

Response to TRAI's Consultation Paper on Complaints/Grievance Redress in the Telecom Sector

NIPFP Macro/Finance Group

September 8, 2016

1 Basic principles of consumer protection

The basis for regulation of any sector, including telecom, lies in the need to protect the interests of consumers. This is also made clear by the preamble of the TRAI Act, which specifically confers the telecom authority with the mandate of protecting the interests of consumers of the telecom sector.

In the context of financial consumers, the Financial Sector Legislative Reforms Commission (FSLRC) noted that the field of consumer protection consists of two key components: the *preventive* component and the *curative* component. The preventive side consists of a range of requirements prescribed by the regulator to ensure that consumers are treated in a fair and equitable manner. In the case of telecom consumers this would include TRAI's regulations, orders and directives relating to disclosure and transparency requirements, quality of service (QoS) parameters, billing accuracy, mobile number portability, curbing unwanted commercial communications, etc. The curative component, on the other hand, refers to the systems and processes for providing redress to consumers when they are faced with situations where a provider fails to meet the standards of conduct specified by the regulator.

A comprehensive consumer protection regime for the telecom sector requires both these components to work together in a well-designed and efficient manner.

The draft Indian Financial Code (IFC) prepared by FSLRC identifies the

following key principles of consumer protection. Although these principles were formulated in the context of the financial sector, they incorporate the global practices and high-level principles on consumer protection that can be of relevance for various sectors, including the telecom sector.

Basic protections for all consumers

1. *Professional diligence:* Service providers must act with professional diligence, which refers to a level of skill and care that is commensurate with honest market practices and good faith that providers are reasonably expected to provide to a consumer.
2. *Protection against unfair contract terms:* Providers should not introduce contract terms that cause a significant imbalance in the rights and obligations of the parties (to the consumer's detriment), where such terms are not necessary to protect the provider's legitimate interests.
3. *Protection against unfair conduct:* Unfair conduct refers to any form of misleading or abusive behaviour or any other conduct that impairs the consumer's ability to make an informed decision on whether to enter into a contract and on what terms.
4. *Requirement of fair disclosure:* The provider should disclose appropriate information that is required by a consumer to make an informed decision.
5. *Protection of personal information:* Any information that discloses the identity of a consumer should be kept confidential, the consumer should be allowed reasonable access to the information and the opportunity to seek modifications to it.
6. *Redress of complaints by the provider:* A provider must have in place effective mechanisms to receive and redress consumer complaints in a prompt and efficient manner. The consumer should be informed of his/her right to seek redress and the process to be followed for it.

Additional protections for retail consumers¹

1. *Right to receive suitable advice:* Advice given to a retail consumer should be suitable, based on an assessment of the person's financial situation, objectives and needs.

¹The FSLRC report defined "retail consumers" to mean individuals and small and medium enterprises (determined based on net asset value or turnover criteria) that purchase financial products or services of up to a certain value.

2. *Protection from conflict of interest of advisors:* In case of any conflict of interest, the person giving advice to a retail consumer must inform the consumer of the same and give priority to the consumer's interests.
3. *Access to the redress agency for redress of grievances:* The FSLRC proposed the creation of an independent, sector-neutral, Financial Redress Agency (FRA) to redress complaints of retail consumers against all financial service providers.

The provisions relating to the design, structure and functioning of the proposed FRA contained in the draft IFC can be of great help while considering the appropriate mechanism of grievance redress for the telecom sector. These aspects are described in further detail in our responses below.

2 Responses to issues raised in the consultation

Questions 1-2

1. Is the complaint redressal mechanism, as presently existing, adequate or is there a need to strengthen it?
2. Are there any specific changes that can be made to the existing system to improve it?

Response:

As detailed in TRAI's Consultation Paper, the framework for redressal of telecom consumers' grievances is currently governed by the Telecom Consumers Complaint Redressal Regulations, 2012 (Complaint Regulations). The Complaint Regulations envisage a two-tiered grievance redress mechanism, to be housed within each telecom service provider (TSP). The first tier consists of a complaint centre, where complaints must be resolved within the time frame specified by the TRAI. This is supplemented by a host of disclosure requirements (e.g. the compilation and publication of the Telecom Consumers Charter), aimed at ensuring awareness about the complaint redressal process, as well as the terms and conditions of service provided by the service providers.

The second tier consists of an Appellate Authority established by the TSPs in their licensed service areas. The consumer may refer an appeal to this

authority if she is not satisfied with the TSP’s redress or the issue is not addressed within the specified time limit. The decision of the Appellate Authority is not binding on the consumer, and the consumer is not foreclosed from availing other remedies available to her under the law. Significantly, the Complaint Regulation requires the Appellate Authority to be aided by a two member advisory committee, with members from the TSP and a consumer action group recognized by TRAI.

