



Protecting consumers from mis-selling of fixed-line telecommunications services

A consultation on options to protect consumers from
mis-selling of fixed-line telecommunications services

Consultation

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Section 1

Summary

- 1.1 Tackling mis-selling of fixed-line telecommunications services remains an important Ofcom priority. Mis-selling works against the interests of consumers, both directly through harm and distress as well as undermining confidence in the development of competition and in the industry as a whole.
- 1.2 Ofcom introduced new rules to protect consumers from harm caused by mis-selling on 26 May 2005 in the form of an amended General Condition 14 ('GC14'). General Conditions are rules imposed by Ofcom on specific categories of Communications Provider ('CPs') in accordance with the Communications Act 2003 ('the Act'). The amended GC14 required all CPs supplying fixed-line telecommunications services to establish, and comply with, sales and marketing codes of practice, which are consistent with Ofcom published guidelines annexed to the amended GC14.
- 1.3 Ofcom has since pursued an active enforcement programme through an industry-wide investigation with the aim of securing compliance with the rules. We have been monitoring allegations of mis-selling in order to identify companies who are engaged in mis-selling, so that we can take action to protect the interests of consumers.
- 1.4 Despite these new rules, and our active enforcement programme, we continue to see high levels of fixed-line telecommunications mis-selling complaints. We have examined the existing regulations, and our experience of enforcing against these as well as the evidence on complaints and changes in the industry. In the light of this analysis, we have not been persuaded that sufficient progress has been made in reducing levels of fixed-line telecommunications mis-selling.
- 1.5 We are therefore proposing changes to strengthen the regulations to address this ongoing consumer harm.

Ofcom's policy objectives and aims

- 1.6 Ofcom's overall policy objective is that switching processes should promote switching and competition, whilst protecting consumers. In particular, we seek to ensure:
 - a good customer experience of switching;
 - protection against inappropriate sales and marketing activity;
 - well-informed consumers; and
 - that competition is supported to the benefit of consumers, particularly by minimising obstacles to switching.

Proposals

- 1.7 Based on our analysis of the existing regulations, and our experience of enforcing against these, we have identified the following:
 - genuine confusion by some CPs on what is expected of them;

- the Code of Practice approach may not be the most effective to secure compliance and to enable enforcement activities;
- consumers switching without realising they had existing contractual liabilities with their existing CP e.g. an early termination charge ('ETC') for ceasing service within a minimum contract period;
- consumer harm arising from abuse of the Cancel Other process where it has been used to prevent customers from switching. Cancel Other allows a customer's existing CP to cancel a live order before a transfer takes place. However, it is only allowed to be used to prevent a transfer taking place where the customer alleges slamming; and
- variability of sales records made, and retained, across the industry, meaning we have found it difficult, on occasion, to enforce the rules.

1.8 In light of this, we are consulting on the following as our preferred options:

- clarifying the regulations to aid understanding;
- simplifying the regulations by moving away from an approach requiring all CPs to establish, and comply with, Codes of Practice, to one of prohibiting inappropriate sales and marketing activity;
- better information for consumers on the potential consequences of switching by requiring CPs to alert consumers at the point of sale, and through letters, that they may have existing contractual liabilities with their existing CP;
- extending Cancel Other rules to cover all CPs providing fixed-line telecommunications services – at present the rules that are in place apply only to BT; and
- clarifying existing general record-keeping requirements, together with a proposal requiring CPs to make, and retain, voice recordings of all relevant telephone contact.

1.9 These proposals are part of a package of measures aimed at delivering sustained reductions in harm from mis-selling. Other recent initiatives include our step-up in enforcement activity and the publication of consumer guides on mis-selling.

1.10 Based on our analysis, we expect there to be a net benefit to the economy from implementing our preferred options as a package, both on conservative estimates of benefits and on less-conservative estimates of benefits.

1.11 Ofcom is also inviting comments on more radical options e.g. Third Party Validation models. We are not proposing any such changes at the current time. Nevertheless, we would welcome views on these options and intend to keep them under review in the event that any changes we may institute following this consultation do not lead to sufficient reduction in fixed-line mis-selling volumes.

1.12 We are inviting comments on our proposals and on the other options we have considered by 27 May 2009.

Section 2

Introduction and background

- 2.1 Ofcom exists to further the interests of citizens and consumers through a regulatory regime which, where appropriate, encourages competition. Effective competition delivers choice and lower prices, better quality of service, and product and service innovation to consumers, as well as opportunities for new services and CPs. However, competition alone may not always deliver appropriate results and consumers may need protection from inappropriate and unacceptable behaviour by certain market players that may undermine confidence in the market as well as causing individual harm.
- 2.2 An example of such unacceptable behaviour concerns irresponsible sales and marketing activity, specifically the mis-selling of telecommunications services. This has the effect of undermining consumer confidence in the transfer and switching process, and causing consequential damage to the industry as a whole.
- 2.3 The term 'mis-selling' covers a range of sales and marketing activities that can work against the interests of both consumers and competition and undermines confidence in the industry as a whole. It can include:
- the provision of false and/or misleading information (for example, about potential savings or promising offers or gifts which do not actually exist);
 - applying unacceptable pressure to change CPs, such as refusing to leave until the customer signs, or using threatening or otherwise intimidating behaviour; and
 - 'slamming', an extreme form of mis-selling, where customers are simply switched from one company to another without their knowledge and consent. Forms of slamming can include, for example, passing off (i.e. where representatives claim to represent a different company from the company they are actually working for), customers being told they are merely signing for information and then being switched from one CP to another, or forging of customers' signatures on contracts without the customer being aware.
- 2.4 Ofcom considers that there are various aspects of detriment arising from irresponsible sales and marketing activity. These include, amongst others:
- where customers find themselves switched to different CPs without their knowledge and/or consent. This will typically cause significant distress and anxiety (as well as substantial inconvenience) to consumers, particularly where transfers are not stopped in time. Also, there is likely to be financial harm involved such as where transfers go ahead and consumers find themselves on higher tariffs with the new CP. Moreover, there have been instances of consumers being slammed and then finding themselves charged a high termination fee when they attempt to switch or where slammed consumers incur termination fees from their previous CP for transferring before their minimum contract periods had elapsed;
 - the risk of adverse publicity relating to inappropriate sales and marketing activity discouraging switching because of 'reputational effects' that may influence customer perceptions of the sales techniques of sales agents. This has the effect of discouraging customers from switching, thereby restricting them from making

any savings by moving between CPs and/or products or both. By making competition less effective, it may limit the benefits to customers as a whole that accrue from well-functioning markets; and

- if switching is discouraged then this could potentially raise supply side barriers, where new entrants are deterred from entering in the knowledge that it will be difficult to persuade customers to switch from their existing CP, or indeed for customers to enter the market for the first time. Again, this will diminish the effectiveness of competition and therefore limit the benefits that consumers would otherwise derive from it.

Ofcom's policy objectives and aims

2.5 Our overall policy objective is that switching processes should promote switching and competition, whilst protecting consumers, which objective reflects our principal duty in section 3(1) of the Communications Act 2003 ('the Act'). Amongst others, this objective aims to achieve the following:

- a good customer experience of switching;
- protection against inappropriate sales and marketing activity;
- well-informed consumers able to discipline CPs by making informed and considered choices, based on timely, objective and reliable information; and
- that competition is supported in retail and wholesale markets to the benefit of consumers, particularly by minimising obstacles to switching.

2.6 If we find continuing consumer harm in relation to switching, any proposed solution must be targeted at those activities causing this detriment, be objectively justifiable non-discriminatory and proportionate.

Review of consumer safeguards designed to protect consumers from mis-selling of fixed-line telecommunications services

2.7 Ofcom is committed to preventing problems with mis-selling of telecommunications services. In light of evidence that mis-selling was growing as a problem as well as strong views from stakeholders, Ofcom commenced a review during 2004 considering whether current safeguards designed to protect consumers from mis-selling of fixed-line telecommunications services were effective, or whether it was appropriate for Ofcom to impose different rules.

The April 2004 Consultation

2.8 In April 2004, Ofcom published a consultation document on the effectiveness of current consumer safeguards which were designed to protect consumers from mis-selling of fixed-line telecommunications services. Ofcom put forward two options for consideration:

- i) consumers are adequately protected, and there is no need to make any changes; and
- ii) consumers are not adequately protected, and there is a need for additional regulation in the form of mandatory guidelines for sales and marketing codes of practice.

- 2.9 The consultation document made clear that option (ii) would only be preferred if there was sufficient evidence and support for the view that mis-selling of fixed-line telecommunications services was a serious problem and that the current measures did not provide sufficient protection to consumers.
- 2.10 In addition, and separate to the issue of the effectiveness of consumer safeguards, Ofcom also sought views in relation to the need for clarification of certain provisions contained within the existing guidelines for sales and marketing codes of practice for fixed-line telecommunications services.
- 2.11 Ofcom's April 2004 consultation document is available on the Ofcom website at: http://www.ofcom.org.uk/consult/condocs/mis_selling/mis_selling.pdf

The November 2004 Consultation

- 2.12 In light of stakeholder responses to the April 2004 consultation document, Ofcom considered that the balance of arguments supported the conclusion that the current consumer safeguards did not provide adequate consumer protection against the mis-selling of fixed-line telecommunications services.
- 2.13 Ofcom therefore concluded that a requirement should be imposed upon CPs who engage in sales and marketing activity for fixed-line telecommunications services to establish codes of practice on sales and marketing in accordance with published guidelines, and to comply with the provisions of those codes. It was proposed that the obligation should be subject to a 'sunset' clause, such that it would lapse two years after the date of introduction unless a positive need could be demonstrated to reinstate the obligation.
- 2.14 In order to impose this obligation, it was necessary to modify the then existing GC14 in accordance with the procedure for setting, modifying or revoking conditions in section 48 of the Act. This required the publication of a notification of the proposed modification. The November 2004 consultation document therefore included a notification of a proposed modification to GC 14. It is available on the Ofcom website at: <http://www.ofcom.org.uk/consult/condocs/mis-selling/mis-selling.pdf>

The April 2005 Explanatory Statement and Notification under section 48(1) of the Communications Act 2003

- 2.15 Ofcom's Explanatory Statement and Notification, published on 13 April 2005, gave effect, with modification, to the proposals set out in the November 2004 consultation document. The Notification and Schedule to the Notification set out the following:
- that there was to be an obligation upon all CPs who engage in sales and marketing of fixed-line telecommunications services to establish, under set guidelines, codes of practice, and to comply with the provisions set out in those codes;
 - that the requirement to establish, under set guidelines, codes of practice on sales and marketing, and to comply with the provisions set out in those codes, should be subject to a 'sunset' clause. The effect of the clause was that the requirement would lapse two years after the date of introduction unless a positive need was demonstrated to reinstate the requirement;
 - the guidelines for sales and marketing codes of practice for fixed-line telecommunications services; and

- that there would be an obligation to provide codes of practice on sales and marketing on request, and free of charge, to customers.
- 2.16 The revised GC 14.5¹, which came into effect on 26 May 2005, meant that Ofcom could enforce the requirement to have in place codes of practice for sales and marketing under its enforcement powers in sections 94 to 104 of the Act against CPs who failed to establish and thereafter maintain a Code which conforms with our Guidelines and/or fail to comply with the provisions of their Code. This included ultimately being able to impose a financial penalty on the relevant CP for non-compliance.
- 2.17 The obligations were only applicable to CPs who provided fixed-line telecommunications services. Ofcom did consider whether to extend these obligations to other services such as cable services, Local Loop Unbundling ('LLU')² and other new voice services. However, in the absence of clear evidence that mis-selling was a problem for these services, Ofcom did not consider that the obligation should be extended to those services at that time. Ofcom pointed out that it remained open for such classes of CPs to adopt similar guidelines for sales and marketing on a voluntary basis.
- 2.18 Ofcom's Explanatory Statement and Notification is available on the Ofcom website at: <http://www.ofcom.org.uk/consult/condocs/misselling/statement.pdf>

The February 2007 consultation

- 2.19 Under the sunset clause, the obligations were due to end on 25 May 2007. In light of this, Ofcom published a consultation in February 2007 on whether mis-selling of fixed-line telecoms services had been satisfactorily addressed to such an extent that it was appropriate to remove regulatory obligations.
- 2.20 In addition, the document also considered whether, if mis-selling had not been satisfactorily addressed, the obligations should only apply to fixed-line telecommunications services or whether they should be extended to cover other services, such as, broadband services, cable services, services using LLU and/or mobile services.
- 2.21 Ofcom's February 2007 consultation document is available on the Ofcom website at: <http://www.ofcom.org.uk/consult/condocs/missellingprotection/misselling.pdf>

The May 2007 Explanatory Statement and Notification under section 48(1) of the Communications Act 2003

- 2.22 Ofcom's Explanatory Statement and Notification, published on 21 May 2007, gave effect, with modification, to the proposals set out in the February 2007 consultation. The Notification and Schedule to the Notification set out the following:

¹ General Condition 14 was further amended following consultation by the Notification of Modification to a General Condition "Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services" published by Ofcom on 19 April 2006. This entered into force on 19 June 2006, and amended the numbering in General Condition 14, although not the obligation it places on Communications Providers in relation to sales and marketing codes of conduct. See http://www.ofcom.org.uk/consult/condocs/nts_info/statement/statement. Prior to 19 June 2006 the relevant General Condition was GC14.3. Since 19 June 2006 the relevant General Condition is GC14.5.

² a process by which a dominant CP's local loops are physically connected to a competing CP's networks. This enables CPs other than the incumbent to use the local loop to provide services including broadband to end-users.

- that there should remain an obligation upon all CPs who engage in sales and marketing of fixed-line telecommunications services to establish, under set guidelines, codes of practice, and to comply with the provisions set out in those codes;
- that the requirement to establish, under set guidelines, codes of practice, and to comply with the provisions set out in those codes, would no longer be subject to a sunset clause;
- that the obligation should be extended to CPs offering services based on full LLU³;
- amended guidelines for sales and marketing codes of practice for fixed-line telecommunications services;
- that there would be an obligation to provide codes of practice on sales and marketing on request, and free of charge, to customers; and
- that these requirements would enter into force on 26 May 2007 save for services based on full LLU which entered into force four weeks from the date of publication of the final statement and Notification.

Ofcom's Explanatory Statement and Notification is available on the Ofcom website at: <http://www.ofcom.org.uk/consult/condocs/mis-sellingprotection/statement/statement.pdf>

Background and history of Cancel Other

2.23 Cancel Other is the industry term for a functionality that enables the CP losing the customer to cancel wholesale orders (during the switchover period) placed by an alternative CP where slamming has been alleged by the customer. Cancel Other plays an important role as a consumer protection mechanism by ensuring that customers are able to cancel orders where they have been slammed.

The July 2003 Direction

- 2.24 On 8 July 2003, following an own initiative investigation prompted by industry concern surrounding BT's use of Cancel Other, Office of Telecommunications ('OfTel'), one of Ofcom's predecessor regulators, published a Direction ('the Original Cancel Other Direction') specifying in what circumstances BT was permitted to use Cancel Other to cancel orders for Carrier-Pre Selection ('CPS')⁴.
- 2.25 The Original Cancel Other Direction permitted BT to use Cancel Other to cancel orders for CPS only in certain circumstances. The Original Cancel Other Direction also imposed a number of further conditions on BT's use of Cancel Other to cancel orders for CPS.

³ means services where the provision of the access to the copper wires from the customer premises to a BT exchange allows a competing CP to provide the customer with both voice and data services over such copper wires.

⁴ CPs is a facility offered to consumers which allows them to opt for certain defined classes of calls to be carried by a CP selected in advance (and having a contract with the consumer) without having to dial a prefix, use a dialler box, or follow any other different procedure to invoke such routing.

- 2.26 The Original Cancel Other Direction applied to CPS only. However, BT and the rest of the industry designed equivalent processes for Wholesale Line Rental ('WLR')⁵ in order to be consistent with the existing processes for CPS.

The November 2003 Direction

- 2.27 On 23 November, Oftel published its review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets ('the Wholesale Fixed Markets Review'⁶).
- 2.28 The wholesale fixed narrowband markets review concluded that BT had significant market power ('SMP') in a number of wholesale markets in the UK excluding the Hull area and imposed a number of SMP conditions on BT, including:
- a requirement to provide network access on reasonable request (SMP condition AA1(a));
 - a requirement to provide CPS (SMP Condition AA8); and
 - a requirement to provide wholesale analogue line rental (SMP Condition AA10).
- 2.29 The wholesale fixed narrowband market review resulted in a Direction setting out the circumstances in which BT was permitted to use Cancel Other⁷. This mirrored the provisions of the Original Cancel Other Direction described above.

The November 2004 Consultation

- 2.30 Following publication of the Original Cancel Other Direction, BT and the industry discussed, at BT's initiative, the possible introduction of a new process for managing customer complaints and cancellations during the transfer period which, it was envisaged, would replace the current process, including BT's ability to use Cancel Other.
- 2.31 The industry, including BT, considered the current process could be improved. BT's competitors considered the current process, and specifically Cancel Other, enabled BT to cancel their CPS and WLR Cancel Other orders inappropriately. They also argued that the current process did not enable them to address allegations of slamming, because customers who believed they had been slammed could simply ask BT to cancel their order, and did not have to contact their gaining CP directly.
- 2.32 On 26 August 2004, following a dispute between BT and the industry, the referring parties asked Ofcom to resolve a dispute about the process for managing customer complaints during the CPS and WLR transfer process.
- 2.33 Having considered the information provided by the parties, Ofcom published a consultation on a draft Direction and draft Determination for resolving the dispute.

⁵ WLR is a facility by which BT provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) on the BT network.

⁶ Review of the fixed narrowband and wholesale exchange line, call origination, conveyance and transit markets: identification and analysis of markets, determination of market power and the setting of SMP conditions. Final Explanatory Statement and Notification.

⁷ Annex C to the wholesale fixed narrowband market review.

The January 2005 Direction

- 2.34 After having considered stakeholders' responses to the consultation document, Ofcom published a final Direction on 21 January 2005⁸ ('the January 2005 Direction') which specified when BT was permitted to use Cancel Other and what information it was required to provide to its competitors about its use of Cancel Other.
- 2.35 As set out in the January 2005 Direction, BT was permitted to use Cancel Other in cases of slamming, described as a CP's attempts to transfer some or all of a customer's calls and/or telephone line without that customer's express knowledge and consent. In the Direction, Ofcom provided further detail on the definition of slamming and clarified the types of behaviour covered by the definition. These are described in more detail in Section 4.
- 2.36 As well as being able to use Cancel Other in cases of slamming, BT was also permitted to use Cancel Other in order to prevent a customer from being transferred as a result of another CP's failure to action a customer's request to cancel a transfer.
- 2.37 BT was also permitted to use Cancel Other where a BT account was closed before a CPS or WLR order had matured ('line cease').
- 2.38 In order to make BT's use of Cancel Other more transparent, and to give confidence that it was only using Cancel Other in accordance with the permitted reasons set out in the Direction, BT was required to provide full records of contact between individual customers and BT, on reasonable request, relating to the transfer associated with the CP making the request, where BT had applied Cancel Other.

The July 2005 Direction amending the Direction of 21 January 2005 regarding BT's use of Cancel Other

- 2.39 On 28 July 2005, Ofcom published a Direction⁹ ('the July 2005 Direction') amending the January 2005 Direction regarding BT's use of Cancel Other.
- 2.40 The effect of the July 2005 Direction was to remove the obligation on BT to pass certain Cancel Other information to gaining CPs within a set period of time. This was because the CPS Process Group and WLR Process Group agreed that the requirement for BT to "on a fortnightly basis ... pass this information to the gaining CP, where the gaining CP was not also the CPS Operator or WLR Service Provider" was unnecessary. It was agreed that this information would be passed to the gaining CP by the CPS Operator or WLR CP in the standard course of business, and that as long as BT was passing the information to the CPS Operator or WLR CP as required in the first sub-paragraph of paragraph 6 of the Direction, then the second sub-paragraph requiring the sharing of information was not required.
- 2.41 In addition, as BT had already implemented the processes and systems to comply with all aspects of the January Direction with the exception of the second sub-paragraph of paragraph 6, Ofcom considered that paragraph 7 of the January 2005 Direction (which required BT to do the necessary work to implement paragraph 6 within three months of the January Direction coming into force) was unnecessary.

⁸ <http://www.ofcom.org.uk/consult/condocs/cancel-other/codir/codir.pdf>

⁹ http://www.ofcom.org.uk/consult/condocs/cancelother/amendment2direction/amending_direction.pdf

Industry-wide own initiative enforcement programme

- 2.42 On 27 May 2005, Ofcom opened an own-initiative enforcement programme to monitor compliance with the new rules and take enforcement action, where appropriate.

Outline of the remainder of this document

- 2.43 The rest of this consultation document is divided into the following sections:
- section 3 analyses the evidence of consumer detriment relating to mis-selling of fixed-line telecommunications services in light of evidence of ongoing harm and our experience of enforcing against the existing regulations;
 - section 4 includes an introduction to the options and sets out the relevant legal framework;
 - section 5 considers options on clarifying and simplifying the regulations;
 - section 6 considers options on information to consumers of the potential consequences of switching;
 - section 7 considers options on Cancel Other rules;
 - section 8 considers options on record keeping for both sales and Cancel Other; and
 - section 9 reviews a number of other options.
- 2.44 An Impact Assessment ('IA') of each of the options is included at Annex 5. Please note that the full IA for the purposes of section 7 of the Act includes section 3 and the following sections of this document as well as Annex 5.
- 2.45 In addition, the following draft notifications are also set out in this consultation document:
- Annex 6 contains a notification of a proposed modification of GC 14 on Codes of Practice and Dispute Resolution under Section 48(1) of the Act; and
 - Annex 7 contains a notification of a proposed insertion of a new GC 24 on Sales and Marketing of Fixed-Line Telecommunications Services under Section 48(1) of the Act.

Section 3

Analysis of consumer detriment and enforcement experience to date

Introduction

- 3.1 This section focuses on the extent to which consumer detriment may arise from mis-selling of fixed-line telecommunications services, though an assessment of the mis-selling data, an analysis of the existing regulations and our experience of enforcing against these. We then consider, in light of our experience to date and the evidence of ongoing consumer harm, the extent to which we believe it is possible to deliver further reductions in current mis-selling levels in line with our stated policy objectives and aims.
- 3.2 The analysis presented in this section, together with subsequent sections in this document and Annex 5, represents an IA of the options on which we are consulting, as defined in section 7 of the Act. A more detailed analysis of consumer detriment can be found in Annex 5.

Review of mis-selling data

- 3.3 As described below, Ofcom currently monitors mis-selling issues using two measures:
- i) Ofcom's own mis-selling complaints data; and
 - ii) the volume of orders cancelled by CPs following allegations of slamming by customers (i.e. Cancel Other).

Ofcom's own mis-selling complaints data

- 3.4 Ofcom's Advisory Team ('OAT') is the team within Ofcom responsible for dealing with complaints and enquiries from members of the public. OAT collects data that enables Ofcom to monitor trends and take action where appropriate to address issues of concern to consumers.
- 3.5 Consumers can contact OAT by telephone, letter, e-mail or by completing an on-line form on Ofcom's website.
- 3.6 OAT records all reported complaints from consumers regarding alleged unfair sales and marketing practices, including mis-selling and slamming. OAT generates a unique record for each contact and those records are assigned to various categories depending on the nature of the complaint or enquiry.
- 3.7 The complaints data is monitored and assessed, together with the Cancel Other data (see below), and used to help inform Ofcom's investigations programme.

Industry Cancel Other (slam) data

- 3.8 The July 2005 Direction set out more detailed rules regarding when BT is permitted to use Cancel Other and what information it must provide to its competitors about its

use of Cancel Other. The July 2005 Direction is binding on BT only as historically BT was the primary user of Cancel Other albeit this is no longer the case¹⁰.

- 3.9 Under the July 2005 Direction, BT is only permitted to use Cancel Other in cases of slamming, to prevent a customer from being transferred as a result of another CP's failure to action that customer's request to cancel their transfer, and where a BT account is closed before a CPS or WLR order has matured ('line cease').
- 3.10 The July 2005 Direction also includes requirements relating to information to be provided to competitors about use of Cancel Other, and requires that full records of any contact between individual customers and the losing CP relating to the use of Cancel Other are made available, on reasonable request, to the gaining CP. This includes the use of reason codes for all cancelled orders in line with specific categories agreed by the industry.
- 3.11 For the purpose of Ofcom's investigations programme into compliance with GC14.5, Ofcom only takes into consideration those Cancel Others whose reason codes relate to slamming.

