



# **Monitoring and enforcement of the requirements regarding Codes of Practice for Sales and Marketing**

Summary of activities under Ofcom's own-initiative  
enforcement programme: CW/00838/05/05

Publication date:

31 May 2007

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## Section 1

# Sales and Marketing Codes of Practice

- 1.1 From 26 May 2005, General Condition 14.5<sup>1</sup> requires Communications Providers (“providers”) who provide fixed-line telecommunications services and engage in sales and marketing activity, to establish, and comply with, a code of practice for sales and marketing in accordance with published guidelines.
- 1.2 Since the new obligations took effect, Ofcom has pursued an active enforcement programme to ensure compliance with GC 14.5.
- 1.3 The first phase of Ofcom's programme was an information gathering exercise in order to determine whether after the introduction of General Condition 14.5 providers had established codes of practice for sales and marketing (“codes”) and, if so, whether these codes conformed to Ofcom's published guidelines.
- 1.4 Ofcom analysed over 35 individual providers' codes to determine whether those codes conformed with the guidelines, published in annex 3 to GC14. Of the 35 codes submitted, Ofcom concluded that only three conformed; the remainder being deficient in some way.
- 1.5 In light of this, Ofcom wrote to each provider to explain the reasons why, in Ofcom's view, the codes did not conform with the guidelines. In this way, Ofcom was able to secure the necessary changes to all these codes without the need for further enforcement action.

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<sup>1</sup> General Condition 14 was further amended following consultation by the Notification of Modification to a General Condition “Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services” published by Ofcom on 19 April 2006, which entered into force on 19 June 2006. As a result, the obligations relating to establishing and complying with a code of practice for sales and marketing pursuant to General Condition 14.3 are now imposed by General Condition 14.5. The obligations have not changed, though the numbering in General Condition 14 has. Further references to the obligations in General Condition 14.3 and General Condition 14.5 in this explanatory statement will be referred to as “GC 14.5” for ease of reference, though any references to the operation of these obligations prior to 19 June 2006 will be in respect of General Condition 14.3.

## Section 2

# Monitoring of Sales and Marketing Activity

2.1 The next phase in Ofcom's programme was to actively monitor the extent to which providers were compliant with their codes, with a view to taking further enforcement action in individual cases should it be necessary. The two measures used to monitor compliance are set out below.

