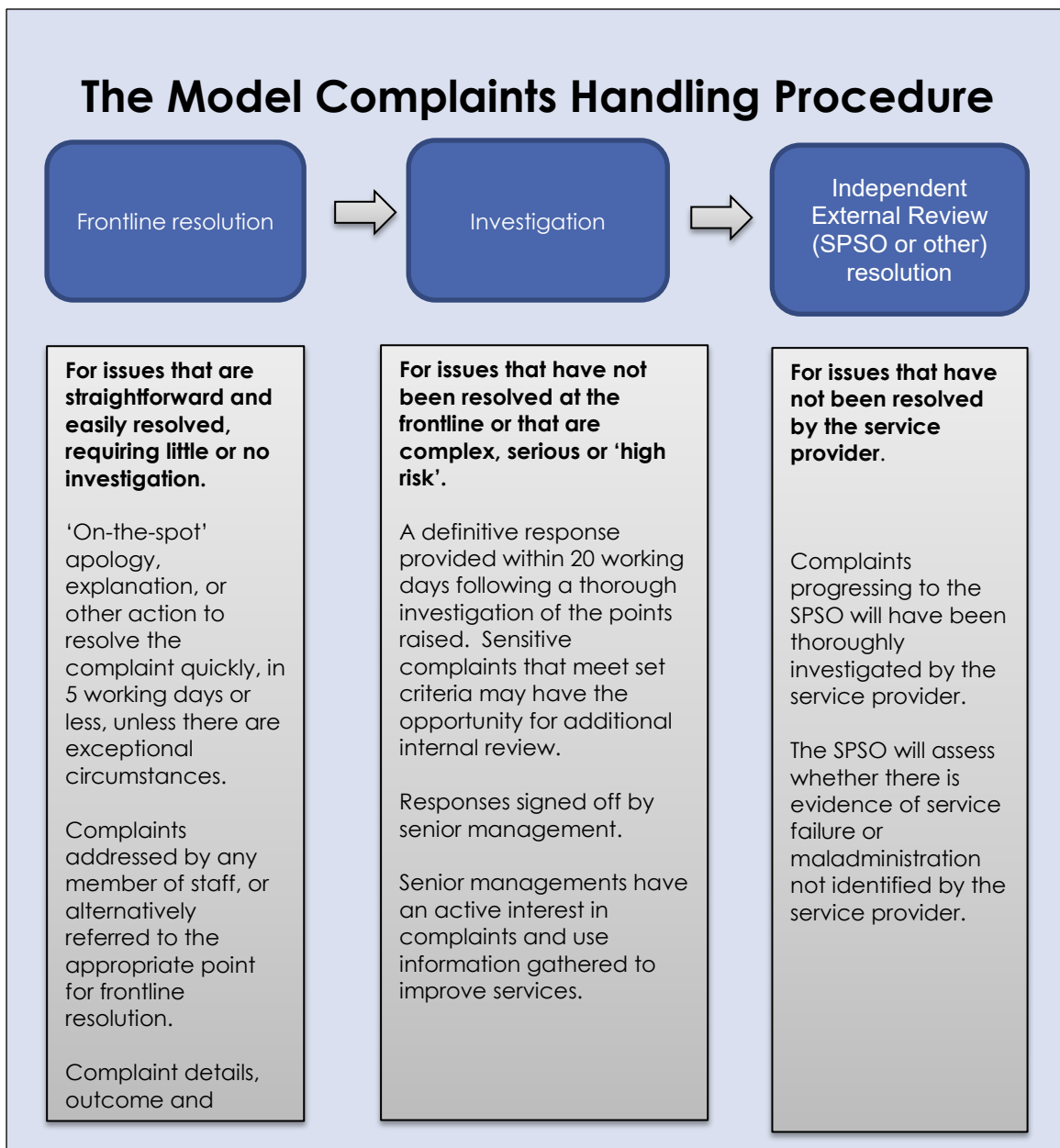
A complaints procedure should be well publicised.

A complaints procedure should be easily understood without any specialist knowledge.

A complaints procedure should be designed with regard to the needs of minority and vulnerable groups. Where appropriate, service providers should make available material and support to help people access and use the procedure.

Example 2: responsiveness

SPSO Model Complaints Handling Procedure¹⁸³



¹⁸³ *Guidance on a model complaints handling procedure.* SPSO. 2011. <http://www.valuingcomplaints.org.uk/sites/valuingcomplaints/files/resources/Guidance-on-a-Model-Complaints-Handling-Procedure.pdf>

