

# Terms of Reference

These are the terms of reference approved by the Council in accordance with the Articles of Association of The Ombudsman Service Limited (the **Company**) for the Telecommunications Ombudsman Service (hereinafter referred to as **Otelo**) for public communications providers (**PCPs**). Certain expressions used in these terms of reference are either defined in paragraph 17 below or otherwise in such Articles of Association of the Company.

## 1 Purpose and Scope

1.1 **Purpose, Scope and Complaints** - The main purpose of Otelo is:

- (a) the receipt and handling of unresolved complaints made to PCPs who are Otelo Members by any of their domestic and small business customers;
- (b) the resolution, settlement and/or withdrawal of such unresolved complaints or disputes between such Otelo Members and any of their domestic and small business customers;
- (c) where appropriate, the provision of remedies and redress in respect of matters that form the subject-matter of such unresolved complaints or disputes

in respect of the supply or provision by Otelo Members of certain services and/or products falling within the jurisdiction of the Ombudsman and Otelo.

1.2 **Statutory Services and Products** - The services and products provided by Otelo Members which will be covered by, and fall within the jurisdiction of, the Ombudsman and Otelo are the services and/or products provided to domestic and/or small business customers which fall within the scope of “electronic communications services” as the same are defined under Section 32(2) of the Communications Act 2003 or may be included from time to time within the jurisdiction of Ofcom (together the **Statutory Services and Products**)

1.3 **Other Services and Products** – Any Otelo Member which offers, supplies or provides a service or product which is not one of the Statutory Services and Products, may (at its sole discretion) apply to the Council for such service or product to be covered by, and fall within the jurisdiction of, the Ombudsman and Otelo. If the Council determines (with the approval of the Otelo Member Board and in consultation with such other bodies (if any) as the Council may consider appropriate) that such service or product is to be covered by, and fall within the jurisdiction of, the Ombudsman and Otelo, then the Council shall notify the relevant Otelo Member of such and, for the purposes of such Otelo Member only, such service or product shall become an “Other Service or Product” falling within the jurisdiction of the Ombudsman and Otelo. If the Council does not so determine, then the relevant service or product shall not constitute an Other Service or Product. A service or product shall only remain an Other Service or Product until the earlier to occur of:

- (a) the relevant Otelo Member or the Council terminating and removing such service or product from the jurisdiction of the Ombudsman and Otelo upon six months written notice; or
  - (b) such service or product becoming one of the Statutory Services and Products pursuant to a determination of the Council in accordance with the provisions of paragraph 1.2 above.
- 1.4 **Services and Products** – Such Statutory Services and Products and Other Services or Products shall together constitute the services and products falling within the jurisdiction of the Ombudsman and Otelo.
- 1.5 **Eligibility for Membership of Otelo** – Persons who offer, supply or provide any of the Statutory Services and Products or Other Services or Products (as defined in paragraphs 1.2 to 1.4 above) shall thereby satisfy the criteria for Membership of Otelo and be eligible to become Otelo Members.
- 1.6 **Jurisdiction** – Upon becoming Otelo Members, all Otelo Members (to the extent that they offer, supply or provide Statutory Services and Products or Other Services or Products) shall specify which of their Statutory Services and Products and Other Services or Products are to be placed under the jurisdiction of the Ombudsman and Otelo and, for those specified Services and Products, shall accept and be subject to the jurisdiction of Otelo and the Ombudsman in relation to complaints regarding such Statutory Services and Products. An Otelo Member shall only accept and be subject to the jurisdiction of the Ombudsman and Otelo in relation to complaints regarding its Other Services or Products (if any) to the extent and for as long as they are accepted as and remain Other Services or Products in accordance with paragraph 1.3 above.
- 1.7 **Complainants** – The Ombudsman and Otelo shall only have jurisdiction in relation to a complaint against an Otelo Member if the person making the complaint:
- (a) was, at the time the subject matter of the complaint arose:
    - (i) a domestic customer of such Otelo Member ; and/or
    - (ii) a small business customer of such Otelo Member ; or
  - (b) had, at or prior to the time the subject matter of the complaint arose, applied or been solicited (by or on behalf of such Otelo Member) to be a customer falling within the scope of sub-paragraphs 1.7(a)(i) or 1.7(a)(ii) above; or
  - (c) is acting on behalf (and with the written consent) of any person falling within the scope of sub-paragraphs 1.7(a) or 1.7(b) above; or
  - (d) is a user of a service or product which (i) is the subject matter of the complaint and (ii) is supplied or provided (or has been applied or solicited to be supplied or provided) to any person falling within the scope of sub-paragraphs 1.7(a)(i) or 1.7(a)(ii) above, and has the written consent of such person to make such complaint, each of the persons falling within the scope of sub-paragraphs 1.7(a) to 1.7(d) above being a complainant and together complainants.

## 2 Governance of the service

- 2.1 The Ombudsman is appointed by, and responsible to, the Council. In determining any complaints made in accordance with these Terms of Reference the Ombudsman shall act independently of the Council, the Otelo Member Board, the Finance Board (if any), the Otelo Members, and complainants.
- 2.2 Otelo shall be administered by the Company in accordance with the Memorandum, the Articles and these Terms of Reference.
- 2.3 The Articles provide for the constitution of a Council being the Board of Directors of the Company with the powers and duties set out in the Articles
- 2.4 The Articles provide for the establishment of a Member Board for each Service Sector to which the Ombudsman Service is administered by the Company which shall be constituted in accordance with the Terms of Reference and shall have the powers and duties set out in the Articles.
- 2.5 The Otelo Member Board may appoint two individuals or such other number as may be agreed from time to time by the Council as Industry Council Members.