The existing framework, therefore, offers consumers a framework to take up their grievances directly with TSPs. However, if they remain dissatisfied with the outcome of the TSP’s complaints handling process, they do not have access to any specialised forum for seeking redress. While consumers do have the option of approaching consumer courts, that process has its own fair share of issues.

There is a large backlog of cases in consumer courts. On an average, it takes 2-3 years to resolve a case (Refer *Box 1: Pendency of Complaints at Consumer Courts*). The vacancies in these forums also add to the backlog of cases - in 2015, a total of 364 positions were vacant in consumer courts.

Box 1: Pendency of Complaints at Consumer Courts

Commission ^a	Old Pendency [Upto 2015]	Pen- dency [Upto 2015]	Filed Plus Restored [2016]	Hearings [2016]	Disposed [2016]	Current Pen- dency
NCDRC	10,295		1,876	12,195	1,585	10,586
SCDRC	138,917		5,959	63,154	4,203	140,664
District Fo- rum	301,936		34,784	421,925	22,134	314,586

^aSource: Data taken from <http://confonet.nic.in/DBPendency.html> on 29/03/2016

Dependence on lawyers is another factor that can make consumer courts unsuitable for complaints which generally involve low financial value but are large in numbers, as is the case in retail telecom complaints. Lawyers represent about 90 per cent of the complainants at the NCDRC. Since, most telecom complaints pertain to low monetary value transactions, it is possible that consumers who are not satisfied with the remedy offered by the Appellate Authority may not seek further redress by approaching consumer courts.

A review of decisions of various State Consumer Dispute Resolution Commis- sions, and the National Consumer Dispute Resolution Commission, reveals

that since their inception, Airtel, Vodafone and Idea Cellular have been involved in a sum total of 26 appeals. Airtel was subject of 14 appeals, out of which Airtel was the appellant in 7 cases; Vodafone was subject of 7 appeals, out of which Vodafone was the appellant in 6 cases; and Idea Cellular was subject of 5 appeals, out of which Idea was the appellant in 3 cases.

A preliminary review of the nature of complaints recorded on third party on-line consumer forums² indicates that complaints against TSPs can be broadly grouped into the following categories -

- *Billing Issues* - These are complaints where the consumer does not recognise a deduction/charge against his account, or where the deductions/charges are in excess of the tariff disclosed to the consumer. Typically, the consumer requests a refund/ rectification of the billing discrepancies, apart from certain instances where compensation is demanded.
- *Unwarranted Activation/ De-Activation* - These are complaints where certain core or value added services (VAS) are activated/ de-activated without notice and/or without the express consent of the consumer. Typically, the consumer wants the de-activation/ resumption of core services/ VAS, apart from certain instances where compensation is demanded.
- *Misrepresentation of Tariff Plans* - These are complaints where the consumer claims to have been provided incorrect/ misrepresented details of tariff plans by the service provider or their sales executives. Typically, the consumer requests for de-activation of tariff plan, and in several instances compensation is demanded.
- *Non-Activation of Services* - These are complaints where services have not been activated by the service providers despite a consumer having signed up and/or paid for such services. Typically, the consumer requests for activation of services, or a refund in lieu of services, and in several instances compensation is demanded.
- *Quality of Service* - These are complaints relating to the quality of service provided by the service providers and includes call quality, network strength, data speeds, and other such issues. Typically, the consumer requests for quality issues to be addressed, apart from certain instances where compensation is demanded.

²Consumer Complaints India (at URL: <http://www.consumercomplaints.in>), Grahak Seva (at URL: <http://www.grahakseva.com>)

The QoS regulations prescribed by the TRAI address each of the above categories of issues and therefore TSPs are obligated to abide by them. A review of the Telecom Consumers Charter released by the top 10 TSPs, however, reveals that there are no specified standards for the final remedy provided by them. In the absence of uniform standards on the nature of remedy to be offered by the TSPs, there may be significant differences in the effectiveness of their complaint redress mechanisms.

Further, impartiality of the Appellate Authority that is housed within the TSP could also be an issue (although this is sought to be addressed through the inclusion of outside members). Some of the complaints on third party consumer forums also related to the lack of correspondence from the TSPs after the consumer had approached the Appellate Authority.

