

# OFCOM CONSULTATION: REVIEW OF GENERAL CONDITIONS OF ENTITLEMENT - CONSULTATION ON THE GENERAL CONDITIONS RELATING TO CONSUMER PROTECTION

## FURTHER RESPONSE BY SKY

### EXECUTIVE SUMMARY

- 1.1 Sky submitted its initial response to Ofcom's consultation entitled 'Review of the General Conditions of Entitlement' published on 20 December 2016 ("**Consultation**")<sup>1</sup> on 14 March 2017. This submission provides a further response by Sky and comprises the following sections:
- Section 1: Billing requirements
  - Section 2: Complaints handling and access to ADR
  - Section 3: Measures to meet the needs of vulnerable consumers and end-users with disabilities
- 1.2 The Consultation proposes significant changes to the consumer protection aspects of the current general conditions of entitlement ("**General Conditions**" or "**GCs**"), culminating in a proposal to replace the General Conditions with a new set of conditions as set out in Annex 12 of the Consultation (the "**Revised GCs**").
- 1.3 Sky welcomes many of Ofcom's stated intentions for the review of the General Conditions including making the rules clearer, making it easier for CPs to comply, removing any redundant rules, and ensuring they remain fit for purpose for both consumers and CPs.
- 1.4 Sky is concerned that Ofcom's proposals in some cases fail to achieve its desired outcome and Ofcom is proposing changes which, far from making the rules clearer, would increase regulatory uncertainty, complexity and costs. Ofcom has considered opportunities for deregulation but come to the view that most of the consumer protection conditions are "*not good candidates for significant deregulation*". At the same time, Ofcom is currently proposing a significant extension to regulation in the policy areas of switching and automatic compensation which, taken together with the changes proposed in this Consultation, represent a significant overall increase in regulation.
- 1.5 It is important that the references to deregulation, clarity and simplicity in the Consultation, which are given such prominence, do not obscure what is actually happening at this time which is a series of proposals that will significantly increase the scope and complexity of regulation.
- 1.6 Ofcom's proposals are wide-reaching and constitute a number of significant modifications to the GCs and the introduction of new conditions, particularly in respect of complaints handling processes and vulnerable customers. In respect of a number of these proposals Sky is concerned that Ofcom has failed to fulfil its duties under section 3(3) of the Communications Act 2003 (the "**Act**"), to satisfy the test under section 47(2) of the Act and to apply its stated general regulatory principles of "*(a) operating with a bias against intervention, (but with a willingness to intervene firmly, promptly and effectively where required); (b) ensuring that our interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome; (c) always seeking the least intrusive regulatory mechanisms to achieve our policy objectives; and (d) intervening where there is a specific statutory duty to work towards a public policy goal which markets alone cannot achieve.*"

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<sup>1</sup> All references to paragraphs, figures, annexes and footnotes are to those in the Consultation unless stated otherwise.

## SECTION 1: BILLING REQUIREMENTS

### Proposal to extend the regulatory requirements for billing to fixed and mobile voice call and data services

- 1.1 Whilst Sky accepts that customer consumption of fixed line data services has increased in recent years, billing for data on the fixed network is very different than for voice services. Sky questions why it is necessary to extend the existing Metering and Billing Direction ("**Direction**") to data on the fixed network given that the purpose of the requirement is to ensure that customers have confidence in their bills because they cannot verify their own usage. This holds true for voice, where charges are generally on a per usage basis but fixed line broadband is usually charged as a flat fee. Sky considers that the extension of the Direction to data on the fixed line network imposes an unnecessary regulatory burden and is unjustified. Sky notes that this view was also the position Ofcom reached when considering the need to extend the scope of the Direction to cover fixed line broadband services in its statement on the revisions to the Direction published in July 2014<sup>2</sup>. Sky accepts that the position is different for mobile data consumption.
- 1.2 If, contrary to Sky's view, Ofcom is minded to extend the metering and billing accreditation requirement to include data services Sky considers that the implementation period should be 24 months in accordance with the Direction. This period is required not just for internal systems adjustments but also to cater for the availability of external accreditors which has been challenging in the past
- 1.3 Sky considers that in order to ensure streamlining across industry and reduce the potential for inefficient or inconsistent processes, there should be structured support on hand from Approval Bodies, with input from Ofcom, to scope out any changes required to introduce the data requirements.