## 3 The Member Board of Otelo

- 3.1 The Otelo Member Board shall consist of seven individuals or such other number as may from time to time be determined by the Otelo Member Board in consultation with the Council.
- 3.2 There shall be at all times at least one Independent Council Member for every two Otelo Member Board Industry Members on the Otelo Member Board or such lesser number as the Council may agree. The chairman of the Otelo Member Board shall not be an Independent Council Member.
- 3.3 The remainder of the Otelo Member Board, including the chairman, shall be made up of representatives of Otelo Members appointed by Otelo Members in accordance with paragraphs 3.4 and 3.5 below. In order to facilitate such appointments each Otelo Member shall, by 31st January in each year or, if later, upon the Otelo Member becoming an Otelo Member, provide the Secretary with:
  - (a) a schedule detailing its Total Relevant Retail Revenue; and
  - (b) a report from a director or the secretary of such Otelo Member certifying and confirming the accuracy of the Total Relevant Retail Revenue information detailed in the schedule provided pursuant to paragraph 3.3(a), and the Secretary shall keep such information and report confidential, save to the extent otherwise required in order for the Secretary to discharge his/her duties and/or obligations.

### **Constitution of the Otelo Member Board**

- 3.4 Category A membership
  - (a) Four Otelo Member Board Industry Members or such other number as may be determined from time to time by the Otelo Member Board in consultation with the

Council shall be appointed by the Otelo Members which individually each have a Total Relevant Retail Revenue greater than twenty million pounds (or such other sum as may be agreed from time to time in consultation with the Council), as confirmed by the Secretary based on the information provided to it and certified pursuant to paragraph 3.3 above (the **Category A Qualifying Otelo Members**).

- (b) Any Category A Qualifying Otelo Member who individually has more than 30% of the aggregate Total Relevant Retail Revenue of all Otelo members (the **Major Otelo Members**) shall have the automatic right to appoint an individual to be an Otelo Member Board Industry Member on the Otelo Member Board. Such an Otelo Member Board Industry Member must be either employed by or contractually engaged by a Category A Qualifying Otelo Member.
- (c) All other Category A Qualifying Otelo Members that do not have an automatic right to appoint an Otelo Member Board Industry Member as described in paragraph 3.4(b) shall follow the procedure for appointment set out in paragraphs 3.4(d) to 3.4(i) below.
- (d) The Secretary shall invite each Category A Qualifying Otelo Member (other than any Major Otelo Member(s)) to nominate an individual to be an Otelo Member Board Industry Member within 21 days of the issuance of such invitation by the Secretary.
- (e) If there is only one nomination, such nominee shall be appointed to the Otelo Member Board; if there is more than one nomination by the Category A Qualifying Otelo Members, the Secretary shall list the nominees and arrange a ballot with each Category A Qualifying Otelo Member (excluding than any Major Otelo Member(s)) being entitled validly to vote for one individual nominee in such ballot. The nominee receiving the largest number of votes shall be appointed to the Otelo Member Board.
- (f) If the ballot provided for in paragraph 3.4(e) is inconclusive, in that no one nominee receives more votes than each of the other nominees (a **Category A deadlock ballot**), then the Category A Qualifying Otelo Members shall use all reasonable endeavours to agree the relevant nominee (which need not be one of the original deadlocked nominees) to be appointed to the Otelo Member Board. If within 21 days following the Category A deadlock ballot, the Category A Qualifying Otelo Members (excluding any Major Otelo Member(s)) are (i) able to agree upon a nominee, such nominee shall be appointed to the Otelo Member Board on such Category A Qualifying Otelo Members reaching agreement and notifying the Secretary of such, or (ii) unable to agree upon a nominee, the provisions of paragraph 3.4(g) shall apply.
- (g) Subject to paragraph 3.7, if the Category A Qualifying Otelo Members are unable to agree upon a nominee, then the chairman of the Otelo Member Board (if appointed) shall himself/herself determine which nominee shall be appointed. In making his/her determination the chairman shall be obliged to choose one of the nominees who received the largest number of votes under the Category A deadlock ballot and, in doing so, shall take account of the reasonable views and submissions of the Category A Qualifying Otelo Members (excluding any Major Otelo Member(s)). Such appointment shall take place on the chairman's determination.
- (h) Should any of the nominating Category A Qualifying Otelo Members subsequently cease to be Category A Qualifying Otelo Members, the Otelo Member Board Industry Member nominated or appointed by that Category A Qualifying Otelo Members shall cease to be an Otelo Member Board Industry Member with immediate effect.

- (i) Should there be no Category A Qualifying Otelo Members or should such Otelo Members make no nominations in accordance with paragraph 3.4(d) then no Otelo Member Board Industry Member shall not be appointed.

