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From  
The London Trading Standards Authorities Group

To  
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By Email 29 April 2008

## OfCom Consultation: Protecting consumers from mis-selling of mobile telecommunications services

Since mobile phone use amongst the general populous has increased enforcement and advisory services have received increasing levels of complaints concerning mis-selling, cash back offers and slamming.

Trading Standards Services in the London Region have clear evidence that consumers are rarely compensated in cash back complaints but the market continues to be flooded with such offers

The new proposal by OFCOM seeks to introduce a new General Condition on sales and marketing practices that will apply to all mobile phone providers. However this is in addition to the Code of Conduct which OFCOM accept has not been 'uniformly applied' and has therefore been of limited effect as far as consumer protection is concerned.

### 1) Consumer Redress

Presently, there is no protection for consumers when cash back offers are not redeemed: airtime suppliers disassociate themselves from the retailers when consumers are unable to redeem cash back claims. There is evidence that this situation has been tolerated even in cases where there is a clear contractual link between the airtime suppliers and the retailers.

In our view, this situation will remain unchanged because the proposed General Condition does not address this aspect of consumer detriment.

### 2) Responsibility

Presently there is no duty on airtime suppliers to cancel disputed contracts which has led to consumers running up debts. Where contracts have been cancelled, this has been on a goodwill basis. Airtime suppliers are inconsistent in their approach.

LoTSA is concerned that the new General Condition will neither address this situation nor place any responsibility on airtime suppliers with regards to disputed contracts. Unless airtime suppliers are made responsible for retailers, consumers will continue to suffer financial and emotional distress

### 3) Equality issues

The question of how the law relating to mobile phones impacts on different groups does not appear to have been addressed in the proposals.

The use of a mobile phone is a way of life used without exception in all London communities. If transparency is the aim with contracts and terms and conditions then reaching those groups who are vulnerable is vital.

There is evidence that certain ethnic minority Groups, for whom English is a second language, are targeted by mobile phone retailers. For example, the problem is acute in the London Borough of Tower Hamlets, which has the highest percentage of residents of Bangladeshi origin in the UK.

Groups such as these may need more protection, such as retail information regarding incentives being made available in languages other than English.

An Equality Impact Assessment should be carried out as to the effect of the proposals.

#### **4) Complaints**

The proposals require mobile providers to have in place a complaints handling system for consumers.

However, there is no clarity as to how or to whom complaints can be escalated by the consumer if their complaint is rejected by the mobile operators.

It is in our view desirable in the interests of fairness for consumers to have the opportunity of seeking independent arbitration where appropriate.

#### **5) Conclusion.**

- Incentives will always play a huge part in attracting customers, and cash back schemes will continue to be a significant attraction for consumers.
- If consumers are to be protected from problems currently arising with regard these schemes, then more robust measures than those currently proposed will be needed.
- The proposal of a new general Condition adds little to the present voluntary code of practice and is therefore unlikely to be of significant benefit to consumers.
- An Equality Impact Assessment should be considered to measure the differing impact of the present and proposed consumer protection measures on different community groups.

Yours sincerely

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