

Ofcom's Guidance under General Condition C1 – contract requirements

1. This document sets out Ofcom's guidance under General Condition C1 (condition C1) in three specific areas:
 - a. Condition C1.3 - Conditions and procedures for contract termination;
 - b. Condition C1.3 - Automatically renewable contracts; and
 - c. Conditions C1.6-1.9 - Contractual modifications.

Condition C1.3 - Conditions and procedures for contract termination under

2. This guidance does not form part of condition C1.3. Its purpose is to assist Communications Providers (CPs) to comply with the minimum requirements of condition C1.3 by outlining Ofcom's likely approach to investigating whether certain conditions or procedures for contract termination comply with condition C1.3. It is not an exhaustive list of the types of conditions or procedures that Ofcom may consider under condition C1.3.
3. We have also included some examples of what we consider to be good practice, identified through our monitoring and enforcement work. CPs may choose to adopt these, or similar, practices.
4. The guidance is not binding on Ofcom and while we will take it into account, we will determine compliance with condition C1.3 on the basis of the individual circumstances of any given case. However, where we decide to depart from the guidance, we expect to give reasons for doing so. Words and expressions used in condition C1.3 shall have the same meaning when used in this guidance.

Conditions or procedures for contract termination acting as a disincentive for End-Users against changing their CP

5. We consider that "*conditions or procedures for contract termination*" should be interpreted broadly. In particular, we consider that, as well as covering industry practices and a CP's contractual conditions, a CP's internal processes may also be procedures that potentially provide a disincentive to switch providers. Such internal processes need not necessarily be in writing, as it is their effect that is relevant, rather than their form. In addition, we consider that behaviour of individual customer service agents that is inconsistent with a CP's written or established conditions or procedures could itself amount to a breach of condition C1.3 in certain circumstances; for example, if it demonstrated a failure by the CP to have sufficient procedures in place to ensure agents are properly trained, or for monitoring their compliance with the internal procedures.

6. We consider that to act as a “*disincentive*” a condition or procedure does not necessarily have to prevent an end-user from terminating (although it may do so). A condition or procedure could cause unreasonable effort, hassle or undue difficulty when seeking to terminate a contract such that it acts as a disincentive for an end-user even if that end-user ultimately still completes a switch of provider.
7. We recognise that some end-users contacting CPs about ending their services will have chosen to do so in order to have a conversation about any offers or options available to them and to take advantage of any discounts that the CP might provide as a result of those conversations. This can be beneficial to the consumers concerned, and we are not seeking to prevent these conversations for those end-users who wish to have them. However, we are also aware that other end-users want to terminate their services without having these conversations and in those circumstances prolonged retention activity may act as a disincentive. CPs should consider the needs of these end-users within their conditions and procedures to ensure that they do not act as a disincentive against changing CP.

Contractual conditions and procedures for ending a contract

Communication options and accessibility of contract termination procedures

8. CPs should offer a range of communication options for end-users to terminate their contracts.
9. The full range of communication options should be clearly and prominently displayed on a CP’s website, along with information about the steps required to end a contract.

Good practice in this area includes:

- (a) To reflect different end-users’ preferences and needs, offering options to end-users to terminate contracts which include both ‘real-time’ and ‘non-real-time’ communication options. For example, by phone and/or webchat, where the end-user would speak directly in real-time to a customer service agent or using non-real-time options, such as by letter, email or via an online account, where they do not need to speak directly to the CP.*
- (b) Details of each communication option (i.e. phone number, email address, link to online accounts etc.) and how and when these can be accessed could be listed on a dedicated “terminations” page on a CP’s website.*

Identification and verification procedures

10. Where CPs need to verify the identity of an end-user prior to their contract being terminated, these verification procedures should not themselves act as a disincentive to switch providers.

Good practice in this area includes:

- (a) making end-users aware if they will need to provide information to verify their identity before their termination request will be processed.*
- (b) being clear about the types of identification information that the end-user will need to provide before their contract will be terminated.*
- (c) ensuring that any verification procedure relating to contract termination is the same as required to make any other substantive change to an end-user's account (e.g. a change requiring an additional financial commitment, such as an upgrade or contract renewal).*
- (d) adopting identification and verification procedures that are consistent with the communication option that the end-user has selected to make their termination request. For example, if an end-user has made a non-real-time request, then the CP could have procedures in place to verify the end-user's identity in the same way or obtain the end-user's consent to verification via a different method.*

Maximum notice periods

- 11. Subject to any maximum technical limits or other regulatory requirements,¹ CPs should allow end-users to reasonably give more than the minimum period of notice.
- 12. CPs' conditions or procedures should not suggest that exact notice must be given by end-users.