### 3.5 Category B membership

- (a) Two Otelo Member Board Industry Members or such other number as may be determined from time to time by the Otelo Member Board in consultation with the Council, shall be appointed by the Otelo Members which individually each have a Total Relevant Retail Revenue equal to or less than twenty million pounds (or such other sum as may be agreed from time to time in consultation with the Council), as confirmed by the Secretary based on the information provided to it and certified pursuant to paragraph 3.3 above (each a **Category B Qualifying Otelo Member**). Any Otelo Member Board Industry Members appointed by Category B Qualifying Otelo Members must be either employed by or contractually engaged by a Category B Qualifying Otelo Member. The procedure for such appointment shall be as set out in paragraphs 3.5(b) to 3.5(f) below.
- (b) The Secretary shall invite each Category B Qualifying Otelo Member to nominate an individual to be an Otelo Member Board Industry Member within 21 days of the issuance of such invitation by the Secretary.
- (c) If there is only one nomination (or such number may be determined from time to time by the Otelo Member Board in consultation with the Council (the **Revised Number**), such nominee(s) shall be appointed to the Otelo Member Board. If there is more than one nomination (or the Revised Number of nominations) by Category B Qualifying Otelo Members, the Secretary shall list the nominees and arrange a ballot in which each Category B Qualifying Otelo Member is entitled validly to vote for one or the Revised Number of individual nominee(s). The nominee(s) receiving the largest number of votes shall be appointed to the Otelo Member Board.
- (d) If the ballot provided for in paragraph 3.5(c) is inconclusive, in that no one or such other Revised Number of nominee(s) receive more votes than each of the other nominees (a **Category B membership deadlock ballot**), then the Category B Qualifying Otelo Members shall use all reasonable endeavours to agree the relevant nominee(s) (which need not be any of the original deadlocked nominees) to be appointed to the Otelo Member Board. If within 21 days following the Category B membership deadlock ballot the Category B Qualifying Otelo Members are (i) able to agree upon the nominee(s), such nominee(s) shall be appointed to the Otelo Member Board on such Category B Qualifying Otelo Members reaching agreement and notifying the Secretary of the same, or (ii) unable to agree upon the nominee(s), the provisions of paragraph 3.5(e) shall apply.
- (e) Subject to paragraph 3.7, if the Category B Qualifying Otelo Members are unable to agree upon the nominee(s), then the chairman of the Otelo Member Board (if appointed) shall himself/herself determine which nominee(s) shall be appointed. In making his/her determination the chairman shall be obliged to choose one of the Revised Number of nominees who received the largest number of votes under the Category B deadlock ballot and, in doing so, shall take account of the reasonable views and submissions of the Category B Qualifying Otelo Members. Such appointment(s) shall take place on the chairman's determination.

- (f) Should there be no Category B Qualifying Otelo Members or should such Category B Qualifying Otelo Members make no nominations in accordance with paragraph 3.5(b) then no Otelo Member Board Industry Member shall be appointed.
- 3.6 The chairman and deputy chairman, if any, of the Otelo Member Board shall be appointed by the Otelo Member Board from amongst the Otelo Member Board Industry Members. The two Otelo Member Board Industry Members appointed by and from the Independent Council Members shall not take part in the appointment process for the chairman or deputy chairman of the Otelo Member Board.
- 3.7 For the purposes of paragraphs 3.4(g) and 3.5(e) if at the relevant time the chairman of the Otelo Member Board has not yet been appointed in accordance with paragraph 3.6, any then appointed Otelo Member Board Industry Members shall together act as chairman in making the relevant determinations, to the extent required (in accordance with paragraphs 3.4(g) and 3.5(e)), instead of the chairman of the Otelo Member Board. Such Otelo Member Board Industry Members as are so acting as chairman shall make such determinations by majority decision. If, within 14 days of being requested or required to do so, such Otelo Member Board Industry Members are unable to reach a majority decision as to the outstanding appointments to be made to the Otelo Member Board, then such undetermined appointments shall remain undetermined and the relevant Otelo Member Board Industry Member appointment(s) shall remain unfilled. The relevant Otelo Members may, however, at any time reach agreement in respect of such unfilled Otelo Member Board Industry Member appointment(s) and any appointment(s) so agreed shall be appointed on such agreement being reached and notified to the Secretary.
- 3.8 The Otelo 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.
- 3.9 In relation to the duration of the terms of office of the initial Otelo Member Board Industry Members:
- (a) the Category B Qualifying Otelo Member appointee(s) shall be appointed to serve for a period of up to two years with an option for the Category B Qualifying Otelo Members to renew such appointment for one further period of up to two years;
  - (b) the Category A Qualifying Otelo Member appointee(s) shall be appointed to serve for a period of up to four years with an option for the Category B Qualifying Otelo Members to renew such appointment for one further period of up to two years.
  - (c) Thereafter, all Otelo Member Board Industry Members shall be appointed to serve for a period of up to two years with an option for the relevant Otelo 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.
- 3.10 If the Otelo Member Board at a meeting at which an Otelo Member Board Industry Member retires does not fill the vacancy, the retiring Otelo Member Board Industry Member shall, if willing to act, be deemed to have been reappointed until such time as the relevant replacement Otelo Member Board Industry Member is appointed in accordance with the

terms of these Terms of Reference and/or the Articles, unless at the meeting it is otherwise resolved or unless a resolution for the reappointment of the Otelo Member Board Industry Member is put to the meeting and lost.

- 3.11 The Otelo Member Board's powers, duties and conduct shall be as detailed in Articles 101 and 103 to 122 (inclusive).

