

Communications & Internet Services Adjudication Scheme (CISAS)

Operated by Centre for Effective Dispute Resolution (CEDR), CISAS is an Ofcom approved dispute resolution scheme for the communications sector. All communications providers (CP's) providing services to consumers and small businesses, and who are subject to General Condition 14 of the Communications Act 2003, must be registered with an approved scheme.

Who are CEDR?

CEDR is a conflict management and resolution consultancy based in London, assisting organisations around the world in resolving disputes with a cumulative value of over £1.5 billion every year. A not-for-profit organisation, CEDR specialises in preventing, managing and resolving business-to-consumer and business-to-business conflict through the use of alternative dispute resolution techniques including adjudication, arbitration and mediation. CEDR's consumer ADR team operate over 30 schemes for businesses, trade bodies and public sector subscribers in a dozen industries including home building, lotteries, postal services, telecoms, travel and the water industry. Our training and consultancy work is conducted globally with partners including the IFC (World Bank) and the European Bank for Reconstruction and Development providing advice and training on conflict management to over 7000 individuals in 70 countries.

The CISAS Service

CISAS has operated as an Ofcom-approved scheme since December 2003. In that time CISAS has dealt with tens of thousands of customers who have had complaints registered with a CISAS subscriber. CISAS currently has more than 200 CP subscribers which vary from well-known international brands through to smaller CPs offering internet or other services in localised areas of the UK.

The CISAS Rules

All cases referred to CISAS will be dealt with under the CISAS Rules, which can be found at www.cisas.org.uk. Subscribers are strongly advised to ensure that all members of staff who will be required to deal with cases referred to CISAS have read and understand the Rules and the subscriber's obligations under them.

CEDR is approved to provide ADR by



Eligible cases

Full details of case eligibility are detailed in the CISAS Rules. In summary, CISAS is obliged to accept all applications received and refer them to an adjudicator unless they fall into one of the following ten categories:

1. Where the claim has been brought by someone who does not fit the definition of a 'customer';
2. Where the customer's claim is made against a CP that does not subscribe to CISAS;
3. Where the customer's application is premature (i.e. where the customer has not complained to the CP at all, or where it has been less than eight weeks since the customer first complained to the CP and the CP has not provided the customer with its final position in relation to the dispute);
4. Where the customer's application to CISAS has been submitted more than 12 months from the date on which the company has given notice to the customer that it is unable to resolve the complaint;
5. Where the customer's application contains no aspect relating to bills, the quality of customer service received, communication services provided to customers and any contracts or agreements made thereunder; or premium rate services, Pay TV services, On Demand services and disputes about mobile handsets (by individual, non-business, customers only);
6. Where the customer claims a sum of money (or money's worth, i.e. refunds/credits) which exceeds £10,000.00;
7. Where the dispute is, in the opinion of CISAS, more appropriately dealt with by a court, regulatory body, or other formal process;
8. Where the dispute is, in the opinion of CISAS, frivolous and/or vexatious;
9. Where the customer's claim is the subject of an existing or previous valid CISAS application;
10. Where the dispute has been or is the subject of court proceedings or an alternative independent procedure.

The CISAS administration team assess all applications against the above criteria, and those which do not fall within the scope of the scheme will be immediately withdrawn.

Objections to eligibility

Although the CISAS administrative team carry out an initial assessment on the validity of a CISAS application, this may not cover all instances in which a case may be outside our scope, as further evidence may be required to prove this.

1. If a CP has evidence which proves that the entirety of a CISAS application falls into one or more of the ten reasons for rejecting a claim detailed above, this evidence must be provided within ten working days of the application being sent to the CP. CPs must specify the grounds on which they consider the application to fall entirely outside the scope of CISAS.
2. Upon receipt of an objection, CISAS will refer the matter to an adjudicator for a determination to be made as to the validity of the application.
3. If the objection is upheld, the case will be withdrawn and no fee will be charged.
4. If the objection is rejected, the CP will be given a time extension of two working days to either defend or settle the claim.
5. Where a dispute arises as to the validity of an application, the decision of CISAS will be final.

