

Peer Review 1 October 2018 – Ombudsman response

At its meeting on 25 March 2019 the Committee asked me to draft my response to the peer review under three headings:

1. Recommendations which I have already implemented
2. Recommendations which I have deferred for my successor to consider
3. Recommendations which I have decided not to implement

My response below focuses on the points made in the peer review's Executive Summary, but except in some cases I have not used the same headings.

Definitions

OA – Ombudsman Association

ADR Regulations – The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

CTSI – Chartered Trading Standards Institute (the Competent Authority for the Waterways Ombudsman Scheme under the ADR Regulations)

GDPR – General Data Protection Regulation

1. Recommendations which I have already implemented

Improvements to the website

1.1 The review stated that consideration should be given to making published service standards more prominent and easier to find on the website.

1.2 I have created a new website tab (Service standards and process) at <http://www.waterways-ombudsman.org/service-standards-and-process/>. It provides links to three documents:

- How complaints are handled
- Standards and policies
- The Scheme Rules

1.3 There is also a process flowchart explaining the key stages and decisions in the process, depending on whether the complaint is within jurisdiction and whether the complainant has completed the internal complaints process of the relevant organisation.

1.4 I have added a link from the FAQs page to the “Complaining” page.

2. Recommendations which I have deferred for my successor to consider

Improvements to the website

2.1 One of the suggestions of the review was to consider seeking Plain Language accreditation, although it recognised that this might not be justified by the cost. In light of

the many changes over the past few years, in particular CTSI accreditation, OA revalidation, and GDPR, I have carried out a number of reviews of the documentation, and I am satisfied that it is up to date. I do try to write clearly for a wide audience, but my public statements (i.e. standard documents or website wording, not related to specific complaints) have not been independently reviewed for language and comprehensibility.

2.2 My successor will be in place after 26 July 2017, and she will need to make a number of changes to the website, as well as reviewing all the public statements, if only for the purposes of reflecting the fact of the different gender. This would be a good opportunity to review them for content and language. I have therefore decided to defer any further work for her to consider, including whether to carry out a wider review of the documentation, and to consider whether it would be appropriate to seek Plain Language accreditation.

Service standards

2.3 The review suggested that existing service standards should be given greater prominence on the website. As I have already noted, I have added a “Service standards and process” tab.

2.4 On the addition of deadlines such as acknowledging communications and responding to all communications, I would be reluctant to be too prescriptive. Even though the Waterways Ombudsman is part-time, I always meet the requirement to respond to 90% of enquiries with one week, and generally do so in 100% of cases. Other deadlines are often driven by the timing of responses from the Trust and the complainant. On whether to set service standards for the resolution of complaints about the Scheme, I receive less than one a year, but I can see no reason not to set a deadline of, say, 20 working days.

2.5 I do think there may be some scope for clarification and improvement in these areas, which I leave to my successor to consider.

Purpose of the scheme

2.6 The review noted that it may be useful for the scheme to consider a peer review of outcomes, although it did add that volumes are low and that resource constraints may not permit such an exercise. There are two aspects to this; difficulties in reaching conclusions in particularly complex cases; and a review of decisions already made as a check on decisions already reached. In one or two especially complex cases I have sought opinions of colleagues in the Ombudsman sector, and there is no reason why this cannot continue. Any personal information is redacted and the second opinion is sought on the issues rather than the precise situation. A peer view of decisions already made would in my view be something my successor should consider. If so, it would be of greatest benefit in her first year or so.

Investigation of disputes and equality of access

2.7 The reviewer noted that complex cases need not be resolved within 90 days, and that although I had my own criteria for when a case is classified as complex, he could not see where this was defined in the Scheme’s published policies or procedures.

2.8 The point here is that under the ADR Regulations, where cases are complex I am permitted to exceed 90 days. The ADR Regulations do not apply to complaints made by businesses, but I rarely see such cases. As there is no set definition of complexity I have devised one (which the Committee has previously discussed) and to which I have referred in annual reports. In my 2015-16 Annual Report I said:

“By way of example, I would regard a complaint about a single issue, such as the licence fee, as not being complex, and an instance of this is case 892. Where there are multiple issues (such as in case 842), where there are other parties involved (case 888), or where the analysis is very detailed and/or I need to make a site visit (case 881), I would generally regard the case as complex.”

