

Helping consumers to get better deals in communications markets: mobile handsets

CONSULTATION:

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About this document

We have a programme of work to ensure consumers are informed and can take advantage of the wide range of choice available in the telecoms market. Consumers should be empowered to shop around with confidence and secure the best deals for their needs.

In the mobile sector, we have found many customers on bundled handset and airtime contracts continue to pay the same price after the end of their minimum contract period. In many cases this means customers continue to pay for the handset, even though they have paid it off. Ofcom has been assessing the scale of this issue and is now seeking views on a range of potential solutions to ensure customers are sold mobile airtime services and handsets in a way that is fair.

Responses are invited by Wednesday 7 November 2018.

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1. Summary

- 1.1 Ofcom has an established programme of work to ensure that markets work effectively for consumers, so that they benefit from strong competition in the telecoms market.
- 1.2 We are concerned that the market is not working well for everyone, and although there are typically good deals on offer, the evidence we have shows that, all too often, consumers do not take advantage of them.
- 1.3 To address this, we launched a programme of work designed to ensure consumers are informed and can take advantage of the wide range of choice available in the telecoms market, whether that is by switching to a new provider (and we have also introduced measures designed to make switching easier) or by obtaining a better deal with their current one. We also have an enforcement programme in place to address practices which might deter consumers from switching.
- 1.4 We are currently consulting on plans to require providers to notify their customers when they are coming to the end of their contract, or if they are already out-of-contract.
- 1.5 In the mobile sector, we have previously identified that if mobile customers on bundled handset and airtime deals do not take action at the end of their minimum contract period, their contract rolls forward and they continue to pay the same price. In many cases this includes the cost of the handset, which they have already paid off.
- 1.6 Acquiring a handset with a pay-monthly contract is a popular way for customers to get a new handset with their service. Approximately two-thirds of pay-monthly customers are on one of these tariffs, representing more than 20 million customers.¹
- 1.7 Customers that continue to pay for the handset beyond the minimum contract period, could switch to a cheaper SIM-only deal. Our 2018 Pricing trends report estimated that approximately 1.5 million people may be paying more than necessary; and collectively, UK mobile customers could be overpaying by approximately £330m each year.² We are concerned that many customers are not aware of this.
- 1.8 We do not think this is acceptable. Consumers should clearly be able to identify the goods and services that are offered to them and at what price, in order to evaluate what is on offer and make an informed decision about what to buy. When a mobile customer signs up for a bundled handset and airtime contract, providers are not transparent about how much of the price they pay is for the handset and how much for the airtime. As a result, customers are not aware how much they are paying for each.

¹ Ofcom, Pricing trends for communications services in the UK, 17 May 2018:
https://www.ofcom.org.uk/data/assets/pdf_file/0030/113898/pricing-report-2018.pdf.