## **4 Disqualification and removal of Otelo Industry Member Board Members**

- 4.1 The office of an Otelo Member Board Member shall be automatically vacated if he/she:
- (a) becomes bankrupt, a receiving order is made against him/her or he/she makes any arrangement or composition with his/her creditors generally; or
  - (b) in the reasonable opinion of the Otelo Member Board, becomes of unsound mind; or
  - (c) resigns his/her office by notice in writing to the Otelo Member Board; or
  - (d) does any act or finds himself/herself in any position which, in the reasonable opinion of the Otelo Member Board, is likely to lead him/her, the Otelo Member Board, Otelo or the Company into disrepute; or
  - (e) does any act or finds himself/herself in any position which, in the reasonable opinion of the Otelo Member Board, conflicts or is likely to conflict with his/her position and/or the exercise of his/her powers and/or duties as an Otelo Member Board Industry Member, or the effective operation of Otelo, the Ombudsman or the Terms of Reference; or
  - (f) in the case of an Otelo Member Board Member appointed pursuant to paragraphs 3.2 and 3.8 above, ceases to be an Independent Council Member; or
  - (g) is an Otelo Member Board Industry Member appointed to the Otelo Member Board pursuant to paragraphs 3.4 or 3.5 above and the Otelo Member by whom the Otelo Member Board Industry Member is employed or by whom such Otelo Member Board Industry Member is contractually engaged ceases to be a Otelo Member,
  - (h) does not have their appointment as an Otelo Member Board Member renewed after the expiry of their term of appointment;
  - (i) is an Otelo Member Board Industry Member appointed to the Otelo Member Board pursuant to paragraph 3.4 or 3.5 inclusive and the Otelo Member by whom the Otelo Member Board Industry Member is employed or by whom such Otelo Member Board Industry Member is contractually engaged ceases to have the qualifying member status which it had in accordance with paragraph 3.4 or 3.5 above pursuant to which the Otelo Industry Member Board Member was appointed;
  - (j) is an Otelo Member Board Industry Member appointed to the Otelo Member Board pursuant to paragraph 3.4 or 3.5 above and, subject to paragraph 4.2 below, ceases to be either employed by or contractually engaged by the Otelo Member with whom he/she was so employed or engaged at the time of his/her appointment pursuant to paragraph 3.4 or 3.5 above.

- 4.2 Where an Otelo Member Board Industry Member has ceased to be employed or contractually engaged by the Otelo Member by whom he/she was so employed or engaged at the time of his/her appointment as an Otelo Member Board Industry Member pursuant to paragraph 3.4 or 3.5 above and is immediately employed by or contractually engaged by an Otelo Member with the same qualifying status as the Otelo Member by whom such Otelo Member Board Industry Member was employed or contractually engaged at the time of his/her appointment as an Otelo Member Board Industry Member, then the Otelo Member Board must consult the Otelo Members with the same qualifying status as the Otelo Member by whom such Otelo Industry Member Board Member was employed or contractually engaged at the time of his/her appointment as an Otelo Member Board Industry Member and determine at its sole discretion whether the Otelo Member Board Industry Member may continue in office as an Otelo Member Board Industry Member or whether such office must be vacated by such Otelo Member Board Industry Member.
- 4.3 Should the office of an Otelo Member Board Member be vacated pursuant to paragraph 4.1 above, the Otelo Member Board (at its sole discretion) may either:
- (a) seek a new nomination pursuant to the procedure in paragraph 3.2, 3.4 or 3.5 above (as applicable)
  - (b) invite the Otelo Member or Council (as applicable) who originally nominated the departing Otelo Member Board Member (pursuant to paragraph 3.2, 3.4 or 3.5 above (as applicable) to nominate a replacement; or
  - (c) opt not to fill the vacated office.
- 4.4 In any event, any course of action taken by the Otelo Member Board pursuant to paragraph 4.3 above shall only apply to the remainder of the term of the office determined by reference to paragraphs 3.9 and 3.10 above.

## **5 Ombudsman's principal aim**

The Ombudsman's principal aim is to receive complaints made by complainants in accordance with these Terms of Reference and to consider and, where appropriate, investigate such complaints in order to encourage and/or facilitate the terms of their resolution, settlement and/or withdrawal.

## **6 Acceptance of complaint**

- 6.1 The Ombudsman has an absolute discretion to decide whether a complaint is within the Ombudsman's jurisdiction, as prescribed by these Terms of Reference.
- 6.2 The Ombudsman has an absolute discretion to refuse to accept (or to terminate consideration of) a complaint, if he/she considers that the complainant has no reasonable prospect of success, recovery or redress in relation either to such complaint and/or the Otelo Member(s) to which such complaint relates.

## 7 Provision of information

- 7.1 Upon accepting a complaint for consideration the Ombudsman shall inform the relevant Otelo Member that the complaint has been accepted and may require the Otelo Member to disclose any documents and to provide any information that the Ombudsman may lawfully and reasonably request relating to his or her consideration of the complaint.
- 7.2 The Ombudsman may additionally require a complainant to disclose any documents and to provide any information that the Ombudsman may lawfully and reasonably request relating to his or her consideration of a complaint.
- 7.3 If any party to a complaint supplies information to the Ombudsman and requests that the Ombudsman treat it as confidential, the Ombudsman shall not disclose that information or the fact or existence of that information to any other party without the consent of the party who has made the confidentiality request, provided that:
- (a) maintaining the confidentiality of such information does not impede the Ombudsman's ability to make a fair and reasonable determination of the complaint; and
  - (b) the Ombudsman is satisfied that the confidentiality request has been made in good faith and not with the aim of impinging on any principles of natural justice.
- 7.4 The Ombudsman's decision (in its absolute discretion) as to whether to keep any information in confidence from any party shall be final and binding.