Assessment of mis-selling data and context

- 3.12 When assessing mis-selling data, it is important to put that data into the wider context, and to first understand both the make-up of the data and what factors may influence the data over time. In particular, Ofcom considers that the following needs to be taken into account as part of any evaluation of the data:

(i) Comprehensiveness of the data

- 3.13 While both Ofcom's mis-selling complaints data and Cancel Other (slam) data provide a useful indicator of potential issues, and are able to highlight trends over time, neither, by themselves, provide a complete picture of mis-selling activities. Some reasons for this are as follows:
- OAT's mis-selling data only reflects a small proportion of actual mis-selling activity as evidenced by the monthly Cancel Other (slam) volumes. This is because the current Notification of Transfer ('NoT') process¹¹ was specifically designed to ensure that problems are identified before the switch happens, and provides an opportunity for the consumer to stop the order going ahead where mis-selling or slamming is alleged. This should ensure that consumers are not switched against their wishes and, typically, they will not complain to Ofcom unless they feel particularly strongly about the 'attempted' mis-selling activity. In other words, Ofcom complaints will only ever provide a partial picture of mis-selling activity;
 - Cancel Other data is also limited as CPs should only use Cancel Other where slamming has been alleged. In cases of mis-selling allegations, the consumer should be directed back to their gaining CP to cancel the order and there would be no visibility of this; and

¹⁰ See Figure 7

¹¹ This is the switching process used for fixed-line telecommunications services. It works on the basis of consumers only having to contact their gaining CP in order to switch, and being well informed of an impending switch before it happens (through receipt of letters) and a 10-day switchover period.

- while all CPs are currently able to use Cancel Other, they are not required to do so. Based on the responses to a Section 135 information request, it is clear that although a significant number do use Cancel Other, some CPs do not use Cancel Other at all and some only use it in limited circumstances.

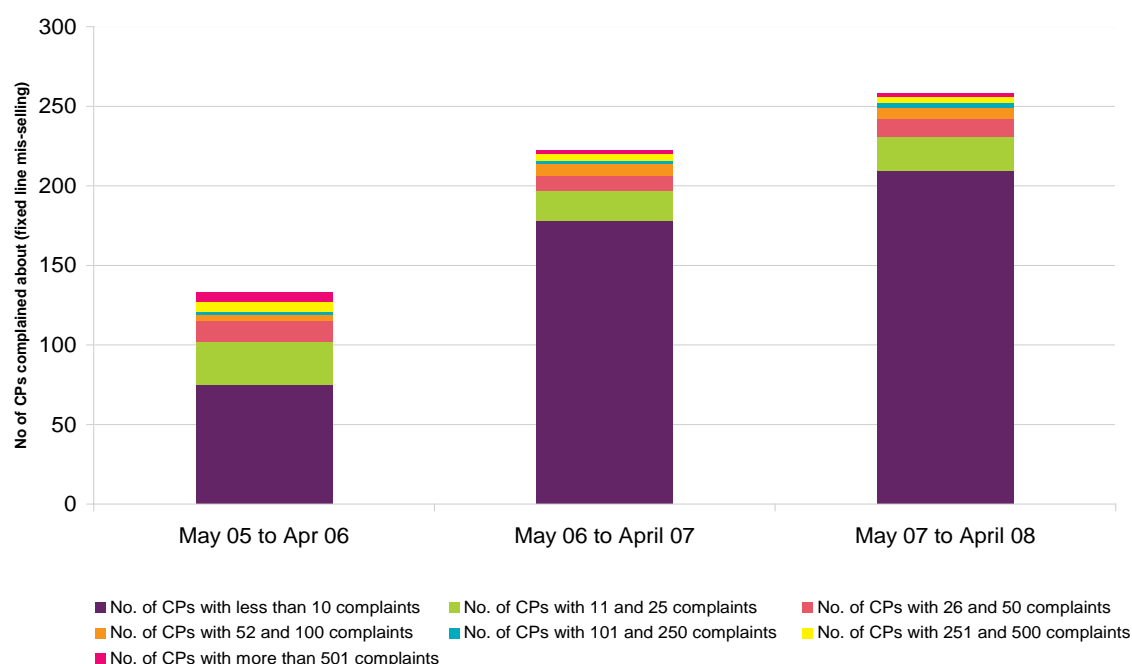
(ii) Reliability of mis-selling data

- 3.14 As described above, we currently use both OAT complaints data and Cancel Other (slam) categories to monitor fixed-line telecommunications mis-selling.
- 3.15 While these two measures are both useful indicators of CPs whose sales activities are giving rise to mis-selling (including slamming) complaints in respect of OAT data, and slamming complaints in respect of Cancel Other data, the data needs to be treated with a certain amount of caution. This is because there are a range of factors which are likely to influence the extent to which the data is able to act as an accurate proxy for the level of mis-selling (and/or slamming) activities. Such factors include, for example, whether CPs are explicitly advising customers to contact Ofcom to complain, deficiencies in the switching systems/processes, customer confusion or inappropriate retention activities from the losing CP. It does nevertheless act as a useful indicator of potential issues which warrant further consideration and does provide a useful basis to evaluate trends over time.

(iii) Changing market conditions

- 3.16 There have been significant changes to the fixed-line telecommunications market over the last three years with the development of WLR and, in particular, the growth of full LLU services leading to increased competition in the market. This has resulted in increased choice for consumers both in terms of the number of CPs competing for customers (as discussed below) but also in the choice of services. While this is a welcome development, there is little doubt that it has added to the complexity faced by consumers when deciding what service/package to buy including, for example, increased potential for confusion by consumers as well as more opportunity to mis-sell.
- 3.17 This is particularly the case when looking at the substantial increase in the volume of CPs generating complaints about fixed-line telecommunications mis-selling over the last few years. Figure 1 below highlights this, showing that between May 2005 and April 2006 there were 75 CPs generating less than 10 complaints, between May 2006 and April 2007 there were 178 CPs generating less than 10 complaints and between May 2007 and April 2008 there were 209 CPs generating less than 10 complaints.

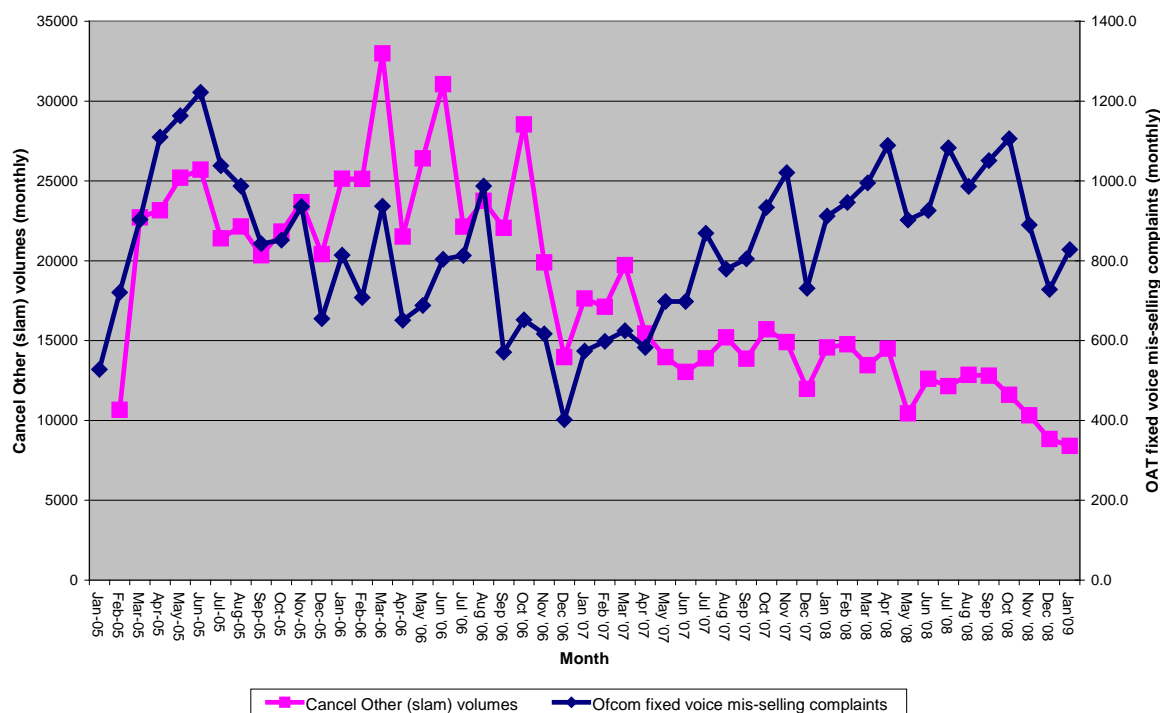
Figure 1: CPs generating OAT fixed-line telecommunications mis-selling complaints broken down by volume of complaints (monthly)



What is the mis-selling data telling us?

3.18 Figure 2 below shows Ofcom's monthly fixed-line telecommunications mis-selling complaints (comprising CPS/WLR and full LLU) and monthly Cancel Other (slam) volumes since January 2005.

Figure 2: Comparison of OAT fixed-line telecommunications mis-selling complaints vs Cancel Other (slam) volumes [Note different scale in axis]



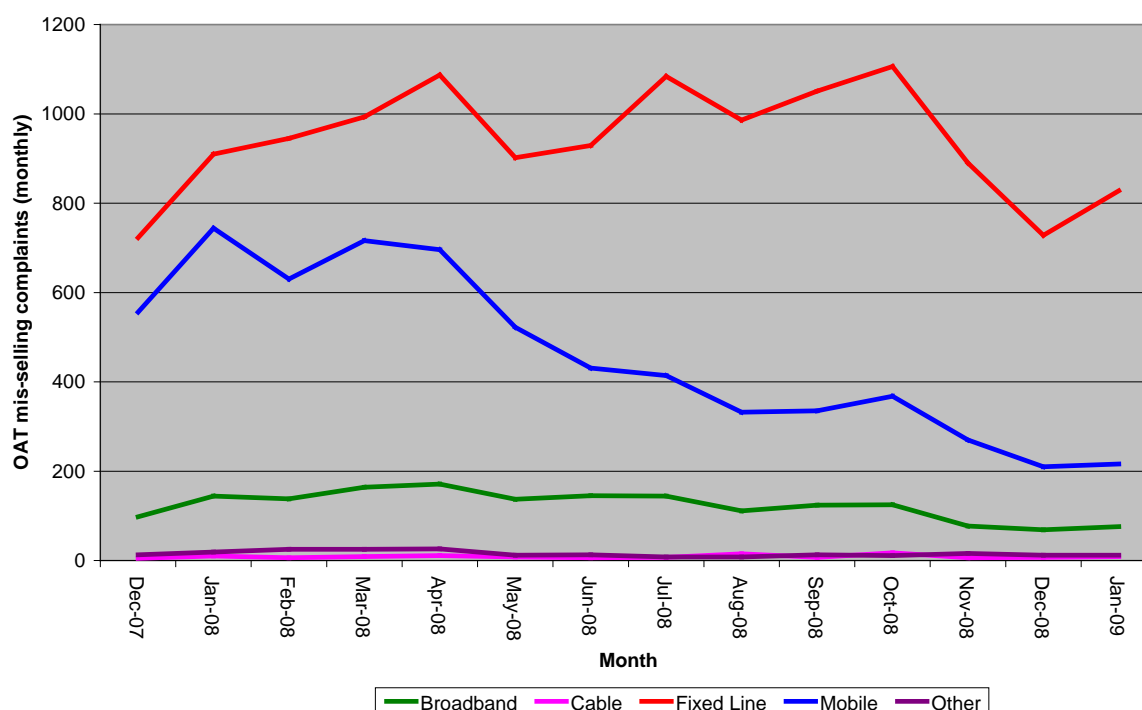
3.19 The chart shows that from a peak of 1,200 complaints a month in summer 2005, when Ofcom introduced GC 14.5, and launched its monitoring and enforcement programme, complaints showed a positive downward trend over the first year. However, complaints have shown a marked increase during 2007/2008 averaging around 940 complaints over the previous 14 months (December 2007 to January 2009), and are 828 based on the latest monthly data (January 2009). The chart also shows that Cancel Other (slam) cases have fallen significantly since the introduction of the new rules, falling from monthly volumes of 30,000 back in early 2006, and averaging at just short of 12,700 over the same 14 month period referred to above. On the most recent months data (January 2009), there were 8,406 instances of Cancel Others applied for slamming reasons.

3.20 These data sets are discussed in more detail below.

OAT mis-selling complaints data

3.21 Figure 3 (below) shows OAT mis-selling complaints for the main service types. This shows fixed-line telecommunications mis-selling complaints continue to dominate OAT mis-selling complaints compared to mis-selling complaints for other services.

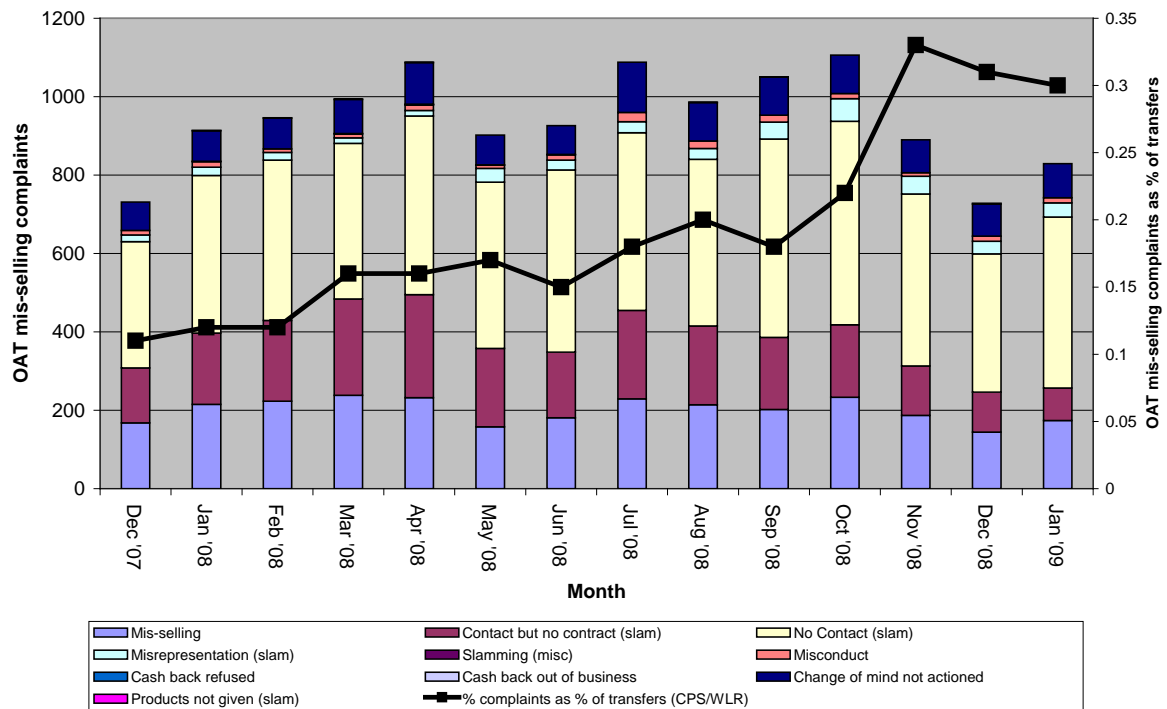
Figure 3: OAT monthly mis-selling complaints (all)



Source: OAT

- 3.22 As can be seen from Figure 3 above, and as already described, fixed-line telecommunications mis-selling complaints have remained relatively even over the last 14 months, and while there has been a decline over recent months, monthly complaint levels remain in excess of 800 (based on January 2009 data). Overall, this means that there has been limited improvement over the last 14 months, with complaint levels at generally similar levels now to 14 months ago. We believe that further improvements are possible, and desirable, and we are not persuaded that sufficient progress has been made to date.
- 3.23 Another useful measure is to consider what OAT mis-selling complaints tells us when analysed as a proportion of new sales. This is shown in Figure 4 below, and shows a significant upward trend in relation to the volume of complaints as a proportion of sales. Indeed, it is particularly concerning to see that this has risen from 0.11% in December 2007 to 0.3% on the most recent monthly data (January 2009). This reinforces our view that sufficient progress has not been made to address particular concerns relating to mis-selling and, based on this measure, has got significantly worse.

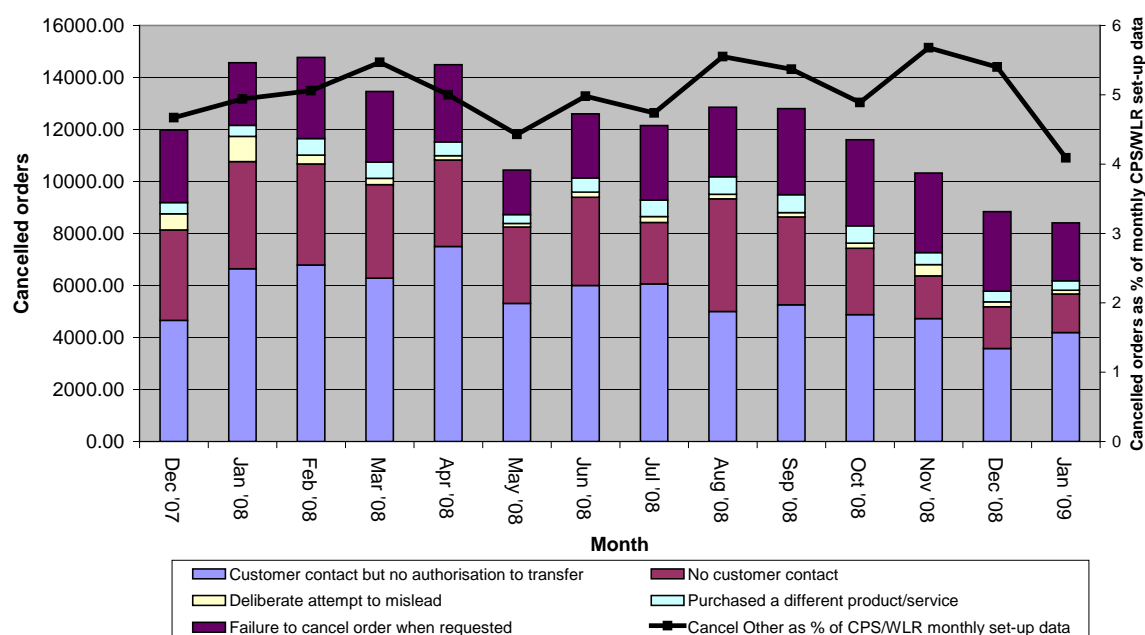
Figure 4: OAT fixed-line telecommunications mis-selling complaints broken down by category and as a proportion of news sales [Note different scale in axis]



Cancel Other (slam) categories

3.24 Figure 5 (below) shows the volume of orders being cancelled each month due to alleged slamming, both in absolute terms and as a proportion of new sales. Again, this shows relatively little progress over the last 14 months, both in terms of absolute cancels and also the volume of cancels as a proportion of new sales. Indeed, based on the most recent months data, we note that there still remain in excess of 8,300 monthly orders which are cancelled for slamming reasons and that the percentage of cancels against sales has remained relatively steady, and is currently running at 4.09% (January 2009). Based on this, we believe that further improvements remain possible, and desirable, and, as with Ofcom's mis-selling complaints, we are not persuaded that sufficient progress has been made to date.

Figure 5: Cancel Other (slams) broken down by category and as a proportion of new sales



Conclusion on assessment of mis-selling data

- 3.25 Based on the above, our view, taking into account our policy objectives and aims, is that further improvements are achievable, and that both absolute and relative numbers of mis-selling incidences can be reduced.
- 3.26 While there is evidence of some progress over the last 14 months, we are not persuaded that this has been sufficient. In particular, as mentioned above, we note that OAT mis-selling complaints as a proportion of sales has worsened considerably over the last 14 months.
- 3.27 Ofcom considers that further reductions would therefore be consistent with our stated policy objectives and aims, given incidences of mis-selling give rise to consumer harm and have the potential to undermine confidence in the operation of the market. In our view, it is appropriate to consider regulatory obligations to help to foster a competitive marketplace where consumers are able to seek out and easily take advantage of the best deals.

Question 1

Based on our analysis of Ofcom's mis-selling complaints data, do you agree that further improvements are achievable, and that both absolute and relative numbers of mis-selling incidences can be reduced?

Please provide an explanation to support your response.

Experience of Ofcom's enforcement programme

- 3.28 On 27 May 2005, Ofcom opened an own initiative enforcement programme to monitor compliance with the new rules and take enforcement action, where appropriate.
- 3.29 Under the programme, we have monitored trends and determined a number of benchmarks in relation to mis-selling complaints such that we can identify those CPs whose performance appears to be outside what we consider to be accepted parameters and take appropriate action.
- 3.30 Since the enforcement programme commenced Ofcom has conducted investigations into 12 CPs on fixed-line telecommunications mis-selling issues. These are as follows: Axis Telecom Ltd, Economy Calls Limited, FreeCall UK Ltd, Just Telecoms UK Limited (trading as Lo-Rate), Orb Communications Ltd, Platinum Telecom UK Ltd, Post Office Ltd, Scottish and Southern Energy, Tesco Stores Ltd (trading as Tesco Telecoms), Universal Telecom Ltd, Universal Utilities PLC (trading as Unicom) and XLN Telecom Ltd.
- 3.31 Notifications have also been issued to Telecom Plus PLC (trading as the Utility Warehouse Discount Club ('Utilities Warehouse')) and Universal Telecom Ltd for failing to comply with the GC 1.2 by preventing the customer transfer through the unauthorised use of the Cancel Other process. We are also currently investigating the use of Cancel Other by Telephonics Integrated Telephony Ltd.
- 3.32 Based on our analysis of the existing regulations, and our experience of enforcing against these, we have identified a number of matters as issues which we consider have impacted on the extent to which our policy objectives and aims have been met, and have inhibited the effectiveness of our enforcement activities. These are set out below:

Genuine confusion by some CPs on what is expected of them

- 3.33 In order for regulations to be effective, it is important that the regulatory instrument is clear about what is being regulated and how it is being regulated. This requires that stakeholders have a clear understanding of the rights and obligations of all parties in order to ensure that compliance and enforcement are not unduly impeded by unnecessary confusion and misunderstanding.
- 3.34 Based on our discussions with stakeholders, we consider that the regulations could be made clearer in certain parts, and that there is genuine confusion by a number of CPs, particularly smaller CPs, about what is expected of them in order to comply with their obligations. For example, we have previously come across uncertainty relating to the requirements for both gaining and losing CPs to send out NoT letters to consumers during the switchover period. Some of the feedback that we have received from stakeholders is that the relevant provisions are not clear as to whether or not the obligations rest with losing CPs as well as gaining CPs.

The Code of Practice approach may not be the most effective to secure compliance and enable enforcement activities

- 3.35 The current approach to regulating sales and marketing activity requires individual CPs to first establish a code of practice on sales and marketing and, once established, to comply with the provisions of their Code.

- 3.36 This approach is largely ‘process-based’ insofar as these codes of practice have to be consistent with Ofcom’s published guidelines which are annexed to GC14.5. This essentially requires all CPs to adopt certain sales practices and processes, as defined within the guidelines, including requirements around recruitment and sales training, customer contact and entering into a contact with customers.
- 3.37 Based on our experience to date, we believe the current ‘process-based’ approach has certain inherent weaknesses which have impacted on the extent to which our policy objectives have been met and, in particular, have inhibited the effectiveness of our enforcement activities. These are as follows:
- First, this has the potential to hinder swift and effective enforcement action. This is because it effectively follows a two-staged approach to regulation by first requiring CPs to establish codes of practice and then to comply with them. This means that where CPs have not established Codes we are unable to remedy the consequences of actual mis-selling activity – and we can only require CPs to establish a code of practice.
 - Second, the current approach has been criticised by certain stakeholders for being overly prescriptive and an unnecessary burden on compliant CPs. This approach has been criticised for, in effect, prohibiting CPs from adopting different, but equally legitimate, sales and marketing practices.
- 3.38 In light of this, we consider that moving towards more ‘outcome-based’ regulation would address certain identified weaknesses with the current codes of practice approach and therefore have some merit.

Consumers switching without realising they had existing contractual liabilities with their existing CP e.g. an early termination charge for ceasing service within a minimum contract period

- 3.39 An important element of the current switching process is that consumers are well informed of the transfer at the point at which they are looking to switch. Effective markets require well informed consumers who are able to discipline CPs by making informed and considered choices based on timely, objective and reliable information. Amongst other things, this means that consumers should be well informed of the implications of the transfer, including affected services and existing contractual liabilities at the point at which they are looking to switch. Where this does not happen, consumers will be making purchasing decisions based on incomplete information and this has the potential to result in consumer harm such as where there may be an early termination charge (‘ETC’). Consumer harm would be reduced if consumers were reminded of the possibility of any liabilities arising from switching before agreeing to transfer their service to a new CP.
- 3.40 As discussed at paragraph 6.9, in order to inform our thinking, we analysed a sample of complaints about ‘ETCs’ over a one month period to enable us to more clearly identify the reasons consumers complain and how this varies by sector. Our analysis showed that almost half of the complaints received about ETCs in the fixed-line telecommunications sector involved consumers not being aware of their contract terms. Of those complaining about ETCs in the fixed-line telecommunications sector, some 48% of complainants had no awareness of their contract length, the possibility of charges being applied for leaving early or believed that they had already fulfilled their terms. This is in stark contrast to the mobile and broadband sectors (27% and 21%, respectively). This is shown in figure 6 below:

- 3.41 In light of this, we consider that consumer harm would be reduced if consumers had the opportunity to find out the nature of any liabilities arising from switching before agreeing to transfer their service to a new CP.