Preparing a Defence

The defence is your opportunity to respond to the customer's complaint. The defence and any evidence that you choose to submit with it will be put before the adjudicator and will be taken into account when a decision is made. You should bear in mind that the way an adjudicator approaches a case is very similar in its essential elements to the approach that a judge would adopt in a court of law. However, all of the disputes brought to CISAS are decided on the documents submitted by the parties alone – there are no oral hearings. Therefore, the statements you make and the evidence you provide with your defence are extremely important. Please note that our staff cannot provide any advice as to how to defend against a claim but they can provide advice and information in relation to how the CISAS service works.

What should be included in a defence?

The principal purpose of a defence is to respond to each of the points that the customer has raised in their application to CISAS. The defence should deal with each and every complaint that the customer has made, stating clearly whether you agree or disagree with the points made and your reasons why. The danger of not responding to all of the complaints is that the adjudicator will only have one side of the story for those complaints which you remain silent on. This could result in the adjudicator finding in the customer's favour on that point. Where you disagree with the customer and wish to put across an alternative point of view, you must provide evidence to support your position. Adjudication is an evidence-based process, so you must prove to the adjudicator's satisfaction that your position is correct.

Examples of evidence you can submit include (but are not limited to):

- The contract between your company and the customer;
- A copy of your terms and conditions;
- Any relevant bills or invoices;
- Any letters or e-mail correspondence that has been exchanged;
- Any relevant call recordings or account notes.

The Adjudicators role

All CEDR adjudicators have a legal qualification and receive scheme specific training and mentoring by CEDR. They provide written decisions on disputes after considering all the information received from the customer and the CP. The adjudicator can ask for extra information on any matter if this is necessary in order to settle the dispute in a fair and reasonable way.

Once an adjudicator is in receipt of the case papers they will review the documents and assess all of the evidence. The starting point is always the customer's application form, which details the remedy or remedies that are being sought. The adjudicator will then consider whether the customer has provided sufficient evidence to support their claim. This means evidence of the alleged breach by the CP and evidence of the alleged loss suffered. In considering the evidence provided, the adjudicator will also assess how much weight to attach to each piece of evidence.

The adjudicator will then review the CP's defence and consider whether the CP has provided any evidence to rebut the claim. Again the adjudicator will consider how much weight to attach to the CP's evidence. A decision is then made by weighing up the evidence and seeking a fair and reasonable resolution with regard to the law, the terms of the contract, and any relevant codes of practice. Throughout the adjudication process, the adjudicator will be fair and unbiased and will act quickly and efficiently to settle the dispute in a fair and reasonable way.

Legislative and Regulatory Background to CISAS

Sections 52 and 54 of the Communications Act 2003 set out Ofcom's duty to set general conditions requiring all telecoms providers to sign up to a dispute resolution scheme. General Condition 14.5 lays down the requirement on telecoms providers to register with a scheme.

The Communications Act 2003:

s. 52 Conditions relating to customer interests

- (1) It shall be the duty of OFCOM to set such general conditions (if any) as they consider appropriate for securing that—
- a. public communications providers, or
 - b. such descriptions of them as OFCOM consider appropriate,

establish and maintain procedures, standards and policies with respect to the matters mentioned in subsection (2).

(2) Those matters are—

- a. the handling of complaints made to public communications providers by any of their domestic and small business customers;
- b. the resolution of disputes between such providers and any of their domestic and small business customers;
- c. the provision of remedies and redress in respect of matters that form the subject-matter of such complaints or disputes;
- d. the information about service standards and about the rights of domestic and small business customers that is to be made available to those customers by public communications providers;
- e. any other matter appearing to OFCOM to be necessary for securing effective protection for the domestic and small business customers of such providers.