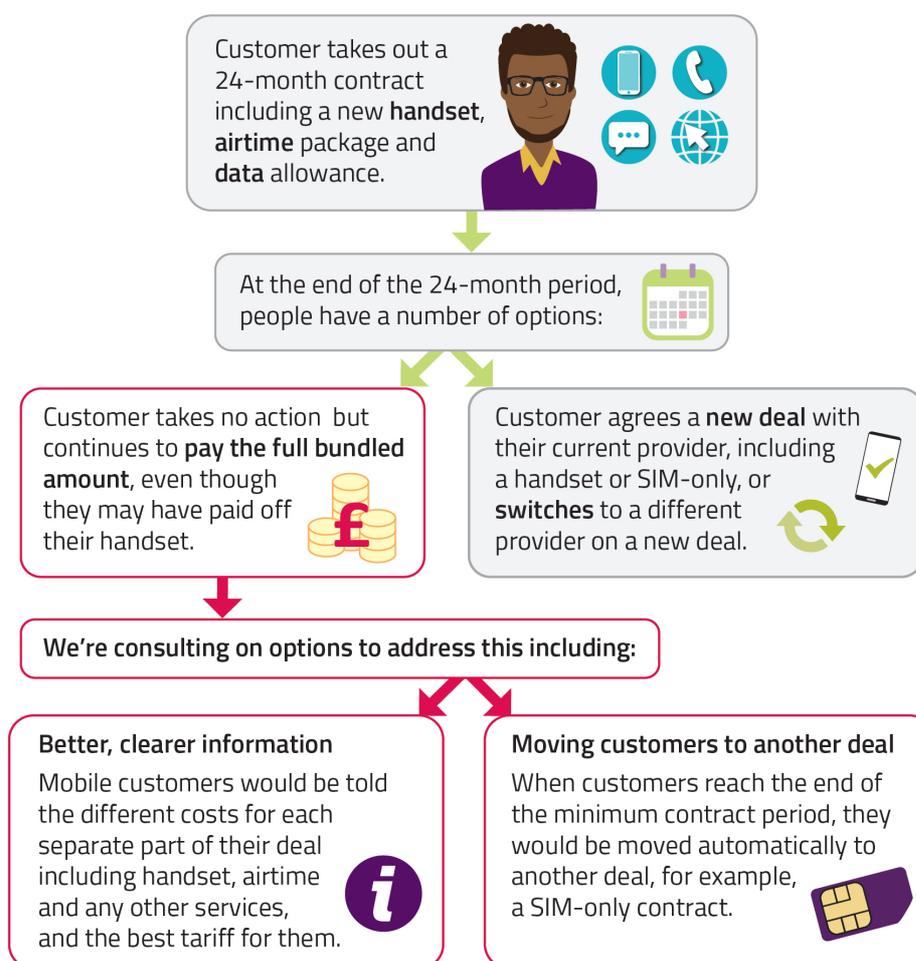
² Ofcom, Pricing trends for communications services in the UK, 17 May 2018:
https://www.ofcom.org.uk/data/assets/pdf_file/0030/113898/pricing-report-2018.pdf.

1.9 We have asked providers to address this issue on a quick, voluntary basis, without the need for formal consultation and regulation. We are disappointed that this has not resulted in sufficient or firm commitments. So we are now examining the need for regulation.

1.10 We have identified potential solutions to address our concerns. These include:

- **achieving greater transparency** beyond end-of-contract notifications; and
- the introduction of **fairer default tariffs** that would apply at the end of the minimum contract period.

Typical bundled mobile deal including a handset



1.11 We want to ensure that providers continue to make available a wide range of competitive offers to consumers. We have also considered the option of requiring separate contracts for handsets and airtime, where the handset payments stop at the end of a fixed period. Restricting providers' ability to bundle services could lead to a reduction in innovation and less competition in the provision of mobile services and, ultimately, to poorer outcomes for consumers. We believe that there are less intrusive remedies we could pursue that could achieve our aims.

- 1.12 We invite views and comments on our proposals from interested parties by Wednesday 7 November. We will examine responses and evidence before publishing detailed proposals to take forward in the new year.
- 1.13 Our work to review barriers and practices that make it harder for consumers to understand the choices available and find better deals continues. We have expanded this to include the impact of the different prices paid by consumers when they are in- and out-of-contract, which is sometimes referred to as the 'loyalty penalty'. In particular, we expect to focus on the outcomes for vulnerable consumers.

2. Introduction

- 2.1 Ofcom has an established programme of work to ensure that markets work effectively for consumers, so that they can gain from the benefits of competition.³ This reflects our principal duty to further the interests of citizens and consumers, where appropriate by promoting competition. Consumers benefit most from competitive markets, where providers invest in networks and services and compete to make innovative offers to consumers who make informed choices about the services which suit them best.
- 2.2 Our 2016 *Strategic Review of Digital Communications*⁴ confirmed that competition is generally the best way to deliver good results for consumers, but that this relies on people's ability to engage with the market and make informed choices. Consumers must be able to shop around with confidence, equipped with the right information, and ultimately secure the best deal for their needs – whether this means taking up a new deal with their current provider, switching to a new provider, or making an informed decision to stay on an existing deal.
- 2.3 While providers typically offer a range of good deals, our evidence shows that some consumers often do not benefit from that choice. Instead, many continue with the same service and the same provider for a long period of time. Our recent *Pricing Trends for Communications Services* report (the “Pricing Trends report”) highlights that consumers who do not effectively engage with the market pay much higher prices than those who do.⁵
- 2.4 To address this, we launched a programme of work in July 2017 to boost consumer engagement. We are working to create conditions where customers are given important information about their services at an appropriate time, and can find and obtain the best offers and deals available. We can intervene where this fails to happen, because of shabby practices or where providers take advantage of consumers that do not, or cannot, find better deals. In these circumstances it may be appropriate to ensure additional protection for consumers.