Consumer harm arising from abuse of the Cancel Other process where it has been used to prevent customers from switching

- 3.42 As already described, the current Cancel Other rules under the July 2005 Direction only apply to BT, and therefore there are no current specific obligations on the rest of the industry to use Cancel Other properly nor to keep records for cancellations.
- 3.43 However, BT is no longer the majority user of Cancel Other, and Cancel Other usage is now widespread across the industry. Our analysis shows that the distribution of CPs applying Cancel Other for any given month is extensive, and that use of Cancel Other is widely dispersed across the fixed-line telecommunications sector (see Figure 7). In addition, through our ongoing action to tackle mis-selling, we have come across evidence that CPs are abusing the Cancel Other process by using it to block customers switching between CPs. In order to address this particular issue, in May 2007, we extended our industry-wide enforcement programme to include 'inappropriate save'¹² activity through the abuse of Cancel Other, and have taken formal enforcement action under GC 1.2.
- 3.44 Notifications for a breach of GC 1.2 have been issued to The Utility Warehouse and Universal Telecom. As well as issuing notifications we have also publicised guidance¹³ on what we consider to be the appropriate use of Cancel Other.
- 3.45 However, reliance on GC1.2 relies on ensuring compliance with the provisions contained in GC1.2 requiring information to be used only for the purpose for which it was intended. This covers a much more restricted set of requirements than those which currently apply to BT.
- 3.46 For this reason, Ofcom considers that there is a case for Cancel Other rules to be extended to all CPs of fixed-line telecommunications services.

Variability of sales records made, and retained, across the industry, meaning we have found it difficult, on occasion, to enforce the rules

- 3.47 The effectiveness of our enforcement activities are in large part dependent on the strength of the evidence secured during any investigations activity. A major limitation which we have identified over the course of the enforcement programme has been the fact that CPs currently have different approaches to record keeping, both in terms of what they keep and the length of time they retain. In the past we have found it difficult to enforce against CPs where bad practices have been alleged but we have been unable to obtain good quality records of the alleged instances. This variability leads to the lack of a level playing field in respect of records and our concern is that this may unfairly penalise those CPs who follow best endeavours in respect of record keeping.
- 3.48 A particular difficulty we have experienced is in relation to telesales where, based on our experience to date, the most valuable evidence in investigating mis-selling allegations is evidence at the point of sale and, in particular, call recordings. Indeed,

¹² 'Inappropriate save' relates to inappropriate activity on the part of the CP to retain their customer and is contrary to General Condition 1.2 ("GC 1.2").

¹³ http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_960/#cancel

while in the majority of cases where telesales are used, it is likely that there will be a paper trail (through welcome packs etc), it is also likely that customers will have signed up to the service based on the representations made over the telephone. Without a call recording, therefore, it is difficult to formulate a clear decision on whether or not mis-selling has occurred based on other forms of evidence submitted. In the absence of call recordings, it becomes more difficult to take a judgement on the facts of the case.

- 3.49 For these reasons, Ofcom considers that existing record keeping rules should be strengthened, including making, and retaining, call recordings, where appropriate, where telesales is used.

Conclusion on experience of enforcement programme

- 3.50 Based on our experience of enforcing the regulations, as described above, we have identified a number of areas within the existing regulations which have inhibited the extent to which we have been able to meet our stated policy objectives and aims.
- 3.51 In light of this, we consider that strengthening the regulations would therefore be consistent with those policy objectives and aims by better enabling our ability to deal with incidences of mis-selling that give rise to consumer harm and have the potential to undermine confidence in the operation of the market. In our view, strengthening the regulations would therefore help to foster a competitive marketplace where consumers are able to seek out and easily take advantage of the best deals.

Question 2

Based on our experience of our enforcement activities, do you agree that the regulations should be further strengthened in order to better meet Ofcom's policy objectives and aims?

Please provide an explanation to support your response.

Section 4

Introduction to options and the relevant legal framework

Introduction to options

- 4.1 In Section 3 we considered the extent to which consumer detriment may arise from mis-selling of fixed-line telecommunications services, though an assessment of the mis-selling data, and set out our analysis of the existing regulations and our experience of enforcing against these.
- 4.2 In particular, in assessing levels of mis-selling in relation to fixed-line telecommunications services, we considered two key pieces of evidence which measure the extent to which mis-selling of fixed-line telecommunications services remains a problem that continues to warrant regulatory intervention, namely:
- Ofcom's own mis-selling complaints data; and
 - Industry 'Cancel Other' (slam) data.
- 4.3 Based on our analysis of the effectiveness of our approach to date, an assessment of the evidence, including what mis-selling data is telling us, our enforcement experience to date and the problems we have diagnosed, we have identified a number of areas where we believe the regulations can be improved to better meet our stated policy objectives and aims referred to earlier in this document.
- 4.4 For each of these areas, we have sought to establish by reference to our policy objectives and aims what regulatory options are available to address these problems.
- 4.5 The areas considered are as follows:
- the simplicity and clarity of regulations;
 - the provision of information to consumers of the potential consequences of switching;
 - the scope of the current Cancel Other rules; and
 - the quality of sales and cancellations records, including whether there is a case for the introduction of mandatory call recordings.
- 4.6 For each of these areas we identify and evaluate the available options (including the option to do nothing) to address the problems identified, with a recommendation for a preferred option, and our reasons for it.

Implementation periods

- 4.7 For the purpose of our IA at Annex 5 we have assumed an implementation period of 12 months for the package of measures we are proposing. Accordingly, our economic modelling has been constructed on this basis.

- 4.8 However, in assessing the options in the following sections, we are aware that even where some systems development work may be required, the implementation period for different aspects of our proposals need not take the full 12 months assumed in our analysis.
- 4.9 We therefore invite views on appropriate implementation periods for each of our preferred options which are discussed in the following sections. We are also keen to invite views on the extent to which our assessment of the potential costs and benefits outlined in the IA depend on the implementation period. For instance, if implementation periods were shorter, would there be a material impact on costs?
- 4.10 We also consider that it may be appropriate to modify the July 2005 Direction (or any provision saving in effect this Direction) to reflect our preferred option (this is considered at Section 7), or withdraw the Direction, so that any such changes take effect before the end of any implementation period for modification of the General Conditions. This is because for the reasons set out at Section 7, we do not consider that it is necessary for the industry to be subject to provisions equivalent to those of paragraph 5 of the July 2005 Direction relating to the provision of information to CPs. These provisions are set out in full at paragraph 4.32. On that basis, we do not consider that it would be appropriate for BT to be subject to those provisions during any implementation period. This is subject to the outcome of this consultation and in particular, the views being sought in this regard.

Question 3

What are your views on appropriate implementation periods for each of the proposed measures we are consulting on as set out in sections, 5, 6, 7 and 8?

Please provide an explanation to support your response.

Question 4

To what extent do you consider our assessment of the potential costs and benefits outlined in the IA at Annex 5 is dependent on the implementation periods for each of the proposed measures we are consulting on as set out in sections, 5, 6, 7 and 8?

Please provide an explanation to support your response.

Question 5

Do you agree that it is appropriate to modify, or remove, the July 2005 Cancel Other Direction (or any provision saving in effect this Direction) so that any changes take effect before the end of the implementation period for modifications to the General Conditions?

Please provide an explanation to support your response.

The regulatory framework

- 4.11 In this section we provide an overview of Ofcom's duties and powers under the Act and the requirements and procedure to be met before Ofcom can introduce new general conditions or withdraw a direction.

The legal framework

- 4.12 Ofcom regulates the communications sector under, and in accordance with, the framework established by the Act.

Ofcom's general duties

- 4.13 Section 3(1) of the Act states that:

“it shall be the principal duty of Ofcom, in carrying out their functions:-

- a) to further the interests of citizens in relation to communication matters; and
- b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.”

- 4.14 Section 3(2) of the Act states that Ofcom is required, when carrying out its functions, amongst other things, to secure the availability throughout the UK of a wide range of electronic communications services.

- 4.15 Section 3(3) of the Act requires Ofcom, when performing its duties, to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and any other principles appearing to Ofcom to represent best regulatory practice.

- 4.16 Section 3(4) of the Act states that in performing its duties, Ofcom must also have regard to a number of matters as appears to be relevant in the circumstances which we consider include in the current context, in particular:

- the desirability of promoting competition in relevant markets;
- the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- the desirability of encouraging investment and innovation in relevant markets;
- the needs of persons with disabilities, of the elderly and of those on low incomes; and
- the opinions of consumers in relevant markets and of members of the public generally.

European Community requirements for regulation

- 4.17 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements. In summary these requirements are to:

- promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
- contribute to the development of the European internal market;
- promote the interests of all persons who are citizens of the European Union;

- not favour one form of or means of providing electronic communications networks or services, i.e. to be technologically neutral;
- encourage the provision of network access and service interoperability for the purpose of securing:
 - efficient and sustainable competition; and
 - the maximum benefit for customers of CPs; and
 - encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of CPs.

4.18 In doing so, Ofcom has to read these requirements in accordance with the requirements of Art. 8 of the Framework Directive. These include, in particular, the obligation to:

- ensure that users, including disabled users, derive maximum benefit in terms of choice, price and quality (Art. 8(2) (a));
- ensure a high level of protection for consumers in their dealings with suppliers (Art. 8(4)(b)); and
- promote the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services (Art 8(4)(d)).

Specific provisions under the Act

Powers and duties in relation to the General Conditions

- 4.19 Ofcom currently regulates through setting General Conditions to which all CPs in the category specified in that Condition (e.g. providers of publicly available telephone services) must comply, although the specific requirements will depend on the nature of the service and the type of customer.
- 4.20 Section 45 of the Act gives Ofcom the power to set General Conditions which can only contain provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64 of the Act.
- 4.21 General Conditions can include the requirement to comply with a direction made by Ofcom or another specified person.
- 4.22 In accordance with Section 45(10) of the Act, Ofcom can only modify a condition where it is satisfied that the modification meets the test in section 47(2) of the Act, which is that it is:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - c) proportionate to what the modification is intended to achieve; and

- d) in relation to what it is intended to achieve, transparent.”
- 4.23 Before setting or modifying conditions, Section 48(2) requires us to publish a notification:
 - a) “stating that they are proposing to set, modify or revoke the conditions that are specified in the notification;
 - b) setting out the effect of those conditions, modifications or revocations;
 - c) giving their reasons for making the proposal; and
 - d) specifying the period within which representations may be made to Ofcom about their proposal.”
- 4.24 Ofcom can give effect to proposals to make or modify conditions only where, in accordance with section 48(5) of the Act, we have considered each representation made during the consultation period and provided we have had regard to any international obligation notified to us by the Secretary of State.

Withdrawing a direction

- 4.25 Under section 49(1) of the Act where a condition set under section 45 has effect by reference to a direction and there is a proposal to withdraw that direction, Ofcom must not withdraw the direction unless we are satisfied that to do so is
 - a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - b) not unduly discriminatory against particular persons or against a particular description of persons;
 - c) proportionate to what it is intended to achieve; and
 - d) transparent in relation to what it is intended to achieve.

General Condition 14 on codes of practice and dispute resolution

- 4.26 GC 14 sets out a number of provisions relating to codes of practice and dispute resolution.
- 4.27 GC 14.5 sets out provisions relating to codes of practice for sales and marketing and, specifically, that:
 - “14.5 Those Communications Providers who provide Fixed-line Telecommunications Services shall:
 - (a) establish and thereafter maintain a Code of Practice for Sales and Marketing for dealing with its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 3 to this Condition; and
 - (b) comply with the provisions of the Code of Practice for Sales and Marketing established according to Condition 14.5(a) above.

14.6 The Code of Practice for Sales and Marketing shall be drafted in plain English which is easy to understand, and copies of it shall be provided on request and free of charge to any Domestic and Small Business Customer, and be prominently available on the Communications Provider's public website."

BT's SMP obligations

- 4.28 In line with the requirements of the then new EC Communications Directives and the Act, Ofcom undertook a review of the call origination market and published a market review statement ("the Market Review") on 28 November 2003¹⁴.
- 4.29 The Market Review concluded that BT had SMP in a number of markets including the market for call origination on fixed public narrowband networks in the UK excluding Hull.
- 4.30 Under section 90 of the 2003 Act, Ofcom is required to impose on a CP that it has found to be dominant such SMP conditions relating to CPS and Indirect Access as it thinks fit¹⁵. Ofcom imposed a number of SMP conditions on BT in the wholesale call origination market including:
- a requirement to provide Network Access on reasonable request (SMP Condition AA1);
 - a requirement not to unduly discriminate (SMP Condition AA2);
 - a cost orientation obligation (SMP Condition AA3);
 - a requirement to provide CPS on request (SMP Condition AA8); and
 - a direction imposing restrictions on BT's use of Save and Cancel Other (*Direction: Carrier pre-selection 'Save' and 'Cancel Other' activities*).

Direction concerning BT's use of Cancel Other

- 4.31 The July 2005 Direction states the following on BT's use of Cancel Other:
- "1. BT shall only be permitted to use Cancel Other in the following circumstances:
- a) where a request for CPS and/or WLR has been made without the Customer's express knowledge and consent ("Slamming"), that is, in the following circumstances:
- i. where the Customer has never been contacted by the Gaining Provider;
- ii. where a Customer has been contacted by the Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of his telephone calls and/or line rental to the Gaining Provider;

¹⁴ Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets, 28 November 2003,

http://www.ofcom.org.uk/consult/condocs/narrowband_mkt_rvw/nwe/fixednarrowbandstatement.pdf

¹⁵ Indirect access (IA) is a mechanism that allows users to select alternative communications providers to their access line provider on a call-by-call basis by dialling a short pre-fix before each number they wish to dial.

iii. where the Customer has agreed to purchase a product or service from the Gaining Provider and the Gaining Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or

iv. where the Customer has agreed to transfer some or all of his telephone calls and/or line rental to the Gaining Provider having understood, as a result of a deliberate attempt by the Gaining Provider to mislead, that he is making an agreement with a different communications provider;

- b) at a Customer's request, where the Gaining Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");
- c) where the telephone line is ceased during the Transfer Period ("Line Cease");
- d) for other specified reasons not related to a Customer's request to BT to cancel a transfer, and agreed by the CPS and WLR Service Providers Forum (the "SPF")."

4.32 The July 2005 Direction also states the following regarding transparency obligations:

"2. Before using Cancel Other in cases of Slamming and/or Failure to Cancel, BT shall take reasonable steps to ensure that Slamming and/or Failure to Cancel has actually taken place;

3. After using Cancel Other, BT shall confirm the cancellation of the CPS and/or WLR order in writing to the Customer, unless this is not possible or appropriate, including where the customer is deceased;

4. Where a Customer is the subject of Cancel Other, BT shall keep a record of all contact made with that Customer during the Transfer Period where such contact relates to BT's use of Cancel Other and BT shall retain such records for a period of at least six months;

5. Subject to paragraph 4 above, BT shall provide, within 15 working days of a reasonable request by a Gaining Provider, save in exceptional circumstances, the following information (in relation to that Gaining Provider):

- a randomly selected representative sample, covering a period of one month, of the records of contact between BT and a Customer, where such contact relates to BT's use of Cancel Other, in instances of Slamming and/or Failure to Cancel. Such records shall include recordings of Customer-initiated calls to BT where available; and
- all records of any contact between BT and an individual Customer specified by the Gaining Provider, where such contact relates to BT's use of Cancel Other, in instances of Slamming and/or Failure to Cancel. Such records shall include recordings of Customer-initiated calls to BT where available;"

6. BT shall record its reason for using Cancel Other in each case, according to categories (a) (i) to (iv) and categories (b) to (d) set out at paragraph 1 above, and shall within a reasonable period, pass this information to the CPSO or WLR Service Provider."

Section 5

Options on clarifying and simplifying the regulations

Introduction

- 5.1 The first area we have identified where we believe the regulations may be improved to better meet our stated policy objectives and aims is the form and structure of the current regulations. Here we consider whether it is possible to clarify and simplify the regulations in two ways, namely:
- i) improving clarity to aid understanding; and
 - ii) simplifying regulations by moving away from a code of practice (process-based) approach to one of absolute prohibitions.
- 5.2 These are discussed below.

Improving clarity to aid understanding

- 5.3 The current regulatory approach to tackling mis-selling of fixed-line telecommunications services is to require all relevant CPs to establish, and comply with, sales and marketing codes of practice, which are consistent with Ofcom's published guidelines.
- 5.4 As discussed in paragraphs 3.33 and 3.34, Ofcom considers that, based on our discussions with stakeholders, there is genuine confusion by a number of CPs, particularly smaller CPs, about what is expected of them in order to comply with their obligations.
- 5.5 One example, as described in section 3, relates to the requirements for both gaining and losing CPs to send out 'NoT' letters to consumers during the switchover period. Some of the feedback that we have received is that from the way this is currently drafted is not clear whether or not the obligations rest with losing CPs as well as gaining CPs.

Simplifying regulations by moving away from a code of practice (process-based) approach to an outcome driven approach based on absolute prohibitions of mis-selling

- 5.6 As described above, our current approach requires individual CPs to first establish a code of practice on sales and marketing and, once established, to comply with the provisions of their Code.
- 5.7 This approach is largely 'process-based' insofar as these codes of practice have to be consistent with Ofcom's published guidelines which are annexed to GC14.5. This essentially requires all CPs to adopt certain sales practices and processes, as defined within the guidelines, including requirements around recruitment and sales training, customer contact and entering into a contact with customers.

5.8 As discussed in paragraphs 3.35 to 3.38, we believe the current ‘process-based’ approach has certain inherent weaknesses, and that these have impacted on the extent to which our policy objectives and aims have been met and have inhibited the effectiveness of our enforcement activities. We consider these weaknesses are twofold, namely:

- first, that the current approach has the potential to hinder swift and effective enforcement action; and
- second, that the current approach has been criticised by certain stakeholders for being overly prescriptive and an unnecessary burden on compliant CPs.

Options

5.9 We have identified the following three options in relation to clarifying and simplifying the regulations, as follows:

Option 1: Do nothing

5.10 Under this option we would not propose to make any changes to the way in which the current GC14.5 or supporting guidelines are drafted. We would also retain the current process-based approach, requiring CPs to establish, and comply with, sales and marketing codes of practice which are consistent with Ofcom’s published guidelines.

Option 2: Redraft the current provisions in order to achieve greater clarity to the stated objectives of GC 14.5

5.11 This option would involve a number of stylistic changes to the provisions in order to achieve greater clarity to the stated objectives and aims and supporting guidelines, where appropriate.

5.12 This option would primarily involve clarifying the provisions in those areas which have caused confusion. However, under this option, there would be no change to either the current structure of the provisions or, indeed, the approach to regulation. Under this option, as with Option 1, we would retain the current process-based approach, requiring CPs to establish, and comply with, sales and marketing codes of practice which are consistent with Ofcom’s published guidelines.

Option 3: Redraft and simplify the current provisions in order to achieve greater clarity to the stated objectives of GC 14.5 and move away from a largely process-based approach to an outcome driven approach based on absolute prohibitions of mis-selling

5.13 This option would encompass the changes described at Option 2 but also involve a change to our regulatory approach to tackling mis-selling insofar as we would look to move away from current requirements on CPs to establish, and comply with, sales and marketing codes of practice to one based on absolute prohibitions of mis-selling.

Our preferred option on simplifying and clarifying the regulations

5.14 Our preferred option is Option 3, namely to simplify the regulations by moving away from a code of practice (process-based) approach to one of absolute prohibitions, and redrafting the current provisions in order to achieve greater clarity to the stated objectives and aims of GC 14.5.

- 5.15 The reason for this, as discussed above, is that our experience to date is that the current 'codes of practice' approach has certain inherent weaknesses which have impacted on the extent to which our policy objectives and aims have been met and have inhibited the effectiveness of our enforcement activities. We believe that moving to a more 'outcome-based' approach would address these identified weaknesses and, in particular:
- it would allow for swifter and more effective enforcement action, and would enable Ofcom to take action, and require that CPs remedy the consequences of actual mis-selling activity, in a way that we are currently unable to do where CPs have failed to establish a code of practice; and
 - it would provide for less prescriptive regulation, and therefore should reduce current burdens on compliant CPs by allowing CPs to adopt different, but equally legitimate, sales and marketing practices, which may be better suited to their business.
- 5.16 Also, Ofcom's view, based on our experience to date, both through our formal enforcement activities and informal compliance discussions with a wide range of industry stakeholders, suggests that the provisions of the current GC14.5 may not be clear, and that certain improvements to the clarity of the regulations are justified.
- 5.17 We do not anticipate that there will be any costs involved for CPs given that all we are seeking to achieve here is to clarify and simplify existing regulations. Based on our indicative modelling which is set out at the Annex to the IA in Annex 5, we estimate that this option could yield a net present value ('NPV') in the order of £2 to £7m over five years.
- 5.18 We believe that this option meets the tests under Section 47(2) of the Act for the following reasons:
- taking account of our policy objectives and aims, we consider our preferred option is objectively justifiable and proportionate. This is because, as discussed above, we consider the option does no more than necessary to target the problems we have identified. We consider that both elements are required to enable us to better meet our stated objectives and aims to the benefit of industry as well as enhancing the effectiveness of our enforcement activities. Also, we do not anticipate that there will be any costs involved for those CPs who are already complying with the existing regulations given that all we are seeking to achieve here is to clarify and simplify existing regulations.
 - we consider our preferred option is not such as to discriminate unduly between CPs in that it would apply consistently to all CPs providing fixed-line telecommunications services as they would all be under the same obligations to comply with the stated regulations; and
 - we are satisfied that our preferred option is transparent insofar as the nature and intended effect of the proposed changes are clearly set out in this consultation document.

Question 6

Do you agree with our preferred option on clarifying and simplifying the regulations, namely that we should:

- (i) improve clarity of the regulations by redrafting in order to aid understanding and*
- (ii) simplify the regulations by moving away from a code of practice (process-based) approach to an outcome driven approach based on absolute prohibitions of mis-selling?*

Please provide an explanation to support your response.

Question 7

Do you consider there are other parts of the existing GC14.5 obligations where we could clarify and simplify the regulations, but have not proposed to do so? If so, please explain and set out the reasons for this.

Section 6

Options on information to consumers of the potential consequences of switching

Introduction

- 6.1 The second area we have identified where we believe the regulations may be improved to better meet our stated policy objectives and aims relates to the information provided to consumers at the point of sale of the potential consequences of switching.
- 6.2 As we discuss in paragraphs 3.39 to 3.41, an important element of the current 'NoT' process is that consumers are well informed of the transfer at the point at which they are looking to switch. Amongst other things, this means that consumers should be well informed of the implications of the transfer, including affected services and existing contractual liabilities at the point at which they are looking to switch.

The current situation

- 6.3 Fixed-line telecommunications switching (including full LLU) currently uses a 'Letter Facilitation' or NoT process. The process is based on consumers being well-informed of the impending switch before it happens through receipt of letters by both the gaining and losing CPs and a 10-day switchover period.
- 6.4 These letters must be in accordance with the industry agreed process in terms of what information is able to be conveyed. Of particular importance, these letters must be restricted to neutral information only and must be devoid of any 'save'¹⁶ or marketing material. The losing CP letter, however, does contain provision for information to be given in relation to the possibility of contractual liabilities.
- 6.5 This process is largely effective. However, a common criticism from certain stakeholders is that letters may not always provide sufficient information, that consumers may not always read or understand the implications of the letter or that letters may not be sent on occasion. For this reason, it is argued that reliance on letters alone will not sufficiently warn consumers of the full implications of the transfer, including the existence of any ETCs. It is argued by certain stakeholders that this, therefore, results in consumers only finding out that they are liable for ETCs after the transfer has gone through, and so it becomes impossible for consumers to avoid the charges.

Evidence of consumer harm

- 6.6 In assessing the effectiveness of the current obligations and, in particular, evidence of current difficulties as well as potential costs of change, Ofcom has gathered evidence from different sources and stakeholders and used the following approach:

¹⁶ means marketing activity which is undertaken by the losing CP during the switchover period in an attempt to persuade the customer not to switch to a new CP.

