

**Minutes of the forty-eighth meeting of the Council of the Telecommunications
Ombudsman Service Limited (TOSL)**

20 June 2006 at 9:30

The Caledonian Hilton, Edinburgh.

Present:

Council: Peter Holland (Chairman)
Tony Allen
Jean Couper
Margaret Doyle
Chris Holland
Rosaleen Hubbard
Roger Jefferies
Julie Meadows
Duncan Sedgwick

In Attendance: Elizabeth France (Ombudsman)
Richard Brown
Richard Sills
Jeremy Mitchell (Outgoing Council member)
Andrew Bradley (Minutes)

1 Apologies for Absence

There were no apologies.

2 Minutes of the Council Meeting, held on 16 May 2006

The Minutes will be amended for clarification and accuracy and will be re-circulated as a further draft for approval outside the meeting.

3 Matters Arising

At a previous meeting the Council had accepted proposals for the extension of the terms of Council members, as a working document, to be kept under review. That paper had recommended that, in line with the Articles of Association, the term of Margaret Doyle, as an Independent Council Member, should be extended by two years to finish on, or about, 13 June 2008 and that Peter Holland's term as an Independent Council Member should be extended by the maximum normally allowed, to 13 June 2009. The Council formally confirmed these arrangements.

4 Chairman's Report

Jeremy Mitchell's term as an Independent Council Member had ended. As one of the key players in establishing the service and a founder Council Member, the Chairman, on behalf of the Council, expressed thanks and best wishes to Jeremy Mitchell for his invaluable contribution to the Service. He wished him well in his role on the Ofcom Consumer Panel.

Tony Allen and Jean Couper had been appointed as Council members on 1 June 2006 following their acceptance of the formal offer made to each of them by the Chairman; they were welcomed to their first meeting as Council Members.

Jean Couper was congratulated for her inclusion in the Queen's birthday honours list. She received the CBE for services to the administration of justice.

The Chairman reported on the meeting he and other Council members had with representatives from Ofcom and Ofgem on 30 May to discuss the Ombudsman services, the role of the Council and relationships with the regulators.

The Chairman had met the Director of Energy Supply for Scottish Power on 19 June. The new Energy Supply Ombudsman scheme was discussed. The meeting was positive and it was agreed that regular meetings between Scottish Power and staff from the new service would be very beneficial. This would be the model for all the new member companies.

The Chairman invited a report from the Council members who met Scottish Citizens Advice and the Scottish Consumer Council on 19 June. The meeting had gone well and the opportunity had been taken to give an update on the progress of Otelco and on the planned service for energy supply. Both consumer organisations expressed some concern at the problems they perceived as a result of there being more than one approved Alternative Dispute Resolution (ADR) procedure for the domestic and small business customers of public communications providers. The Scottish Consumer Council may consider conducting research into the consumer experience of these. An update was given on the progress of the Energy Supply Ombudsman service. It was agreed that it was important to set out clearly what an Ombudsman service offers, and in so doing to make clear that it has no role in collective consumer representation.

5 Ombudsman's Performance Report

Last month it was noted that the level of cases invoiced was lower than budgeted. This month 464 were invoiced. The number of forms returned was 571, more than 200 higher than April, suggesting that the projected volumes are still realistic.

Finance

The level of debt is of some concern.

Operations

There had been a question about the processing of written correspondence. It was confirmed that achievement of the targets, relating to Key Performance Indicators (KPIs), had not been not affected. The Ombudsman was satisfied that all correspondence, in whatever form, had received a first substantive response within 5 working days.

Targets at all stages of the process, including Final Decisions, are being met. For the benefit of the new members of the Council, there was some discussion of the way the current KPIs and the targets had been set.

Staffing

Three new Enquiry Officers joined the service during May.

Energy Project

The project is progressing well with no issues arising which suggest project plan dates cannot be met. A paper dealing with each of the seven key areas forms a separate agenda item.

Meetings

- 22/23 May: Council and the Executive were represented at BIOA meeting in Dublin
- 30 May: Presentation given to Ofcom and Ofgem on future plans
- 14 June: Annual meeting for communications companies at Otelo
- 15 June Visit from Ofgem to provide relevant background information

Future meetings etc:

- 19/20 June: Council meeting in Edinburgh, preceded by meetings, with stakeholders.
- 27 June: Lawrence Wardle O2 to visit Warrington
- 29 June: Ombudsman to make presentation to Hong Kong telecoms regulator.
- 3 July: Energy Supply Ombudsman begins operation
- 6 July: BIOA seminar on Ombudsman Services for the private sector
- 24 July: Annual report launch at Portcullis House.

6a Outstanding Remedies

An update was given on a company which had previously been reported to the Council for failing to pay remedies within the required period.

Another member company had one outstanding remedy and was disputing the Decision taken by the Ombudsman. The Council decided that, as the proper process had been followed, a formal notification should be sent from the Council making clear that its

failure to pay remedies within the required period had been raised and setting out the consequences.

6b Outstanding Debts

There was some discussion of the level of current debt. A 'seven day letter' had been sent to one Member Company. A member which has since left the service also has significant debt. In both cases administrative problems within the member companies seemed to be the cause of the late payments, these were being followed up by the Finance Director.