We also found that there are some discrepancies between the complaint redress statistics released by TSPs and those maintained by third party consumer forums. For example, Airtel's website states that:

- It was 100% in compliance with the benchmarks of resolving 98% of billing/metering/validity complaints within 4 weeks;
- 100% of such complaints were resolved within 6 weeks, in all their licensed service areas; and
- Rajasthan was the only exception with 99.69% compliance with the benchmark of resolving 98% complaints within 4 weeks.³

Similarly, Vodafone's website also states that it was 100% in compliance with the benchmarks in all its licensed service areas.⁴

However, one of the independent consumer complaint forums,⁵ reports that Airtel had received a total of 24,656 complaints through the forum, out of which 10,104 complaints were still pending. Only 1,275 complaints had been marked as resolved by both the consumer and Airtel. Similarly, out of the 14,059 complaints received by Vodafone on the forum, 4,028 were pending and only 225 had been marked as resolved.

The fact that a large number of consumers choose to post their grievances on

³Available at URL: <http://www.airtel.in/wps/wcm/connect/8f043b0a-75fa-41c1-8952-3621928248a2/Website-QoS-Report-QE-Dec-2715-customer-service.pdf?MOD=AJPERES>

⁴Available at URL: http://www.vodafone.in/documents/pdfs/support/hns_QS_Report.pdf

⁵Consumer Complaints India (at URL: <http://www.consumercomplaints.in>). Service providers can sign up on this forum to receive feedback and complaints.

public online forums such as third party consumer forums and social media platforms such as Facebook and Twitter could either be on account of lack of awareness; or a lack of confidence in the complaint redress mechanisms established by the TSPs. Based on this discussion it emerges that there is significant dissatisfaction among consumers about the quality of redress offered by the TSPs. This includes issues related to accessibility, transparency and independence of the appeal process.

While the internal complaints mechanisms of TSPs must continue being the port of first call for consumers, there also needs to be an independent and transparent mechanism for consumers to seek further redress. Specific details of our proposals in this regard are given below.

Questions 3-6

3. Should a separate, independent and appropriately empowered structure to resolve telecom sector complaints and grievances be established?
4. If yes, please comment with regard to the organisation; its structure; kinds of complaints to be handled and its powers?
5. Is establishing an Office of Telecom Ombudsman an option that should be revisited, especially given the experience of the past few years of increasing numbers of complaints?
6. If yes, how should it be created the legal framework? What should be its structure? How should it be funded? What types of complaints should it handle? What should be its powers, functions, duties and responsibilities?

Response:

It has been twelve years since TRAI first mooted the idea of establishing an Office of Telecom Ombudsman (OTO). Given the rapid growth of the sector in these years, it is absolutely necessary to reconsider this issue and create a mechanism to provide an effective system to redress complaints of telecom consumers.

In this context, the consultation paper refers to the mechanisms adopted by other regulators in India and abroad for addressing consumer complaints. Each of these options comes with its own set of pros and cons. For instance, the institution of banking ombudsman (BO) is both staffed and financed by the RBI itself. While this can be perceived to be an efficient arrangement, it

comes with the issue of potential conflict of interest due to the fact that the ombudsmen are officers from within RBI. A redress body housed within the regulator can face a conflict issue on two counts: (i) it may find it difficult to accept situations where complaints are arising not just due to the conduct of service provider but on account of a lack of effective implementation of regulations by the regulator; and (ii) service providers may feel compelled to settle issues before the ombudsman due to the direct or indirect threat of regulatory action being initiated against them.

Similarly, the structure of the insurance ombudsman also suffers from some issues on account of its limited jurisdiction, delays in filling up of positions and reliance on the insurance industry for funding and staff. The Australian Telecommunications Industry Ombudsman (TIO), which is an industry based and funded service, received initial criticism due to concerns about its deep connections with the industry.⁶ Some recent evaluations of the TIO have, however, noted that there is no evidence to show that the TIO's model has negatively affected the independence of the scheme.⁷

Taking into account the current Indian context as well as the present legal framework governing the telecom sector, we propose that the Office of Telecom Ombudsman (OTO) be established through rules made by the Central Government. This could be along the lines of creation of the insurance ombudsman through the Redress of Public Grievances Rules, 1998 (RPG Rules).

The OTO should be an independent body equipped to handle all complaints from retail consumers against entities regulated by TRAI. The OTO should in the first instance try to settle cases through a process of mediation between the TSP and the consumer and only unresolved cases would go to a more detailed process of adjudication. As most of the complaints will relate to low value transactions, the OTO needs to be designed in a manner that makes effective use of technology to provide quick, paperless and low cost redress.