Good practice in this area includes CPs clearly referencing any maximum notice period and the ability of end-users to be able to give more than the minimum notice period in their internal guidelines for customer service agents.

Internal processes for customer service agents handling termination requests

- 13. As noted above, we recognise that CPs are likely to wish to seek to retain end-users that express an intention to switch providers, usually through a conversation (referred to throughout this guidance as "a retention conversation"). We note that some consumers will welcome a retention conversation, while others will not.
- 14. Where the retention conversation occurs, we expect CPs to have procedures in place to ensure that:

¹ The changes introduced in our Mobile Switching Statement prohibited the charging of notice periods beyond the day on which the switch occurs (with effect from 1 July 2019). See Ofcom, *Consumer Switching: Decision on reforming the switching of mobile communications services*, 19 December 2017

https://www.ofcom.org.uk/_data/assets/pdf_file/0023/108941/Consumer-switching-statement.pdf

- i) customer service agents' incentive schemes do not encourage poor agent behaviour that constitutes or otherwise gives rise to a disincentive for the customer to switch.
- ii) end-users' intentions are recorded and actioned correctly.
- iii) customer service agents understand what retention activity is appropriate, particularly in circumstances where it is evident that an end-user does not want to have a retention conversation.

Good practice in this area includes:

- (a) incentive schemes that do not: (i) penalise customer service agents for terminating contracts in response to an end-user's request or for correctly identifying that an end-user does not want to have a retention conversation; nor (ii) reward customer service agents for failing to process termination requests.*
- (b) sending written confirmation to end-users once a termination request is processed.*
- (c) ensuring customer service agents make clear notes on an end-user's file about any retention conversation or offers made so that they can be accessed, and taken account of, by other agents.*
- (e) clear internal guidance, regular briefings and ongoing training for agents about how to identify if an end-user making a termination request wants to do so without having a retention conversation, and what is appropriate retention activity in these circumstances. For example, making clear that in circumstances where an end-user does not want to have a retention conversation, the agents understand it is not appropriate to engage in any further retention activity and that they should instead promptly process the request.*
- (f) specific procedures in place for end-users who have made non-real-time requests as, given their preferred communication option, these end-users may be more likely to not want to have a retention conversation.*
- (g) monitoring and quality assurance processes in place to ensure that their conditions or procedures do not act as a disincentive to switching. Advisors who fall short of the behaviours required of them are subject to an appropriate disciplinary process.*
- (h) clear written internal policies and processes for customer service agents handling termination requests (e.g. training and briefings) and regular reviews of these to ensure changes are made as required. For example, if a pattern of poor behaviour is identified via monitoring procedures, CPs then take steps to ensure that it does not occur in the future, and any necessary changes are made to their internal policies and processes, including guidance, training and quality assurance procedures.*

Condition C1.3 - Automatically renewable contracts

15. This guidance, which does not form part of condition C1.3, sets out how we are likely to apply this condition. Condition C1.3 prohibits the use of Automatically Renewable Contracts (ARCs) in the provision of fixed voice and fixed broadband services to residential Consumers and Small Business Customers (together ‘customers’ for the purposes of this Guidance). A fixed commitment period is the period beginning on the first day a contract takes effect and ending on a day falling no more than 24 months thereafter (condition C1.4). These provisions mean that CPs cannot roll forward (or automatically renew) a customer contract to a new fixed commitment period following the expiry of an initial or subsequent fixed commitment period without having obtained the Express Consent of the customer.

‘Informed choice’

16. ‘Express Consent’ is defined as follows:

“Express Consent” means the express agreement of a Domestic or Small Business Customer to contract with a Communications Provider in relation to each Fixed Commitment Period, where the Communications Provider has obtained such consent separately for each Fixed Commitment Period in a manner which has enabled the Domestic or Small Business Customer to make an informed choice;

17. The requirements of this definition are clear. However, we think it is important to clarify that the timing of Express Consent and method by which it is obtained are important in order for customers to be able to make an informed choice.

Method and timing for obtaining Express Consent

18. Where Express Consent is given for a fixed commitment period initiated by a customer, we think it is likely to be reasonable for it to be given at any time in the process.
19. In all other circumstances, CPs should ensure that customers have sufficient time to properly consider the deal they are being offered (including, for example, allowing them time to consider the market more generally) before setting deadlines requiring them to opt in to a further fixed commitment period.
20. We have not set out specific time frames with which CPs must comply, however, there are certain types of behaviour that are unlikely to satisfy the requirements of condition C1.3. These include (but are not limited to) the following examples where:
- i) A CP has asked a customer to provide a “one off” consent which purports to cover all fixed commitment periods that that Consumer or Small Business Customer may subsequently enter into (“stacking”);
 - ii) Consent is sought at a time which is too far in advance of the ending of the fixed commitment period for a customer to reasonably know what other offers may be available at that time;

- iii) A CP contacts a customer either on the day that their fixed commitment period is due to expire, or very shortly before that day, and requests their consent to enter into a further fixed commitment period in circumstances where that customer has not been given an opportunity to consider what other offers may be available.
21. We expect CPs to have reasonable steps in place to prevent stacking and to ensure reasonable and appropriate timing for obtaining Express Consent. Therefore, other things being equal, it is generally likely to be reasonable for Express Consent to be obtained by CPs no sooner than six months before the end of each fixed commitment period.