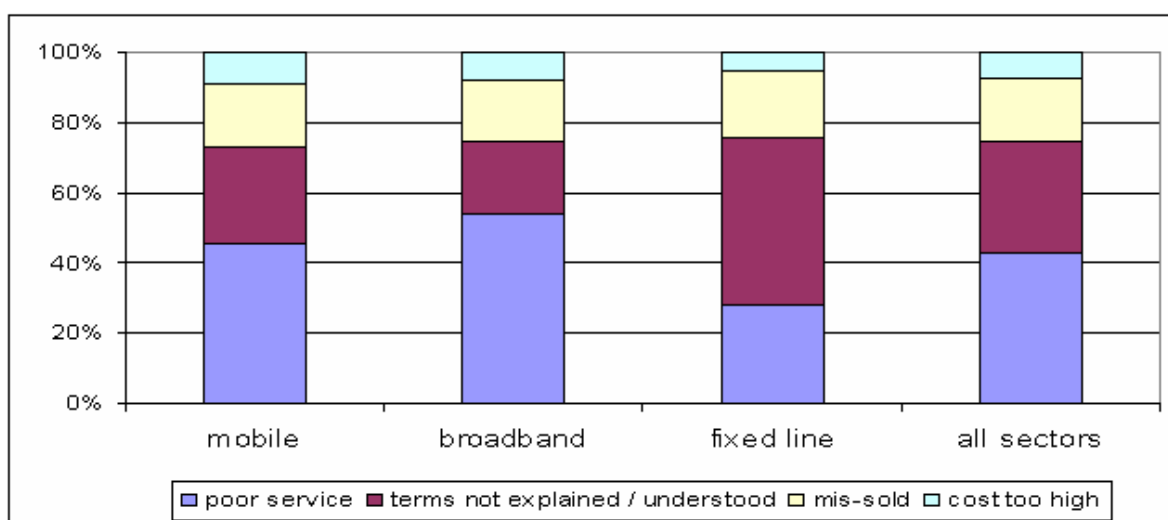
Statutory information request

- 6.7 Ofcom sent CPs a statutory information request under Section 135 of the Act requesting information from CPs about their current approach to making changes to 'sales' scripts. The purpose of these requests was to assess the likely cost incurred for making additions to sales scripts.

Analysis of Ofcom's complaints data

- 6.8 As discussed in Section 3, in order to better understand the extent to which the lack of awareness of ETCs are particularly problematic in the fixed-line telecommunications sector, we analysed a sample of complaints over the period of a month about ETCs to enable us to more clearly identify the reasons consumers complain and how this varies by sector.
- 6.9 Based on a sample of 100 complaints analysed for each of the fixed-line telecommunications, broadband and mobile sectors, our analysis suggests that issues relating to ETCs predominantly affects the fixed-line telecommunications sector. Our analysis shows that nearly half of the complaints received about ETCs in this sector related to consumers not being aware of their contract terms. Of those complaining about ETCs in this sector some 48% of complainants had no awareness of the contract length or possibility of charges for leaving early or believed that they had already fulfilled their terms. This is in stark contrast to the mobile and broadband sectors (27% and 21%, respectively). This is shown in figure 6 below:

Figure 6: OAT complaints about Early Termination Charges



Options

- 6.10 We have identified the following four options in relation to information to be provided to consumers of the potential consequences of switching at the point of sale, as follows:

Option 1: Do nothing

- 6.11 Under this option we would retain the current approach towards supply of information to consumers intended to notify them of the fact that the switch is happening, and the implications of the switch including any potential outstanding contractual liabilities.

This would continue to be through requirements on both the gaining and losing CPs to send out NoT letters during the 10-day switchover period. In particular, it would remain the decision of the losing CP whether or not to include information to consumers about potential contractual liabilities as part of their NoT letters.

Option 2: Introduce obligations requiring both the gaining and losing CPs to include reference to existing contractual liabilities with a customer's existing CP within the NoT letters

- 6.12 Under this option, we would look to require both losing and gaining CPs to include reference to the potential for outstanding contractual liabilities with a customer's existing CP as part of the mandated information that is required to be contained in the NoT letters. Under current arrangements there are no requirements on either CP to include reference to the potential for existing contractual liabilities with their current CPs, although losing CPs are able to make such reference on a voluntary basis.

Option 3: Introduce obligations requiring consumers to be informed at the point of sale by the gaining CP of the potential for contractual liabilities with their existing CP

- 6.13 Under this option, Ofcom would require the gaining CP to inform consumers that there may be outstanding contractual liabilities with their existing CP through a simple prompt at the point of sale whether face-to-face, by telephone or via the internet.

Option 4: Introduce obligations requiring both CPs to include reference to contractual liabilities with a customer's existing CP within the NoT letters as well as at requiring the gaining CP to provide information at the point of sale

- 6.14 This option would encompass both options 2 and 3, including requirements on both losing and gaining CPs to include reference to the potential for outstanding contractual liabilities with a customer's existing CP as part of the NoT letters as well as requirements on the gaining CP to inform consumers that there may be outstanding contractual liabilities with their existing CP through a simple prompt at the point of sale.
- 6.15 It is possible that consumers would get more value from more accurate information at the point of sale relating to whether or not they actually do have a contractual liability and, if so, the amount of such liability. This is likely to require a comprehensive industry-wide common database solution which is accessible by all CPs, and we do not currently consider that it is likely to be proportionate to impose such requirements. As a result we have not considered this further.

Our preferred option on information to be provided to consumers of the potential consequences of switching

- 6.16 Our preferred option for the purpose of consultation is Option 4, to ensure consumers are better informed of the potential for contractual liabilities with their existing CP through improving the information to be given to consumers of the potential consequences of switching both (i) at the point of sale; and (ii) during the switchover period.
- 6.17 We have chosen this option because our analysis suggests that while the NoT process is largely effective, there is some evidence that consumers are not always as

well informed as they could be of the full implications of switching and, specifically, existing contractual liabilities with their existing CP. We discuss this above in the context of our analysis of OAT complaints data relating to ETCs which shows that a significant number of complainants had no awareness that ETCs could apply if they switched.

- 6.18 On balance, therefore, our preference is to require provisions to be put in place which ensure that consumers are better informed of the full implications of switching. We believe that this would be best achieved through requirements that consumers are informed both at the point of sale and during the switchover period of the possibility that they may have existing contractual liabilities. As a minimum, this should at least ensure that the consumer will be made aware of the possibility of contractual liabilities with their existing CP. This would therefore allow the consumer, once prompted to either:
- i) go ahead with the switch;
 - ii) decide to check themselves if they have a minimum notice period and, if so, the amount of the ETC before going ahead with the switch; or
 - iii) decide to first contact their losing CP to check if they have a minimum notice period and, if so, the amount of any ETC before going ahead with the switch.
- 6.19 We have considered whether it would be sufficient to provide information to consumers through letters only but, given frequently stated concerns that letters may not always provide sufficient information, that consumers may not always read or understand the implications of the letter or that letters may not be sent on occasion, we are not persuaded that reliance on letters only would be sufficient.
- 6.20 There are likely to be costs involved by requiring CPs to make changes to their sales scripts in order to ensure that consumers are prompted at the point of sale of the potential for contractual liabilities. As set out in the IA, the NPV of our preferred option on its own could lie in the range -£1m to £2m. This suggests that this option could be finely balanced in terms of net welfare benefits. However, we note that a combination of clarifying and simplifying the existing record keeping rules combined with the provision of better information to consumers at point of sale relating to contractual liabilities could yield a positive net present value ('NPV') in the order of £1 to £10m over five years.
- 6.21 We believe that this option meets the tests under s 47(2) of the Act for the following reasons:
- taking account of our policy objectives and aims and, in particular, that consumers should be well informed, we believe our preferred option is objectively justifiable. Specifically, based on our analysis of the evidence, we consider that there is evidence that consumers are not always well informed of the full implications of switching and, in particular, whether there is likely to be an existing contractual liability with their existing CP. We consider that information will be useful at point of sale and as part of the switching process – the two points at which a customer can make or confirm (or otherwise) a decision to obtain the service.
 - taking account of our policy objectives and aims and, in particular, that consumers should be well informed, we consider our preferred option is proportionate. This is because, based on our analysis, and taking into account

evidence relating to the limitations of letters, we consider that the proposed requirement for a simple prompt targets the problems we have identified at the points when a customer makes or confirms a decision. At both points, our evidence indicates that reminders would greatly assist customers, which leads us to conclude that Option 4, whilst requiring more from the gaining CP than Option 3, is proportionate to the aim we are trying to achieve of having well informed consumers. Also, as shown with the costs data above, we do not expect that this will be a significant additional burden on CPs compared with current obligations placed on CPs;

- we consider our preferred option is not such as to discriminate unduly as between CPs in that it would apply consistently to all CPs providing fixed-line telecommunications services as they would all be under the same obligations to comply with the stated regulations; and
- we are satisfied that our preferred option is transparent insofar as the nature and intended effect of the proposed changes are clearly set out in this consultation document.

Question 8

Do you agree with our preferred option to provide better information to consumers on the potential consequences of switching?

Please provide an explanation to support your response.

Section 7

Options on Cancel Other rules

Introduction

- 7.1 As set out above in section 2, the July 2005 Direction¹⁷ introduced more detailed rules as to when BT is permitted to use Cancel Other and what information it must provide to its competitors about its use of Cancel Other.
- 7.2 Under the July 2005 Direction, BT is only permitted to use Cancel Other in cases of slamming, to prevent a customer from being transferred as a result of another CP's failure to action that customer's request to cancel their transfer, and where a BT account is closed before a CPS or WLR order has matured ('line cease').
- 7.3 The July 2005 Direction also includes requirements relating to information to be provided to competitors about use of Cancel Other, and requires that full records of any contact between individual customers and BT relating to the use of Cancel Other are made available, on reasonable request, to the gaining CP. This includes the use of reason codes for all cancelled orders in line with specific categories.
- 7.4 For the purpose of Ofcom's investigations programme into compliance with GC14.5, Ofcom only takes into consideration the reason codes which relate to slamming.

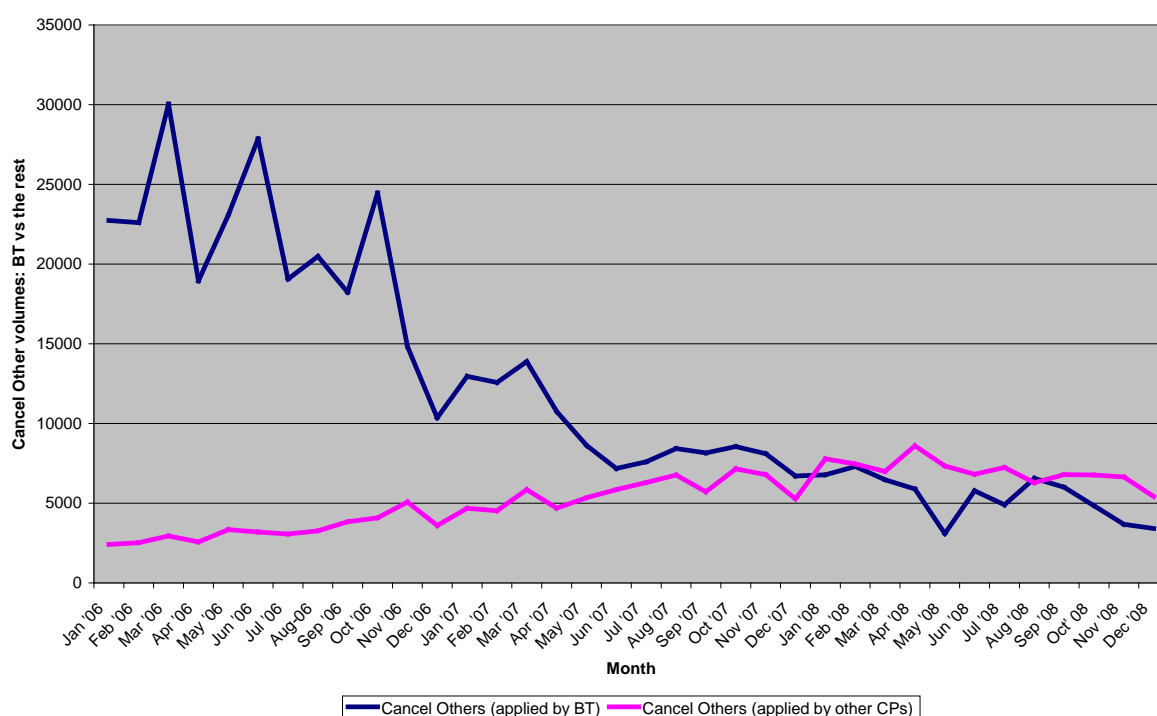
The current situation

Cancel Other obligations

- 7.5 The current Cancel Other obligations under the July 2005 Direction only apply to BT, and therefore there are no current specific obligations on the rest of the industry to apply Cancel Other in accordance with the rules nor to keep records for cancellations.
- 7.6 BT is currently subject to rules on use of Cancel Other as well as having various obligations relating to record keeping and transparency. These are set out in full in paragraphs 4.31 and 4.32.
- 7.7 BT, however, is no longer the majority user of Cancel Other, and Cancel Other usage is now widespread across the industry. Our analysis shows that the distribution of CPs applying Cancel Other is extensive, and that use of Cancel Other is widely dispersed across the fixed-line telecommunications sector (see Figure 7 below).

¹⁷ http://www.ofcom.org.uk/consult/condocs/cancelother/amendment2direction/amending_direction.pdf

Figure 7: Volume of CPs cancelling orders through Cancel Other': BT vs the rest



Market review of the fixed narrowband wholesale services market

- 7.8 The current Direction relating to BT's use of the "Save" and "Cancel Other" activities derives its authority from condition AA(1)(a) to the Notification published on 28 November 2003 as part of the review of the fixed narrowband line, call origination, conveyance and transit markets. Condition AA(1)(a) requires BT to provide Network Access on reasonable request, and includes a requirement to comply with any Direction made under that condition.
- 7.9 Ofcom is currently undertaking a market review of the fixed narrowband wholesale services markets, including those markets reviewed in 2003. Implicitly, the SMP conditions set in 2003, including condition AA(1)(a) will be reviewed.
- 7.10 A consultation document on this will be published imminently. However, questions relating to Cancel Other issues are being addressed as part of this consultation document on the review of mis-selling of fixed-line telecommunications services. This consultation document cannot prejudice the outcome of the narrowband market review, just as the narrowband market review cannot prejudice the outcome of this consultation process. To that end, the narrowband market review will be proposing the keeping in effect of the July 2005 Direction in the event that the review concludes before this consultation. This will enable the proposals here to be fully consulted upon and finalised.
- 7.11 We set out at paragraphs 7.34 to 7.54 our proposals on Cancel Other and include at paragraphs 4.7 to 4.10 our initial proposals regarding implementation periods.

Evidence of consumer harm

- 7.12 In assessing the effectiveness of the current Cancel Other rules and, in particular, evidence of current difficulties as well as potential costs of change, Ofcom has

gathered evidence from different sources and stakeholders and used the following approach:

Statutory information request

- 7.13 Ofcom sent CPs a statutory information request regarding information about the current approach to using Cancel Other, i.e. cancelling an order placed by another CP at the request of an existing customer, prior to the service commencing. This letter was sent to a number of CPs offering fixed-line telecommunications services (most of the large CPs and those who generate a significant number of complaints to OAT or generate a high number of Cancel Others).

Monitoring and enforcement of conduct relating to the transfer of customers between CPs

- 7.14 As described above, the July 2005 Direction only applies to BT and therefore does not enable Ofcom to enforce against allegations of misuse of Cancel Other by losing CPs such as where losing CPs are preventing customers from switching away who wish to do so.
- 7.15 Nevertheless, through our ongoing action to tackle mis-selling and, in particular, allegations by CPs that other CPs are misusing the Cancel Other process, we have considered possible options to address.
- 7.16 In order to address this particular issue, in May 2007, we extended our industry-wide enforcement programme to include 'inappropriate save'¹⁸ activity through the abuse of Cancel Other, and have taken formal enforcement action under GC 1.2.
- 7.17 On 29 November 2007 we published our decision to continue our programme of active monitoring and enforcement. Under the programme, we explained that we would continue to collect industry data and examine any evidence which suggests that CPs are not complying with the requirements of their Code of Practice and/or are failing to act appropriately following a request to transfer. This includes evidence in relation to unauthorised use of the Cancel Other facility.
- 7.18 When a customer places an order to transfer their fixed line telephone service from one CP to another, the losing CP is made aware of the customer's intention to transfer through a notification from the BT Wholesale/Openreach Service Provider Gateway. This notification is provided to enable the transfer to take place and to ensure certain consumer protection measures are met (i.e. the sending of a letter notifying the customer that a request has been made to transfer and allowing the customer to cancel the order if they have been slammed).
- 7.19 Ofcom has previously stated that losing CPs would be in breach of GC 1.2 if they used information obtained from Openreach for WLR transfers and/or BT Wholesale for CPS transfers, during the transfer process to engage in marketing activity to try to retain a customer. GC 1.2 places an obligation on CPs to ensure that information acquired from another CP for the purpose of negotiating network access, is used solely for that purpose. Therefore, the notification of transfer information, which is shared when a customer seeks to transfer to another CP, must be used solely for the purpose of enabling the transfer.

¹⁸ 'Inappropriate save' relates to inappropriate activity on the part of the CP to retain their customer and is contrary to General Condition 1.2 ("GC 1.2").

- 7.20 However, reliance on GC1.2 relies on ensuring compliance with the provisions contained in GC1.2 requiring information to be used only for the purpose for which it was intended. This only covers a much more restricted set of requirements than those which currently apply to BT.

Schema investigation into reported levels of telecoms mis-selling

- 7.21 In light of continuing concern from some industry stakeholders on the extent to which Ofcom's complaints data and Cancel Other categories represented an accurate assessment of levels of mis-selling, Ofcom commissioned Schema in 2007 to conduct an independent study into the accuracy of these measures. The aim of the study was twofold:
- i) to establish, to stated statistical confidence levels, the accuracy of OAT mis-selling and slamming data and Cancel Other (slam) category data; and
 - ii) to provide recommendations on how the accuracy of the data could be improved to ensure greater accuracy as well as how best to monitor the integrity of the data on an ongoing basis.
- 7.22 Schema carried out their study between February and April 2007. For the purpose of the study, Schema reviewed evidence supplied by Ofcom and the relevant CP(s), for the following data set:
- 241 OAT records from November 2006; and
 - 303 Cancel Other (slam) records from November 2006 and 335 Cancel Other (slam) records from July 2006.
- 7.23 On the basis of the evidence received, and after careful examination of the facts of each case, Schema produced their own verdict on each record reviewed. Schema delivered their final report to Ofcom in May 2007. A non-confidential version of the report was published by Ofcom in August 2007¹⁹.
- 7.24 Schema noted the number of Cancel Others did not give an accurate reflection of the degree of slamming. In particular, it noted that its analysis revealed that only 54% of orders cancelled for slam reasons could be categorised with confidence as a slam. This was again largely the result of 'customer issue' cases – where customer confusion or a mind change lay behind the case.
- 7.25 Schema also noted there were particular issues around the '9x80' codes (failure to cancel), with almost a third of the orders cancelled using this code involving situations where the customer had first requested cancellation from the losing CP or gaining CP in the final 48/72 hours before the service was due to go live. Schema further noted that while it was legitimate to cancel such cases under rules relating to the '9X80' codes, such a situation did not imply any failure on the part of the gaining CP. This was distinct from the other 70% of '9X80' cases, in which the gaining CP had failed to act on a cancellation request despite having ample time to act.
- 7.26 Schema noted the major weaknesses in relation to the accuracy of Cancel Other (slam) categories were as follows:

¹⁹ <http://www.ofcom.org.uk/consult/condocs/mis-sellingprotection/statement/report/report.pdf>

- losing CPs making invalid cancellations of cases where slamming had not occurred and was being used to frustrate the transfer process, particularly in situations where, for example, the customer has not yet paid their bill, the notice period has not been served or where disconnection or termination charges apply (17% of cases);
- an anomaly in the process for recording '9X80' cases of failure to cancel, meaning that slams and process issues are bracketed together (14% of cases); and
- 'customer issue' cases, where the losing CP cancels in good faith based on the customer's version of events, which gaining CP evidence reveals to be erroneous (14% of cases).

Conclusion on evidence of consumer harm

7.27 As set out above, and based on our analysis of the evidence, including our experience gathered through our monitoring and enforcement of conduct relating to the transfer of customers as well as the Schema findings, we consider there is evidence that a significant number of CPs are now using Cancel Other together with evidence of misuse by losing CPs. This gives rise to consumer harm as where Cancel Other is being misused it effectively prevents consumers from switching between CPs where they wish to do so. We consider that this is contrary to our policy objectives and aims and, in particular, that consumers should have a good experience of switching.

Options

7.28 We have identified the following four options in relation to the scope of Cancel Other rules, as follows:

Option 1: Do nothing

7.29 Under this option we would not propose to make changes to the 'Cancel Other' process as currently defined. This would mean that the July 2005 Direction which applies only to BT (or any savings provision under a new SMP Services Condition as part of the narrowband review, considered at paragraphs 7.8 to 7.10) would remain in place and we would be able to investigate BT's use of Cancel Other where we received complaints alleging abuse of the Cancel Other process by BT. However, as at present, we would not be able to investigate and/or enforce against allegations of abuse of Cancel Other by CPs except through GC1.2 in those cases where information was being used for a purpose other than that intended.

Option 2: Withdraw the July 2005 Direction concerning BT's use of Cancel Other (or remove any savings provision keeping it in effect) so that there are no specific rules relating to Cancel Other applicable to any CP

7.30 Under this option, Ofcom would look to withdraw the July 2005 Direction concerning BT's use of Cancel Other (or any savings provision) meaning that there would be no specific rules for Ofcom to enforce against allegations of abuse of Cancel Other by any CPs (including BT). Ofcom would only be able to enforce against CPs using GC1.2 in those cases where information was being used for a purpose other than that intended.

Option 3: Withdraw the July 2005 Direction concerning BT's use of Cancel Other (or remove any savings provision keeping it in effect) and incorporate reduced requirements as part of a General Condition

- 7.31 Under this option, we would look to introduce some but not all of the current requirements on BT relating to use of Cancel Other to cover all CPs of fixed-line telecommunications services which, in practice, would mean that the July 2005 Direction which applies to BT would be withdrawn (or any savings provision) and only those requirements which we consider to best meet our policy objectives and aims, and are objectively justifiable and proportionate, would be incorporated as part of the proposed General Condition.
- 7.32 Under this option, therefore, we would look to replicate some but not all of the current provisions contained within the July 2005, namely only those requirements relating to:
- i) permitted usage of Cancel Other; and
 - ii) record keeping requirements (i.e. "record of all contact made with that customer... for a period of six months").

Option 4: Withdraw the July 2005 Direction concerning BT's use of Cancel Other (or remove any savings provision keeping it in effect) and incorporate identical requirements as part of a General Condition

- 7.33 Under this option, Ofcom would look to introduce identical Cancel Other requirements to cover all CPs of fixed-line telecommunications services which, in practice, would mean that the July 2005 Direction which applies to BT would, in effect, be withdrawn, (or any savings provisions) with requirements being incorporated as part of a General Condition applicable to all relevant CPs.
- 7.34 Under this option we would look to replicate all current provisions contained within the July 2005 Direction on BT, as described in paragraphs 4.31 to 4.32.

Our preferred option on Cancel Other rules

- 7.35 Our preferred option for the purpose of consultation is Option 3, namely to withdraw the July 2005 Direction concerning BT's use of Cancel Other (or remove any savings provision keeping it in effect) and incorporating reduced requirements as part of a General Condition, applicable to all CPs of fixed-line telecommunications services.
- 7.36 This is because, based on our analysis of the evidence relating to the use of Cancel Other, we believe that the evidence shows that there is both widespread use of Cancel Other as well as evidence of systematic abuse of Cancel Other by losing CPs. This is as follows:
- Our analysis of industry data relating to the use of Cancel Other as well as the findings of the Schema study shows that use of Cancel Other has changed significantly over recent years and that while, historically, BT was the primary user, this is no longer the case. As Figure 7 above shows, BT is no longer the majority user of Cancel Other and Cancel Other usage is now widespread across the industry.
 - Also, our enforcement experience to date as well as the findings of the Schema study shows evidence of misuse of the Cancel Other process by other CPs

where Cancel Other would appear to have been used primarily to prevent customers from moving to another CP rather to protect from slamming. Our evidence relating to misuse of Cancel Others by losing CPs is twofold:

- i) First, our monitoring and enforcement of conduct relating to the transfer of customers has highlighted evidence of systematic abuse of the Cancel Other process where it has been used to stop customers from switching to another CP. We have already issued two notifications (to Telecom Plus trading as the Utility Warehouse Discount Club and Universal Telecom Ltd). In addition, we are currently investigating the use of Cancel Other by Telephonics Integrated Telephony Ltd; and
- ii) The findings of the Schema study which concluded that, based on the records reviewed by it, slamming had occurred in 54% of those cases where orders were cancelled for slam reasons. Of the other cases where slamming was not proven, a significant percentage were found to be cancelled inappropriately by the losing CP (17% of all cases where Schema was able to make a judgement on the evidence provided).