### Access to adequate billing information

- 1.4 Ofcom proposes that communications providers ("**CPs**") offer consumers access to "adequate billing information"<sup>3</sup>. Sky would welcome clarification on what Ofcom means by "adequate". For example, would CPs be required to supply itemised individual data sessions to customers on the bill, or would a summary of a day's data consumption suffice in order to avoid lengthy bill statements?

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<sup>2</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0032/58838/statement.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0032/58838/statement.pdf)

<sup>3</sup> Paragraphs 6.33-6.36 of the Consultation

## SECTION 2: COMPLAINTS HANDLING AND ACCESS TO ADR

- 2.1 Excellent customer service is at the heart of Sky's business. When things do go wrong from time to time, Sky's focus is on treating our customers as individuals and ensuring the correct case management of customer issues and complaints; making sure that complaints are resolved in a timely manner. Sky welcomes any proposals which support those processes and goals.
- 2.2 We have a number of observations on Ofcom's proposed changes to GC14 and the new Code of Practice for Complaints Handling ("**New Code of Practice**") which we set out below.

### Channels to make a complaint

- 2.3 Given that reviews of the General Conditions are conducted only periodically, Sky considers that, as far as possible, this review should aim to "future-proof" the regulations. To that end, Sky considers that the channels by which consumers contact CPs to complain should keep pace with technological developments and also cater to customers with disabilities who may prefer to use messaging rather than the telephone. Online or SMS based messaging provides quicker responses for customers than email and allows customers a more interactive experience. Sky suggests that clause 4(c) in section 1 of the New Code of Practice ('Complaints Handling Procedures') should include an additional alternative channel in the form of online or SMS messaging; i.e. "*either an email address or an internet web page form dedicated to allowing Relevant Customers to lodge complaints or by online or SMS messaging*" (proposed new wording underlined).

### Definition of a complaint

- 2.4 Sky notes that Ofcom proposes to extend the definition of 'complaint' to include complaints about "*the level of customer service experienced by the Domestic and Small Business Customer*"<sup>4</sup>.
- 2.5 Sky considers that this extension of the definition has the potential to cause confusion for CPs and customers: for example, CPs would have to capture a complaint about a customer using an IVR or being put on hold. Instead of making this change, Sky considers that this review provides an opportunity to better inform customers of the constraints of the complaints resolution processes in some circumstances.
- 2.6 For example, a customer may complain that installation of their Sky Talk and Broadband service has taken too long but the reason for the delay is Openreach provisioning timeframes. Sky customer services have ensured that the customer expectations have been managed and the customer has been kept fully updated on timings. In these circumstances, Sky has done everything it can to manage the customer's needs but understandably the customer may feel aggrieved that they have still incurred delays to the installation of their service. However, the ability to resolve the complaint is not within Sky's control and referring the customer to the Ombudsman for redress will simply result in additional work for the customer, and the Ombudsman, but with no ability for the Ombudsman to resolve the complaint to customers' satisfaction either.
- 2.7 Sky considers that complaints processes should remain focused on failures by the CP i.e. where something has not happened or has gone wrong, rather than framing a complaint around the level of customer service experienced. Ofcom's proposals are incomplete and if they were to be implemented in their current form would give rise to uncertainty and

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<sup>4</sup> Paragraph 7.32 of the Consultation and definition of 'Complaint' in the New Code of Practice.

confusion for stakeholders. For example, would this then require the establishment of a minimum customer service level against which all cases would be assessed? or would CPs, ADR schemes and regulators be required to assess a case against the customer service experience expected from each individual CP, for example, would a 'no-frills service' CP have a lower experience expectation to assess against than another CP who offered a fuller, higher quality service experience? If so, such an approach would disincentivise the use of customer service experience as a differentiator in the market.

