

**Minutes of the Thirty-Third Meeting of the Council of the Telecommunications
Ombudsman Service Limited (TOSL)**

Tuesday 18 January 2005 at 11:30

Otelo Offices, Wilderspool Park, Greenalls Avenue, Warrington

Present:

Council: Peter Holland (Chairman)
Margaret Doyle
Chris Holland
Rosaleen Hubbard
Roger Jefferies
Jeremy Mitchell

In Attendance: Elizabeth France (Ombudsman)
Richard Brown
Richard Sills

The Chairman said he was glad to be back and thanked everyone for their good wishes. The Council congratulated the Chairman on the award of his CBE in the recent New Year Honours List.

1 Apologies for Absence

There were no apologies.

2 Minutes of the Council Meeting, held on 15 December 2004

The Minutes were approved for publication on the Otelo website, subject to minor amendment.

3 Matters Arising

The Ombudsman reported that Actions No. 1 and 3 had been completed – No. 3, the Council Member's Pack, was in draft for comments. Andrew Bradley was investigating alternatives to Adobe (No. 2) and contact with CISAS was postponed, pending a revised visit date to Otelo by Greg Hunt, CISAS' Coordinator.

4 Chairman's Report

The Chairman said that he had now seen the two front-runner candidates for the Council vacancy and, although they were both excellent candidates and it had been a tough decision, he had selected Julie Meadows.

He and the Ombudsman had completed their planned series of meetings with senior staff in some of the larger member Companies. In general he was comforted and pleased with the tenor of the sessions but had detected a sense that at this level those companies not directly involved would appreciate a little more feed-back and information

from the Member Board. There were several suggestions about how to achieve this and Rosaleen Hubbard agreed to discuss the matter further at the next Member Board meeting. The Chairman said that his next “round” of meetings with member companies would be developed after he and the Ombudsman met the DTI.

5 Ombudsman’s Report

The Ombudsman reported that the backlog reduction had achieved an older-then-six-weeks level of 23 just before Christmas, down from the high of 570 in mid-September. As the office had been closed until 3 January the backlog had increased to 74 but this was now being worked-off. Consideration was being given to further recruitment for the pool of external case-workers, as several of the previous panel had accepted offers to join the organisation full-time. The Chairman and Council thanked the Ombudsman and her staff for their efforts in reducing the backlog.

None of the Council had comments of principle on the draft Corporate Plan and Budget, and the Plan would be re-drafted, taking all comments into account for re-issue as soon as practicable. The Ombudsman said that she would propose a slight alteration in the way KPIs were defined – as a certain percentage meeting a particular target (eg the timescale for issuing Provisional Conclusions), rather than providing the Council members with an average time for their issue.

Rosalind Stevens-Strohmann had replaced Chris Smithers as Ofcom’s Lead Officer in the review of the performance of the ADR schemes. The Ombudsman had spoken recently with her and now expected a letter setting-out, in draft, the key elements of the information that would be requested by the regulator. One element was sure to be related to the customer satisfaction survey and it was for agreement how Ofcom could obtain relevant information without risking customer-overload. The Council thought that the collection of the requisite data would need careful consideration.

There were several detailed questions concerning the Operations and Financial reports.

6 Member Board Report

The Chair of the Member Board, Rosaleen Hubbard, said that there had been no meetings since the last Council. Immediately following the 15 December Council, she and Chris Holland had met a representative from UKIF, the UK Internet Forum and had described how the process worked. UKIF had gone away to consult members and would get back in touch. So far, nothing further had been heard from UKIF.

Rosaleen had been re-elected as a Council Member by the Member Board and the Council seat, currently occupied by Chris Holland was due for election in March. Also on the subject of elections, John Bangs, of Broadssystem Ventures, had resigned from the company and the Member Board, and a replacement would have to be found. On behalf of the Council, the Chairman expressed appreciation of his work for the Ombudsman Service and wished him well in his new position.

7 Member Update

A further six members had joined the Service since the last meeting – making 113 members. Chris Holland had written to the Ombudsman, querying the application from a common base-station operator. She had replied that Otelo understood that Ofcom had

decided that such operators came within the definition of 'public communications provides' and so had to nominate an ADR service for their customers.

8 Meetings in 2005

The Chairman noted that the previous schedule had been amended and asked whether there any further difficulties. Jeremy Mitchell asked that, if the proposed 20 September meeting were to be changed, then Council members should be consulted about the new date. The Chairman observed that this meeting was scheduled to be the Annual Report presentation and would, in all probability, be held in London. The 2004 Report presentation had been well received and he would like the 2005 session to be as good, if not better; one improvement would be to make time for some interactive content.

Margaret Doyle asked about the event for Consumer Bodies and the Ombudsman said that Andrew Bradley would be in contact with her as soon as possible.

Action Point 1: Andrew Bradley to contact Margaret Doyle.

Roger Jefferies asked for meetings of the Audit Committee to be included in the programme on the same dates as the March and June meetings.