ANNEX 2 SUMMARY OF LEARNING POINTS

Key learning points identified in the literature review

1. Collecting and utilising complaints data leads to improvements in service, customer satisfaction and positive repurchasing intentions.
2. It seems clear that short and long-term satisfaction are impacted, not just by the amount of compensation, but by the quality of the interaction.
3. Staff need to listen effectively to consumer complaints and treat customers with respect.
4. Staff training is important to ensure highly effective communication with customers.
5. Communications should be made in plain English
6. Clear standards of expectations around when and how communications should happen should be set
7. Consumers should be made aware that complaints are valued, will be acted upon and taken seriously, and should feel encouraged to raise their
8. Organisations should provide guidance and training to complaint handlers on making decisions, communicating findings effectively and persuasively, and communicating with empathy.
9. Apologies should be made after providing the complainant with the opportunity to voice their concerns in full, and the organisation has demonstrated that they have fully understood these concerns
10. Carefully consider the needs of consumers at risk of vulnerability and design complaint handling systems and processes to achieve better outcomes.
11. Organisations should have in place measures to effectively support and value complaint handlers, recognising especially the unique health and safety considerations surrounding the role
12. Complaint handlers should have appropriate decision-making authority to enable effective, efficient resolution of complaints
13. Organisations needs to have in place:

- systems that capture the learning from complaints;
- ensure that employees are equipped with the necessary skills and qualities in order to deliver effective complaint handling; and
- supported where they are subject to an individual complaint.

Key learning points identified in complaint systems in regulated sectors

14. Regulators are generally under a duty to ensure that the interests of consumers are protected. In some instances, this also includes an explicit duty to ensure there are effective procedures in place for first-tier organisations to resolve complaints (see Ofgem and Legal Services Board).
15. The methods by which these bodies regulate first-tier complaint handling slightly vary but typically consist of a combination of general principles and detailed rules. One general principle is that suppliers must ensure that they treat customers fairly.
16. Regulators may use an approved code of practice with minimum standards for complaint handling. This will provide consistency in standards, and it will be easier to enforce. Regulators do take enforcement action in relation to poor complaint handling.

Key learning points identified in essential principles

17. A combination of enforceable principles and detailed rules on particular issues is necessary
18. Regulators need to regularly monitor and review their rules and to make changes where necessary to address the consumer interest.
19. Dealing with complaints promptly is important: consumer expectations around the time taken to resolve a complaint are relatively short and early resolution reduces the costs of dealing with a complaint and maximises the opportunity for organisation learning.
20. Eight weeks is a maximum for 1st tier complaint handling organisations to conduct an investigation, and delay by the consumer will not 'stop the clock' but can be taken into account by ADR bodies when considering what is fair and reasonable.
21. Within the complaint handling process it may be possible to incentivise early resolution by reducing regulatory requirements for complaints resolved quickly

22. ORR may wish to consider whether it would be appropriate to make a duty to resolve complaints fairly explicit to bring ORR requirements in line with the requirements in other schemes
23. Driving improvement in industry complaint handling standards is a clear priority for regulators. The experience of other regulators with an ombudsman scheme is that this task is not easy and there is still much work to be done.
24. The publication of data by regulators, the regulated businesses and ombudsman schemes can play an important role in relation to transparency and driving wider improvement.
25. Regulators take an active role in relation to monitoring performance and have taken enforcement action in relation to failures relating to complaint handling, imposing significant penalties.
26. There is a need to be clear about the relationship between the regulator and the ombudsman scheme.

Research team



Jane Williams is a Senior Lecturer in dispute resolution at Queen Margaret University in the Consumer Dispute Resolution Centre. Her current research focuses on consumer experiences of complaint handling in the context of consumer ADR, vulnerable consumers and fairness in complaint handling. As a former manager in Trading Standards Jane has direct experience of complaint handling, investigation and enforcement of consumer law. She is a member of the Chartered Trading Standards Institute and works with them as an examiner and moderator. She has extensive experience of running short courses for regulators, ombudsman organisations and complaint handlers working in both the public and private sector. Jane is a consumer representative on the Scottish Civil Justice Council and a member of their Access to Justice Committee.



Carol Brennan is a Reader in Consumer Policy and Director of the Consumer Dispute Resolution Centre at Queen Margaret University, Edinburgh, Scotland. Carol has experience of leading projects to provide continuing professional development for complaint investigators. Carol's research interests include consumer policy, complaint management, dispute resolution, consumer empowerment and customer experience. Carol is chair of the Scottish Legal Complaints Commission Consumer Panel. She is a member of the Office of Rail and Road Consumer Expert Panel and a member of the Civil Aviation Authority Consumer Panel. She is also Chair of the Qualifications and Awards Board for the Chartered Trading Standards Institute. Carol conducts research for consumer policy and dispute resolution organisations, and publishes regularly in academic journals. Carol draws on her research to influence new developments in strategy, policy and practice. She has produced reports on consumer representation, the outcome of complaints and using complaints to transform services.



Nial Vivian is an experienced ADR practitioner and a lecturer and researcher in the related academic field. Prior to joining Queen Margaret University in August 2016, he resolved complaints across a number of schemes and disciplines, including working operating as an independent reviewer of a major regulator. Since joining Queen Margaret University, he has undertaken qualitative research into Scottish Local Authorities and their implementation of Scotland's Model Complaints Handling Procedures (Mullen et al, 2017), and for Citizens Advice into consumer perspectives on ADR (Gill et al, 2017). He has also designed and delivered teaching at undergraduate and postgraduate levels for complaints professionals and students across private and public sectors, including the Property Ombudsman and the Information Commissioners Office.