

## LETTER TO PROVIDERS OF MOBILE PHONE SERVICES

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Dear Sir/Madam

### Mobile bill limits implementation

We are writing regarding the new legal obligation on mobile providers to offer bill limits to customers from 1 October 2018.

Section 124S of the Communications Act 2003 ('the Act'), which comes into force on 1 October 2018, requires providers of mobile phone services to give customers the ability to limit the cost of their bill and to notify customers when that limit is likely to be reached. The legislation requires that a bill limit is offered to all customers taking out a mobile phone contract on or after 1 October 2018 and to all customers renewing any existing contract from this date. These customers must also be permitted to specify, amend or remove a bill limit on reasonable notice at any time. A customer's limit can only be exceeded with their express consent. If a service continues to be provided without this consent, the provider is prohibited from billing the customer for any charges for the service after the limit is reached.

Ofcom is responsible for enforcement of the bill limit obligation under section 124T of the Act. Our [enforcement guidelines](#) will apply in respect of any enforcement action that we take.

Based on our initial discussions with industry stakeholders, we have not identified any issue where further consultation about our enforcement approach or detailed guidance is needed at this stage. However, to assist providers implementing this obligation, Annex A sets out our understanding of how the legislation will work in practice.

Annex B sets out draft FAQs for consumers. We intend to publish a final version of these on our website prior to the bill limit obligation coming into force on 1 October 2018.

If you have any questions about implementing this obligation, please contact Camille Seldon by email on [camille.seldon@ofcom.org.uk](mailto:camille.seldon@ofcom.org.uk).

Yours sincerely,



Lynn Parker

## **Annex A: Requirement on providers to offer bill limits under s124S of the Communications Act**

### **Obligation to offer bill limits**

Providers of mobile phone services must not enter into a contract unless the customer has been given an opportunity to specify a bill limit (s124S(1)).

Providers should have adequate checks and processes in place to ensure that they, and any third party intermediaries acting on their behalf, give customers an opportunity to specify a bill limit before entering into a contract.

### **‘Customer’**

This term has broad application under section 124S, comprising both individual and business customers. The only exception identified under section 124S(10) is that a customer *“does not include a person who is a customer as a communications provider”*.

Providers must offer bill limits to all new customers on or after 1 October 2018 (s124S(1)) and to any existing customer who agrees to extend their contract or enter into a new contract (s124S(8)) from this date. We welcome voluntary steps by providers to allow customers in existing contracts to specify bill limits, but note that this is not a legal requirement.

We note that some customers may have multiple accounts or have multiple phones linked to a single account (e.g. business customers or parents who are also responsible for their child’s account) and that these customers are likely to have differing needs, depending on their own circumstances. In such cases it may be appropriate to take a flexible approach to accommodate the customer’s preference as to how the bill limit should apply. For example, a business customer may want a bill limit to apply to a specific account or to apply across all accounts.

### **‘Mobile phone service’**

The legislation defines a mobile phone service as *“an electronic communications service which is provided wholly or mainly so as to be available to members of the public for the purpose of communicating with others, or accessing data, by mobile phone”* (s124S(10)). In accordance with s32(2) of the Act, an *“electronic communications service”* is *“a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service”*.<sup>1</sup>

In assessing whether any particular service being provided is a mobile phone service in relation to which a bill limit must be offered to the customer, providers should consider the following:

- (a) does the service in question consist in, or have as its principal feature, the conveyance by means of an electronic communications network of signals?;

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<sup>1</sup> See s32(1) of the Act for the meaning of *“electronic communications network”* and s32(7) for the meaning of *“content service”* and s32(8) and (10) in relation to *“signals”*.

if so, and providing it is not a ‘content service’,

(b) is it provided for the purpose of enabling the customer to communicate with others by mobile phone?; or

(c) is it provided for the purpose of enabling the customer to access data by mobile phone?

We expect providers to consider carefully the definition of a mobile phone service when determining what services are included within bill limits and to be clear and transparent in communications with customers about whether a specific service is covered.

We note that not all items that appear on a customer’s bill will be for services covered by the definition of a mobile phone service. Any items relating to services which are not covered will not count towards the customer’s bill limit. For example, charges associated with management of the customer’s account (e.g. fees for paper bills or late payment fees). Services provided by third parties are outside of the scope of s124S but we would expect the provider’s charge for accessing those services to be covered.