Our work to ensure consumers can exercise choice

- 2.5 We have used our powers to ensure consumers are able to engage with the market, exercise informed choices, and secure better deals. In particular, we have imposed General Conditions that require providers to give consumers clear and transparent information about contracts; limit their fixed duration to two years; and ensure that the terms and charges relating to termination do not disincentivise consumers from switching.

³ Ofcom, Annual Plan 2018/19: *Making communications work for everyone*:

https://www.ofcom.org.uk/_data/assets/pdf_file/0017/112427/Proposed-Annual-Plan-2018.pdf.

⁴ Ofcom, *Making communication work for everyone: initial conclusions from the Strategic Review of Digital Communications*, 25 February 2016: https://www.ofcom.org.uk/_data/assets/pdf_file/0016/50416/dcr-statement.pdf.

⁵ Ofcom, *Pricing trends for communications services in the UK*, 17 May 2018:

https://www.ofcom.org.uk/_data/assets/pdf_file/0030/113898/pricing-report-2018.pdf.

- 2.6 We have taken action to enforce these conditions a number of times. For example, we are currently investigating two providers, Virgin Media and EE, for possible breaches of the rule relating to termination charges. We have also introduced a package of reforms to ensure mobile switching is easier and simpler for consumers, including banning notice periods charged after the consumer has switched.
- 2.7 Our current programme of work to help consumers engage in communications markets is well underway. In July 2017 we published a Call for Inputs to:
- help us better understand how and why some consumers may face difficulties engaging in communications markets; and
 - help us identify, develop and implement solutions that enable consumers to engage.⁶
- 2.8 Alongside this we commissioned consumer research, including qualitative and quantitative studies, to further underpin our understanding of consumers' attitudes and experiences in engaging with communications markets. The research has also helped to inform the scoping of possible solutions.
- 2.9 In April 2018, we published an update that highlighted some of the findings from the call for inputs and the consumer research.⁷ We found that people often don't understand their options. Some consumers do not understand what coming to the end of their minimum contract period means. They are also unaware of the options, savings or benefits available to them. In the mobile sector, we found that certain mobile consumers continue to pay the same price after the end of their minimum contract period – which, for some consumers, could be significantly higher than if they switched to a SIM-only deal. We also announced that we were phasing our work to prioritise end-of-contract notifications.⁸
- 2.10 In July 2018 we proposed new rules requiring communications providers to send a notification to their customers when they are approaching, or have already reached, the end of their minimum contract period.⁹ Among other things, we have proposed that the notification to mobile customers must inform them that a SIM-only deal is an available option – as our research indicates that around a quarter of consumers are not aware of this option.¹⁰

⁶ Ofcom, *Helping consumers to engage in communications markets: Call for Inputs*, 14 July 2017:

https://www.ofcom.org.uk/data/assets/pdf_file/0014/104441/call-inputs-consumer-engagement-communications.pdf.

⁷ Ofcom, *Helping consumers to engage in communications markets: Update on next steps*, 27 April 2018:

https://www.ofcom.org.uk/data/assets/pdf_file/0015/113451/Engagement-project-update_April-2018.pdf.

⁸ We use the term 'end-of-contract' as this is how consumers tend to talk about the end of their minimum contract period or 'minimum term'. Where we refer to 'end-of-contract' or being 'in-contract' or 'out-of-contract', this refers to customers' minimum contract period.