## 8 Handling complaints and the Ombudsman's investigation

- 8.1 The Ombudsman will seek to achieve a mutually acceptable settlement of a complaint wherever practical and appropriate.
- 8.2 If the complaint is not resolved by a mutually acceptable settlement or withdrawn, the Ombudsman may conduct a formal investigation of the complaint.
- 8.3 The procedure for the conduct of an investigation will be such as the Ombudsman considers appropriate in the particular circumstances of the case and may require such assistance of the parties to the complaint (including in relation to access, information and submissions) as the Ombudsman may consider reasonable and appropriate.
- 8.4 Where an investigation has been conducted, the Ombudsman will inform, in writing, the complainant and the Otelo Member(s) concerned of the Ombudsman's provisional conclusions and suggested Remedies (as defined below) and, in each case, the reasons for them and will invite their comments thereon, to be received within a specified period thereafter.
- 8.5 If, after investigation, the Ombudsman considers that the Otelo Member(s) (against which a complaint has been made) is already offering (and continues to offer) a fair and reasonable settlement (even if it is not acceptable to the complainant), or if the Ombudsman considers that no settlement is required, the Ombudsman may exercise discretion to terminate consideration of the complaint.

- 8.6 In handling complaints, carrying out investigations and reaching any Final Decision (as provided for hereunder) it shall be the duty of the Ombudsman:
- (a) to proceed fairly and in accordance with the principles of natural justice;
  - (b) to make reasoned decisions in accordance with what is fair and reasonable in all the circumstances having regard to principles of law, good practice, equitable conduct and good administration;
  - (c) to decide whether to continue or discontinue the consideration of a complaint;
  - (d) save with the prior written consent of the relevant parties and subject to paragraphs 8.6(a), 8.6(e) and 10.2(e), not to disclose the fact of, parties to or details of any complaint, its resolution or enforcement to persons other than the parties to the complaint, the Ombudsman, the Council and Otelo and such officers, employees, agents and advisers of each of such persons as are duly authorised for such purposes;
  - (e) to have regard to any applicable rule of law, the terms of any relevant contract, any relevant judicial authority or regulatory provision, any relevant codes of conduct or practice, any guidance of a general nature given by the Council and what is, in the Ombudsman's opinion, best practice in the handling of complaints; and
  - (f) to give reasons for any decision made or conclusion reached.
- 8.7 Notwithstanding paragraphs 8.6(a) and 8.6(e) above, the Ombudsman shall not be bound by any legal rule of evidence or by the past conduct or decisions of, or the past Remedies or Awards imposed by, the Ombudsman or Otelo.

## 9 The Ombudsman's final decision

- 9.1 If the complainant and the relevant Otelo Member(s) accept the Ombudsman's provisional conclusions, then such provisional conclusions will become the Ombudsman's Final Decision.
- 9.2 If either the complainant or the relevant Otelo Member(s) or both do not accept the Ombudsman's provisional conclusions, then the Ombudsman will issue a Final Decision, including its reasons therefore. Such Final Decision shall be made after considering any representations the complainant or the relevant Otelo Member(s) or both may make in relation to the provisional conclusions.
- 9.3 Where the Ombudsman issues a Final Decision (either under paragraph 9.1 or 9.2 above) which concludes that an Otelo Member has not acted fairly or reasonably, the Ombudsman will set out his or her reasons in writing and may, subject to paragraphs 9.6 and 9.7 below, impose any of the following remedies requiring the Otelo Member to:
- (a) provide a service or product to the complainant;
  - (b) provide an apology or explanation to the complainant;
  - (c) award to the complainant compensation not exceeding £5,000 (inclusive of VAT (if any)) per complaint (an **Award**);
  - (d) take some other practical action of direct benefit to the complainant; or

- (e) provide any combination of the above remedies.
- 9.4 Each remedy set out in paragraphs 9.3(a) to 9.3(e) above shall be referred to as a Remedy and any combination thereof as Remedies.
- 9.5 The Ombudsman may also, as a result of considering a complaint, make recommendations to an Otelo Member about changing its policies or procedures, including in relation to the provision of its services and/or products.
- 9.6 The total value of all Remedies to be provided or complied with by an Otelo Member to or for the direct benefit of a complainant in respect of a complaint shall not exceed £5,000 (inclusive of VAT (if any)).
- 9.7 No Award or Remedy shall contain a punitive element nor be of greater amount than in the reasonable opinion of the Ombudsman is appropriate to compensate the complainant for loss or damage or inconvenience suffered by reason of the acts or omissions of the Otelo Member against and in respect of which the Award or Remedy is made.
- 9.8 No Award or Remedy will be made against a complainant.
- 9.9 The Final Decision shall be issued in writing and shall state the Remedies to be provided and a summary of the Ombudsman's reasons for reaching the Final Decision. A copy of the Final Decision shall be given to the complainant and the relevant Otelo Member(s) together, in the case of the complainant, with an acceptance form (addressed to the Ombudsman) (the **Acceptance Form**) to be duly completed and signed by the complainant and returned to the Ombudsman within two months of the date of the Final Decision (the **Acceptance Period**). The Final Decision shall state that if, within the Acceptance Period (or such longer period as the Ombudsman may consider reasonable), the complainant replies to and accepts the Final Decision in full and final settlement of the subject matter of the complaint (by duly completing, signing and returning the relevant Acceptance Form), the Final Decision shall (save in the event of fraud or manifest error) be binding on the complainant and the relevant Otelo Member(s).
- 9.10 If the complainant does not reply to the Final Decision within the Acceptance Period (or such longer period as the Ombudsman may consider appropriate), then the Final Decision will not be binding on the complainant or the relevant Otelo Member(s) and it will be open to the complainant to initiate any other proceedings to which the complainant is entitled in pursuit of the complaint.
- 9.11 If within the Acceptance Period (or such longer period as the Ombudsman may consider reasonable) the complainant replies to the Final Decision but does not accept it in full and final settlement of the subject matter of the complaint, then the Final Decision will not be binding on the complainant or the relevant Otelo Member(s) and it will be open to the complainant to initiate any other proceedings to which the complainant is entitled in pursuit of the complaint.
- 9.12 If the Final Decision becomes binding on the complainant and the relevant Otelo Member(s) in accordance with paragraph 9.9, the Ombudsman shall notify the relevant Member(s) of such fact within 14 days of his or her receipt of the complainant's duly completed and signed Acceptance Form. The relevant Otelo Member(s) shall then provide the Remedy (including any Award (if any)) to the complainant within 28 days of the Ombudsman's notification.