## Removal of deadlock letters

2.8 Sky notes that Ofcom proposes to remove the requirement for customers to request a deadlock letter, and replace it with an obligation on the CP to issue an ADR letter whenever a complaint reaches deadlock<sup>5</sup>, thereby essentially merging the current deadlock letter with the ADR letter.

2.9 The definition of an ADR Letter requires that letter to inform *"the Complainant that because the Complaint cannot be resolved to their satisfaction, they may exercise their right to take their Complaint to the ADR Scheme"*<sup>6</sup>. The merging of the ADR letter and deadlock letter presents problems for paragraph 12 of the New Code of Practice, which requires that:

*"The Regulated Provider must immediately issue an ADR Letter to the Complainant if the Complaint remains unresolved after 8 weeks have passed since the date on which the Complaint was first received, unless the Relevant Provider has already sent an ADR Letter in accordance with paragraph 11. above;"*

2.10 This means that in circumstances where a complaint is ongoing at 8 weeks, even though the CP and customer may still be in contact to resolve a complaint (if for example a customer has not answered calls to provide required information or has been holiday etc.), the CP will be required to send a letter to the customer advising that they are receiving this letter because *"the complaint cannot be resolved to their satisfaction"*. Currently, in these circumstances, Sky sends an ADR letter to the customer advising of their right to go to the Ombudsman but assuring the customer that we are still trying to resolve their complaint.

2.11 Sky also has concerns about the proposal in paragraph 9(a) of the New Code of Practice which requires that CPs keep complaints open until the 'Relevant Date', giving customers 56 days to say whether or not they are satisfied with the outcome of their complaint. This appears to contradict the principle of agreed closure set out in paragraph 15 of the New Code of Practice<sup>7</sup> because paragraph 14 of the New Code of Practice states that CPs can only close a complaint if (i) the customer has *"expressly agreed"* or (ii) an ADR letter has been issued or (iii) it is reasonable to consider the complaint to be frivolous or vexatious. The conflict arises in that the letter advising the outcome of the complaint investigation will have advised the customer that they have 56 days to let the CP know that the issue

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<sup>5</sup> Paragraph's 7.62 – 7.65 of the Consultation.

<sup>6</sup> Definition of ADR Letter in the New Code of Practice, bullet (d).

<sup>7</sup> *"The Regulated Provider must not close a Complaint unless:*  
*a. the Complaint has been resolved in accordance with the circumstances set out in paragraph 15. below;*  
*b. an ADR Letter has been issued to the Complainant in accordance with paragraphs 11 or 12 above; or*  
*c. it is reasonable for the Regulated Provider to consider the Complaint to be frivolous or vexatious."*

has not been resolved to their satisfaction. So, for example, the customer may have agreed to close the complaint but then decides that they are not entirely happy and they are under the impression that they have until day 56 to say whether they consider the complaint remains unresolved. Sky suggests that additional wording be added to paragraph 9a of the New Code of Practice to explain that the 56 day period ends if the customer agrees that the complaint has been resolved.

- 2.12 Sky also has concerns about the 56 day '*Relevant Date*' period. Ofcom will be aware that Mott Macdonald recommended a 28 day period for consumers to advise whether or not they are satisfied with an outcome in its report on facilitating Access to ADR published in September 2015<sup>8</sup>. Sky considers that extending this to 56 days unnecessarily prolongs the complaints process and we are not aware of any evidence that suggests that the Mott Macdonald recommendation no longer holds. Sky would therefore welcome sight of the evidence that has driven Ofcom to propose the need for this, seemingly unnecessary, extension.

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<sup>8</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/55534/access\\_to\\_adr.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/55534/access_to_adr.pdf), page 35, para. 8.