⁹ Ofcom, *Helping consumers to engage in communications markets: Consultation on end-of-contract and out-of-contract notifications*, 31 July 2018: <https://www.ofcom.org.uk/consultations-and-statements/category-2/end-of-contract-notifications>

¹⁰ Ofcom's quantitative consumer engagement research 2018, conducted by Critical:

https://www.ofcom.org.uk/data/assets/pdf_file/0022/117076/Consumer-engagement-quantitative-research-2018-slide-pack.pdf

- 2.11 The consultation closes on 9 October, and we will consider responses before making a decision.

This document

- 2.12 In our April 2018 update, we stated that our current work also included looking at the issue of prices of bundled handset and airtime contracts after the end of the minimum contract period. If customers on bundled contracts do not take action at the end of this period, their contract rolls forward and they continue to pay a price which effectively includes the cost of the handset, when in many cases they have already paid this off.¹¹ This price is often significantly higher than if they switched to a SIM-only contract.¹²
- 2.13 In the update, we said that we would be engaging with mobile providers on this. We have discussed our concerns with the major mobile providers and have sought voluntary change to address the issue. EE, Vodafone and Three have indicated that they have plans to launch separate contracts (“split contracts”) for the handset and airtime elements of a mobile deal, as an option for their customers. With this approach, the charge for the handset contract is automatically removed at the end of the minimum contract period. This would bring them into line with a number of other mobile providers who already offer split contracts.
- 2.14 At present, we do not have firm launch dates for when these three providers will offer split contracts to their customers. Moreover, we still have concerns that the issue will remain for a significant number of consumers who will continue to purchase bundled contracts. We understand that these providers will continue to sell bundled handset and airtime contracts either directly or through their indirect sales channels, even after they launch their split contract deals.
- 2.15 Therefore, we do not consider that these plans are sufficient to bring about change for consumers. So we are now exploring regulatory options over and above our proposals for providers to send end-of-contract or out-of-contract notifications.
- 2.16 We are therefore inviting views and comments from all interested parties on the matters set out in this document, by Wednesday 7 November. Following consideration of responses, we will consult on any detailed proposals early next year.

Further work on the ‘loyalty penalty’

- 2.17 Our July 2017 Call for Inputs included other difficulties that consumers experience when seeking to engage and secure a better deal. The April 2018 update set out a second phase of work, to consider whether some consumers have difficulties understanding their own

¹¹ We recognise that in the case of certain contracts the handset may not be fully ‘paid-off’ at the end of the minimum contract period.

¹² A contract between a mobile network provider and a customer whereby the customer is only paying for the monthly network service and not a handset.

needs and usage requirements and/or struggle to understand or navigate the range and complexity of deals and packages on offer.

- 2.18 We intend to expand this second phase of work to review the large price differences between the discounted prices that consumers pay when they sign up to a new deal and those they pay at the end of their minimum contract period. Most providers have significantly higher default or 'standard' prices that apply at this point, and as a result, many consumers pay more because of higher prices or because they miss out on deals that could improve their package or save them money. Some refer to this price difference between in-contract and out-of-contract prices as the 'loyalty penalty'.
- 2.19 Our current consultation on end of contract notifications¹³, found that more than 20 million consumers are outside their minimum contract period, and more than 10 million are on deals with an automatic price increase at the end of this period. Given there are a significant number of unengaged consumers who are paying out-of-contract prices, this is a material issue, particularly where it is impacting on vulnerable consumers. We expect our work to have a particular focus on the outcomes for vulnerable consumers.
- 2.20 We will report on this next phase of work in the first half of next year.