2.9 Investigations rarely exceed 90 days, but I do think that it would be appropriate to review this definition and to examine whether it needs to be modified.

2.10 The size and nature of the Waterways Ombudsman Scheme, and the complaints it receives, does mean that cases are inherently more complex than, for example, in telecoms, where I have previously worked. With such large numbers of cases it was rare to find completely novel issues, and complexity was more often related to the volume of evidence and opinion rather than the need to understand a situation which had not previously been encountered, or trying to get a clear understanding of unfamiliar subject matter.

2.11 However, in practice it is often less the complexity of the issues that prolongs the timescale, than the need to seek clarification, further opinion or evidence, or to meet complainants. This is frequently an iterative process, with most delays arising from the need to seek further information or opinion from the Trust.

2.12 The reviewer also noted some difficulties I reported in getting responses from the Canal & River Trust. He suggested that consideration be given to the introduction of a scheme rule committing the Trust to a defined response deadline, and circumstances in which it would be permissible to miss it, such as in the interests in natural justice. He also suggested the consideration of a rule which, in the event of a failure by the Trust to respond within a deadline, would lead to a determination being made in favour of the complainant.

2.13 More recently, missed deadlines have been less of a problem but there is in my view some merit in reviewing this topic. On the matter of making a determination in favour of the complainant, this may be appropriate, for example, where a lack of information would not influence conclusions on significant issues. In such cases any delays could be reflected, for example, in an increased goodwill award.

2.14 I leave it to my successor, in discussion with the Committee, to consider whether more work needs to be done on the issues of the definition of complexity, and the introduction of formal response times for information requests. I agree with the comment in the review that this could be formalised in a Scheme Rule.

3. Recommendations which I have decided not to implement

The use of a case management system

3.1 The review notes that the current case management system (CMS) uses a spreadsheet, which relies on manual input. Any CMS requires data input at some point. The spreadsheet is very easy to manage, requires only a small amount of my time to do so, and has the benefit that everything is contained on two worksheets; one for all enquiries, and one for enquiries which are converted into investigations. The data are therefore both visible and transparent.

3.2 Dependence on the spreadsheet would be replaced by dependence on a CMS. Data extraction for reporting purposes is a manual task, which needs to be done before every Committee meeting and for the Annual Report, but the time taken to do this is not significant. Any benefits a CMS might offer in terms of reporting features, and data sifting and extraction, may be unlikely to outweigh the simplicity and transparency of a spreadsheet. I do also have a concern that by automating the process I may lose close contact with, and understanding of, the data.

3.3 On balance, I think that in view of the current small size of the scheme and the low data volumes, as well as the potential software and operating costs of a CMS, it is not justified either on grounds of costs or efficiency.

The use of an online portal

3.4 The review suggested consideration of a portal to enable parties to raise and respond to disputes and view each other's evidence. It recognised that the cost may be beyond the scheme's resources but suggested that it may be an issue for my successor to consider.

3.5 In practice, both parties generally already have all of the relevant evidence, and if there is evidence which one party has, which it would be useful to share, I generally do so. I contacted the provider of a widely-used portal. The provider did not regard the scheme as being likely to benefit from the use of a portal, which would cost around £500 per month in addition to set-up charges and other subscription costs. Given the size of the scheme such costs would be prohibitive. Even leaving aside the costs my view is that the demand from the complainants for such a service would not justify the resources needed to operate it, and the time needed to manage a portal would outweigh the benefits. This situation is unlikely to change in the foreseeable future.

Identifying where enquirers heard about the Scheme

3.6 The review asked whether more could be done to identify where users come from, and whether anything further could be achieved, such as by the use of focus or user groups.

3.7 The Scheme is a bespoke service for a very small potential stakeholder base. I have had few, if any, enquiries from complainants who said they had difficulty finding me, and indeed people quite often find me for complaints outside my remit, including those which are not

even about waterways. Unless it is obvious how a complainant found me (for example for complainants who have been directed to me by the Canal & River Trust) I generally do ask enquirers how they did so, especially where a complaint is at an early stage or is not about the Trust, and where I do I record the outcome. In my view there is no need for further work on this topic.

Andrew Walker

17 July 2019