

Guidance Notes for CISAS Subscribers (2015 edition)

What is CISAS?

CISAS is one of two Ofcom-approved dispute resolution schemes for the communications sector. All Communications Providers (CPs) providing services to customers (consumers and small businesses) and who are subject to Ofcom's General Condition 14 and the Communications Act 2003 must be registered with one of the schemes.

Who operates the service?

CISAS is operated by IDRS, the consumer services unit of the Centre for Effective Dispute Resolution (CEDR). CEDR acquired IDRS from its original parent, The Chartered Institute of Arbitrators, in November 2011.

IDRS provides access to more than 200 conciliation, mediation, adjudication and arbitration schemes resolving thousands of consumer-to-business disputes each year. Many of our services are provided to consumers and members of trade associations allowing quick, cost-effective and final resolution. Our neutrals are trained to the highest standards and our advice and assistance teams are available to guide users of the scheme.

Who are CEDR?

CEDR is the largest conflict management and resolution consultancy of its kind, assisting organisations around the world in resolving over £1.5 billion in disputes every year. A not-for-profit organisation, CEDR specialises in preventing, managing and resolving consumer-to-business and business-to-business conflict through the use of alternative dispute resolution techniques. CEDR also provides training in conflict prevention and conflict management to individuals, businesses, national governments and NGO's in over 60 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. These vary from well-known international brands through to smaller CPs offering internet or other services in localised areas of the UK. All CISAS subscribers are assured of the same quality of service regardless of their size in the market.

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.

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'.
The definition of a customer is defined in CISAS Rule 1.5 as:
 - the persons to whom the network or service is or has been provided in the course of any business carried on as such by the CP;
 - the persons who have requested such network or service from the CP or for whom the CP has attempted to provide such network or service.
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 (ie. 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 (except where either the parties agree or where, in our opinion, the CP has caused unreasonable delay in handling 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, ie. 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 for the determination of disputes (unless such proceedings or alternative procedure have been abandoned, stayed or suspended).

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.

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.

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.

If the objection is upheld, the case will be withdrawn and no fee will be charged. If the objection is rejected, the CP will be given a time extension of **two working days** to either defend or settle the claim.

Where a dispute arises as to the validity of an application, the decision of CISAS will be final.

For full details of the objection procedure, see CISAS Rule 4.3.

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. We can, however, 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.

Adjudicators

CISAS provides an informal and independent way of settling disputes between companies and their customers. The adjudicator will make a decision on such disputes by considering 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 and in line with the law and the CP's code of practice.

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.

Key Performance Indicators (KPIs)

At CISAS we take our KPIs agreed with Ofcom very seriously. Our KPIs are much stricter than you might find elsewhere, but they have been met consistently over nearly a decade of providing ADR for disputes in the UK communications market. The KPIs are described below:

1. At least 88% of cases should be concluded within 6 weeks of the customer making an application to CISAS;
2. Less than 10% of cases should be concluded more than 8 weeks after receipt of the application from the customer;
3. At least 95% of telephone calls should be answered by CISAS staff within 2 minutes;
4. At least 90% of written correspondence should receive a response within 5 working days;
5. Calculation of actual cost of a CISAS case (this is recorded annually). There is no target; this is purely an information figure showing the total number of valid applications divided by the total income generated for the scheme.

Complaints and Appeals

As with any organisation, we occasionally receive complaints about our service. Though we find that more often than not complaints about us are made by consumers who have lost their case and therefore still feel aggrieved, we do have a published complaints procedure and the outcome of complaints made against us are discussed at Board of Directors level.

We also have an Independent External Reviewer to whom we can refer complaints as the final step of our escalation process.

When CISAS issues a decision made by an adjudicator, it is only capable of being accepted or rejected, and only by the customer. There is no right of appeal against an adjudicator's decision.

Example Case Files

We do not currently provide example case files though we are considering doing this in the future. We do however have a comprehensive case study library including a case study index and a case study compensation summary on the CISAS website at www.cisas.org.uk.

Subscription Fees

Subscription fees are based on the CPs turnover and are show in the table below.

CISAS subscribers are also given membership of CISAS' parent body, The Centre for Effective Dispute Resolution (CEDR) for one year for free. Further details on membership of CEDR can be found [here](#).

Subscription Fee Table	
Turnover	Subscription
Band 1 - Up to £1,000,000	£75 plus VAT
Band 2 - £1,000,001 to £5,000,000	£225 plus VAT
Band 3 - £5,000,001 to £10,000,000	£375 plus VAT
Band 4 - £10,000,001 to £20,000,000	£575 plus VAT
Band 5 - In excess of £20,000,000	Calculated based upon staffing requirements for the estimated volume of cases and enquiries to be generated.

Case Fees

A fee applies to each case referred to CISAS. The CP is responsible for the payment of a case fee of **£355 plus VAT** which is triggered at the point that a defence is filed by the CP. Even if the CP subsequently settles the case, the case fee will remain payable in full.

Early Settlement Fee

If the CP decides to reach a settlement with the customer prior to the appointment of an adjudicator, either by providing everything the customer has claimed on his/her CISAS application form (ie. a **settlement in full**) or by negotiating a settlement with the customer (ie. a **negotiated settlement**), an early settlement fee of **£130 plus VAT** will be payable.

In order to qualify for the early settlement fee the CP **must** provide CISAS with evidence that they have provided the customer with everything claimed on his/her CISAS application form, or evidence of the offer the subscriber has made to the customer to settle the case and evidence of the customer's acceptance of that offer **before an adjudicator has been appointed**.

Example of notifications of settlement are as follows:

Settlement in full: Where a customer has claimed £1000.00 in compensation and for a discount of £10.00 to his or her monthly service charge, if the CP agrees to provide these items to the customer you must provide us with evidence that you have paid the customer £1000.00 (eg. proof that a cheque has been sent to the customer's correct address) and that you have applied the requested discount to the account (eg. screenshots from your internal systems to show the discount has been applied).

Negotiated settlement: Where a customer has claimed £1000.00 in compensation and for a discount of £10.00 to his or her monthly service charge, if the CP agrees with the customer that he or she will withdraw the CISAS case in exchange for a payment of £500.00 and a discount of £5.00 off the monthly service charge, you must provide us with evidence that you have made this offer to the customer and that it has been accepted by the customer (letters/e-mails if the offer/acceptance is in writing, or call recordings if the offer/acceptance is verbal).

It is not sufficient for you to notify CISAS that a settlement has been reached without providing clear evidence of the settlement. If clear evidence is not produced, CISAS will proceed to appoint an adjudicator, at which point the case fee will become payable.

Transferring from Ombudsman Services: Communications

We find it common for CPs to request to transfer from the Ombudsman Service to CISAS. We are not obliged to accept a CP's request to subscribe to CISAS and we can therefore decide to reject an application to subscribe. The two main reasons for refusing entry to CISAS are (a) that the CP has a history of non-compliance with decisions issued by the Ombudsman Service, and (b) the CP has left the Ombudsman Service with a debt. In either case, we will communicate with the CP and the Ombudsman Service in order to reach a solution. Ofcom will also be kept informed of the membership status of any given provider.

Contract

Each CP that registers with CISAS must be party to a contract between themselves and CISAS. A copy of the relevant contract will be sent when the CP indicates that they are seriously considering subscribing to CISAS. Contracts are generally for three years and the prices are fixed for the duration.

Contacts

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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.”