¹³ Ofcom, *Helping consumers to engage in communications markets: Consultation on end-of-contract and out-of-contract notifications*, 31 July 2018: <https://www.ofcom.org.uk/consultations-and-statements/category-2/end-of-contract-notifications>

3. Bundled mobile airtime and handset contracts

Background

- 3.1 Our 2018 Pricing Trends report noted that acquiring a handset with a pay-monthly contract is a popular way for consumers to get a new handset with their service; approximately two-thirds of pay-monthly customers are on one of these tariffs, representing more than 20 million customers.¹⁴
- 3.2 Depending on the provider, consumers can either receive a mobile handset as part of an airtime contract, or they can have separate contracts for the handset and airtime elements (split contracts).
- 3.3 The key features of each are as follows:
- **Mobile handset as part of an airtime contract:** the customer enters into one contract which combines the handset and airtime elements. The customer pays the combined price for the minimum contract period (not longer than 24 months). At the end of the minimum term, the customer can move to another deal with the same provider or switch to another provider.¹⁵
 - **Separate contracts for the handset and airtime elements:** the customer enters into one contract for the handset and one contract for the airtime. The customer's monthly bill displays two separate costs for the handset and airtime elements. Once the handset element has been paid off (and that contract ends), the bill will automatically reduce to the cost of the airtime plan only. While the customer has entered into two separate agreements, there can still be dependencies between the contracts (e.g. the customer may not be able to switch to an airtime contract with another provider until they pay off the remainder of their handset contract). The handset agreement is a sale of goods contract that falls under the Consumer Credit Act.
- 3.4 Of the main providers:
- EE, Three, Vodafone, O2¹⁶ and BT Mobile offer a single contract which combines the handset and airtime elements – these are sometimes referred to as “combined”, “bundled” or “handset-inclusive” contracts.

¹⁴ Ofcom analysis of operator data, Q3 2017. Represents pay-monthly contracts with handset connections provided by leading mobile operators. Ofcom, *Pricing trends for communications services in the UK*, 17 May 2018: https://www.ofcom.org.uk/_data/assets/pdf_file/0030/113898/pricing-report-2018.pdf.

¹⁵ This type of contract does not fall under the Consumer Credit Act and the Financial Conduct Authority (FCA) does not regulate them.

¹⁶ O2 no longer offer these contracts directly but some are still on legacy contracts of this type. Customers that join O2 through third party retailers are also on bundled contracts.

- O2 (direct channels only), giffgaff, Tesco Mobile, Virgin Mobile and Sky have separate contracts for the handset and airtime elements – these arrangements are commonly referred to as split contracts. Some of these contracts require consumers seeking to switch their airtime contract to pay off any remaining charges on the handset loan.

Potential concerns

- 3.5 Paying for a handset in instalments can be a convenient way to pay for an expensive device. For example, it could enable consumers on low incomes to obtain a handset and mobile services, critical to engaging in society. However, some customers who receive a handset as part of an airtime contract (and where the price reflects the cost of the handset) may continue to pay the same price after the end of their minimum contract period.
- 3.6 If customers on bundled contracts do not take action at the end of their minimum contract period, their contract rolls forward and by default they continue to pay a price which effectively includes the cost of the handset, which in many cases they will have already paid-off and therefore own outright. This price is often significantly higher than if they switched to a SIM-only contract.
- 3.7 When a customer signs up for a bundled handset and airtime contract, providers are not transparent about how much of the price they pay reflects the cost of the handset and how much for the airtime. As a result, customers are not aware and may not understand how much they are paying for each element. This makes it difficult for them to compare packages and consider whether separate contracts for the handset and airtime, or buying a handset outright and combining it with a SIM-only contract, might be better value or better meet their needs. It also means that consumers are not clear of the amount that relates to the handset that they no longer need to pay once they reach the end of the minimum contract period.
- 3.8 In our view, consumers should be able to clearly identify the goods and services that are offered to them and at what price, in order to evaluate what is on offer and make an informed decision about what to buy. The price of goods and services should also not be obscured, with the effect that consumers pay for things (or continue to pay for things) that are not provided to them. Continuing with a higher combined handset and airtime price after the minimum contact period ends is likely to be an unfair default position in circumstances where the consumer has already paid for the handset.
- 3.9 We have evidence that shows a significant number of consumers on bundled mobile airtime and handset contracts allow their contracts to roll-over beyond the minimum contract period. We have estimated how much more consumers may be paying than necessary, compared to if they switched to a SIM-only contract.
- 3.10 In our 2018 Pricing Trends report, we highlighted that, similar to last year, 6% of UK pay-monthly mobile users with a mobile handset as part of their contract said that they continued to pay their full monthly charge at the end of the minimum contract period, rather than taking a new contract with a new mobile phone or switching to a cheaper SIM-