- 9.13 If the Final Decision does not become binding on the complainant and the relevant Member(s) in accordance with paragraph 9.10 or 9.11, then the Ombudsman shall notify the complainant and the relevant Otelo Member(s) of such fact within 14 days following the end of the Acceptance Period (or such longer period as the Ombudsman may consider reasonable).

## 10 Powers and duties of the Ombudsman

10.1 The Ombudsman shall have the following powers and duties:

- (a) to report to the Council on the non-compliance with a decision of the Ombudsman (including in relation to any Awards or Remedies imposed by the Ombudsman) by an Otelo Member;
- (b) to ensure the efficient, effective and economical use of resources;
- (c) to ensure, so far as reasonably practicable, equality of access to Otelo by complainants irrespective of age, disability, gender, race, religion or sexual orientation;
- (d) to enter into Memoranda of Understanding with the Chief Executive of Ofcom, Phonepay Plus (formerly **ICSTIS**) and with any other bodies the Ombudsman considers fit on matters of common interest, including the exchange of information (subject to paragraph 7.3 above);
- (e) to attend meetings of the Council when asked to do so on reasonable notice and to provide them with such information (other than about individual complaints) as they may reasonably request;
- (f) to prepare, each year, a draft Annual Business Plan for the period commencing on and from the next Financial Year Commencement Date, for presentation to the Council by not later than the 31 December falling immediately prior to the relevant Financial Year Commencement Date;
- (g) to prepare, each year, a draft Annual Budget for the period commencing on and from the next Financial Year Commencement Date, for presentation to the Council by not later than the 31 December falling immediately prior to the relevant Financial Year Commencement Date;
- (h) to prepare, each year, an Ombudsman's Report (which shall be distinct from the annual report of the Company) on the discharge of the Ombudsman's functions during the most recently ended Ombudsman's Reporting Period and provide it to the Council and the Otelo Member Board for publication within such period following the end of such Ombudsman's Reporting Period as the Council shall determine;
- (i) To encourage and promote good practice by Otelo Members in the handling of complaints they receive;
- (j) to develop and sustain discussions with PCPs and consumer bodies about matters relevant to Otelo; and
- (k) to refer to the Council complaints received by it about Otelo and/or the Ombudsman.

10.2 In addition to the powers conferred elsewhere in these Terms of Reference, the Ombudsman may:

- (a) incur expenditure for the purposes of the functions of Otelo, subject to and to the extent such are provided for in the then current Annual Business Plan and Annual Budget as approved by a Member Board or the Finance Board (as applicable);
- (b) recruit, appoint, train, manage and remove staff, subject to and to the extent such are provided for in the then current Annual Business Plan and Annual Budget as approved by the Otelo Member Board;
- (c) delegate, subject (where necessary) to the approval of the Council, any of the Ombudsman's powers and duties to members of the staff of Otelo (including, deputy, and/or principal ombudsmen (if any)), provided that, in delegating any such powers and duties, the Ombudsman shall exercise all reasonable care and skill to ensure that the delegate discharges all such powers and duties in accordance with the standards expected of the Ombudsman himself/herself;
- (d) subject to the approval of the Council and the provisions of sub-paragraph 10.2(a) above, determine the terms and conditions of service/employment of the staff of Otelo;
- (e) publish individual determinations and digests of complaints in anonymised form (i.e. in which the parties are not identified); and
- (f) recommend systemic changes in policy or procedure relating to dispute handling within the telecommunications industry and, in his or her discretion, to publish such recommendations.

10.3 Notwithstanding the above, the Ombudsman shall not exercise any powers which are explicitly conferred upon the Council or the Otelo Member Board.