Following are some specific suggestions for the design and functioning of the proposed OTO:

⁶A Stuhmcke, "The Corporatization and Privatization of the Australian Telecommunications Industry: The Role of the Telecommunications Industry Ombudsman", UNSW Law Review, 1998 at Pages 807 to 833 and P Smith, "Twenty years of the Ombudsman" in Twenty years of the Commonwealth Ombudsman 1977-1997, Commonwealth Ombudsmans Office, Canberra, June 1997

⁷See, The Allen Consulting Group 2006, Review of the Telecommunications Industry Ombudsman Scheme, November, Available at URL: <http://www.digecon.info/docs/0014.pdf>

- **Legal framework:** The OTO can be constituted under rules framed by the Central Government, similar to the institution of the insurance ombudsman under the RPG Rules. These Rules were framed by the Central Government under sub-section (1) of Section 114 of the Insurance Act, 1938. The section provides that *The Central Government may, subject to the condition of previous publication by notification in the official Gazette, make rules to carry out the purposes of this Act.* Section 35(1) of TRAI Act contains a similar provision.

The insurance ombudsman is appointed by the Governing Body of Insurance Council under the RPG Rules. These Rules are currently undergoing amendments and it may be useful to build on experience of IRDAI as well as RBI while framing such Rules for the proposed OTO.

In addition, the recommendations of FSLRC and provisions of Chapter VII of the draft Indian Financial Code (*Version 1.1*) can serve as guidance for creating the OTO. Some of these aspects are enumerated below:

1. *Redress mechanism at service provider:* TRAI Regulations should continue to require TSPs to provide a robust internal redress mechanism. The regulations may be revisited from time to time to ensure that they are effective in mandating TSPs to follow set processes relating to the manner in which a complaint may be made, process to be followed by the TSPs to receive and redress the complaints, time period within which complaints must be addressed and time limits for each step of the process.
2. *Procedures of the OTO:* The Rules should provide for the detailed procedure to be followed by the Ombudsman. This would include processes relating to information required to be submitted, screening of complaints, mediation and adjudication; time-limits on procedures at the Ombudsman; and monetary limits on award of compensation.
3. *Self Assessment and Appeal:* The OTO should have a self assessment mechanism to look into grievance against its own procedural matters.

While drafting the rules, attention should also to be paid to the process of handling appeals on the orders made by the OTO. This question may be evaluated against the backdrop of three models which are seen globally: (i) Service provider has no right to appeal and the consumer may appeal at civil courts; (ii) Any party

may appeal at civil courts; and (iii) appeal lies with a specialised appellate mechanism.

4. *Feedback loop*: There should be a feedback mechanism for patterns emerging from consumer complaints handled by OTO to flow to TRAI so that it can take appropriate regulatory measures. This will serve as valuable process for ongoing strengthening of consumer protection.

Accordingly, it is recommended that both the rules governing OTO as well as TRAI's regulations should provide that OTO will regularly share information with TRAI and TRAI will use this as an input while framing or amending its regulations.

- **Structure**: Currently, most redress agencies (including courts) place the onerous task of managing various administrative processes on persons who are also tasked with the key function of providing redress. This has proved to be sub-optimal.

Effective support functions are key to ensuring the proper functioning of the OTO. Therefore, it is recommended that its organisational design should allow mediators and adjudicators to focus exclusively on its core function, namely providing redress in an independent manner. The Board/ Council of the OTO needs to be supported by a *Secretariat* that can handle governance and compliance issues. As mentioned above, it should also have an *Independent Assessment Officer* to consider complaints against the Ombudsman's redress function arising out of issues related to its standards of service.

The rules also need to be designed in a manner that ensures that the OTO is able to run an efficient process to manage vacancies and meet demands for new/additional mediators and adjudicators. This has traditionally been a cause for complaints piling up in various forums.

- **Funding**: The funding mechanism of the OTO needs to be designed to ensure that (i) it does not compromise on its independence; (ii) it is proportionate to its workload and enables speedy and effective redress; and (iii) it does not create perverse incentives to adversely influence the consumer protection objectives.

It is suggested that the DoT or TRAI should have the responsibility to provide the annual financial requirements of the OTO based on fees collected from TSPs. The fee model can be structured in a hybrid manner, comprising of (i) a base flat fee collected from all TSPs; and

(ii) an variable fee based on (a) the size of the entity and (b) number of complaints against the entity and the stages at which the complaints are resolved. No fee should be charged to the consumer.

It would also be useful for the OTO to have a framework for imposing reasonable costs on complainants and service providers to discourage frivolous complaints and consequential wastage of the ombudsman's resources.