only service.¹⁷ Based on this figure, we estimated that approximately 1.5 million people may be paying more than necessary; and collectively, UK mobile customers could be overpaying by approximately £330m each year.^{18,19}

- 3.11 Our 2018 quantitative consumer engagement research found that a quarter of consumers on a mobile handset contract were unaware of the possibility of moving to a SIM-only deal at the end of their minimum contract period.²⁰ This lack of awareness was also evident in our qualitative research, where some participants on a mobile handset contract ‘discovered’ they could make substantial savings by switching to a SIM-only deal.²¹
- 3.12 For consumers to avoid paying more than they need to, they need to be aware of their mobile contract status and the options available to them when the minimum contract period ends. We are consulting on proposals for providers to send end-of-contract notifications and, where relevant, out-of-contract notifications which would alert customers to the fact that they are approaching, or have reached, the end of their minimum contract period. The proposed content of the notifications is aimed at helping customers make informed decisions about their current deal and exercise choice. We are proposing that the notification to customers of mobile services should also include that the customer can use their existing handset and take a SIM-only deal as one of the options available to them at the end of the minimum contract period.
- 3.13 Our proposed notifications would provide consumers with better information about when to engage and the options available to them. However, we are also considering whether we should directly address consumers lack of awareness of handset charges and ensure they do not continue to pay for a handset when they no longer need to. We are investigating what, if any, further regulatory action might be appropriate in addition to our proposals on end-of-contract and out-of-contract notifications.
- 3.14 We set out our initial thoughts on potential options in the next section.

¹⁷ Ofcom Switching Tracker

¹⁸ This figure was based on a monthly overpayment of £18.52. Ofcom, Pricing trends for communications services in the UK, 17 May 2018: https://www.ofcom.org.uk/_data/assets/pdf_file/0030/113898/pricing-report-2018.pdf.

¹⁹ As part of our review, we will collect further information to arrive at a more precise estimate of the extent to which mobile consumers are currently overpaying for their mobile handset. We have some indications that the number of mobile handset customers who are out-of-contract is greater than 1.5 million. In contrast, we recognise that not all customers who go out-of-contract on a mobile handset deal would necessarily pay higher prices than current SIM-only prices (e.g. we understand that some consumers remain out-of-contract to benefit from attractive legacy deals). Other factors which we intend to investigate further include the length of time that customers remain out-of-contract, as well as the extent of overpayment incurred by them.

²⁰ Ofcom’s quantitative consumer engagement research 2018, conducted by Critical. Slide 29.

²¹ Ofcom’s qualitative consumer engagement research 2017, conducted by Futuresight (p. 29).

4. Options under consideration

- 4.1 As set out above, we want competition to deliver benefits to consumers, such that providers compete to make innovative offers to consumers who make informed choices about the services which suit them best. We seek to create the conditions where that can happen but will intervene where it does not.
- 4.2 The issues that arise in the context of bundled mobile airtime and handset contracts suggest to us that a significant minority of consumers do not understand their handset costs. This is leading to poor outcomes for these consumers, including continuing to pay for a mobile handset when it is likely to already be paid-off and they no longer need to.
- 4.3 Our proposals for end-of-contract and out-of-contract notifications would go some way towards helping to address some of the issues raised in this consultation. However, we are considering what more may also need to be done to protect consumers, including looking at broader remedies as appropriate.
- 4.4 We have considered a number of potential solutions and our current view is that options could include:
- mandating further transparency measures; and/or
 - fairer default tariffs.
- 4.5 We do not consider that these options are mutually exclusive. The first option would ensure that consumers have greater transparency about the services they buy, which we consider is important, even if they are placed on a fairer default tariff at the end of their minimum contract period.
- 4.6 We recognise that some solutions may not be perfect in addressing consumers' understanding of how the price they pay reflects the cost of their handset and the outcome of consumers paying for their handset when they no longer need to. We are also aware that some could have an impact on the pricing of deals that are currently available, for example if they were to lead to a substantial increase in the number of people on SIM-only deals. In that situation, it is possible this could lead to higher SIM-only prices. We also recognise that particular solutions could lead to a reduction in engagement amongst consumers who are currently engaged, who might have less incentive to shop around, leading to lower levels of engagement and switching, and less competition or higher prices across the mobile market more generally.
- 4.7 We are seeking to engage with interested stakeholders to ascertain whether these, or indeed other solutions would be viable remedies.