## 11 Limits on the Ombudsman's powers

11.1 The Ombudsman shall not accept a complaint for consideration unless:

- (a) the complainant gave the relevant Otelo Member(s) notice of the matter the subject of the complaint within twelve months of first knowing of the matter or, if later, by 31 December 2003; and
- (b) either (i) the Otelo Member has sent the complainant a letter saying that it is unable or unwilling itself to resolve the complaint to the complainant's satisfaction and providing details of the existence of Otelo and appropriate contact details for the Ombudsman (a **deadlock letter**), or (ii) the Otelo Member has not issued a deadlock letter within 8 weeks of the complainant's notice (as referred to in paragraph 11.1(a) above); and
- (c) the complaint is made to the Ombudsman within six months of the issue of the deadlock letter or, if no deadlock letter has been issued, within nine months of the complainant first giving notice of the complaint to the Otelo Member (as referred to in paragraph 11.1(a) above); the Ombudsman has discretion, however, to accept a complaint made out of time if satisfied that there are exceptional reasons to justify the delay.

11.2 The Ombudsman shall not accept a complaint about a matter:

- (a) of which the complainant had notice before (i) the commencement of the provision and operation of Otelo, or (ii) the date when the relevant Otelo Member became a Otelo Member whichever is the later;

- (b) to the extent such matter has been or is the subject of court proceedings or arbitration or some other independent procedure for the determination of disputes brought by the complainant (unless such proceedings, arbitration or other procedure have been abandoned, stayed or suspended either by or with the consent of the relevant court, arbitral or procedural body or with the written consent of the relevant Otelo Member(s));
  - (c) which either does not concern or relate to the complainant or to a service or product of the relevant Otelo Member falling within the jurisdiction of Otelo;
  - (d) which concerns or relates to terms of employment or other personnel issues of, in each case, the complainant;
  - (e) which concerns or relates to equipment not purchased or rented from the relevant Otelo Member or cabling or wiring inside the relevant complainant's premises;
  - (f) if it appears to the Ombudsman that it is more appropriate that the complaint be dealt with by a court, by arbitration or under another complaints or conciliation procedure;
  - (g) if it appears to the Ombudsman that the complaint is frivolous or vexatious;
  - (h) to the extent that the complaint relates to an Otelo Member's commercial judgment in determining whether and, if so, on what terms a service and/or product is to be provided; or
  - (i) which concerns a dispute solely between providers of telecommunications services and/or products falling within the jurisdiction of Otelo in relation to the provision of such services and/or products.
- 11.3 In relation to any matter forming the subject of a complaint in respect of which the Ombudsman has previously reached a decision or conclusion (a **Concluded Complaint**), the Ombudsman shall not accept or consider:
- (a) a new complaint the subject matter of which and the parties to which are the same (or substantially the same) as those addressed in relation to the Concluded Complaint; or
  - (b) a request to reconsider the Concluded Complaint, unless, in exceptional circumstances, the Ombudsman is of the opinion that (i) significant evidence or facts not available at the time of, or not taken into account in, the Ombudsman's consideration of the Concluded Complaint have come to the attention of the Ombudsman, and (ii) had such evidence or facts been so available or taken into account it is reasonably likely that the decision or conclusion reached in relation to the Concluded Complaint would have been substantially different.

## 12 Charges and case fees

- 12.1 The Ombudsman will make no charge to complainants for the consideration of their complaints.
- 12.2 Otelo Members shall be obliged to pay subscriptions and case fees to the Company in respect of Otelo in accordance with the Articles.

## 13 Duties of each member

Each Otelo Member undertakes to:

- (a) submit to any consideration or investigation of a complaint by the Ombudsman and Otelo to which it is a party, pursuant to and in accordance with these Terms of Reference;
- (b) comply with any Final Decision (including any Remedy and Award) which, in accordance with these Terms of Reference, is made by the Ombudsman against it and is duly accepted by the complainant and which is binding on it and the relevant complainant under these Terms of Reference;
- (c) maintain and operate an adequate internal complaints procedure for the resolution of complaints in relation to matters which could be the subject of consideration or investigation by the Ombudsman and Otelo, being a procedure under which the complaint, if not previously resolved, settled or withdrawn is addressed by the dispatch of a deadlock letter;
- (d) encourage any such complaint, which is not resolved, settled or withdrawn, to be dealt with under the jurisdiction of the Ombudsman and Otelo, including (without limitation) by giving due and reasonable consideration to any request by a complainant for such Otelo Member written consent to abandon, stay or suspend any court proceedings, arbitration or other procedures as are referred to in paragraph 11.2(b) above;
- (e) contemporaneous with becoming an Otelo Member execute a deed poll (in the form set out in the Schedule hereto or in such other form as may, subject to the approval of the Otelo Member Board, be prescribed by the Council from time to time) (the **Deed Poll**) which shall, inter alia, enable a complainant to enforce any Remedy and/or Award directly against such Otelo Member; and
- (f) supply a schedule detailing its Total Relevant Retail Revenue in accordance with paragraph 3.3 above; and
- (g) ensure that it and, as appropriate, each of its relevant subsidiary undertakings complies with, observes and performs the obligations and duties of an Otelo Member under the Terms of Reference, the Articles, the Deed Poll and/or otherwise in connection with Otelo.

## 14 Termination of an Otelo Member's membership

An Otelo Member may only terminate its membership with Otelo by giving not less than six months' notice in writing to the Secretary.

## 15 Review of the terms of reference

The Council will complete a review of these Terms of Reference periodically but at intervals of not more than three years. Such reviews will include (without limitation) consideration as to whether there is evidence of complainants seeking to abuse the right to complain in order to

evade or delay the payment of money or the performance of any other obligation rightfully owed by them to any Member of Otelo.