Small Business Customers

22. The definitions of a Domestic and Small Business Customer and Domestic or Small Business Customer for the purposes of condition C1.3 are consistent with the definition of Domestic and Small Business Customer in Section 52(6) of the Communications Act 2003 which is reproduced here for ease of reference.²

“Domestic and Small Business Customer” means, in relation to a Communications Provider, a Customer of that Provider who is neither:

- (a) himself a Communications Provider; nor*
- (b) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise).*

23. This means that the prohibition in condition C1.3 applies to small business customers with 10 or less employees (the ‘10 employee threshold’).
24. We recognise that it may, at times, be difficult to identify whether or not a customer has 10 employees or less. CPs have informed us that they do not routinely collect or hold information about the number of employees of their business customers. Furthermore, employee numbers can fluctuate over short timescales. We accept, therefore, that estimates as to whether or not a customer falls within the 10 employee threshold may not be precise.

Approach to Enforcement

25. We note that other regulatory requirements also apply to small business customers as defined by Section 52(6) of the Act. For example, condition C4 requires that an alternative dispute resolution (ADR) scheme be made available to small business customers. We note also that we have indicated elsewhere that we will take a pragmatic and flexible approach to compliance monitoring and enforcement for these requirements. For example, in guidance on condition C4 we said “...we would be satisfied if, rather than having to contact the

² The General Conditions contain two definitions which broadly mirror the statutory definition of “Domestic and Small Business Customer”: the definition of “Domestic and Small Business Customer”/“Domestic or Small Business Customer” that includes customers that are consumers and customers that are small businesses, and the definition of “Small Business Customer” that applies to small business customers only.

Complainant to determine whether they have ten or fewer employees (and is therefore potentially 'eligible' to take a case to ADR), a CP instead had reasonable processes in place for determining whether business customers are likely to be small businesses for the purpose of this obligation (for example, making an assessment based on annual communications expenditure of that customer)."³

26. We will take an approach consistent with this to enforcement of condition C1.3. In assessing compliance, we will consider whether CPs have taken reasonable steps to identify business customers to whom the prohibition applies. For example, they may (but not be limited to):
- i) Identify the size of the business by the annual communications spend and ensure that packages without ARCs are targeted to low spending small business customers.
 - ii) Identify the size of the business by the number of lines it has, and ensure that packages without ARCs are targeted to small business customers with few lines.
 - iii) Ensure that where customers self select an ARC (for example, by purchasing online), they may easily identify themselves as being 'eligible' for an ARC.
27. In addition, in assessing compliance, we will expect CPs to take reasonable steps to inform staff and existing ARCs customers affected by the amendments to condition C1.3 of these new regulations. For example, CPs may:
- i) Ensure that sales staff are comprehensively briefed on the regulations.
 - ii) Provide clear information to customers about the regulations on ARCs.
 - iii) Ensure that sales scripts and contract negotiations include necessary information about, for example, migration process, key dates and charges, and any termination procedures.
28. We also expect that CPs will take a reasonable approach to redress in cases where a small business customer has been sold an ARC inadvertently. Generally, we would expect the CP to enable the customer to exit the contract or move to another package penalty free in such cases (after the ending of any fixed commitment period). We believe this flexible approach is an appropriate way to monitor compliance and enforce the small business prohibition for businesses with 10 or less employees.

Guidance on contractual modifications under conditions C1.6-C1.9

29. The guidance below, which does not form part of conditions C1.6-C1.9, sets out how we are likely to apply conditions C1.6- C1.9 in relation to changes CPs make to their consumer and small business contracts.
30. Condition C1.6 states:

³ <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/complaints-handling-guidance.pdf>

C1.6 Regulated Providers shall:

- (a) give their Subscribers adequate notice not shorter than one month of any contractual modifications likely to be of material detriment to that Subscriber;*
- (b) allow their Subscribers to withdraw from their contract without penalty upon such notice; and*
- (c) at the same time as giving the notice in Condition C1.6(a), inform the Subscriber of its ability to terminate the contract without penalty if the proposed modification is not acceptable to the Subscriber.*

31. Conditions C1.7 to C1.9 set out increases in price that are contractual modifications likely to be of material detriment to a Consumer or Small Business Customer for the purposes of condition C1.6.