7.37 In deciding between options 3 and 4, our preferred option is Option 3, namely that the July 2005 Direction concerning BT's use of Cancel Other (or any savings provision) should be withdrawn with reduced requirements being incorporated within a General Condition. While we can see merit in transposing the provisions relating to permitted usage of Cancel Other and record keeping requirements, we are not persuaded that the rules relating to information sharing with other CPs are necessary taking into account our policy objectives and aims. This is discussed in the section below in the context of existing provisions set out in the July 2005 Direction.

i) Permitted usage of Cancel Other

7.38 As set out above, Cancel Other protects consumers from the potential for slamming. To ensure compliance with this, Ofcom put in place rules concerning BT's use of Cancel Other, setting out under what circumstances BT was able to cancel orders using the Cancel Other process. These are set out at paragraphs 4.31 and 4.32 above.

7.39 Ofcom continues to consider that that the primary purpose of Cancel Other is to protect consumers from slamming and, therefore, it remains the responsibility of the losing CP to take reasonable steps to ensure that slamming has actually taken place before cancelling the order.

7.40 For the avoidance of doubt, we consider that Cancel Other should not be used by the losing CP in the following circumstances:

- i) to frustrate the transfer process, particularly in situations where, for example, the Customer has not yet paid their bill, the notice period has not been served or where disconnection or termination of charges apply. These charges should be included in the final bill, and settled in accordance with standard payment terms;
- ii) where a customer has placed a legitimate order, but wants to change their mind, for example, where they have reconsidered or where mis-selling has occurred, for e.g. where the information they have received from the gaining CP does not seem consistent with what they were told at the time of the sale. In such cases, the process requires losing CPs to direct the consumer back to the gaining CP to cancel the order;

- iii) in cases of internal miscommunication which is where a request for service may have been made by a person other than the person named on the bill but who may have identified themselves as an authorised decision maker. In many cases, where a customer contacts a losing CP, following internal customer miscommunication, it may appear to the customer that slamming has occurred. As set out in the July 2005 Direction, Ofcom consider that internal miscommunication is not an appropriate use of Cancel Other given that the named account holder may not be the only authorised decision maker in a household or business, where decisions about fixed-line telecoms services are often made jointly. In such circumstances, we consider that where the named account holder disagrees with this decision, it is up to those individuals, and not the losing CP, to resolve.

Similarly, in the case of businesses, Ofcom considers that if an individual takes a decision they are not authorised to make, this is a matter for the organisation concerned and, similarly, should not be for the losing CP to resolve. Where internal customer miscommunication has occurred, the customer can cancel the transfer by contacting their gaining CP within the 10-day switchover period, if the household or organisation has decided it does not want service from the gaining CP.

- 7.41 However, we propose to continue to allow losing CPs to apply Cancel Other in cases where there has been a failure to cancel by the gaining CP. In such cases, and where the gaining CP has failed to cancel a pending order on the request of the customer, we continue to believe a “safety net” mechanism is required which allows losing CPs to cancel an order using Cancel Other in these circumstances.
- 7.42 Losing CPs will therefore be permitted to use Cancel Other where a gaining CP has failed to cancel a transfer when the customer has requested this, albeit they will need to take reasonable steps to ensure that failure to cancel has, in fact, taken place and where the customer would otherwise be transferred to the gaining CP against their wishes.
- 7.43 To give customers certainty and transparency, Ofcom proposes that losing CPs should be required to confirm the cancellation of the cancelled order wherever it uses Cancel Other, unless this is not possible.

Question 9

Do you agree that Cancel Other should primarily only be permitted for reasons of slamming, as defined by Ofcom, or are there other circumstances where you feel use of Cancel Other should be permissible?

Reason codes

- 7.44 An important part of the transparency of Cancel Other comes from reason codes which provide information relating to the cause of the cancellation. BT must currently record its reason for using Cancel Other in each case, according to the categories (a) (i) to (iv) and (b) to (d) set out at paragraphs 4.31 and 4.32 above. While there are currently no equivalent obligations on other CPs, it is nevertheless the case that where CPs use Cancel Other they should also use correct reason codes in line with industry agreed processes.
- 7.45 As part of its findings on the reliability of Cancel Other data, Schema found that there was evidence that the codes used did not always reflect the situation. Moreover, Schema also observed that some CPs were systematically or randomly selecting reason codes to cancel transfers which should not have been cancelled. In other cases there was a legitimate reason for cancellation, yet the wrong code had been used.
- 7.46 For example, a '9X50' code was sometimes allocated (a slam without contact by the gaining CP) for cases of slamming in which the customer had clearly told the losing CP that there had been contact (though not agreement) – so the case should have been a '9X20'. Using the wrong code gives gaining CPs a false idea of why the service was cancelled. This can lead them to claim, understandably, that a slamming allegation is false, when in fact the wrong reason has been given.
- 7.47 A benefit, therefore, of extending Cancel Other rules to apply to all CPs is that, going forward, all CPs who use Cancel Other would be required to record the reason for the Cancel Other, selecting the appropriate "reason code" from a list corresponding to the permitted uses of Cancel Other, as agreed by the industry, and approved by Ofcom. Failure to do so would be a contravention of the proposed rules.
- 7.48 During the consultation period, we intend to work with the industry in order to further improve the reliability of Cancel Other data, based on our experience to date to address a number of identified areas which we consider can be improved. This includes taking forward various recommendations put forward by Schema, including splitting the current '9X80' reason code into separate codes in order to enable a proper distinction to be made between cases where the gaining CP has acted inappropriately by failing to cancel the order as opposed to where the customer has contacted the gaining CP too late in the process and it has not been technically possible to cancel the order.
- 7.49 Also, we do not believe that it is appropriate that the reason codes should provide visibility as to when BT is applying Cancel Other as opposed to other CPs. While historically, there may have been a good reason why this was the case, we do not believe that such a distinction is any longer valid given some of the changes described above. We therefore intend to work with the industry in considering the case for having a single set of reason codes to be applied consistently across the industry.

Question 10

Do you have any other suggestions for improvements to the reliability of the Cancel Other data and, in particular, the existing reason codes?

ii) Record keeping requirements under the July 2005 Direction (i.e. “record of all contact made with that customer... for a period of six months”)

7.50 This is discussed in section 8, *Options on record keeping for sales and Cancel Other*. See paragraphs 8.36 to 8.48.

iii) Information sharing obligations (i.e. provision to share records with a CP, on request, within a reasonable period)

7.51 As discussed, BT is currently subject to certain transparency obligations and, in particular, must provide the following within a reasonable period:

- a randomly selected representative sample, covering a period of one month, of the records of contact between BT and its customers, where such contact relates to BT's use of Cancel Other, in instances of slamming and/or failure to cancel; and
- all records of any contact between BT and its customers specified by the gaining CP, where such contact relates to BT's use of Cancel Other, in instances of slamming and/or failure to cancel

7.52 Ofcom notes that this particular requirement was introduced following the dispute between BT and the industry and, in particular, concerns that the Cancel Other process unfairly enabled BT to cancel CPS and WLR orders inappropriately. In this context, Ofcom took the view that while Cancel Other should continue to exist given it acted as an important consumer protection mechanism, there should nevertheless be additional transparency obligations imposed on BT in the form of record sharing to demonstrate that Cancel Other had been used appropriately.

7.53 However, given some of the changes around use of Cancel Other and, specifically, extensive use of Cancel Other across the industry, Ofcom is not persuaded that similar requirements to share records on request are likely to be workable nor proportionate in a multi CP-regulated environment. We have a number of concerns regarding transposing this particular obligation into the new proposed General Condition including:

- i) it is likely to be very expensive for CPs to provide records on request on a reasonable basis to other CPs (given the volumes involved); and
- ii) it is arguably not necessary in the event there is a General Condition in place as Ofcom can request records where we feel necessary based on evidence of Cancel Other volumes and allegations of Cancel Other abuse.

Question 11

Do you agree with Ofcom's proposals not to transpose information sharing obligations relating to use of Cancel Other as part of the proposed new General Condition?

Please provide an explanation to support your response.

7.54 We do not anticipate there will be costs arising from our proposals to extend Cancel Other rules across the industry given, as discussed previously, a significant number of CPs already use Cancel Other, and are already expected to do so in accordance

with industry agreed processes, including using correct reason codes. This will remain the case and it is important to note that our proposals will not require CPs to use Cancel Other where they choose not to do so. However, in the event that they do use Cancel Other they will be required to do so properly, and to make, and retain, records as evidence of this. Therefore, we anticipate any costs to the industry from our proposals to arise in the context of record keeping requirements. We discuss Cancel Other record keeping requirements in paragraphs 8.36 to 8.48.

7.55 We believe that this option meets the tests under Section 47(2) of the Act for the following reasons:

- taking account of our policy objectives and aims, we consider our preferred option is objectively justifiable and proportionate given that the evidence shows that use of Cancel Other is now widespread across the industry. Also, as we discuss above the evidence from our enforcement experience to date and the findings of the Schema study highlights misuse of the Cancel Other process by other CPs where Cancel Other would appear to be used primarily as a tool to prevent customers from switching. We consider that the evidence we have considered justifies extending the scope of the Cancel Other rules to all CPs in order to ensure that where it is used it is done so properly. However, as discussed, taking account of issues of proportionality, we are not proposing at this stage to transpose all current rules, and are proposing to omit rules around information sharing. In addition, we do not anticipate that there will be any costs involved for those CPs who are already using Cancel Other properly; costs would only be a factor where CPs are currently misusing the Cancel Other process.
- we consider our preferred option is not such as to discriminate unduly in that it would apply consistently to all CPs providing fixed-line telecommunications services as they would all be under the same obligations to comply with the stated regulations; and
- we are satisfied that our preferred option is transparent insofar as the nature and intended effect of the proposed changes are clearly set out in this consultation document.

Section 8

Options on record keeping for sales and Cancel Other

Introduction

- 8.1 This section assesses current obligations in respect of sales and Cancel Other records made, and kept, by CPs, and considers whether there is a case for greater obligations to be placed on CPs to keep sales and Cancel Other records.

The current situation

Record keeping for sales

- 8.2 The current obligations relating to record keeping are set out in the Guidelines for sales and marketing codes of practice for Fixed-Line Telecommunications Services at Annex 3 to GC14. Specifically, paragraph 5.10 states:

“Sales and marketing campaign records to be maintained for six months, including the date and appropriate time of the contact with the Customer. Records to be such as to allow subsequent identification of the salesperson(s) involved and assist in dealing with any complaint or query.”

Evidence of consumer harm

- 8.3 In assessing the effectiveness of the current obligations and, in particular, evidence of current difficulties as well as potential costs of change, Ofcom has gathered evidence from different sources and stakeholders and used the following approach:

Statutory information request

- 8.4 Ofcom sent two statutory information requests under Section 135 of the Act requesting information from CPs about their current approach to record keeping. The purpose of these requests was to assess possible requirements for improved recording of sales and cancellations interactions between CPs and their customers. The Section 135 information request letters were sent to a number of CPs offering fixed-line telecommunications services (as described earlier).

Monitoring and enforcement of mis-selling

- 8.5 As discussed above in paragraphs 3.28 to 3.31, Ofcom has conducted an active industry-wide enforcement programme to monitor and raise the level of compliance in the industry with GC 14.5. Since the enforcement programme commenced Ofcom has opened separate investigations into 14 CPs on mis-selling and related transfer issues.
- 8.6 Our experience to date in investigating alleged mis-selling complaints is that the likely success of any investigation is dependent on the quality of the records kept. A major limitation which we have identified over the course of the enforcement programme has been the fact that CPs have different approaches to record keeping, both in terms of what they keep and the length of time they retain records. This variability

has directly impacted upon Ofcom's enforcement activities and, in the past, Ofcom has found it difficult to enforce against CPs where bad practices have been alleged but the records provided have been poor due to lack of adequate evidence provided.

8.7 We highlight below two investigations which illustrates the importance of good quality records and, specifically, where telesales is used, the existence of call records:

- as part of one investigation, we approached the CP involved and asked them to provide certain information in relation to their sales processes. The CP responded with various documentation and sales scripts which indicated that they took compliance seriously and had scripts in place to ensure there was no mis-selling. Trading Standards, who had received similar complaints, conducted a site visit/raid as part of their own investigation and recovered a number of calls made by the CP in question to consumers. These calls included instances of slamming and it was only through these that we were able to take enforcement action.
- As part of a different investigation, we approached Otelo for information on a number of their adjudications. We found that in the absence of full call recordings, Otelo often found in favour of the CP involved claiming that the consumer should have relied upon the information contained within the welcome pack. In the course of the investigation, however, we were able to obtain call recordings and it was only through this evidence that we were able to identify contraventions to the regulations.

Schema investigation into reported levels of telecoms mis-selling

8.8 As already discussed at paragraphs 7.21 to 7.26, Ofcom engaged Schema in 2007 to review the extent to which Ofcom's complaints data and Cancel Other categories represented an accurate assessment of levels of mis-selling.

8.9 As part of its findings, Schema identified the quality of evidence provided by CPs as a major limitation to its work. Schema requested 1,497 records regarding OAT complaints and Cancel Other (slam) cases. There was no response at all from CPs regarding 304 records (20%). This meant they were able to provide no information to explain a complaint, or justify a transfer or the use of Cancel Other. In a further 323 cases (22%) the information returned was insufficient to produce a verdict. The information was insufficient through being incomplete, too brief or covering the wrong period or case. In addition, where telesales had been used, Schema identified that the quantity of call recordings provided was low. In addition, in some cases only the verification part of a sales call was provided. Schema noted that this, in itself, did not give enough information on the main part of the sale.

8.10 Moreover, Schema observed that complete records that give an audit trail to both sales and Cancel Other were vital. In order to improve the quality of sales records, Schema made the following recommendations:

- CPs who use telesales should keep complete call recordings. The quantity of call recordings provided to Schema was low. In addition, in some cases only the verification part of a sales call was provided. Whilst in some cases Schema noted that this was better than nothing e.g. it can add an additional element of security in the case of a sale made face to face – in many cases it does not give enough information on the main part of the sale. Indeed, Schema was concerned that there was a risk that while verification calls may sound fine, the customer may have been misled earlier in the sale process. Schema therefore recommended

that CPs should keep and provide recordings of all calls made to and from customers about sales and cancellations;

- CPs to keep records for 12 months. When Schema requested information some CPs claimed recordings no longer existed. Schema noted that the fact that records are kept for six months only restricts the period over which changes in selling practices can be measured. Schema therefore recommended extending the obligation to 12 months which, it argued, would enable Ofcom to monitor mis-selling over a longer time period;
- all CPs should keep records for Cancel Other cases, in addition to records for sales. In order to monitor effectively the validity of Cancel Other actions, as well as sales activities, Schema recommended that all CPs should retain records for Cancel Other actions. This should include all recordings, documents and papers to justify a Cancel Other action that was taken; and
- CPs should keep a proper audit trail for web sales. Schema noted that some CPs claimed they could not provide information about the sale because a customer signed up via their website. Schema therefore recommended that CPs should take steps to ensure that there was a full audit trail of web sales so that information regarding them can be provided along with information regarding other sales channels (phone, doorstep etc).

Options on record keeping for sales

8.11 We have identified the following four options in relation to record keeping for sales, as follows

Option 1: Do nothing

- 8.12 Under this option we would not propose to make changes to current obligations relating to record keeping for sales which would mean that current obligations, as set out at paragraph 5.10 of the current sales and marketing guidelines, described above, would be retained.
- 8.13 Under this option Ofcom's approach to record keeping would remain high-level, and SPs would retain the freedom to determine what records are made, and retained, in line with their particular business model and circumstances, sufficient to meet the requirements set out at paragraph 5.10.

Option 2: Clarification of existing obligations relating to record keeping obligations for sales

- 8.14 Under this option we would not propose to make changes to current obligations relating to record keeping for sales which would mean that current obligations, as set out at paragraph 5.10 of the current sales and marketing guidelines, described above, would be retained.
- 8.15 Under this option, as above, Ofcom's approach to record keeping would remain high-level, and SPs would retain the freedom to determine what records are made, and retained, in line with their particular business model and circumstances, sufficient to meet the requirements set out at paragraph 5.10 of the current sales and marketing guidelines.

- 8.16 However, under this option, unlike Option 1, Ofcom would look to provide additional clarification of the current obligations in order to aid understanding in light of concerns that not all CPs are acting fully in accordance with current requirements relating to record keeping.
- 8.17 In particular, as discussed above, we have observed, both through our enforcement experience to date plus through the Schema findings, that CPs have very different approaches to record keeping. This variability has directly impacted upon Ofcom's enforcement activities, and in the past Ofcom has found it difficult to enforce against CPs where bad practices have been alleged but the quality of the sales has been sub-standard and contrary to what Ofcom believes is required by existing obligations.

Option 3: Introduce obligations requiring CPs to keep, and retain, call recordings, where appropriate

- 8.18 Under this option, Ofcom would require CPs to keep recordings of the actual sale, plus any subsequent calls that were made as part of the sales process, where telesales is used by CPs as a channel to market.
- 8.19 As stated above, while in the majority of cases where telesales is used, it is likely that there will be a paper trail (through welcome packs etc), it is also likely that customers will have signed up to the service based on the representations made over the telephone. Without a call recording, therefore, it is difficult to formulate a clear decision on whether or not mis-selling has occurred based on other forms of evidence submitted. The two investigations cases referred to above highlight the difficulty involved in being able to take a judgement in the absence of call recordings.
- 8.20 In reviewing the response to our statutory information request letter (as described above), we note that the majority of CPs now use telesales to promote and sell their products. Indeed, on the basis of the evidence provided, telesales is the most popular channel to market, with 11 out of 17 respondents ranking telesales as their most important sales channel in terms of their planned or projected growth.
- 8.21 On call recordings, we note there are different standards that we could look to put in place and, in particular, for the purpose of consultation, we are considering the following sub-options:

Sub-option 3(i)- 75% call record keeping requirements (with no assumed tolerance levels)).

Sub-option 3(ii) - 100% call record keeping requirements based on reasonable endeavours [with an explanation why 100% was not possible] and never less than 90%.

Sub-option 3(iii) – 100% call record keeping requirements (with no assumed tolerance levels).

Option 4: Clarification of existing obligations relating to record keeping obligations for sales and introduction of obligations requiring CPs to keep, and retain, call recordings, where appropriate

- 8.22 Under this option, we would look to provide additional clarification of the current obligations in order to aid understanding in light of concerns that not all CPs are acting fully in accordance with current requirements relating to record keeping as well as introducing new requirements on CPs to keep recordings of the actual sales, plus any subsequent calls that were made as part of the sales process, where telesales are used by CPs as a channel to market.

- 8.23 On call recordings, as described under Option 3, there are different standards that we could look to put in place and, in particular, for the purpose of consultation, we are considering the following sub-options:

Sub-option 4(i) - clarification of existing obligations relating to record keeping obligations for sales as well as 75% call record keeping requirements (with no assumed tolerance levels).

Sub-option 4(ii) - clarification of existing obligations relating to record keeping obligations for sales as well as 100% call record keeping requirements based on reasonable endeavours [with an explanation why 100% was not possible] and never less than 90%.

Sub-option 4(iii) – clarification of existing obligations relating to record keeping obligations for sales as well as 100% call record keeping requirements (with no assumed tolerance levels).

Our preferred option on record keeping for sales

- 8.24 Our preferred option is 4 and, more specifically, sub-option (4)(ii) – namely 100% record keeping requirements based on reasonable endeavours. In practice, we would expect this to mean as close to 100% as possible and, where, not achievable, an explanation as to why this was not possible.
- 8.25 The reason for this is that in our view there is a need to provide both additional clarification of existing obligations for record keeping for sales as well as a requirement for obligations for call recordings to be made, and retained, where appropriate, where telesales are used.

Clarification of existing obligations

- 8.26 We intend to use the guidelines to provide information and advice to CPs in respect of what we consider is required in terms of record keeping across various sales channels. The aim of this would be to provide much greater certainty to relevant CPs in terms of what is required by them in order to meet their obligations as set out under paragraph 5.1 of Ofcom's current published guidelines.
- 8.27 In particular, we expect to set out that all CPs must keep a comprehensive audit trail of the sales process, including complete records and supporting material and that, in our view, there are a number of ways by which CPs can ensure that there is good quality evidence available regarding the legitimacy of the sales activity, including:
- cases notes recorded by the sales representative;
 - documents, contracts and/or correspondence in support of the sale correspondence with customers; and
 - any other supporting information pertinent to a review of the sales approach.
- 8.28 Given evidence of inadequate records for web-sales, in particular, we expect that there should be a full audit trail for web sales, legitimising the sales activity.
- 8.29 The proposed new guidelines are attached at Annex 8.

Call recording obligations

- 8.30 As discussed in section 3, a particular difficulty we have experienced is in relation to telesales where, based on our experience to date, the most valuable evidence in

investigating mis-selling allegations is evidence at the point of sale and, in particular, call recordings.

- 8.31 Under the options section, in the context of call record keeping obligations, we highlight that there are different thresholds which could be applied.
- 8.32 We believe that a 'reasonable endeavours' approach to call recording obligations should provide the best balance between ensuring that CPs are keeping adequate records of sales calls together with the need for Ofcom to ensure that regulation is proportionate and objectively justifiable. While we have considered the case for 100% call record keeping requirements (with no assumed tolerance levels), we do not believe that this is likely to be feasible without significantly increasing the costs to the industry; a cost we would expect ultimately to be passed on to consumers through higher charges. This is because we consider that such an approach is likely to be challenging for CPs to comply with given the range of factors that could impact on CPs ability to comply with 100% record keeping and retrieval obligations including, amongst others, the possibility of systems and operational failures.
- 8.33 We have also considered the case for 75% of call record keeping obligations. However, we have concerns that this may lessen the value of any record keeping obligations. This is because we are concerned that the records we receive may not necessarily be representative of the sales practices of certain CPs. We are also concerned that the current approach results in the potential for perverse incentives, and may unduly penalise those CPs who currently follow best practice in relation to record keeping practice.
- 8.34 Taking into account the fact that CPs would incur set-up costs in the first year of implementation and that benefits would not then be realised until implementation was complete, we estimate that the NPV of our preferred option on its own could lie in the range £10m to £58m, as set out in the Annex to the IA at Annex 5. However, we note that a combination of clarifying and simplifying the existing record keeping rules and provision of better information to consumers at point of sale relating to contractual liabilities could yield a positive NPV in the order of £11m to £67m over five years. We note that less stringent obligations are likely to be less effective and do not in any event reduce costs significantly. More information on costs can be found in the IA which is attached at Annex 5.
- 8.35 We believe that our preferred option meets the tests under Section 47(2) of the Act for the following reasons:
 - taking account of our policy objectives and aims, we believe our preferred option is objectively justifiable and proportionate given that the evidence, as discussed above, shows that there is a need to provide both additional clarification of existing obligations for record keeping for sales as well as a requirement for obligations for call recordings to be made, and retained. We consider new rules requiring CPs to make, and retain, call recordings will establish what Ofcom considers to be 'minimum best practice' in relation to telesales and help establish a level playing field. Without this, our concern is that certain 'less reputable' CPs may seek to deliberately avoid recording sales where it remains open to them to do so on the grounds this means evidence cannot be produced when bad practices are alleged. This will have the effect of penalising those CPs who continue to follow best endeavours in relation to record keeping. We consider that both elements are no more than necessary to enable us to better meet our stated objectives and aims;

- we believe our preferred option is not such as to discriminate unduly in that it would apply consistently to all CPs providing fixed-line telecommunications services as they would all be under the same obligations to comply with the stated regulations; and
- we are satisfied that our preferred option is transparent insofar as the nature and intended effect of the proposed changes will be clearly set out in the consultation document.

Question 12

Do you agree with our preferred option on record keeping for sales? Please provide an explanation to support your response.

Options on record keeping for Cancel Other

8.36 We have identified the following three options in relation to record keeping for sales, as follows:

Option 1: Do nothing

8.37 Currently, record keeping obligations only rest with BT. Under this option, therefore, this would remain the case and only BT would remain under obligations to make, and retain, records where Cancel Other is used.

Option 2: High-level approach to record keeping obligations for Cancel Other

8.38 Under this option we would introduce industry-wide obligations in respect of record keeping obligations meaning that all CPs would be under the same obligations. Under this option, CPs would retain the freedom to determine what records are made, and retained, in line with their particular business model and circumstances.

8.39 Here, we would look to issue guidance and clarification in order to aid understanding to assist all CPs to meet their obligations under this option.

Option 3: Introduce obligations requiring CPs to keep, and retain, call recordings, where appropriate

8.40 Under this option, we would require CPs to keep call recordings of conversations relating to use of Cancel Other between their customer and themselves where Cancel Other was applied.

8.41 On call recordings, we note there are different standards that we could look to put in place and, in particular, for the purpose of consultation, we are considering the following sub-options:

Sub-option 3(i)- 75% call record keeping requirements (with no assumed tolerance levels).

Sub-option 3(ii) - 100% call record keeping requirements based on reasonable endeavours [with an explanation why 100% was not possible] and never less than 90%.

Sub-option 3(iii) – 100% call record keeping requirements (with no assumed tolerance levels).