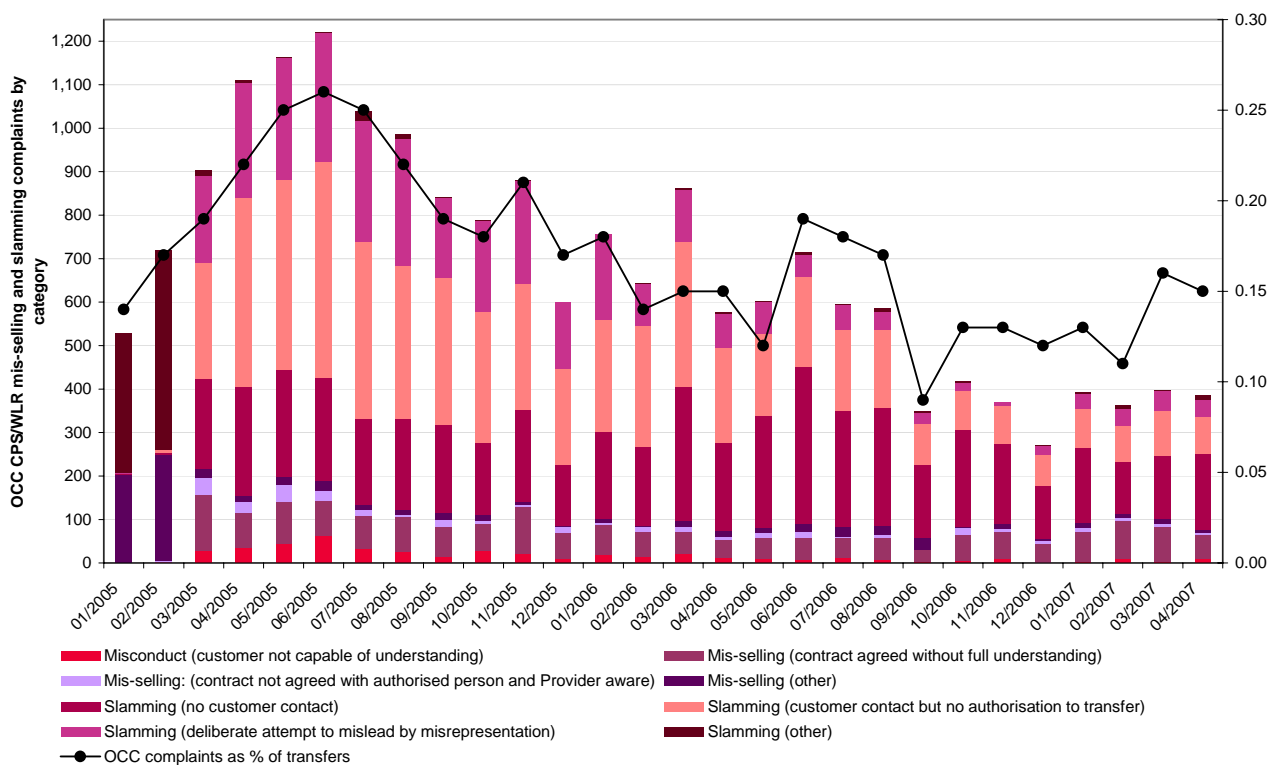
### Ofcom's own mis-selling complaints

2.2 Ofcom's Contact Centre ('OCC') is the team within Ofcom responsible for dealing with complaints and enquiries from members of the public. OCC collects data that enables Ofcom to monitor trends and take action where appropriate to address issues of concern to consumers. Consumers can contact OCC by phone, letter, e-mail or by completing an on-line form on Ofcom's website.

2.3 OCC records all reported complaints from consumers regarding alleged unfair sales and marketing practices, including mis-selling and slamming. OCC then generates a unique record for each contact and those records are assigned to various categories depending on the nature of the complaint or enquiry. The same categories are used for LLU mis-selling (and slamming) complaints.

2.4 This complaints data is then assessed in the aggregate, together with the 'Cancel Other' data (see below) and used to help inform Ofcom's investigations programme.

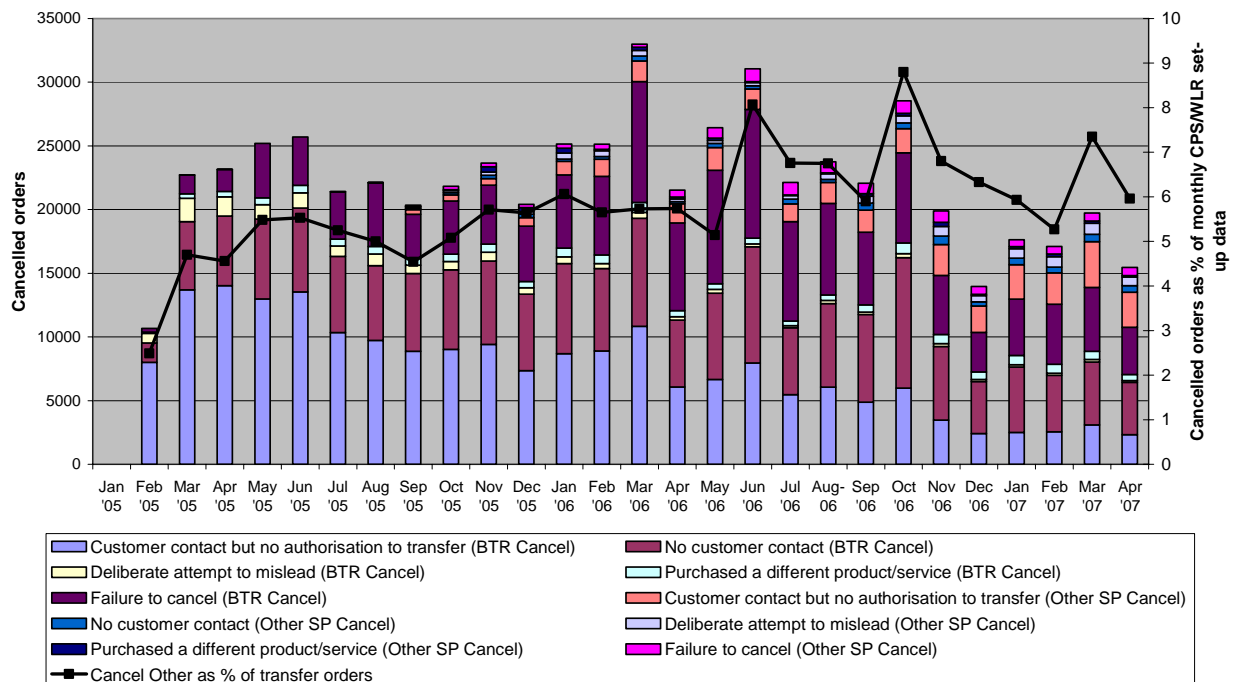
Fixed-line telecommunications mis-selling complaints received by Ofcom as a proportion of monthly transfers