Option 1: Mandating further transparency measures

- 4.8 Consumers are not told and therefore are unaware of how much they are paying for their handset and airtime in a bundled contract. We consider that this is important information that consumers should be aware of in order to make informed decisions about the services

they buy. We note that the forthcoming European Electronic Communications Code places particular importance on the provision of information to consumers on the individual elements of bundles which include both services and equipment. It makes clear that this information should be provided before a consumer is bound by a contract.

- 4.9 Under this option providers would inform customers when they purchase services, and in a clear and transparent manner, of the different cost elements of the mobile package a consumer is purchasing,²² particularly where this includes handset, airtime and any other services.²³ This information should also be provided at the end of the minimum contract period to provide the customer with a breakdown of what they are continuing to pay for.²⁴
- 4.10 In the case of certain contracts, consumers are provided with different decision points about whether to upgrade or change their contract during the minimum contract period. In these circumstances, it may be appropriate for further transparency of handset and airtime costs so that consumers are able to make informed decisions about their options.
- 4.11 We also want to explore what further information may be appropriate at the end of the minimum contract period to ensure customers understand that they no longer need to continue to pay any handset costs. For example, providers could explain to customers that they can retain their handset and to inform them of the specific SIM-only deals they could move to, and the specific cost savings associated with this.
- 4.12 If this information was provided to consumers, we believe they would be able to better compare available packages and make a more informed decision about whether separate contracts for the handset and airtime, or buying a handset outright and combining it with a SIM-only contract, would better suit their needs. They would also better understand the amount that reflects the cost of the handset, and that they no longer need to pay this once they reach the end of the minimum contract period. This, along with clear messages about the savings that could be made by moving to a specific SIM-only deal, could ensure that consumers are sufficiently informed such that they do not allow their existing contract and price (including the cost the handset) to roll-over and instead move to a better deal.

Option 2: Fairer default tariffs

- 4.13 As set out above, the current default for customers on bundled contracts is to continue to pay a combined handset and airtime price even after their minimum contract period has ended. As a result, under the current default, customers are likely, in many cases, to be paying in respect of a handset, the cost of which they have already paid off. This does not seem to us to be in consumers' best interests.
- 4.14 Under this option, providers would place customers on a different, and fairer, default deal when their minimum contract period ends. Rather than continuing to pay for their

²² Or that they would pay if the elements were sold separately.

²³ If interest is charged for the handset we consider this should also be made clear.

²⁴ It is possible that providing this information may result in a separate agreement for the handset which could fall within consumer credit agreement rules. This would be a matter for providers to clarify with the FCA.

handset, customers would instead only pay for their airtime. This would better align with consumers,' and not just providers,' interests. There are a number of ways this could occur.