Preferred option on record keeping for Cancel Other

- 8.42 Our preferred option is Option 3 as we believe that the evidence, as set out, suggests that there is a need for call recordings to be made, and retained, where Cancel Other is used. In particular, it is important to note that in the case of Cancel Other, it is likely that a telephone conversation will have taken place between the customer given the timescales involved i.e. the 10 day switchover period. In this instance, typically, letters will only be received by customers around day five and therefore customers will only have five days to effect any cancellation. It is for this reason we are not persuaded that others forms of records will be effective.
- 8.43 Given that Cancel Other is likely to be triggered by a telephone call, we believe that, without a telephone call recording, it will be difficult to establish a clear picture of the facts. As with sales, we are concerned that variability in respect of record keeping is likely to make it difficult for us to enforce as well as potentially penalising those CPs who follow best practice in respect of record keeping.
- 8.44 This particular weakness in the regulations was highlighted by the findings of the Schema study (see paragraphs 8.9 and 8.10). Schema found that the general approach to record keeping for both sales and Cancel Other was poor, with either no response being provided or insufficient response which was unusable. Schema also identified that the quantity of call recordings provided was low where telesales had been used.
- 8.45 As discussed, in the context of call record keeping obligations, there are different thresholds which could be applied. Our preferred sub-option is (3)(ii) – namely 100% record keeping requirements based on reasonable endeavours. This is because we believe that a ‘reasonable endeavours’ approach to call recording obligations should provide the best balance between ensuring that CPs are keeping adequate records of cancellations calls together with the need for Ofcom to ensure that regulation is proportionate and objectively justifiable. While we have considered the case for 100% call record keeping and retrieval requirements (with no assumed tolerance levels), as discussed, we do not believe that this is likely to be feasible without significantly increasing the costs to the industry. This is because we consider that such an approach is likely to be challenging for CPs to comply with given the range of factors that could impact on CPs ability to ensure 100% record keeping and retrieval obligations including, amongst others, the possibility of systems and operational failures.
- 8.46 We have also considered the case for 75% of call record keeping obligations. However, we have concerns that this may lessen the value of any record keeping obligations for Cancel Other. This is because we are concerned that the records we receive may not necessarily be representative of cancellations practices of certain CPs.
- 8.47 Taking into account the fact that CPs would incur set-up costs in the first year of implementation and that benefits would not then be realised until implementation was complete, we estimate that the NPV of our preferred option on record keeping for Cancel Other could actually be in the range -£1m to £4m over five years. This suggests that this option could be finely balanced in terms of net welfare benefits. We note that less stringent obligations are likely to be less effective and we note does not

reduce costs significantly. More information on costs can be found in the IA which is attached at Annex 5.

8.48 We believe that this option meets the tests under Section 47(2) of the Act for the following reasons:

- taking account of our policy objectives and aims, we believe our preferred option is objectively justifiable and proportionate given that the evidence, as discussed above, shows that record keeping obligations is no more than necessary where Cancel Other is used. As with sales, we consider new rules requiring CPs to make, and retain, call recordings will establish what Ofcom considers to be 'minimum best practice' in relation to use of Cancel Other and help establish a level playing field. Without this, our concern is that certain 'less reputable' CPs may seek to deliberately avoid recording Cancel Other where it remains open to them to do so on the grounds this means evidence cannot be produced when bad practices are alleged. This will have the effect of penalising consumers as well as other CPs by frustrating the switching process;
- we believe our preferred option is not such as to discriminate unduly in that it would apply consistently to all CPs providing fixed-line telecommunications services as they would all be under the same obligations to comply with the stated regulations; and
- we are satisfied that our preferred option is transparent insofar as the nature and intended effect of the proposed changes are clearly set out in this consultation document.

Question 13

Do you agree with our preferred option on record keeping where Cancel Other is used?

Please provide an explanation to support your response.

Section 9

Consideration of other options

Background

- 9.1 The proposals contained in this document are part of a package of measures aimed at delivering sustained reductions in harm from mis-selling. These measures include a recent step-up in enforcement activity in this area and the publication of consumer guides on mis-selling.
- 9.2 We expect the package of measures to have an impact in terms of reducing current mis-selling levels and abuses of the Cancel Other process (where consumers are illegitimately prevented from switching). However, it is important to note that the proposals contained in this document are largely incremental in nature insofar as they seek to identify, and tackle, weaknesses of the current regulations.
- 9.3 There are a range of options available which are likely to be more interventionist in nature ranging from more intrusive ex-ante validation which would likely result in changes to wholesale processes (and therefore have the potential effect of making it more difficult to switch between suppliers) to ex post validation which would seek to both resolve any issues following allegations of mis-selling post sale but also change the incentives on CPs to improve compliance levels and reduce consumer harm.
- 9.4 While we are not proposing any such changes at the current time, we would nevertheless welcome views on these options, which are set out below. We intend to keep them under review in the event that any changes we may institute following this consultation do not lead to sufficient reduction in fixed-line mis-selling volumes and abuses of Cancel Other.

Other options

- 9.5 As set out above, there are a range of different options which are likely to be more interventionist in nature, and range from ex-ante validation models to ex post validation models. These are as follows:

(1) Ex-ante validation

- 9.6 As described above, ex-ante validation essentially looks to introduce greater upfront validation. This is typically achieved through making changes to wholesale switching processes. Examples of ex-ante validation include the following:
 - Customer validation of orders: where orders received from a gaining CP would not be processed until there was some form of confirmation received from the customer to validate the sale.
 - Third party verification of orders: the use of third party verification of orders is commonplace in other countries, including the USA, Ireland and Switzerland. In the USA, for example, CPs are required to use a formal verification process before consumers can be switched. In Ireland, customers are required to sign a customer authority form ("CAF") or use an independent third party verification ("TPV") process. The telephone call between the customer and the TPV body is recorded and must be produced within two days if the transfer is challenged. If the CAF or TPV record cannot be produced the consumer cannot be switched.

Ex-post validation

- 9.7 As described above, ex-post validation looks to reduce the value to be gained from mis-selling activity by increasing the costs of non-compliance. Examples of ex post validation include the following:
- Automatic compensation: another possible option would be the introduction of automatic compensation in the case of proven mis-selling activity where CPs are required to provide redress to consumers in the event of proven mis-selling activity.
 - Third party Complaints Validation Body (CVB): a further option is that of a CVB which would have the specific aim of validating CP-specific mis-selling complaints.

Moving to a losing CP-led switching process

- 9.8 A further possible option could be to move to a process which requires consumers to contact their LP before switching as currently used in the broadband sector with the MAC process.

Stakeholder views

- 9.9 As above, we are not proposing at this stage to propose the sorts of models briefly referred to above. We would nevertheless welcome views on these options given that we may come back to these in more detail the event that any changes we may institute following this consultation do not lead to sufficient reduction in fixed-line mis-selling volumes and misuse of Cancel Other.

Question 14

What are your views in relation to consideration of other options described in section 9?

Please provide an explanation to support your response.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 27 May 2009**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at http://www.ofcom.org.uk/consult/condocs/protecting_consumers/howtorespond/form as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email gavin.daykin@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Gavin Daykin
Ofcom
Consumer Policy Team
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3706
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Gavin Daykin on 020 7981 3859.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/account/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in Autumn 2009 setting out our conclusions on the proposals contained in this consultation document.
- A1.12 Also, as discussed in relation to the July 2005 Direction relating to BT's use of Cancel Other (see paragraphs 4.7 to 4.10), we consider that it may be appropriate to modify the July 2005 Direction (or any provision saving in effect this Direction) to reflect our preferred option (this is considered at Section 7), or withdraw, so that any such changes take effect before the end of the proposed 12 month period. This is subject to the outcome of this consultation and in particular, the views being sought in this regard, and may be subject to further consultation.
- A1.13 In addition, and as also discussed in the consultation document, we intend to work with the industry in order to further improve the reliability of Cancel Other data, based on our experience to date to address a number of identified areas which we consider can be improved.
- A1.14 Please note that you can register to receive free mail updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.15 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.16 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.17 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House

149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401

Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. 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

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 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 to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

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)

Annex 4

Consultation questions

Question 1

Based on our analysis of Ofcom's mis-selling complaints data, do you agree that further improvements are achievable, and that both absolute and relative numbers of mis-selling incidences can be reduced?

Please provide an explanation to support your response.

Question 2

Based on our experience of our enforcement activities, do you agree that the regulations should be further strengthened in order to better meet Ofcom's policy objectives and aims?

Please provide an explanation to support your response.

Question 3

What are your views on appropriate implementation periods for each of the proposed measures we are consulting on as set out in sections, 5, 6, 7 and 8?

Please provide an explanation to support your response.

Question 4

To what extent do you consider our assessment of the potential costs and benefits outlined in the IA at Annex 5 is dependent on the implementation periods for each of the proposed measures we are consulting on as set out in sections, 5, 6, 7 and 8?

Please provide an explanation to support your response

Question 5

Do you agree that it is appropriate to modify, or remove, the July 2005 Cancel Other Direction (or any provision saving in effect this Direction) so that any changes take effect before the end of the implementation period for modifications to the General Conditions?

Please provide an explanation to support your response.

Question 6

Do you agree with our preferred option on clarifying and simplifying the regulations, namely that we should:

- (i) improve clarity of the regulations by redrafting in order to aid understanding and*
- (ii) simplify the regulations by moving away from a code of practice (process-based) approach to an outcome driven approach based on absolute prohibitions of mis-selling?*

Please provide an explanation to support your response.

Question 7

Do you consider there are other parts of the existing GC14.5 obligations where we could clarify and simplify the regulations, but have not proposed to do so? If so, please explain and set out the reasons for this.

Question 8

Do you agree with our preferred option to provide better information to consumers on the potential consequences of switching? Please provide an explanation to support your response

Question 9

Do you agree that Cancel Other should primarily only be permitted for reasons of slamming, as defined by Ofcom, or are there other circumstances where you feel use of Cancel Other should be permissible?

Question 10

Do you have any other suggestions for improvements to the reliability of the Cancel Other data and, in particular, the existing reason codes?

Question 11

Do you agree with Ofcom's proposals not to transpose information sharing obligations relating to use of Cancel Other as part of the proposed new General Condition? Please provide an explanation to support your response.

Question 12

Do you agree with our preferred option on record keeping for sales? Please provide an explanation to support your response.

Question 13

Do you agree with our preferred option on record keeping where Cancel Other is used? Please provide an explanation to support your response.

Question 14

What are your views in relation to consideration of other options described in section 9? Please provide an explanation to support your response.

Annex 5

Impact Assessment

- A5.1 The analysis presented in this annex represents an impact assessment ('IA') as defined in Section 7 of the Communications Act 2003 ('the Act').
- A5.2 You should send any comments on this IA to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- A5.3 IAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in Section 7 of the Act, which means that generally we have to carry out IAs where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing IAs in relation to the great majority of our policy decisions. For further information about our approach to IAs, see our published guidelines²⁰.

Equality impact assessment

- A5.4 We have not carried out separate Equality IAs in relation to Race Equality or equality schemes under the Northern Ireland and Disability Equality Schemes at this stage. This is because we are not aware that the proposals being considered here would have a differential impact on different racial groups, on consumers in Northern Ireland or on disabled consumers compared to consumers in general. Similarly we have not made a distinction between consumers in different parts of the UK or between consumers on low incomes²¹. Again, we believe that the proposals under consideration will not have a particular effect on one group of consumers over another. However, we would welcome input from respondents as to whether we do need to carry out specific studies because they perceive that our proposals could give rise to a differential impact on particular groups of consumers.
- A5.5 This IA summarises the economic modelling that has been carried out to date to evaluate the different policy options. It is organised as follows:
- first we outline the consumer interest issues relating to the apparent levels of mis-selling and slamming that continue to affect the industry. We then link those concerns to our objectives in relation to the policy options being considered – they establish the criteria for evaluating our policy options;
 - we then provide a summary of the different policy options that we are considering at this stage together – where possible - with our assessment of the impact of those options in both qualitative and quantitative terms. In each case we have attempted to assess the impact on:
 - i) consumers;

²⁰ Better policy-making: Ofcom's approach to impact assessments - http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf.

²¹ This view is based upon a landline mis-selling survey conducted by ICM for Ofcom in September 2008. Ofcom considers that the survey did not provide sufficient evidence that reported mis-selling differs between groups based on gender, age, social class or region

- ii) Communications Providers (“CPs”); and
- iii) competition in general.

- A5.6 Finally we draw these conclusions together to identify the preferred policy option or package of options.
- A5.7 Annex 1 to this IA provides a more detailed description of the modelling approach we have adopted for the purpose of our assessment of the impact of those options we have considered.

The consumer interest

- A5.8 A feature of a well functioning, competitive market is that consumers are able to make informed purchasing decisions about the products or services. Where mis-selling arises because of an information asymmetry²² between consumers and CPs (e.g. CPs possess information which is not readily available to consumers) then that can impede the proper functioning of the market, leading to a market failure.
- A5.9 Consumers’ interests can be harmed as a result of irresponsible sales and marketing activities in a number of ways. For example, customers could suffer financial harm, inconvenience and/or distress if certain aspects of their contract are different from the pre-sale advice they received, for instance if:
- a contract is more expensive than advised; and
 - they have been ‘slammed’ i.e. where a customer is switched from one CP to another without the express knowledge and/or consent of that customer. The customer may suffer financial harm if they are transferred onto a more expensive price plan or end up with cancellation charges.
- A5.10 In addition there is the risk that adverse publicity relating to irresponsible sales and marketing activity could result in consumers losing confidence in the fixed-line telecommunications market. This might mean consumers are discouraged from participating in the market and exercising the opportunity to choose or switch. This might make competition less effective to the detriment of consumers.
- A5.11 As discussed in more detail in Annex 1 to this IA, we have estimated that at current levels the financial cost to consumers of mis-selling in respect of fixed line telecommunications services could be in the region £10-37m per year²³. That is without taking into account non-financial factors such as any annoyance, distress and inconvenience involved e.g. the time required to be invested by the consumer in sorting out problems caused by mis-selling.

Ofcom’s policy objectives and aims in this area

- A5.12 Under Section 3 of the Act it is the principal duty of Ofcom to:

²² The way in which consumers process information and the context in which decisions are made can also affect the operation of the market but such issues relate to behavioural economics and lie outside of the scope of this IA. Useful papers on behavioural economics are, for example, DellaVigna ‘Psychology and Economics: Evidence from the Field’ and Rabin ‘Psychology and Economics’

²³ See Annex 1 to this IA for more detail. The range depends on different measures of financial loss. We have used a range based on both the median and the mean estimates of financial loss as a reasonable approximation of the scale of financial loss.

- further the interests of citizens in relation to communication matters; and
 - further the interests of consumers in relevant markets, where appropriate by promoting competition.
- A5.13 As set out in at paragraph 2.5 of the main document, our overall policy objectives and aims in this area are:
- to ensure a good customer experience so that consumers have confidence in the switching process;
 - to protect against dishonest sales and marketing activity;
 - to enable well-informed consumers to exert a competitive discipline on CPs by making informed and considered choices, based on timely, objective and reliable information; and
 - to support competition in retail and wholesale markets to the benefit of consumers, particularly by minimising artificial obstacles to switching.
- A5.14 We consider that these policy objectives also serve as relevant criteria to use in reevaluating the impact of different policy proposals.
- A5.15 Based on our analysis of the effectiveness of our approach to date, an assessment of the evidence, including what mis-selling data is telling us and our enforcement experience to date (discussed in the relevant sections of the main document), we have identified a number of areas where we believe the regulations can be improved to better meet our stated policy objectives and aims described above.
- A5.16 For each of these areas, we have sought to establish by reference to the available evidence whether there is a problem, whether regulatory intervention is necessary and, if so, what the regulatory options are. For each area the options include “do nothing”, as even where the analysis of the evidence highlights a potential weakness in the current regulations, it may still be the case that regulatory action is not justified on an assessment of the potential burden imposed relative to the problem identified.
- A5.17 The areas considered are as follows:
- the simplicity and clarity of regulations;
 - the provision of information to consumers of the potential consequences of switching;
 - the scope of the current Cancel Other rules; and
 - the quality of sales and cancellations records, including whether there is a case for the introduction of mandatory call recordings.

Clarifying and simplifying the regulations

- A5.18 The current regulatory approach to tackling mis-selling of fixed-line telecommunications services is to require all relevant CPs to establish, and comply with, sales and marketing codes of practice, which are consistent with Ofcom’s published guidelines.

- A5.19 This approach, therefore, requires CPs to first establish codes of practice on sales and marketing and, once established, to comply with the provisions of their code of practice.
- A5.20 The current approach is largely ‘process-based’ insofar as these codes of practice have to be consistent with Ofcom’s published guidelines which are annexed to GC14.5. This essentially requires all CPs to adopt certain sales practices and processes, as defined within the guidelines, including requirements around recruitment and sales training, customer contact and entering into a contact with customers.
- A5.21 In the main document, we consider whether it is possible to clarify and simplify the regulations in two ways, namely:
- i) improving clarity to aid understanding in order to ensure that the regulatory instrument is clear about what is being regulated, how it is being regulated and the consequences of failure to comply; and
 - ii) simplifying regulations by moving away from a code of practice (process-based) approach to one of absolute prohibitions in order to address identified weaknesses under the current approach.
- A5.22 In the context of this consultation, we have identified the three following options in relation to clarifying and simplifying the regulations, as follows:

Option 1: Do nothing;

Option 2: Redraft the current provisions in order to achieve greater clarity to the stated objectives of GC 14.5; and

Option 3: Redraft and simplify the current provisions to achieve greater clarity to the stated objectives of GC 14.5 and move away from a largely process-based approach to an outcome driven approach based on absolute prohibitions of mis-selling.

Option 1: Do nothing

- A5.23 Under this option we would not make any changes to the way in which the current GC14.5 or supporting guidelines are drafted. We would retain the current process-based approach which requires CPs to establish, and comply with, sales and marketing codes of practice which are consistent with Ofcom’s published guidelines.
- A5.24 As such we would not anticipate any cost implications for CPs who are already complying with the existing regulations given all we are, in effect, seeking to do is to clarify and simplify existing regulations. At the same time, however, we would not expect this to have any impact on current levels of mis-selling. As indicated above, we are concerned that despite some early progress, we continue to see high levels of mis-selling problems, as shown in our complaints data and Cancel Other (slam) data (discussed in paragraphs 3.3 to 3.27 of the main document).
- A5.25 In light of our analysis of our complaints data together with our experience of our enforcement work, both through our formal enforcement activities and informal compliance discussions with a range of CPs, we do not consider that this option is appropriate.

Option 2: Redraft the current provisions in order to achieve greater clarity to the stated objectives of GC 14.5

- A5.26 The aim of this option would be to make a number of stylistic changes to the provisions in order to achieve greater clarity to the stated objectives of GC14.5 and supporting guidelines, where appropriate. The option would primarily focus on clarifying the regulation and there would be no change to the current approach/structure of regulation. Under this option, as with Option 1, we would retain the current process-based approach, requiring CPs to establish, and comply with, sales and marketing codes of practice which are consistent with Ofcom's published guidelines.
- A5.27 As with Option 1, we would not expect this option to impose any additional costs on CPs. However, at the same time, while we believe clarifying the existing provisions will have some impact on the mis-selling levels, by addressing areas of genuine confusion, we are not persuaded that this option in itself would have a sufficiently material impact.

Option 3: Redraft and simplify the current provisions to achieve greater clarity to the stated objectives of GC 14.5 and move away from a largely process-based approach to an outcome driven approach based on absolute prohibitions of mis-selling

- A5.28 This option would encompass the changes described at Option 2 but would also involve a change to our regulatory approach to tackling mis-selling. That is, we would look to move away from current requirements on CPs to establish, and comply with, sales and marketing codes of practice to one based on absolute prohibitions of mis-selling.
- A5.29 We would expect this option only to impose additional costs on CPs to the extent that they were not already complying with the current code of practice approach and, for this reason, we have not factored this into our IA. We would nevertheless expect a combination of clarifying existing provisions together with the removal of the current code of practice approach to one of absolute prohibitions to have greater impact on mis-selling levels than Option 2 – albeit modest.
- A5.30 Based on our indicative modelling which is set out at Annex 1 to this IA we estimate that this option could yield a NPV in the order of £2-7m over five years.

Preferred Option on simplifying and clarifying the regulations

- A5.31 Taking into account our stated policy objectives and aims, and the likely costs and benefits of the options described above, our preferred option is Option 3, namely to simplify the regulations by moving away from a code of practice (process-based) approach to one of absolute prohibitions and redrafting the current provisions in order to achieve greater clarity to the stated objectives and aims of GC14.5. This is because we consider the option does no more than necessary to target the problems we have identified. We consider that both elements are required to enable us to better meet our stated objectives and aims to the benefit of industry as well as enhancing the effectiveness of our enforcement activities. The reasons for this are discussed more fully in paragraphs 5.14 to 5.18 of the main document.

Question A5.1

Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option? If not, please provide an explanation and evidence to support your response.

Information to consumers of the potential consequences of switching

- A5.32 As discussed in paragraphs 3.39 to 3.40, an important element of the current Notification of Transfer ('NoT') process is that consumers are well informed of the transfer at the point at which they are looking to switch. Effective markets require well informed consumers who are able to discipline CPs by making informed and considered choices based on timely, objective and reliable information. Amongst other things, this means that consumers should be well informed of the implications of the transfer, including affected services and existing contractual liabilities. Where this does not happen, consumers will be making purchasing decisions based on incomplete information and this has the potential to result in consumer harm such as where there may be an early termination charge ('ETC'). Consumer harm would be reduced if consumers had the opportunity to find out the nature of any liabilities arising from switching before agreeing to transfer their service to a new CP.
- A5.33 Under the current NoT process consumers receive a letter from their gaining and losing CPs prior to a switch taking effect. This letter contains provision for information to be given in relation to the possibility of contractual liabilities. Although the process is largely effective, a common criticism from some stakeholders is that letters may not always provide sufficient information, that consumers may not always read or understand the implications of the letter or that letters may not be always be sent. For this reason, it is argued that consumers may not be sufficiently warned of the full implications of the transfer, including the existence of ETCs. This can result in consumers incurring unexpected ETCs once the transfer has been completed and when it is too late to avoid the charges.
- A5.34 As discussed at paragraph 6.9, in order to better understand the extent to which the lack of awareness of ETCs are particularly problematic in the fixed-line telecommunications sector we analysed a sample of complaints over the period of a month about ETCs to enable us to more clearly identify the reasons consumers complain and how this varies by sector. Our analysis showed that almost half of the complaints received about ETCs in the fixed-line telecommunications sector involved consumers not being aware of their contract terms. Of those complaining about ETCs in the fixed-line telecommunications sector, some 48% of complainants had no awareness of their contract length, the possibility of charges being applied for leaving early or believed that they had already fulfilled their terms. This is in stark contrast to the mobile and broadband sectors (27% and 21%, respectively). This is shown in figure 6 in the main document.
- A5.35 We have identified the following four options in relation to information to be provided to consumers of the potential consequences of switching, as follows:
- Option1: Do nothing;
- Option 2: Introduce obligations requiring both the gaining and losing CPs to include reference to existing contractual liabilities with a customer's existing CP within the NoT letters;

Option 3: Introduce obligations requiring consumers to be informed at the point of sale by the gaining CP of the potential for contractual liabilities with their existing CP; and

Option 4: Introduce obligations requiring both CPs to include reference to contractual liabilities with a customer's existing CP within the 'NoT' letters as well as requiring the gaining CP to provide information at the point of sale.

Option 1: Do nothing

- A5.36 Under this option we would retain the current approach towards the supply of information to consumers i.e. that they are notified of the fact that the switch is happening and the implications of the switch, including any potential outstanding contractual liabilities. This would continue to apply through requirements on both the gaining and losing CPs to send out NoT letters during the 10-day switchover period. In particular, it would remain the decision of the losing CP whether or not to include information to consumers about potential contractual liabilities as part of their NoT letters in line with industry agreed practices.
- A5.37 We would not expect this option to impose any costs on CPs. However, it would not address the concern that NoT letters by themselves may not be sufficient to ensure that consumers are well informed of the potential consequences of switching, including possible financial implications, until it is too late.

Option 2: Introduce obligations requiring both the gaining and losing CPs to include reference to existing contractual liabilities with a customer's existing CP within the NoT letters

- A5.38 Under this option, we would require both the losing and gaining CPs to include reference to the potential for outstanding contractual liabilities with a customer's existing CP as part of the mandated information that is required to be contained in the NoT letters. Under current arrangements there are no requirements on either CP to include reference to the potential for existing contractual liabilities with their existing CPs, although losing CPs are able to make such reference should they choose to do so, in line with industry agreed practices.

Issues for consumers

- A5.39 Under this option consumers would be better informed of the implications of the transfer and, in particular, the existence of existing contractual liabilities. This should therefore decrease instances of unintended financial loss as a result of early termination of an existing contract. However, the effectiveness of this option would depend on consumers reading and understanding the implications of the information being provided. As indicated above, a common criticism from some stakeholders is that reliance on notification by letters may not always be sufficient to achieve the stated objectives and aims.