### Industry 'Cancel Other' (slam) reason codes

- 2.5 'Cancel Other' is the industry term for a functionality that enables the Losing Provider to cancel orders placed by Gaining Providers for CPS and WLR during the switchover period. Ofcom considers that 'Cancel Other' plays an important role as a consumer protection mechanism by ensuring that customers are able to cancel orders where they have been slammed.
- 2.6 In accordance with a Direction published by Ofcom on 21 January 2005, as amended on 28 July 2005, concerning British Telecommunications PLC's ('BT') use of Cancel Other, stricter rules were introduced as to when BT is permitted to use Cancel Other and what information it must provide to its competitors about its use of Cancel Other. While the Direction is binding on BT only, Ofcom expects that the specified uses of Cancel Other would apply uniformly.
- 2.7 Under the new Direction, BT is only permitted to use Cancel Other in cases of slamming, to prevent a customer from being transferred as a result of another Provider's failure to action that customer's request to cancel their transfer and where a BT account is closed before a CPS or WLR order has matured ('line cease').
- 2.8 The Direction also includes requirements relating to information to be provided to competitors about use of Cancel Other, and the Direction requires that full records of any contact between individual customers and the Losing Provider relating to the use of Cancel Other are made available, on reasonable request, to the Gaining Provider. This includes the use of reason codes for all canceled orders in line with specific categories.
- 2.9 For the purpose of Ofcom's investigations programme into compliance with GC14.5, Ofcom only takes into consideration the reason codes which relate to slamming.

Cancel Other (slam) as % of monthly CPS/WLR set-up data



## Section 3

# Investigations

- 3.1 Since the enforcement programme commenced, Ofcom has concluded investigations into 6 separate Providers. In addition, Ofcom is currently conducting investigations into the activities of four further Providers, namely Post Office Ltd, Universal Utilities PLC (trading as Unicom), Tesco Stores Ltd (trading as Tesco Telecoms) and Economy Calls Ltd. A brief review of each of these investigations is set out below.

### **FreeCall UK Ltd (“FreeCall”) and Orb Communications Ltd (“Orb”)**

- 3.2 Ofcom opened this investigation following more than 600 complaints from consumers and small businesses about fixed-line telecommunications mis-selling by FreeCall and Orb.
- 3.3 Enforcement action was taken under the GC 14.5(a) for failure to establish, and maintain, a code of practice for sales and marketing, and Part 8 of the Enterprise Act 2002 (specifically the Unfair Terms in Consumer Contracts Regulations 1999, Consumer Protection (Distance Selling) Regulations 2000 and the Control of Misleading Advertising Regulations 1988) in order to address ongoing consumer protection issues which included mis-selling.
- 3.4 Full details of Ofcom's findings can be found [here](#).

### **Universal Telecom Limited**

- 3.5 Ofcom opened this investigation following complaints from small businesses about fixed-line telecommunications mis-selling by Universal Telecom Ltd (company number 03513467), a Provider based in High Wycombe.
- 3.6 Evidence gathered as part of Ofcom's investigation suggested that Universal Telecom Ltd had failed to comply with the requirement to establish, and maintain, a code of practice for sales and marketing under GC 14.5(a).
- 3.7 Full details of Ofcom's findings can be found [here](#).