### SECTION 3: MEASURES TO MEET THE NEEDS OF VULNERABLE CONSUMERS AND END-USERS WITH DISABILITIES

- 3.1 Ofcom is proposing a significant extension to the scope of GC15 requiring CPs “to establish, publish and implement clear and effective policies and procedures for the fair and appropriate treatment of Consumers whose circumstances *may* make them vulnerable” (Sky emphasis). The definition of ‘vulnerable consumers’ is set out in Revised GC C6.3a as “Consumers who may be vulnerable due to circumstances, *including but not limited to*, age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement or divorce” (Sky emphasis).
- 3.2 The definition of ‘vulnerable consumer’ is extremely broad and is indicative only, as “*including but not limited to*” suggests that CPs and their customer-facing staff will need to assess whether a consumer *may* have a vulnerability that requires application of a specific policy and procedure. Furthermore, Ofcom has not set out what services or adjustments CPs are expected to make for “vulnerable customers.” Sky is concerned that this proposal would amount to an open-ended requirement to establish different customer service procedures for a variety of vulnerabilities which advisors would need to assess and record and which CPs would need to ensure were catered for with bespoke policies and procedures.
- 3.3 Sky notes that the proposal suggests that customers’ vulnerabilities may change according to circumstance and it is unclear to us how CPs would be able to identify the type of vulnerability that an individual customer may have from time to time and how this would be determined, stored, reviewed and kept up to date on customer management systems (a requirement of Revised GC6.3(c)).
- 3.4 In practical terms, Sky is unclear how advisors would be trained to be aware of policies or procedures for this broad range of vulnerabilities and how they would navigate conversations without causing offence, whilst attempting to comply with this new definition of ‘vulnerable consumer’. For example, would CPs be required to give training to advisors that if a customer happens to mention that they are divorced during a call, the advisor should proactively ask if the customer would like to be passed to a specialist team? Or should the advisor wait for the customer to mention divorce in the context of financial constraints? E.g. “I’m just divorced and finally I can get Sky Sports!”. Should the advisor ask if the customer requires specialist assistance or do they wait for customers to venture that they are vulnerable? Ofcom will appreciate that CPs will want to ensure that staff are trained accordingly in order to comply with the broader definition but this issue is fraught with sensitivities and potential pitfalls which could cause serious embarrassment and offence to customers and will put advisors in an unenviable position – trying to do the right thing but risking a very awkward customer experience.
- 3.5 The Revised GC C6 proposes a number of very specific requirements for CPs to fulfil in order to comply with the Revised GC6.2, “such policies and procedures must include, *as a minimum*:
- a) *practices for ensuring the fair and appropriate treatment of Consumers who may be vulnerable due to circumstances, including but not limited to, age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement or divorce;*
  - b) *the reasonable steps that will be taken to identify Consumers who may be vulnerable;*
  - c) *in respect of those Consumers that the Regulated Provider has identified as being in circumstances that make them vulnerable, how information about their needs will be*

*recorded and the different channels by which these Consumers will be able to make contact with, and receive information from, the Regulated Provider;*

*d) how all staff are made aware of the policies and procedures and appropriately trained, including (if applicable) how to refer Consumers to specialist teams or members of staff who have received additional training; and*

*e) how the impact and effectiveness of the policies and procedures are monitored and evaluated.” (Sky emphasis)*

3.6 These specific requirements suggest that having a common sense approach to treating customers as individuals will not be sufficient to comply and this causes Sky serious concern. Sky is committed to its customers and is eager to provide an enhanced service for those who are genuinely vulnerable. Sky strives to do the right thing for all its customers as individuals but we consider that Ofcom’s proposals have the potential to cause at best confusion, and at worst, offence. Sky suggests that before any proposals are finalised for vulnerable customers Ofcom provides an opportunity for CPs across the industry to assess and discuss what might be possible in *real* terms.

3.7 The current GC15 is clear. CPs understand the specific adjustments that are required for specific disabilities (e.g., Braille communications or text relay etc.). Sky already has processes in place which cater for customers when they indicate themselves that they have specific needs and we always strive to treat our customers as individuals in any event. If Ofcom is concerned that the needs of specific groups are not being understood, managed or met, then Ofcom should make this case and focus any proposal for any changes on these groups. After all, it is in the interest of all CPs that its customers are well served.

**Sky**

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