7 'Company A'¹ Update

A paper was circulated for discussion. Article 4.2 of the Terms of Reference for Otelo give the Ombudsman an absolute discretion to refuse to accept (or to terminate consideration of) a complaint, if she considers that the complainant has no reasonable prospect of success, recovery or redress. She explained to the Council why she had taken action to suspend consideration of complaints relating to 'Company A' using this provision. Those customers that have raised a complaint about 'Company A' have been notified of this and the decision has been advised to Ofcom. Ofcom has notified the Executive that as part of its own initiative investigation into 'Company A' it will use its powers, under s135 of the Communications Act, to make a statutory request for information from the Ombudsman. The Ombudsman will continue to update Ofcom and those people who register complaints about 'Company A' when she is able to do so.

The Ombudsman is to have a preliminary discussion with Ofcom about the general issues raised by these complaints and will report back to the Council.

8 Member Board Report

There had been no formal meeting since the last Council meeting. Individual members had been involved with discussions with the Member Board Chairman about the proposed changes to the Governance of the Service.

Darren Wight from Pipex Homecall will take up his position, as one of the representatives for Intermediate Qualifying member companies, at the next meeting.

9 Member Update

The Ombudsman reported that a further six companies had joined the Service since the last meeting.

10 Energy Supply Project Update

A report was given which showed that the project is on target to begin operation from 1 July 2006.

¹ 'Company A' has been used so as to protect anonymity within a public document

11 Governance

Written resolutions were distributed which proposed to change the name of the Company to 'The Ombudsman Service Limited'; to alter the objects clause of the memorandum of association of the Company; and to adopt new articles of association for the Company. The directors considered the proposed articles of association. It was decided that Article 102 (a) be amended to read "the Finance Board shall have such membership drawn solely from the Member Board Industry Members of the Member Boards as they shall agree but so that there shall be no fewer than two members from each such Member Board and the Council shall appoint up to two Independent Council Members to be members neither of whom shall have a vote". The revised articles were presented to the meeting.

The Directors considered the contents of the Written Resolutions and, after due and careful consideration, each of the Directors signed the Written Resolution.

Draft Terms of Reference in respect of the Telecommunications Ombudsman Service (Otel) and the Energy Supply Ombudsman Service were discussed.

For the Otel Terms of Reference, it was agreed that clause 3.10 (d) of the circulated copy should be changed to read 'Thereafter, all Otel Member Board Industry Members shall be appointed to serve for a period of up to two years with an option for the relevant Otel Members to renew such appointments for one further period of up to two years but nothing herein shall prevent the same person if eligible from being nominated again and appointed pursuant to these provisions following the expiry of their term of office'.

For the Energy Supply Ombudsman Terms of Reference, it was agreed that clause 3.7 of the circulated copy should be changed to 'The Energy Supply Ombudsman Service Member Board Members appointed by and from the Independent Council Members shall be appointed to serve for a period of up to two years with an option for the Independent Council Members to renew such appointments for one further period of up to two years or, in each case, such lesser periods as conform to the periods for which such persons are appointed to serve as Independent Council Members but nothing herein shall prevent the same person if eligible from being appointed thereafter for a further like term or terms if the Council so decides'.

The Council considered these Terms of Reference and concluded that it would be for the benefit and in the best interests of the Company for the purposes of carrying on its business to adopt these Terms of Reference subject to the above changes being made.

12 Appointment of Independent Council Representatives to the Industry Member Boards

Margaret Doyle and Jean Couper accepted the Chairman's invitation to join the Energy Supply Ombudsman Industry Member Board. Tony Allen accepted the Chairman's invitation to join the Otel Member Board. Roger Jefferies will continue to Chair the Audit Committee. An invitation was extended to the Energy Member Board to nominate a representative the Audit Committee.

The Chairman of the Otelo Member Board thanked Margaret Doyle for the valuable work she had done as an Independent Member of the Otelo Member Board.

The Chairman thanked Roger Jefferies for his work on the changes to the Governance of the Service.

13 Membership

The company, mentioned at item 6a, has now paid most outstanding remedies and is committed to paying the remainder by a set date. The Executive is working closely with the company to monitor this. In relation to case-fees, a schedule of payments has been agreed and the requirements of a consent order met. Therefore, on the recommendation of the Executive, the Council decided not to suspend the company from membership at this point. The situation is, however, to be reported monthly to the Council, and if the situation is not wholly regularised and all remedies paid without further delay, further action will be taken. As agreed at the previous meeting of the Council, any failure to pay future remedies within the 28-day period will follow the Service's escalation process and, if referred to the Council, will lead to the immediate issue of a 21-day letter warning of a further resolution proposing removal from membership.

14 Information Technology and Communication (ITC) Review

The recommendations given in the review will be looked at in terms of cost and feasibility. Any actions requiring the Council's budgetary approval will then be presented. It was accepted that the review focussed on technology rather than applications. A paper on strategic applications would be prepared. It was also agreed that there should be a systematic approach to the way that the Executive reports on ITC to the Council. Following the pattern set for HR, Communications and Finance a quarterly report would be prepared.

15 Presentation of the 2005/6 Customer Satisfaction Survey

Craigforth Consultancy and Research gave a presentation to the Council as to its findings. The written report will be available during July.

16 Time and Date of Next Meeting

The next meeting will follow the Annual General Meeting of the Company which will be held at 1030 on 24 July 2006 at the offices of Towerhouse Consulting, 59-60 Russell Square, London. WC1B 4HP. The Council will receive the regular monthly reports but time for discussion will be limited as the launch of the Annual Report takes place at 12.30 at Portcullis House.