(3) It shall be the duty of OFCOM, in setting conditions in accordance with subsection (1), to secure so far as they consider appropriate—

- a. that the procedures established and maintained for the handling of complaints and the resolution of disputes are easy to use, transparent and effective;
- b. that domestic and small business customers have the right to use those procedures free of charge; and
- c. that where public communications providers are in contravention of conditions set in accordance with the preceding provisions of this section, the providers follow such procedures as may be required by the general conditions.

- (4) Subject to section 55, OFCOM's duties under subsections (1) and (3) so far as relating to procedures for the handling of complaints are to be performed, to such extent as they consider appropriate, by the setting of general conditions requiring public communications providers to establish and maintain procedures that conform with a code of practice which is—
- a. applicable to the providers to whom the conditions apply; and
 - b. for the time being approved by OFCOM for the purposes of this subsection.
- (5) Subject to section 55, OFCOM's duties under subsections (1) and (3) so far as relating to procedures for resolving disputes are to be performed, to such extent as they consider appropriate, by the setting of general conditions requiring public communications providers—
- a. to establish and maintain procedures for resolving disputes; and
 - b. to secure that those procedures are, and continue to be, approved by OFCOM.
- (6) In this section "domestic and small business customer", in relation to a public communications provider, means a customer of that provider who is neither—
- a. himself a communications provider; nor
 - b. a person who is such a customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise).

s. 54 Approval of dispute procedures for the purposes of s. 52

- (1) Before giving their approval to any dispute procedures, OFCOM must consult the Secretary of State.
- (2) OFCOM are not to approve dispute procedures unless they are satisfied that the arrangements under which the procedures have effect—
 - a. are administered by person who is for practical purposes independent (so far as decisions in relation to disputes are concerned) of both OFCOM and the communications providers to whom the arrangements apply;
 - b. give effect to procedures that are easy to use, transparent and effective;
 - c. give, in the case of every communications provider to whom the arrangements apply, a right to each of his domestic and small business customers to use the procedures free of charge;
 - d. ensure that all information necessary for giving effect to the procedures is obtained;
 - e. ensure that disputes are effectively investigated;
 - f. include provision conferring power to make awards of appropriate compensation; and
 - g. are such as to enable awards of compensation to be properly enforced.
- (3) OFCOM may approve dispute procedures subject to such conditions (including conditions as to the provision of

information to OFCOM) as they may think fit.

(4) It shall be the duty of OFCOM to keep under review the dispute procedures for the time being approved by them.

(5) OFCOM may at any time, by a notification given or published in such manner as they consider appropriate—

- a. modify the conditions of their approval of any dispute procedures or withdraw such an approval; or
- b. give notice that the modification of those conditions, or the withdrawal of such an approval, will take effect from such time as may be specified in the notification unless the procedures (or the arrangements under which they have effect) are modified before that time in the manner required by the notification.

(6) In considering—

- a. whether to approve dispute procedures, or
- b. whether or in what manner to exercise their powers under subsections (3) to (5), OFCOM must have regard to the matters mentioned in subsection (7).

(7) Those matters are—

- a. the need to secure that customers are able readily to comprehend dispute procedures;
- b. the need to secure that there is consistency between the different procedures for the time being approved by OFCOM; and
- c. the need to secure that the number of different sets of procedures so approved is kept to a minimum.

(8) In this section—

“approval” means approval for the purposes of subsection (5) of section 52 and “approve” and “approved” are to be construed accordingly;

“dispute procedures” means any such procedures as may fall to be approved for the purposes of that subsection; and

“domestic and small business customer” has the same meaning as in section 52.

Ofcom General Condition 14.5:

“The Communications Provider shall implement and comply with a Dispute Resolution Scheme, including any final decision of the Dispute Resolution Body made in accordance with that Scheme, for the resolution of disputes between the Communications Provider and its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.”