Issues for Communications Providers

- A5.40 We do not expect this option to result in incremental costs to CPs in that NoT letters are already required to be sent out by both losing and gaining CPs i.e. it would not require additional communication with the customer. We would anticipate that this option would only require the addition of a few lines to the existing text within the regulated NoT letters.

Issues for competition

- A5.41 This option could help to foster competition on the merits by discouraging mis-selling and improving confidence in the switching process. However, given the criticism above in relation to consumers reading or fully absorbing information in letters, we are not sufficiently convinced that this option, by itself, would have a sufficiently material impact on current levels of mis-selling

Option 3: Introduce obligations requiring consumers to be informed at the point of sale by the gaining CP of the potential for contractual liabilities with their existing CP

- A5.42 Under this option, we would require the gaining CP to provide information to the consumer through a simple prompt at the point of sale that there may be outstanding contractual liabilities
- A5.43 It is possible that consumers would get more value from more accurate information at the point of sale relating to whether or not they actually do have a contractual liability and, if so, the amount of such liability. This is likely to require a comprehensive industry-wide common database solution which is accessible by all CPs, and we do not currently consider that it is likely to be proportionate to impose such requirements. As a result we have not considered this further.

Issues for consumers

- A5.44 Given the criticism that consumers do not always read or fully absorb the information provided to them in letter form, the requirement to include a prompt in the sales script should ensure that consumers are made aware of the potential for existing contractual liabilities with their existing CP at the point of sale thus reducing the risk of incurring any unexpected fees.

Issues for Communications Providers

- A5.45 To estimate the costs of this option we asked CPs to indicate how often they change their sales scripts and the average cost that would be incurred to make a small addition to a sales script.
- A5.46 On the basis of the information provided, all CPs update their sales scripts at least once a year. Given this, we anticipate that the incremental cost of the measures set out under this option could be minimised by incorporating the changes into the programme of regular updates and should not necessarily require implementation through a separate exercise. As discussed in the main document, we are proposing an implementation period of 12 months for our preferred options to come into force and are asking for views on other implementation periods.
- A5.47 The information provided by CPs indicated two main areas of costs:
- the costs of adjusting the sales script and training staff; and
 - the time added to the sales call.
- A5.48 Based on data provided by CPs, we have estimated that the initial set-up costs of this option could be around £0.6m for the first year, with on-going costs then running at £0.4m per year. The derivation of these estimates is set out in more detail in Annex 1 to this IA.

- A5.49 Given that this option is intended to avoid some of the criticisms of communicating via letters alone which would go with Option 2, we consider this option should help to foster competition on the merits to a greater degree than Option 2.
- A5.50 However, it is difficult to evaluate how much of an impact this measure might have by itself. The information provided by CPs on the two main areas of cost suggests that this would not be costless but estimating what specific impact this measure is likely to have on mis-selling by itself is difficult. At this stage we have not attempted an assessment of the likely benefits of this option by itself and instead we return to the issue of evaluating the benefits of the combination of this and other measures under Option 4 below.

Question A5.2

To what extent is it possible to assess the impact that this option might have on the current level of mis-selling in its own right? Please provide an explanation and evidence to support your response.

Option 4: Introduce obligations requiring both CPs to include reference to contractual liabilities with a customer's existing CP within the 'NoT' letters as well as requiring the gaining CP to provide information at the point of sale

- A5.51 This option combines Options 2 and 3. That is, it combines requirements on both losing and gaining CPs to include reference to the potential for outstanding contractual liabilities with a customer's existing CP within the NoT letters as well as through a simple prompt at the point of sale.

Issues for consumers

- A5.52 Option 4 is a combination of Options 2 and 3. We therefore expect Option 4 to yield greater benefits to consumers than either Option 2 or Option 3 when considered separately.

Issues for Communications Providers

- A5.53 We would expect this option to impose similar costs to CPs as those imposed under Option 3.

Issues for competition

- A5.54 By requiring more explicit communications with the consumer of the potential for outstanding contractual liabilities with their existing CP at both the point of sale and in subsequent correspondence, we consider that this option should help to foster competition on the merits to a greater degree than either Option 2 or Option 3 by themselves.
- A5.55 In terms of evaluating the costs and benefits of this option, we have the costs attributed to Option 3 and we have the combined impact on mis-selling of Options 2 and 3. Taking this into account and assuming that the combination of Options 2 and 3 results in a modest reduction in mis-selling over time, we estimate that the NPV for this option could be in the range -£1m to £2m over five years depending on the measure of financial loss that is used.

Preferred option on information to consumers of the potential consequences of switching

- A5.56 Taking into account our stated policy objectives and aims in light of the discussion above, and recognising that our estimates of the NPV of this option suggests that the result could be marginal, our preferred option for the purpose of consultation is Option 4 i.e. to ensure consumers are better informed of the potential for contractual liabilities with their existing CP through improving the information to be given to consumers of the potential consequences of switching both (i) at the point of sale; and (ii) during the switchover period through the 'NoT' letters.
- A5.57 As well as requiring both CPs to include reference to the fact that there may be existing contractual liabilities in the NoT letters, the gaining CP would only be required to provide a simple prompt to the consumer at the point of sale.
- A5.58 We have chosen this option because our analysis suggests that while the NoT process is largely effective, there is some evidence that consumers are not always as well informed as they could be of the full implications of switching and, specifically, existing contractual liabilities with their existing CP. As a minimum, this would at least ensure that the consumer will be made aware of the possibility of contractual liabilities with their existing CP. This would therefore allow the consumer, once prompted either to:
- i) go ahead with the switch;
 - ii) decide to check themselves if they have a minimum notice period and, if so, the amount of the ETC before going ahead with the switch; or
 - iii) decide to first contact their LP to check if they have a minimum notice period and, if so, the amount of the ETC before going ahead with the switch.
- A5.59 This is discussed more fully at paragraphs 6.16 to 6.21 of the main document.
- A5.60 As set out in the economic modelling section, the NPV of this option on its own could lie in the range -£1m to £2m. This suggests that this option could be finely balanced in terms of net welfare benefits. However, we note that a combination of clarifying and simplifying the existing record keeping rules combined with the provision of better information to consumers at point of sale relating to contractual liabilities would yield a positive NPV in the order of £1-10m over five years.

Question A5.3

Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option? Please provide an explanation and evidence to support your response.

Cancel Other rules

- A5.61 As discussed in Section 7, we believe all CPs providing fixed-line telecommunications services should be subject to the same rules regarding use of Cancel Other. Cancel Other plays an important part of the fixed-line telecommunications switching process by protecting consumers from being slammed to another CP insofar as it allows their current CP to cancel a pending order where slamming is alleged by the consumer. However, it is essential that it is

used appropriately and responsibly otherwise it may act against the interests of both consumers and the competitive process by blocking legitimate attempts by consumers to switch between CPs.

A5.62 We have broken down the issues around Cancel Other rules into two sections, namely:

- i) the issue of the CPs to which Cancel Other requirements should apply; and
- ii) the nature of the requirements that would apply.

A5.63 We have identified the following four options in relation to the use of Cancel Other, as follows:

Option 1: Do nothing;

Option 2: Withdraw the July 2005 Direction concerning BT's use of Cancel Other (or remove any savings provision keeping it in effect) so that there are no specific rules relating to Cancel Other applicable to any CP;

Option 3: Withdraw the July 2005 Direction concerning BT's use of Cancel Other (or remove any savings provision keeping it in effect) and incorporate reduced requirements as part of a General Condition; and

Option 4: Withdraw the July 2005 Direction concerning BT's use of Cancel Other (or remove any savings provision keeping it in effect) and incorporate identical requirements as part of a General Condition.

Option 1: Do nothing

A5.64 Under this option we would not propose to make changes to the Cancel Other process as currently defined. This would mean that the July 2005 Cancel Other Direction which applies only to BT (or any savings provision keeping it in effect) would remain in place and we would continue to be able to investigate BT's use of Cancel Other where we received complaints alleging abuse of the Cancel Other process by BT. However, as at present, we would not be able to investigate and/or enforce against allegations of abuse of Cancel Other by CPs except through the use of GC1.2 in those cases where information was being used for a purpose other than that intended.

A5.65 We do not consider that this is an appropriate way forward. In particular, as discussed in section 7, our analysis of industry data relating to the use of Cancel Other as well as the findings of the Schema study provides evidence of both widespread use of Cancel Other as well as evidence of systematic abuse of Cancel Other by losing CPs where Cancel Other would appear to have been used primarily to prevent customers from moving to another CP rather to protect from slamming. In light of this, we do not believe that it is appropriate that only BT should be subject to Cancel Other rules.

Option 2: Withdraw the July 2005 Direction concerning BT's use of Cancel Other (or remove any savings provision keeping it in effect) so that there are no specific rules relating to Cancel Other applicable to any CP

A5.66 Under this option, we would look to withdraw the current Direction concerning BT's use of Cancel Other (or remove any savings provision). This would mean that there

would be no specific rules for us to enforce against allegations of abuse of Cancel Other by any CPs (including BT). Ofcom would only be able to enforce against CPs using GC1.2 in those cases where information was being used for a purpose other than that intended.

- A5.67 We do not consider that this is an appropriate way forward for the same reasons set out at paragraph A5.65 above.

Issues for consumers

- A5.68 We are concerned that this option would expose consumers to the potential for increased Cancel Other abuse in the absence of specific rules to enforce against allegations of abuse of Cancel Other. As indicated above, we consider that Cancel Other acts as an important consumer protection safeguard where it is used properly by protecting consumers from the potential of slamming. However, as discussed, we are nevertheless concerned that there is evidence of misuse of Cancel Other where it has been used to frustrate legitimate attempts by consumers to switch between CPs.

Issues for CPs

- A5.69 This option would deliver a specific benefit to BT in terms of reducing the burden of this regulation as the current Direction on BT would be removed. However, in the absence of any specific rules for Ofcom to enforce against allegations of abuse of Cancel Other by CPs, there could be additional costs incurred by all CPs to the extent that switching levels are negatively impacted on in the event that there remains misuse of the Cancel Other process, resulting in a wider knock-on effect on consumer confidence in switching.

Option 3: Withdraw the July 2005 Direction concerning BT's use of Cancel Other (or remove any savings provision keeping it in effect) and incorporate reduced requirements as part of a General Condition

- A5.70 Under this option, we would look to introduce some but not all of the current requirements on BT relating to use of Cancel Other (or any savings provision keeping it in effect) to cover all CPs of fixed-line telecommunications services. In practice, this would mean that the July 2005 Direction which applies to BT would be withdrawn and only those requirements which we consider to best meet our policy objectives and aims and are objectively justifiable and proportionate, would be incorporated as part of the proposed General Condition.
- A5.71 Here, we would look to replicate some but not all of the current provisions contained within the July 2005 Direction including requirements relating to:
- i) permitted usage of Cancel Other;
 - ii) record keeping requirements (i.e. "record of all contact made with that customer... for a period of six months"); and
 - iii) information sharing obligations (i.e. provision to share records with a CP, on request, within 15 working days).
- A5.72 Under this option, we would propose only to transpose provisions (i) and (ii) i.e. those provisions which relate to permitted usage of Cancel Other and record keeping requirements. We would not propose to transpose rules relating to

information sharing with other CPs on the basis we would not consider that such provisions are necessary taking into account our policy objectives and aims.

Issues for consumers

- A5.73 Our proposals should reduce the incidence of Cancel Other misuse given that rules relating to proper use of Cancel Other would be extended to all relevant CPs, ensuring that all CPs were under a regulatory obligation to only use Cancel Other in certain circumstances, in particular, where the customer believes they have been the victim of slamming.
- A5.74 This means we would be able to enforce against CPs that are abusing the Cancel Other process. A reduction in the incidence of Cancel Other abuse should benefit consumers who wish to switch CPs but may, in the absence of rules on Cancel Other usage, be illegitimately prevented from doing so.
- A5.75 We discuss the impact of record keeping requirements in the section on record keeping for sales and Cancel Other.

Issues for Communications Providers

- A5.76 As discussed in the '*Issues for Consumers*' section, our proposals should reduce the incidence of Cancel Other abuse and this would benefit CPs who may have previously been the victim of abuse of the Cancel Other process.
- A5.77 Also, by proposing to remove current obligations on BT relating to information sharing, we anticipate that the current burden on BT will be reduced.
- A5.78 We discuss the impact of record keeping requirements in the section on record keeping for sales and Cancel Other.

Issues for competition

- A5.79 The proposals will help to promote competition because the switching process will be easier and the losing CP will be less able to frustrate the switching process by misusing the Cancel Other process. This would indirectly benefit consumers by improving the switching process.
- A5.80 We discuss the impact of record keeping requirements in the section on record keeping for sales and Cancel Other.

Option 4: Withdraw the July 2005 Direction concerning BT's use of Cancel Other (or remove any savings provision keeping it in effect) and incorporate identical requirements as part of a General Condition

- A5.81 Under this option, we would look to introduce identical Cancel Other requirements to cover all CPs of fixed-line telecommunications services which, in practice, would mean that the July 2005 Direction which applies to BT would be withdrawn (or any savings provision removed) and these requirements incorporated as part of a General Condition applicable to all relevant CPs.
- A5.82 Under this option we would look to replicate all current provisions contained within the July 2005 Direction on BT, as described above in paragraph A5.71.

Issues for consumers

- A5.83 We expect our proposals to have a similar impact on consumers to that identified under Option 3.

Issues for Communications Providers

- A5.84 Because our proposals are more wide ranging than under Option 3, we expect that Option 4 will be more costly to CPs given that requirements to share records with other CPs on request is likely to be expensive (on account of the likely volumes involved). In general though there should be no change in terms of costs on BT.

Issues for competition

- A5.85 We expect our proposals to have a similar impact on competition to that identified under Option 3.

Preferred option on Cancel Other rules

- A5.86 Taking into account our stated policy objectives and aims, and in light of our analysis of the likely costs and benefits of the different options, our preferred option for the purpose of this consultation is Option 3, namely withdrawing the July 2005 Direction concerning BT's use of Cancel Other (or any savings provision keeping it in effect) and incorporating reduced requirements as part of a General Condition, applicable to all CPs of fixed-line telecommunications services.
- A5.87 The reason we prefer Option 3 over Option 4 is because we are not persuaded that the rules relating to information sharing with other CPs would be easily transposed in a General Condition nor are necessary taking into account our policy objectives and aims. In particular, we are not persuaded that such requirements are likely to be workable nor proportionate in a multi CP-regulated environment for the following reasons:
- i) it is likely to be very expensive for CPs to provide records on request on a reasonable basis to other CPs (given the volumes involved); and
 - ii) it is arguably not necessary in the event there is a General Condition in place as Ofcom can request records where we feel necessary based on evidence of Cancel Other volumes and allegations of Cancel Other abuse.
- A5.88 Furthermore, under the proposed new General Condition, we will be able to continue to monitor use of Cancel Other, and where we identify possible breaches of the Cancel Other process, we will be able to request information, which means reliance on industry transparency requirements are lessened.
- A5.89 We do not anticipate there will be costs arising from our proposals to extend Cancel Other rules across the industry given, as already discussed, CPs already use Cancel Other, and are expected to do so in accordance with agreed industry processes, including using correct reason codes. This will remain the case and it is important to note that our proposals will not require CPs to use Cancel Other where they choose not to do so. However, in the event that they do use Cancel Other they will be required to do so properly, and to make, and retain, records as evidence of this. Therefore, we anticipate any costs to the industry from our proposals to arise only in the context of record keeping requirements. We discuss Cancel Other record keeping requirements below and in more detail at paragraphs 8.42 to 8.48 in the main document.

Question A5.4

Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option? Please provide an explanation and evidence to support your response.

Options on record keeping for sales and Cancel Other

A5.90 In assessing the effectiveness of the current obligations and, in particular, evidence of current difficulties as well as potential costs of change, Ofcom has gathered evidence from different sources and stakeholders, including two statutory information request letters under Section 135 of the Act, experience from Ofcom's monitoring and enforcement programme and the 2007 Schema study into reported levels of mis-selling.

Record keeping for sales

A5.91 The current obligations relating to record keeping are set out in the Guidelines for sales and marketing codes of practice for Fixed-Line Telecommunications Services at Annex 3 to GC14. Specifically, paragraph 5.10 states:

"Sales and marketing campaign records to be maintained for six months, including the date and appropriate time of the contact with the Customer. Records to be such as to allow subsequent identification of the salesperson(s) involved and assist in dealing with any complaint or query."

A5.92 Ofcom's proposals in relation to record keeping are set out in Section 8 of the main document. We discuss in this section the critical importance of good quality record keeping, and that a major limitation which we have identified over the course of our enforcement programme has been the fact that CPs have different approaches to record keeping, both in terms of what they keep and the length of time they retain. This variability has directly impacted upon Ofcom's enforcement activities and, in the past, Ofcom has found it difficult to enforce against CPs where bad practices have been alleged but the records provided have been poor.

A5.93 As discussed in the main document, improved record keeping obligations should help reduce mis-selling. Stamping out bad practices should help to promote market confidence e.g. consumers will feel more comfortable switching between CPs in the knowledge that they will not be mis-sold a product (or if they are mis-sold then evidence will be available to take appropriate action against the perpetrator). This should help to foster a competitive market where consumers seek out the best deals.

A5.94 We consider there are several reasons for seeking to raise the standard of the quality of record keeping across the industry in relation to fixed-line telecommunications sales, including:

- i) setting out stronger rules relating to record keeping would ensure a consistent approach is taken by CPs which would help to create a level playing field;
- ii) the availability of records as evidence would enable Ofcom's enforcement activities to be more effective; and

- iii) strengthening obligations relating to record keeping, including call recordings, should help internalise best practice by CPs and discourage CPs from engaging in bad practices (because Ofcom's enforcement activities will be more effective).

A5.95 We have identified the following four options in relation to record keeping for sales:

Option 1: Do nothing;

Option 2: Clarification of existing obligations relating to record keeping obligations for sales;

Option 3: Introduce obligations requiring CPs to make, and retain, call recordings, where appropriate; and

Option 4: Clarification of existing obligations relating to record keeping obligations for sales and introduction of obligations requiring CPs to keep, and retain, call recordings, where appropriate.

Option 1: Do nothing

A5.96 Under this option we would not propose to make changes to current obligations relating to record keeping for sales which would mean that current obligations, as set out at paragraph 5.10 of the current sales and marketing guidelines, described above, would be retained.

A5.97 Ofcom's approach to record keeping, therefore, would remain high-level, and CPs would retain the freedom to determine what records are made, and retained, in line with their particular business model and circumstances, sufficient to meet the requirements set out at paragraph 5.10.

A5.98 We would not anticipate that there would be any incremental costs for CPs associated with this option. However, we are concerned about the potential cost to consumers if mis-selling remains at current levels. As indicated in the annex we have estimated that current levels of financial loss could be in the order of £10m to £37m per year.

Option 2: Clarification of existing obligations relating to record keeping obligations for sales

A5.99 Under this option we would not propose to make changes to current obligations relating to record keeping for sales which would mean that current obligations, as set out at paragraph 5.10 of the current sales and marketing guidelines would be retained.

A5.100 As with Option1, Ofcom's approach to record keeping would remain high-level, and CPs would retain the freedom to determine what records are made, and retained, in line with their particular business model and circumstances, sufficient to meet the requirements set out at paragraph 5.10 of the current sales and marketing guidelines.

A5.101 However, under this option, unlike Option 1, Ofcom would look to provide additional clarification of the current obligations in order to aid understanding in light of concerns that not all CPs are acting fully in accordance with current requirements relating to record keeping.

A5.102 We do not expect that this option will impose incremental costs on CPs given that it is simply clarifying existing obligations. This additional work should improve the operation of the market in the long run. However, we consider that the impact on mis-selling could be modest. We are not sufficiently persuaded that the current high-level approach to record keeping is having a sufficient deterrent effect such that clarifying what is expected from CPs will have a sufficiently material impact. As discussed in option 3 below, this is particularly the case in relation to telesales where, our experience to date, highlights that the critical importance of point of sale evidence and, in particular, call recordings.

Question A5.5

Do you agree that this option will not result in incremental costs to CPs? Please provide an explanation and evidence to support your response.

Option 3: Introduce obligations requiring CPs to make, and retain, call recordings, where appropriate

A5.103 Under this option, we would require CPs to keep recordings of the actual sale, plus any subsequent calls that were made as part of the sales process, where telesales is used by CPs as a channel to market.

A5.104 As discussed in Section 8 of the main document, while in the majority of cases where telesales is used, it is likely that there will be a paper trail (through welcome packs etc), it is also likely that customers will have signed up to the service based on the representations made over the telephone. Without a call recording, therefore, it is difficult to formulate a clear decision on whether or not mis-selling has occurred based on other forms of evidence submitted.

A5.105 On call recordings, there are different standards that we could look to put in place and, in particular, for the purposes of consultation, we are considering the following sub-options:

Sub-option 3(i) - 75% call record keeping requirements (with no assumed tolerance levels).

Sub-option 3(ii) - 100% call record keeping requirements based on reasonable endeavours [with an explanation why 100% was not possible] and never less than 90%.

Sub-option 3(iii) - 100% call record keeping requirements (with no assumed tolerance levels).

Issues for consumers

A5.106 We anticipate that improved telesales recording requirements would help reduce mis-selling which can result in consumer harm and undermine confidence in the operation of the market. This should help to foster a competitive marketplace where consumers seek out the best deals.

Issues for Communications Providers

A5.107 This option will involve additional costs to some CPs in the form of one-off costs – e.g. in terms of system set up costs - and ongoing costs in relation to recording telesales.

A5.108 As set out in Annex 1 to this IA we collected data from 12 of the largest CPs on the scale of any additional costs they might incur in relation to the introduction of call recording. This is set out in Table A5.1 below which sets out information about the current levels of call recordings for those 12 CPs.

Table A5.1: Levels of call recording and storage currently undertaken for sales (or have plans to undertake in the next year)

Level of call recording and storage	Number of CPs
No call recording or call storage	0
Some call recording and storage capability (but less than 50% of calls recorded)	4
At least 75% of calls recorded and stored for at least 6 months	3
All calls recorded and stored for at least 6 months	5

A5.109 The table indicates that eight of the 12 CPs who provided information indicated that they would not in fact incur any additional costs under sub-option 3(i) because they already record at least 75% of their calls.

A5.110 The table also indicates that five of the 12 CPs who provided information indicated that they would not incur any additional costs under sub-option 3(ii) because they already record all their calls.

A5.111 Using the data provided by the CPs that would incur additional costs from implementing a call recording solution we have estimated the cost to the industry of complying with these two options.

A5.112 Based on the methodology set out in Annex 1 to this IA, we anticipate that the total upfront costs for the industry of sub-Option 3(i) would be in the order of £4.8m and that there would then be on-going costs in the order of £0.3m per year. We estimate that the total upfront costs to the industry of Sub-Option 3(ii) would be in the order of £5.1m with on-going costs in the order of £0.7m per year.

A5.113 These estimates are based on a limited sample – the costs to individual CPs will crucially depend on their current call recording and storage situation. For some CPs the costs may be minimal because they already have systems in place that are capable of meeting our requirements or are indeed already recording a significant proportion of telesales. Other CPs may need to implement new systems solutions to comply. If a CP considers that the costs of complying with the call recording requirements outweigh the benefits in terms of sales, then it is, of course, open to them not to pursue telesales as a channel to market. Given the potential disruption this option could cause, we propose allowing CPs an implementation period of one year to comply with the proposals.

A5.114 As indicated above the benefit from improved telesales recording should be a reduction in mis-selling levels and improved market confidence on the basis consumers should feel more comfortable switching between CPs. Against that background we would anticipate that sub-Option 3(ii) would have the greatest impact on the level of mis-selling because it imposes the more stringent call recording requirements. Taking into account the fact that the previous Ofcom interventions in respect of compliance have resulted in significant reductions in the level of complaints, we have assumed that under sub-Option 3(ii) the incidence of mis-selling would fall from the current levels of around 526,000 households per year

to around half that level two years after implementation and then remain at that level going forward.

- A5.115 Taking into account the fact that CPs would incur set-up costs in the first year of implementation and that benefits would not then be realised until implementation was complete we estimate that the NPV of Sub-Option 3(ii) on its own could lie in the range £10m to £58m, as set out in the economic modelling section. However, we note that a combination of clarifying and simplifying the existing record keeping rules and provision of better information to consumers at point of sale relating to contractual liabilities could yield a positive NPV in the order of £11m to £67m over five years.

Option 4: Clarification of existing obligations relating to record keeping obligations for sales and introduction of obligations requiring CPs to keep, and retain, call recordings, where appropriate

- A5.116 This option would essentially be a combination of options 2 and 3. That is we would look to provide additional clarification of the current obligations in respect of record keeping in general as well as introducing new requirements on CPs to make, and keep, call records for sales, plus any subsequent calls that were made as part of the sales process where telesales are used by CPs as a channel to market.