9 Date of Next Meeting

The next Council meeting will be held on at 11.30am on 15 February 2005 in the Otelo offices in Warrington.

10 Presentation on Remedies

Chris McAlpine, a Senior Investigation Officer, gave the Council a presentation on how the Ombudsman's awards and remedies were derived. His notes are attached to these Minutes for information.

Award and Remedy Presentation

A short presentation on factors which are taken into account when making awards or remedies at Otelo in investigation cases.

There are several factors which are taken into account when considering whether to make an award and, if so, what level or type of award. Here are the key factors that require consideration.

1) Terms of Reference

When we started determining cases in 2003 we had the Otelo TOR as a framework for making awards. As a brief reminder here are the main points referred to in the TOR regarding awards and remedies:

Assuming the complainant accepts the decision of the Ombudsman at either the PC stage or the Final Decision (FD) stage, the Member Company is bound to carry out the remedy **where the Ombudsman has concluded the member has not acted fairly or reasonably.**

The provision of the award is time bound at 28 days from the date of the Ombudsman's letter confirming the award.

Remedies – the member company may be required to:

- Provide a service or product, e.g. line rental
- Provide an apology or explanation
- Provide an award not exceeding £5000 per complaint (inc VAT)
- Provide other practical action of direct benefit to the complainant
- Provide any combination of the above but the total value cannot exceed £5000.

The Ombudsman may also make recommendations about changing policies or procedures.

No award can include a punitive element but must be appropriate.

2) Other Ombudsman Services

In our first year of operation, 2003, members of the investigation team visited other Ombudsman services to observe their working practices including discussing the criteria on which they based their awards.

We visited the Financial Ombudsman Service, the Office of the Legal Services Ombudsman and the Office of the Estate Agents' Ombudsman. Otelo also had a visit from the Australian Telecommunications Industry Ombudsman.

On our visits and discussions we found that none of the other Ombudsman services had started with a specific matrix for the weighting of awards. Rather, they based their decisions on the

facts of each case, and the expertise regarding the appropriateness of their remedies was built up over time and a substantial caseload. There was no magic formula.

One of the main things was to have an award that was proportionate. Clearly, an award regarding a potential mis-sale of a large endowment policy will, in most cases, be significantly higher than the loss of a telephone service for a couple of days.

3) The Principles of Otelos Awards

We have now been operational for two years and have experienced our own substantial caseload as well as developing a certain level of expertise across the organisation based on the cases we have seen.

We have developed a system which consists of two main elements to the consideration of awards made by Investigating Officers (IOs). These are **judgmental** and **quantifiable**.

a) Judgmental

- Relates to the degree that any action/inaction of the SP has impacted upon the customer, e.g. how many letters/phone calls did the customer have to make in order to try and resolve their complaint. Evidence of sending letters by Recorded Delivery for example, where there is evidence that the company has received the letter but taken no action may increase the level of award.
- Stress and inconvenience on the customer is also taken into consideration (TIC), e.g. the receipt of unwarranted debt collection letters.
- This Judgmental element can be roughly split into 3 sections:
 - Low - £10 - £50
 - Medium - £51 - £100
 - High – in excess of £100
- A case can involve more than one of these elements. One part could be low and another medium or high. Remedy weights were based on this combination.
- Cases where it is clear that a duty of care (DOC) has potentially been breached leading to increased costs for the customer will also be TIC. However, this will be balanced against responsibilities of a customer for their equipment and to review its usage. Action by the customer such as requesting a call bar or frequently checking their account balance will also be TIC. Equally, the award will TIC action/inaction of the customer which may have exacerbated the problem.
- IO's will use their experience in order to determine the appropriate level/type of award. However they do have other resources at their disposal including their fellow IO's. They can also utilise a key word spreadsheet with all previous awards. Additionally, all cases are reviewed by one of 2 S IOs (Senior IOs) to ensure consistency. All FD's are seen by the Ombudsman who holds monthly Case Review meetings with IO team.

b) Quantifiable

- This element relates to quantifiable losses/expenses incurred by the customer in trying to resolve their complaint based on evidence provided.
- Examples of this may be DD payments taken in error after a cancellation request was submitted, costs incurred from being placed on a more expensive tariff or call plan. It may also include bank charges substantiated with statements.
- Other quantifiable elements may include the cost of contract cancellation, refunds of line rental or the cost of a replacement handset, postage or telephone call costs.
- This part of the award also TIC the length of delay in resolving the problem. The magnitude of costs and expenses are examined in the circumstances of the case.

An award or remedy will therefore be made based on one of or a combination of both these elements in order to provide an appropriate and proportionate remedy.

4) Some Typical Examples where Judgmental and Quantifiable Elements are present

Case A

A goodwill payment of £30.00 for poor customer service
Confirmation of cancellation of a particular charge
Assurance that credit file is unaffected.

Case B

Clear balance on account
Written apology
Cancel account without early termination fee
A goodwill payment of £25.00

Case C

A refund of charges wrongly taken
A goodwill gesture of £25.00
An explanation of how the award has been made
A recommendation of changing a specific company practice