### **Just Telecomms UK Ltd (“JTUK”) trading as Lo-Rate Telecom**

- 3.8 Enforcement action was taken under GC 14.5(b) for failure to comply with the requirements of its code of practice. As part of its own investigation into the sales activities of JTUK, Hertfordshire County Council Trading Standards entered the premises of JTUK under warrant and were able to obtain and subsequently provide Ofcom with very strong evidence of endemic mis-selling.
- 3.9 Ofcom's investigation followed more than 800 individual complaints from small business customers of JTUK. Ofcom concluded there were reasonable grounds to believe that JTUK had engaged in conduct which included:
- i) misleading potential customers into believing that JTUK is part of BT or is affiliated with BT;
  - ii) demanding early termination charges of up to £395 + VAT per line when customers realise they have been misled and try to cancel their service; and

iii) disconnecting or threatening to disconnect service if these termination charges were not paid.

3.10 Full details of Ofcom's findings can be found [here](#).

### **Platinum Telecom UK Ltd (“Platinum Telecom”)**

3.11 Ofcom issued a Notification under section 94 of the Act to Platinum Telecom regarding breaches of GC 14.5(b) by failing to comply with the provisions of its code of practice by:

i) failing to ensure that copies of its code were available free of charge in various formats on request, including via its website;

ii) failing to respect a person's wishes where they had registered with any relevant preference service, including the Mailing Preference Service, the Telephone Preference Service, the Fax Preference Service and the E-Mail Preference Service;

iii) failing to ensure that their representatives were immediately identify themselves, the company name, the purpose of the call and how long it should take; and

iv) failing to ensure that where customers entered into a contract that they fully understood the terms.

3.12 Full details of Ofcom's findings can be found [here](#).

### **XLN Telecom Ltd (“XLN Telecom”)**

3.13 Ofcom's investigation into XLN Telecom found that there were reasonable grounds to believe that XLN Telecom had breached Ofcom's rules concerning sales and marketing activity by failing to comply with its code of practice.

3.14 Specifically, XLN Telecom had failed to comply with the provisions of its code by:

i) failing to ensure that on making contact, representatives stated clearly that they represent XLN Telecom and offer only factual and accurate information about XLN Telecom's services and contracts, and not misrepresent its services or those of other companies;

ii) failing to ensure that customers entering into a contract fully understood the terms, in particular the length of the contract and the level of the termination fee for terminating the contract within the term;

iii) failing to ensure that the person entering into a contract with XLN Telecom were authorised to sign a contract for services and be responsible for bills at the premises in question;

iv) failing to ensure that XLN Telecom terminated contracts without charge where customers had not understood the contract they entered into or had not agreed to a service transfer;

v) failing to ensure that all sales agents working on behalf of XLN Telecom acted responsibly by conducting recruitment and training according to strict procedures;

and

vi) failing to ensure that the company's remuneration systems were designed to discourage misleading sales practices.

3.15 Full details of Ofcom's findings can be found [here](#).

### **Scottish and Southern Energy ("SSE")**

3.16 Ofcom received a complaint from BT, that during September 2006, SSE had written to its existing 'talk' customers (i.e. customers who had signed up to SSE's calls-only telephone service) informing them that their retail line rental service would be transferred from BT to SSE unless the customer contacted SSE to object. BT's view was that placing orders on such terms would equate to "slamming" as the customer has not provided their explicit consent to the transfer.

3.17 Ofcom closed this case, concluding that SSE failed to obtain express positive consent from all its customers before placing transfer orders, contravening the requirements of the sales and marketing Code of Practice that SSE is required to establish and comply with under GC 14.5.

3.18 Full details of Ofcom's findings can be found [here](#).

### **Post Office Ltd (under investigation)**

3.19 Ofcom opened this investigation following complaints from consumers who claimed to have been mis-sold the 'HomePhone' fixed-line telephone service by the Post Office or have had their service switched without their consent.

3.20 Ofcom's investigation is examining whether the Post Office has complied with the requirements of its code of practice.