- 4.15 For example, providers could migrate customers automatically on to an existing 30-day SIM-only deal at the end of the minimum contract period. Although the service features of current SIM-only deals may be different to those of bundled contracts,²⁵ providers could match customers to deals with the closest matching service features.
- 4.16 We recognise that if this were to happen automatically, there might be a potential impact on consumer choice. Some may object in principle to having their service contract changed without their explicit consent.²⁶ Consumers who are automatically migrated might also find that they lose certain services or experience bill shock where there is a mismatch between the allowances and offers available on SIM-only deals. That said, providers could clearly mitigate or eliminate some of these effects if they chose to do so.
- 4.17 One way to mitigate these risks would be to give consumers the ability to opt-out of automatic migration (at the point of sale and/or prior to the migration). The success of this would depend on how actively consumers react and how much they know about their usage and service requirements.
- 4.18 An alternative would be for providers to reduce the price payable by the customer at the end of the fixed-term by an amount that reflects the handset payments, essentially some form of a handset discount. This would involve less risk of the kinds of unintended consequences that may result from automatic migrations as consumers would remain on the same service package.
- 4.19 We may not want to be prescriptive about the precise way that providers ensure a fairer default tariff, and instead set out the principles that would apply. This could give providers some flexibility to implement solutions that would best serve their customers.
- 4.20 Unlike transparency measures, this option would not rely on consumers moving to a better deal to avoid continuing to pay higher prices but would instead ensure that all consumers stop paying for their handset once their minimum contract period has ended. While Option 1 would rely on consumers opting-in to a better deal, Option 2 would ensure consumers move to a better deal unless they opt-out.

Further options we have considered

- 4.21 We have also considered other options, including mandating split contracts.
- 4.22 We have noted that some operators already sell services and handsets under split contracts. Others have indicated to us that they plan to introduce them in the next couple of years.

²⁵ For example, free additional services (e.g. BT Sport, Netflix, Spotify) are generally only available on pay monthly mobile contracts rather than 30-day SIM-only deals; the same data allowances may not be available for both handset and SIM-only deals; additional free roaming/travel zones are more restricted on SIM-only deals.

²⁶ Providers have told us that consumers have complained on previous occasions where they have been automatically migrated on to a new package.

- 4.23 We also know that some stakeholders, such as Citizens' Advice, advocate the use of these contracts as fairer and more transparent for consumers. Others, however, have cautioned against their introduction because they do not necessarily offer the best value deal.
- 4.24 Depending on how they are implemented, we think that splitting contracts could achieve our aims of ensuring consumers know what they are paying for at the start, during, and at the end of their contract. If providers split contracts, and so stop charging for the handset at the end of the handset contract, this would ensure consumers do not pay for their handset longer than they should.
- 4.25 We recognise, however, that split contracts could also lead to unintended consequences depending on how providers chose to set handset and airtime prices. In particular, we would be concerned if split contracts had the effect of tying consumers into longer contracts with providers, disincentivising switching and denying them the benefits of competition. Our sectoral rules limit the fixed term of airtime contracts to 24 months.²⁷ Some providers currently have 36-month handset loans. In some cases, they require consumers seeking to switch their airtime contract to pay off any remaining charges on the handset loan. These sums could be significant and constrain consumers' ability to switch.
- 4.26 We want to ensure that providers continue to make available a wide range of competitive offers to consumers. Unduly restricting their ability to bundle services could lead to a reduction in innovation and less competition in the provision of mobile services and, ultimately, to poorer outcomes for consumers. We believe that there are less intrusive remedies we could pursue that could achieve the same aims.
- 4.27 Our preference therefore is that bundled handset and airtime deals form part of a range of transparent options open to consumers and from which they can make informed purchasing decisions.
- 4.28 We would welcome stakeholders' views on this.

Consultation questions

Question 1 – Do you agree with the concerns we have identified in relation to bundled mobile airtime and handset contracts?

Question 2 – Do you agree with the options we have outlined as potential remedies for the concerns identified?

Question 3 – Do you have views on additional solutions we should consider, including on split contracts?

²⁷ See General Condition 9.4

A1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on Wednesday 7 November 2018.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/consumers-communications-markets-mobile-handsets>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to mobile.handsets@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>).
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Mobile handsets consultation
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.10 If you want to discuss the issues and questions raised in this consultation, please email mobile.handsets@ofcom.org.uk.

Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

Next steps

- A1.15 Following this consultation period, Ofcom plans to publish a detailed consultation in early 2019.
- A1.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)