We note that providers have other responsibilities under General Condition C2.10-12<sup>2</sup> to provide domestic and small business customers with information and advice on request and free of charge relating to controlled premium rate services (PRS). We note that some providers already offer customers the ability to bar PRS and would encourage them to continue to do this as well as to think about what would most benefit customers when determining what services are covered by a bill limit.

#### **Types of bill limits and reasonable notice**

The legislation states that customers must be allowed to specify a bill limit “*on reasonable notice at any time*” (s124S(3)). It is open ended in terms of the amount of notice and the level of bill limit that a customer can request. For this reason, we consider that providers should consider carefully the needs of the customer requesting the limit.

We want to encourage providers to minimise the delay between a customer’s request and the bill limit taking effect as we consider that customers will benefit if a bill limit is effective immediately or soon after their request is made. We would **not** expect a reasonable notice period to be longer than a single billing period.

We understand that some providers may be considering the possibility of offering customers a range of bill limits to select from instead of allowing customers to specify *any* limit of their choosing. This is not provided for in the legislation which refers to the customer having an opportunity to specify a

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<sup>2</sup> General Condition C2.10-12 replaces GC 14 on the same date that s124S is brought into force (1 October 2018); see [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/106394/Annex-14-Revised-clean-conditions.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/106394/Annex-14-Revised-clean-conditions.pdf)

billing limit. However, from a practical perspective we recognise that this approach would help providers to manage the application of billing limits across their entire customer base. Nevertheless, it remains incumbent on providers to ensure that they comply with s124S(3). Ofcom would be concerned about any measures which risk undermining the mobile bill limits obligation in s124S(1). Providers should always therefore consider whether the choice of options offered is reasonable from the perspective of the customer. In Ofcom's view this would include ensuring that:

- customers can limit costs to their core subscription price for each billing period (i.e. a £0 bill limit);<sup>3</sup> and
- that they are offered a wide range of reasonable limits which would suit the needs of different customers (i.e. appropriate high and low limits with no substantial increase between any two bill limits within that range).

### **Written communication**

Providers must give customers written confirmation in the circumstances set out in s124S(7), that is, of:

- any decision by a customer to apply a bill limit or to subsequently amend or remove a bill limit; and
- any agreement to exceed a bill limit after being notified that they are nearing or have reached that bill limit.

We would expect the method of communication to reflect the contact preferences of the customer e.g. text message, letter or email.

### **Application of the bill limit where a customer is roaming**

We expect providers to be clear and transparent about when and how bill limits will apply to customers when using their mobile phone services abroad.

As there is no specific exclusion within the legislation, any bill limit will apply to mobile phone services used while a customer is roaming overseas if this is included within their contract. We consider that the mobile bill limits obligation in s124S and the data limit requirements in the Roaming Regulations<sup>4</sup> can complement each other to protect customers from bill shock. We expect providers to work through the various roaming scenarios to ensure that they meet both new and existing legal requirements from 1 October 2018.

Some providers have expressed concern about roaming services in some countries outside of the European Economic Area where, for technical reasons, there is a delay in the provider receiving

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<sup>3</sup> We note that a £0 bill limit does not affect a provider's ability to increase this core subscription price, subject to requirements about contractual modifications under General Condition C1.6-9 (GC 9.6 pre-1 October 2018). After notification of a price increase, a £0 bill limit would operate to ensure that customers were not charged beyond the new contract price.

<sup>4</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012R0531-20170615&qid=1498125473071&from=EN>.

usage information. The concern is that a delay may prevent providers from alerting customers that their limit may soon be reached or has been reached. The legislation appears to anticipate that it may not always be possible to notify customers immediately; s124S(4) states that the provider must notify the customer *“so far as practicable...in reasonable time if a limit is likely to be reached”* and *“as soon as practicable if a limit is reached”*.

In circumstances where there is a delay in receiving usage information, we consider it reasonable for providers to notify customers as soon as practicable after that provider receives the information. However, we note that providers cannot charge customers if a limit is exceeded in these circumstances without first notifying the customer and confirming in writing the customer’s agreement to exceed the limit (s124S(4), s124S(5) and s124S(7)(c)). Therefore, any costs caused by delay must be borne by the provider and **not** the customer.

## Annex B: Draft FAQs for consumers

[✂] Mobile providers can email [camille.seldon@ofcom.org.uk](mailto:camille.seldon@ofcom.org.uk) to receive a copy of the draft FAQs.

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