Changes to contractual prices

Application to bundles

32. In some circumstances, communications services may be marketed and sold to subscribers together as part of a bundle. Such a bundle may include some services subject to conditions C1.6 to C1.9 and some not. It will be a question of fact and proper contractual construction as to whether all the services comprised in any such bundle are:
- i) governed by one set of terms and conditions that comprise a single contract;
 - ii) purportedly subject to separate terms and conditions for each service but which in reality comprise a single contract (as may be the case where, for example, the subscriber is required to pay a single price for the bundle as a whole); or
 - iii) subject to separate terms and conditions for each service such that each service can properly be said to be subject to separate contracts.
33. In the first two circumstances, Ofcom is likely to treat conditions C1.6 to C1.9 as applying to the whole contract even if there are elements within it which, on their own, are not subject to that condition. We would be likely to regard any mid-contract increase in the agreed core-subscription price to be materially detrimental (or likely to be materially detrimental) for the purposes of conditions C1.6 to C1.9.

Notification of contract modifications

34. We expect CPs to actively communicate to their subscribers any proposed contractual modifications. CPs need to ensure that subscribers know how such changes will be communicated to them. For example, the terms and conditions should state the method(s) used to communicate contractual modifications and timescales for doing so.

Notification methods

35. Notifications should be set out with due prominence in order to attract the subscriber's attention. They should be in a form which subscribers can reasonably be expected to read. Letters and emails (if that is the means of communication chosen by the subscriber) are the most obvious examples of notifications.
- i) Hard copy notifications should be clearly marked as such in a prominent manner e.g. on the front of the envelope/communication material/the subscriber's bill, and possibly in more than one place in order to attract the subscriber's attention.
 - ii) Providers should consider issuing the modification notification on a separate piece of paper from any marketing material. This could help to ensure that the notification does not get lost in other communications that the subscriber receives from the provider but may not necessarily read.
 - iii) Other printed material, such as pamphlets or magazines, may be used but whether this would be deemed sufficient will depend on how transparent it is made to the subscriber upfront that such publications may contain important information. Not all customers read pamphlets and magazines sent by their CP.
 - iv) Email notifications of contract modifications should be clearly marked as such in the subject line of the email.
 - v) We do not consider that asking subscribers regularly to check their CP's website for possible changes to their contract is acceptable.

Content of notification

36. The notification must be clear and easy to understand. For example, it should make the subscriber aware of the nature of the contract modification, the likely impact on him/her, and, where relevant, set out clearly what action the subscriber can take to avoid the impact, should he/she wish to.
37. Information about the subscriber's termination rights should be made clear upfront. For example, on the front page of a hard copy notification, in the main email message rather than via a link in the message or on the actual webpage of the modification notification rather than via a link to another page.

Notification of termination rights

38. Where it arises, a subscriber's right to terminate their contract must be real and capable of effective exercise in practice.
39. To that end, where the subscriber does have the ability to terminate, this should be made clear in the main body of the notification rather than in a footnote or a reference to the relevant clause of the terms and conditions.

40. The minimum timescale that CPs should give subscribers the ability to exit the contract for any relevant changes is 30 days. This is to enable subscribers to consider the proposed contractual modification and give them time to research their options.
 - i) When this 30 day period for termination starts and ends should be made clear to the subscriber in the notification they receive from the CP of the proposed changes.
 - ii) When the cancellation of the services actually takes effect following a subscriber's request to terminate should also be made clear.
 - iii) CPs may give their customers a period of more than 30 days in which to withdraw from the contract if they wish to do so.
41. The terms and conditions or other practices CPs apply (whether in contracts for bundled services or other contracts relating to that in respect of which a relevant price rise occurs) in respect of contract termination are also important considerations. Terms and/or practices which frustrate the practical effect of condition C1.6 are liable to attract suspicion of non-compliance with the relevant rules.⁴
42. CPs should also keep in mind the need to comply with all their obligations under the General Conditions, including as to switching processes. This is particularly relevant where the rules provide for a gaining provider-led process under which a subscriber is able to switch providers by contacting a new provider and without needing to contact their existing one.
43. Neither condition C1.6 itself nor this guidance requires that a subscriber must exercise their rights under that condition by contacting their existing provider. One way the CP making contract modifications could meet its obligations in a relevant case is by telling the subscriber that the condition C1.6 termination rights may be exercised by contacting a new provider.

⁴ In this regard, condition C1.3 is also relevant.