3.21 Further details on this investigation are available [here](#).

### **Universal Utilities PLC trading as Unicom (under investigation)**

3.22 Ofcom has opened this investigation following complaints from consumers who claim to have been mis-sold their fixed-line telephone service by Unicom or have had their service switched without their consent.

3.23 Ofcom's investigation is examining whether Unicom has complied with the requirements of its code of practice.

3.24 Further details on this investigation are available [here](#).

### **Tesco Stores Ltd trading as Tesco Telecoms (under investigation)**

3.25 Ofcom opened this investigation following a significant increase in the number of Tesco Telecoms' orders cancelled using the 'Cancel Other' process.

3.26 Ofcom has also received complaints from consumers who allege they were mis-sold Tesco Telecoms' fixed-line telephone service. Complainants also allege that Tesco Telecoms failed to cancel orders on request and/or that consumers were forced to contact their existing supplier to prevent the transfer of service to Tesco Telecoms.

3.27 Further details on this investigation are available [here](#).

**Economy Calls Limited (under investigation)**

3.28 Ofcom has opened this investigation following an increase in the number of Economy Calls' orders being cancelled using the 'Cancel Other' process.

3.29 Ofcom has also received complaints from small business customers who allege, amongst things, that they were mis-sold Economy Calls' fixed-line telephone service, their fixed line telephone services were transferred without consent and/or that Economy Calls failed to cancel orders on request.

3.30 Further details on this investigation are available [here](#).

## Section 4

# Policy Initiatives

- 4.1 The formal investigation and enforcement actions mentioned above have secured significant changes to behaviour to ensure consumers are protected. However, in addition Ofcom has also undertaken a programme of work to tackle industry-wide practices related to failures in compliance.
- 4.2 Ofcom met with a number of providers to discuss best practice and made suggestions for where further action or amendments to existing processes could be made to ensure greater compliance.
- 4.3 Where there have been issues around performance Ofcom has also communicated specific targets for better performance allowing providers an opportunity to get their 'house in order'. Ofcom has maintained an ongoing dialogue with the better performers in the market to understand best practice as we seek to continue to drive compliance.

### The 'sunset clause'

- 4.4 The revision of GC14 included a 2 year 'sunset clause' under which the regulatory obligations that it imposed in relation to mis-selling obligations were due to end on 25 May 2007.
- 4.5 On 8 February 2007 Ofcom published its consultation on protecting consumers from mis-selling of telecommunications services. The consultation (which closed on 18 April 2007) considered whether mis-selling of fixed-line telecommunications services has been addressed over the last two years to such an extent that it is appropriate to remove current regulatory obligations or whether it remains a problem that requires continued regulatory intervention by Ofcom.
- 4.6 In light of the comments received in response to the consultation and, in particular evidence that levels of mis-selling in the fixed line telecommunications sector remain unacceptably high, Ofcom has decided to retain the obligations on Providers to establish, and comply with, codes of practice for sales and marketing activity in accordance with published Ofcom guidelines.
- 4.7 Ofcom is also extending the obligations to cover services offered on full LLU. As set out in the statement, *Protecting consumers from mis-selling of telecommunications services* published on 21 May 2007<sup>2</sup>, the process for switching to, from and across, full LLU is identical to that of fixed-line telecommunications, as it works on the basis of customers being notified that they are being transferred through letters from the losing and gaining providers.

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<sup>2</sup> <http://www.ofcom.org.uk/consult/condocs/misellingprotection/statement/>

## Section 5

# Case Closure

- 5.1 In light of the ending of the sunset clause and the changes to the GC 14.5, Ofcom is closing this investigation into monitoring and enforcement of the requirements regarding codes of practice for sales and marketing.
- 5.2 A new investigation will be opened which will continue to monitor compliance with GC 14.5, including services offered on full LLU. This investigation will also be extended to include monitoring of compliance with General Condition 1.2 which deals with obligations in relation to use of information obtained during negotiations for Network Access . Further information about the new investigation can be found here [http://www.ofcom.org.uk/bulletins/comp\\_bull\\_index/comp\\_bull\\_ocases/open\\_all/cw\\_960/](http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_960/)