## 16 Amendment of the terms of reference

- 16.1 The provisions of paragraphs 1, 3.1 to 3.11, 13 and this paragraph 16.1 of these Terms of Reference (together with any definitions used within such paragraphs) may only be amended by the Council with the approval of the Otelo Member Board, and after consulting with and taking due account of the views of the Otelo Members and such other bodies as the Council considers appropriate.
- 16.2 All other provisions of these Terms of Reference may only be amended by the Council after consultation with, and taking due account of the views of the Otelo Member Board, the Members of Otelo and such other bodies as the Council considers appropriate.

## 17 Interpretation

- 17.1 Unless the context otherwise requires, the definitions and interpretations set out below shall apply to these Terms of Reference and, in addition, to the extent not otherwise set out below and not otherwise inconsistent herewith, the definitions and interpretations included in Article 1 of the Articles shall also apply to these Terms of Reference:

**Annual Budget** means each annual financial budget for the Company for the period commencing from (and including) the Financial Year Commencement Date), and ending on (and including) the next following Financial Year End

**Annual Business Plan** means each annual business plan for the Company for the period commencing from (and including) the Financial Year Commencement Date), and ending on (and including) the next following Financial Year End

**Articles** means the Articles of Association from time to time of the Company

**Award** has the meaning attributed to it in paragraph 9.3(c) above

**Board of Directors** means the board of directors of the Company

**Company** means The Ombudsman Service Limited

**complainant** means a person who satisfies the conditions set out in paragraph 1.7 above and **complainants** shall be construed accordingly.

**the Council** means the Board of Directors of the Company, or the members of such Board present at a duly convened meeting of the Council at which a quorum is present, and Council Member means an individual member of the Council

**customer** means any person who is party to a contract with a Member of Otelo for the supply or provision of any service and/or product falling within the jurisdiction of the Ombudsman and Otelo

**Deed Poll** has the meaning attributed to it in paragraph 13(e) above

**domestic customer** means a customer who uses or requests for use any service and/or product falling within the jurisdiction of the Ombudsman and Otelo for purposes which are outside his or her trade, business or profession

**Final Decision** means a Final Decision made by the Ombudsman pursuant to and as referred to in these Terms of Reference

**Finance Board** means a Finance Board constituted in accordance with the Articles where there are two or more Ombudsman Services with Member Boards

**Financial Year Commencement Date** means the date immediately following the Financial Year End

**Financial Year End** means 31 March in each year, or such other financial year end date as the Company may adopt from time to time

**member board member** means an individual member of a Member Board

**Memorandum** means the Memorandum of Association from time to time of the Company

**Ofcom** means Office of Communications

**Ombudsman Service** means the ombudsman services which the Company administers in accordance with the Articles and the Terms of Reference

**Otelo Member** means a PCP admitted as a Member of Otelo by the Council in accordance with these Terms of Reference (and (as the context so requires) each and/or any of its subsidiary undertakings from time to time) which has put its relevant services and/or products under the jurisdiction of the Ombudsman and Otelo

**the Otelo Member Board** means the Member Board referred to in paragraphs 3 to 4.3 (inclusive) of these Terms of Reference, or the members of such Board present at a duly convened meeting of the Otelo Member Board at which a quorum is present

**Otelo Member Board Member** means a member of the Otelo Member Board and **Otelo Member Board Members shall be construed accordingly**

**Otelo Member Board Industry Member** means an individual who is appointed to the Otelo Member Board by the Otelo Members and who is not an Independent Council Member

**PCP** means a provider of a public electronic communications network, a provider of a public electronic communications service or a person who makes available facilities that are associated facilities by reference to a public electronic communications network or a public electronic communications service and "PCPs" shall be construed accordingly

**Remedy** and **Remedies** shall have the meaning attributed to them in paragraph 9.4 above

**small business customer** means a customer who uses or requests for use any service and/or product falling within the jurisdiction of the Ombudsman and Otelo in connection with or for the purposes of a small business; the meaning of small business is to be determined by the Council (from time to time), subject to the approval of the Otelo Member Board, and, following such determination, published by the Council whether by amendment to these Terms of Reference or otherwise

**subsidiary undertaking** has the meaning given in section 258 of the Act

**Telecommunications Ombudsman Service** means the Ombudsman Services provided to PCPs

**Total Relevant Retail Revenue** means the retail value of the services and products falling within the jurisdiction of the Ombudsman and Otelo which the Otelo Member supplies to its domestic and small business customers

**user** means a legal entity or natural person using or requesting for use any service and/or product falling within the jurisdiction of the Ombudsman and Otelo

- 17.2 Words importing the singular number include the plural and vice versa.
- 17.3 Words importing the masculine include the feminine and vice versa.
- 17.4 Reference to a person includes any body, body corporate, government, state or agency of any government or state, or any joint venture, association or partnership, and references (express or implied) to person or it, shall be construed so as to include references to such persons, to any natural or legal person and to a person's legal personal representatives and successors;
- 17.5 References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time modified, amended re-enacted or supplemented.
- 17.6 Unless the context otherwise requires, references to paragraphs and sub-paragraphs are to paragraphs and sub-paragraphs of these Terms of Reference.
- 17.7 These Terms of Reference are to be read and construed subject to the Articles and Clause 3 of the Memorandum and, in the event and to the extent of any conflict or inconsistency between the provisions of these Terms of Reference and the provisions of the Articles or Clause 3 of the Memorandum, the provisions of the Articles and/or such Clause 3, as the case may be, shall prevail and apply.