- A5.117 As with Option 3, there would be the potential for three sub-options for Option 4, namely:

Sub-option 4(i) - clarification of existing obligations relating to record keeping obligations for sales as well as 75% call record keeping requirements (with no assumed tolerance levels).

Sub-option 4(ii) - clarification of existing obligations relating to record keeping obligations for sales as well as 100% call record keeping requirements based on reasonable endeavours [with an explanation why 100% was not possible] and never less than 90%.

Sub-option 4(iii) – clarification of existing obligations relating to record keeping obligations for sales as well as 100% call record keeping requirements (with no assumed tolerance levels).

- A5.118 Although we do not necessarily consider that this option will deliver any specific quantifiable benefit to consumers we do consider that the combination of options 2 and 3 would be likely to reinforce the efficacy of Option 3(i) and 3(ii) on their own.

Preferred Option on record keeping for sales

- A5.119 Taking account of our stated policy objectives and aims, our preferred option is 4 and, more specifically, sub-option (4)(ii) – namely 100% record keeping requirements based on reasonable endeavours. In practice, we would expect this to mean as close to 100% as possible and, where, not achievable, an explanation as to why this was not possible.

- A5.120 The reasons for this is because we believe that the evidence suggests the need to provide both additional clarification of existing obligations for record keeping for sales as well as a requirement for obligations for call recordings to be made, and retained, where appropriate, where telesales are used. This would help establish what we considers to be ‘minimum best practice’ in relation to telesales and help establish a level playing field. Without this, our concern is that certain ‘less reputable’ CPs may seek to deliberately avoid recording sales where it remains open to them to do so on the grounds this means evidence cannot be produced

when bad practices are alleged. This will have the effect of penalising those CPs who continue to follow best endeavours in relation to record keeping.

- A5.121 We also believe that in order for call recording requirements to be effective, sufficient calls need to be recorded in order to both provide a deterrent against mis-selling and produce adequate evidence in the event of an investigation. If the proportion of calls recorded is set too low then it is possible that we would have insufficient evidence (and potentially evidence that is not representative of sales processes) to prove that mis-selling has occurred in any given investigation and this is unlikely to sufficiently change incentives on CPs not to mis-sell.
- A5.122 We do not consider that additional clarification of existing obligations is likely to impose additional costs on CPs. Therefore, we consider that the costs from Option 4 are likely to be similar to Option 3. Furthermore, the impact of Option 2 by itself on mis-selling may well be modest. As a result, the overall NPV of sub-option 4(ii) is likely to be similar to sub-option 3(ii), lying in the range £11m to £67m over five years.

Record Keeping for Cancel Other

- A5.123 As discussed above in relation to Cancel Other rules, we believe all CPs providing fixed-line telecommunications services should be subject to the same rules regarding use of Cancel Other. Cancel Other provides an important consumer protection safeguard insofar as it protects consumers from being slammed to another CP by providing an opportunity for their current CP to cancel a pending order where slamming is alleged by the consumer. However, it is essential that it is used appropriately and responsibly and that CPs are keeping records by way of evidence that they are using Cancel Other properly.
- A5.124 We have identified the following three options in relation to record keeping for sales, as follows:

Option 1: Do nothing;

Option 2: High-level approach to record keeping obligations for Cancel Other; and

Option 3: Introduce obligations requiring CPs to keep, and retain, call recordings, where appropriate.

Option 1: Do nothing

- A5.125 Currently, record keeping obligations only apply to BT. Under this option therefore, this would remain the case and only BT would remain under obligations to make and retain records where Cancel Other has been used.
- A5.126 Our concern here is that this proposal would not reduce the incidence of Cancel Other abuse in the market, as discussed above and in the main document.

Option 2: High-level approach to record keeping obligations for Cancel Other

- A5.127 Under this option we would introduce industry-wide obligations in respect of record keeping meaning that all CPs would operate under the same regulations. Under this option CPs would retain the freedom to determine what records are made and retained in line with their particular business model and circumstances. This is because here we would look to issue guidance and clarification in order to aid

understanding and assist CPs in meeting their obligations. We anticipate that the benefits of this option would stem from CPs tightening up their record keeping procedures.

A5.128 We do not expect this option to impose any additional costs on CPs given that it is simply issuing guidance and clarification.

Option 3: Introduce obligations requiring CPs to keep, and retain, call recordings, where appropriate

A5.129 Under this option we would require CPs to make, and keep, call recordings of conversations between customers and themselves where Cancel Other was applied.

A5.130 On call recordings for Cancel Other as with sales, we note that there are different standards that we could look to put in place and, in particular, for the purposes of consultation we are considering the following sub-options:

Sub-option 3(i)- 75% call record keeping requirements (with no assumed tolerance levels).

Sub-option 3(ii) - 100% call record keeping requirements based on reasonable endeavours [with an explanation why 100% was not possible] and never less than 90%.

Sub-option 3(iii) – 100% call record keeping requirements (with no assumed tolerance levels).

A5.131 In terms of attempting to quantify the impact of the different options, we have assumed that the proposals in relation to call recording and record retention for telesales do not overlap with any proposals for Cancel Other call recordings and record retention. To the extent there economies of scale or scope between the systems that would be used for these activities, then our estimates are likely to overstate the actual cost to CPs.

Issues for consumers

A5.132 Our proposals should reduce the incidence of Cancel Other misuse because CPs will be required to make, and retain, records relating to Cancel Other requests. This means that Ofcom would be able to take enforcement action against those CPs that abuse the Cancel Other process. For example, if there is the suggestion that a CP is incorrectly using the Cancel Other process then Ofcom would be able to request records to prove that the system is being correctly used (or not as the case may be). The increased efficiency of enforcement action by Ofcom should deter abuse of the system.

A5.133 However, as set out in Annex 1 to this IA, there is an issue about the reported scale of loss from slamming in that – from survey evidence – only 25% of customers actually suffered any financial loss. That is, a significant majority (75%) did not suffer any financial loss.

Issues for CPs

A5.134 To estimate the costs of our proposals we asked the largest 12 CPs to provide information about whether they currently apply Cancel Other and the costs associated with recording customer requests to cancel orders.

- A5.135 Of those, 11 CPs indicated that they regularly apply Cancel Other and all of those kept some record of Cancel Other requests. One CP (the twelfth) used Cancel Other only in rare circumstances and was unable to provide meaningful responses to our cost inquiries. Because this CP only used Cancel Other on rare occasions, we assume negligible incremental costs associated with our policy options on Cancel Other for this CP. The type of records varied from CP to CP and included: telephone call recordings; letters/emails from customers; notes in the customer management database/note against the customer account; and faxes.
- A5.136 Most of the CPs already kept records for at least six months. One CP kept call recordings for 60 days, but also recorded the request on a database which was kept indefinitely. However, not all CPs recorded the direct communication from the customer to request use of Cancel Other. For example, where a Cancel Other request is received by telephone some CPs record the request into a database or make a note on the customers account but do not record the telephone call. Ofcom's proposals would require that the direct communication from the customer (e.g. letter, email, fax or phone conversation) is recorded, and stored, as evidence that the use of Cancel Other is legitimate.
- A5.137 Where a customer requests Cancel Other by email, letter or fax (if this option is available) the CP will be required to store this communication as evidence of the request. Based on the information received from CPs we believe the cost of keeping and storing this communication will be minimal – particularly because only a few Cancel Other requests are received by these means. Ofcom's view is that this form of communication in relation to Cancel Other is unlikely to be the norm given the actual switchover process and timeframes involved.
- A5.138 We understand the majority of Cancel Other requests are made by telephone. Table A5.2 categorises each CPs current approach to call recording for Cancel Other requests based on our information request.

Table A5.2: Categorisation of current approach to call recordings for use of Cancel Other

Level of Call recording and storage	Number of CPs
Record all CO requests received by telephone and store for at least 6 months	4
Record some CO requests received by telephone	4
No recording of CO requests received by telephone	3
Unable to provide meaningful response	1

- A5.139 A number of the CPs noted that although calls relating to Cancel Other requests were often recorded they were not necessarily categorised as Cancel Other requests. As a result, retrieval of the records would be difficult and further systems development would be required to meet Ofcom's proposals. This means that even where CPs record all Cancel Other requests there may still be incremental costs from meeting our proposals.

- A5.140 The table indicates that four of the 11 CPs that provided information would not in fact incur any additional costs under Sub-option 3(ii) because they already record all Cancel Other calls. It was not possible to establish how many of the CPs already record at least 75% of all Cancel Other calls.
- A5.141 Using the data provided by the CPs that reported on additional costs that they could incur, we have estimated the cost to the industry of complying with these two sub-options.
- A5.142 Based on the methodology set out in Annex 1 to this IA, we anticipate that the total upfront costs for the industry of Sub-Option 3(i) would be in the order of £1m and that there would then be on-going costs in the order of £0.4m per year. We estimate that the total upfront costs to the industry of Sub-Option 3(ii) would also be in the order of £1m but on-going costs could be in the order of £0.5m per year.
- A5.143 As indicated above, the scale of any financial benefit from improved recording of Cancel Other requests would not in fact solely relate to reducing the financial loss from slamming but would also derive from a saving in the time consumers might spend trying to sort out instances of slamming.
- A5.144 Against this background we would expect that Sub-Option 3(ii) would have the greatest impact on the level of slamming because it imposes the more stringent call recording requirements. Taking into account the fact that the previous Ofcom interventions in respect of compliance for Cancel Other have resulted in a halving of the level of Cancel Other requests, we have assumed that under Sub-Option 3(ii) the incidence of mis-selling would fall from the current levels of just over 12,000 requests per month to around 7,500 requests two years after implementation and then remain at that level going forward.
- A5.145 Taking into account the fact that CPs would incur set-up costs in the first year of implementation and that benefits would not then be realised until implementation was complete, we estimate that the NPV of Sub-Option 3(ii) would actually be in the range - £1m to £4m over five years. This suggests that this option could be finely balanced in terms of net welfare benefits.

Preferred Option for call recording for Cancel Other

- A5.146 Our modelling suggests that the call recording requirements of extending the Cancel Other system across industry could be finely balanced in terms of the NPV. Notwithstanding, taking account of our stated policy objectives and aims, and in light of the discussion above on the wider benefits of improving consumer confidence in the switching process, we consider that we should in fact propose to incorporate the requirements into a General Condition which applies to all CPs of fixed line telecommunications.

Question A5.6

Do you agree with this proposal in the light of the NPV estimate? Please provide an explanation and evidence to support your response.

Annex 1 to the IA

Economic Modelling

The Nature of the Problem

For markets to work effectively consumers need access to information about the product or service they are purchasing. Where there is an asymmetry of information between the CP and the consumer this can lead to market failure. If CPs possess information that is not (easily) available to the consumer but would be valuable to the consumer when deciding whether to enter into a contract then consumers can be misled into taking contracts that are not suitable for them. For example, consumers may not be able accurately to assess the conditions needed to activate the advertised savings or gifts because of the way the marketing material or contract has been designed.

In the specific example of fixed-line telecommunications mis-selling the market failure which can arise is when consumers enter into a contract on the expectation that the tariff is optimal for them. This can result in market failure because, for example, some consumers can end up having selected a tariff or CP which is ex-post sub-optimal²⁴ (i.e. they would have been better off on another deal if they had known at the time of purchase that they had been mis-informed).

As the term market failure suggests, regulatory intervention could be considered appropriate if there are characteristics of the market such that the market itself might not function properly. Where market failure occurs, governments or regulators may be required to intervene to ensure a more socially optimal outcome.

Where market failure exists, and is not likely to be self-correcting, an economic approach would suggest assessing the costs and benefits of regulatory intervention, and the risk of regulatory failure.

We consider that the market failure we have identified in the fixed-line telecommunications sector is not likely to be self-correcting in light of persistent levels of OAT fixed-line telecommunications mis-selling complaints and Cancel Other (slam) volumes over the last three years (see section 3 of the main document).

In the specific example of fixed-line telecommunications mis-selling there has already been some regulatory intervention in the market. However, Ofcom considers that the current level of intervention has not fully corrected the market failure. As a result, our approach will consider the costs and benefits of regulatory intervention over and above the existing levels.

Assessment of Potential Benefits

As described in section 3 of the main document, Ofcom uses OAT fixed-line telecommunications mis-selling complaints and Cancel Other (slam) volumes as a measure of mis-selling problems. Ofcom recognises that this data needs to be treated with a certain amount of caution in that there are a range of factors which can influence the data and that these factors may not be related to actual mis-selling activities. Such factors could include, for example, whether CPs are explicitly advising customers to contact Ofcom to complain, deficiencies in the switching systems/processes, customer confusion or inappropriate

²⁴ An additional issue is that consumers may not be able to tell accurately that they have been the victim of passing off (i.e. where representatives claim to represent a different company from the company they are actually working for).

retention activities from the LP. However, broadly speaking Ofcom considers that these two measures are useful proxies for the level of mis-selling activity.

In order to attempt to quantify the likely consumer harm arising from mis-selling, Ofcom carried out consumer research in September 2008.

Mis-selling

The research indicated that 4% of households with a fixed-line have suffered some form of mis-selling. Assuming 21.9 million UK households have a fixed-line, this would equate to approximately 876,000 fixed-line mis-selling experiences. Of those experiencing a fixed-line mis-sell, approximately 60% had experienced mis-selling in the last year. This would suggest something in the order of 526,000 households experiencing mis-selling on an annual basis.

The research also indicated that the reported financial loss from fixed-line (voice) mis-selling ranged from £0 to over £300, with a mean reported financial loss of around £70. However, the distribution of financial loss was uneven across the sample, suggesting it would be prudent to look at a range of estimates of the scale of the financial loss²⁵ rather than just use the mean. Another reason for looking at several estimates is because of the small²⁶ sample size.

The median reported financial loss was £19 with a lower quartile of £2 and an upper quartile of £87. The relatively low figures for the lower quartile and median are driven by 17 people reporting no financial loss at all. Given that some consumers suffered no loss, the median would also be a relevant representative statistic of the quantum of financial loss.

If we aggregate this data up to a national level, assuming 526,000 households are affected by fixed-line (voice) mis-selling, this would suggest that the estimated median loss would be £10 million and the estimated mean loss would be £37 million over the past year. On the basis that a number of people in the sample experienced a significant amount of financial loss, we consider that it might be appropriate to look at the range bounded by the mean and the median when looking at measures of financial loss. On this basis, the estimated financial loss resulting from mis-selling in the UK could lie in the range £10-£37 million on an annual basis (see Table 1 for summary statistics).

Ofcom recognises that a number of consumers are able to claim back some of their lost money. However, the same survey indicated that only 13% of those who lost money following a fixed-line mis-selling were reimbursed at least some of their costs. We have not factored in reimbursement into the aggregate estimate of financial loss. This is for two main reasons:

- first, only a small number of consumers in the sample were reimbursed so it is not possible to provide a representative estimate for the amount of reimbursement.

²⁵ We considered the following statistics: mean, the median, the lower quartile and upper quartile. The mean is defined as the arithmetic average of a series of numbers, often simply called 'the average'. The median is an alternative statistic for the average. It is calculated by arranging numbers in a series in order of size and selecting the number in the middle. The median is a useful statistic to compute when the distribution of a series of numbers is skewed in one direction. The lower quartile and upper quartile are calculated on a similar basis as the median. While the median contains 50% of the total observations below its value, the lower quartile contains 25% and the upper quartile contains 75% of the observations.

²⁶ The sample consisted of 76 people.

- second, because only a small number of people appear to receive reimbursement we do not believe this will have a significant impact on the aggregate harm estimate.

In addition we have tended towards the conservative in the estimate of the financial loss we are using. For instance, it is possible that those consumers that apply for reimbursement are the ones that suffer the highest loss.

Slamming

An extreme form of mis-selling is slamming, that is to say, where a consumer is switched to a different CP against their express knowledge and/or consent. The consumer research showed that:

- 2% of the sample had actually been slammed. Scaling up to UK households, this would equate to approximately 440,000 slams. Of those experiencing a slam, approximately 30% had experienced the slam in the last year. This would suggest something in the order of 135,000 households experiencing slamming on an annual basis;
- 4% of the sample had suffered an attempted slam which had been stopped before the transfer was completed; and
- the amount of financial loss arising due to slamming ranged from £0-£300. However, the majority of consumers (75%) suffered no financial loss due to slamming.

This suggests the current NoT process, comprising a 10-day switchover period, NoT letters and the Cancel Other process, works reasonably well at ensuring that the majority of consumers have been able to stop the order going ahead in cases of slamming. Nevertheless, some of the unauthorised switching resulted in financial loss. The mean amount of financial loss due to slamming was estimated to be £16. However, only 25% of the sample actually experienced any financial loss. With 75% of the sample not experiencing financial loss, this would suggest that the median would be zero. Given the switching process described in the main document (see Section 6), and referred to above, this is not surprising since the consumer is typically able to stop the transfer going ahead, thereby preventing the financial loss occurring in the first place. However, there would still be costs in the form of anxiety, distress, potential disruption and likely damage to consumer confidence as a result of unauthorised switching. Using the same median/mean approach that was used for mis-selling, we estimate that the financial loss from slamming could currently be in the range £0-2m per annum.

Time to resolve mis-selling/slamming issues

In addition, there would be costs associated with the time spent by consumers dealing with mis-selling issues. We have assumed that people deal with mis-selling problems in their leisure time rather than working time so the value of non-working time is used to convert time costs into money costs. This is a conservative assumption because it is possible that some people deal with problems during the working day and the value of working time is considerably higher than non-working time.

We estimated the value of time ('VoT') using the 2002/3 estimate of non-commuting leisure time given by the Department for Transport²⁷ ('DfT') and converted it to a 2009 price using historical price inflation ('RPI'). In addition, the DfT states that the VoT grows with income so we have increased the VoT by the historical annual increase in average earnings (given by growth in real GDP per capita) multiplied by the elasticity of (non work) value of time (0.8) to income (which is taken from the DfT).

Based on the methodology above the value of non-working time in 2009 is estimated at £5.83 per hour²⁸. This would mean that the total time cost for dealing with mis-selling problems is approximately £2 million, based on a typical fixed-line contract being 12 months.

Table 1 (below) sets out these estimates for the scale of financial loss to consumers on an annual basis.

Table 1: Estimates of financial loss in the past year resulting from mis-selling and slamming

Form of loss	Financial loss (£ million)
Mis-selling	
Median loss	10
Mean loss	37
Slamming	
Median loss	0
Mean loss	2
Time cost	
Time spent dealing with mis-selling and slamming	2

However, Ofcom considers that these figures could underestimate the total harm to consumers for two reasons. First, a conservative range has been provided for aggregate financial loss. Second, mis-selling can result in a number of other costs which are not easily quantifiable, for example:

- a lack of confidence caused by mis-selling may spill over to other areas of the communications sector, and limit switching elsewhere;
- for the dynamic markets Ofcom is concerned with, the benefits from increased innovation (and more broadly, quality) driven by increased switching can easily outweigh the benefits from price reductions;
- consumers put off searching for a better deal due to uncertainty surrounding legitimacy of offers. This can have a detrimental impact on the competitive process; and
- inconvenience arising from time without a service while problems are resolved.

Uncertainty surrounding legitimacy of CP offers can have a detrimental reputational effect on competition in the industry. Uncertainty might lead to consumers becoming unwilling to switch CPs and this consumer inertia could have wider effects. A reduction in willingness to switch CPs represents a dampening of competition, which might lead to weaker incentives for firms to innovate and compete on prices. However, we have not taken into account the

²⁷ http://www.webtag.org.uk/webdocuments/3_Expert/5_Economy_Objective/3.5.6.htm, Section 1.2.20

²⁸ The value of working time is around £30 per hour.

wider benefits of increased competition in our estimates of potential benefits. Increased competition might, for example, foster innovation and lead to lower prices for consumers.

Assessment of costs

In this section we describe our methodology for quantifying the costs of call recording.

Source of data

Our focus in the IA is on incremental costs i.e. the costs incurred as a *result* of our policy options. We do not include costs where CPs have existing business plans in place to increase their call recording capabilities to levels consistent with our proposed options. Such costs would have been incurred by CPs regardless of any further regulation imposed by Ofcom.

The costs discussed below are sourced from information requests and industry sales information from the CPS and WLR electronic order gateways²⁹. These cost estimates are then used as the basis for extrapolating to the rest of the industry.

Information on incremental costs was obtained through formal information requests³⁰. We asked twelve of the larger³¹ fixed-line telecommunications CPs for information on the following:

- how sales records were made, and kept, for different sales routes i.e. telesales, door to door, in store and web sales; and
- the incremental costs which would be incurred if call recording obligations were extended to cover all telesales with a retention period of six months.

The responses to the information request revealed that all of the twelve CPs already undertook some sales call recordings, although the extent of these recordings varied from 100% to only a few calls per week. Where calls were recorded they were usually stored for at least six months.

The responses also highlighted that some CPs had existing investment projects planned to improve their call recording and storage capabilities. Therefore, we anticipate that some CPs will increase their call recording and storage capability over the next year regardless of Ofcom's proposals.

Our focus in the IA is on incremental costs i.e. the costs incurred as a *result* of our policy options. We do not include costs where CPs have existing business plans in place to increase their call recording capabilities to levels consistent with our proposed options. Such costs would have been incurred by CPs regardless of any further regulation imposed by Ofcom.

Cost estimates from CPs were provided before the change in VAT rate, and therefore include VAT at a rate of 17.5%. Any expenditure incurred in 2009 might be slightly lower than predicted by Ofcom given the change from 17.5% to 15%. However, we have not

²⁹ These are the Service Provider Gateway (for WLR) and the BT Wholesale Gateway (for CPS). These act as an online ordering tool that enables communications providers to place and track their orders.

³⁰ The first information request was sent on 31 January 2008. The second information request was sent on 11 September 2008.

³¹ Accounting for approximately 90% of the market in terms of sales.

adjusted the cost estimates given that the VAT reduction is only in place until 1 January 2010.

Extrapolation to industry costs

In the absence of specific sales data we have used data on orders as a proxy for sales. Hereafter, discussion of sales data refers to orders data.

Question A5.7

Do you agree that orders are an appropriate proxy for sales? Please provide an explanation and evidence to support your response.

In terms of extrapolating from our sample to the total industry, we could define the number of CPs (and orders) in the industry based on either the SPID (WLR set up orders) or RID (CPS set up orders) measures. However, this is unlikely to be a precise measure of the volume of CPs given that CPs supply different voice-based services, including CPS only, WLR only or a combination of WLR with CPS. Furthermore, some CPs offer LLU sales which will not be captured in the WLR or CPS data. We have therefore combined data series on WLR, CPS and LLU data to create a single data series showing total set up orders by CP.

It should be noted that we have not included data on Wholesale Calls sales in the IA as the data were not available to us. Further, we have had to estimate³² a few data points of monthly sales data since we were not provided with complete data to December 2008.

The dataset indicates that there were a total of 784 CPs in December 2008. However, not all of these CPs received set up orders in 2008 and some appear to have been operating with very low levels of orders. For example, if we were to consider “active” CPs as those which received 50 or more set up orders in 2008 this would reduce the number of CPs to 387. Table 2 below sets out information on the distribution of orders across the industry.

Table 2: Effective number of CPs in the industry according to different threshold levels

More than X many set up orders in 2008	Number of CPs	Number of set up orders (million)
0	784	4.78
50	387	4.78
100	310	4.78
500	164	4.74
1,000	115	4.70
2,500	83	4.66
5,000	50	4.53
10,000	33	4.41

As indicated above, orders are concentrated in a relatively small number of CPs. In fact, the 50 largest CPs (in terms of sales volumes) account for approximately 95% of industry orders. Table 2 also indicates that there will be a significant number of small CPs in the industry with low (or even zero) set up orders.

³² Specifically, we lacked 3 out of 144 data points. These missing data points were set at the average level of the preceding nine months.

As stated above, our information on costs is based on information provided by the larger CPs. Given the fact that there is a large number of CPs with very low volumes of sales, we are wary about simply extrapolating costs based on the number of CPs. For instance, it is not necessarily the case that all CPs in the industry would have the same fixed (or “one-off”) incremental costs associated with our policy options as the larger CPs. The dataset also indicated that some of these CPs received orders for only the first part of the year, or for a single month, and then received no further orders. It is therefore possible that these CPs no longer trade. Taking these factors into account, extrapolation of costs based on the number of CPs could lead to an overestimate of costs.

For the purposes of this analysis we focus on the orders for CPs with at least 1,000 set-up orders in 2008 – this represents just over 98% of the total order volumes reported across all CPs.

Our understanding is that volume of sales is a key driver of costs of call recording. Taking the information provided by the larger CPs, we can express both initial set-up and on-going costs on a cost per sale basis. Based on the knowledge that the larger CPs account for a given percentage of industry sales we can then extrapolate a cost that would be associated with the total order volumes for the CPs we are focusing on. For instance, the 12 CPs accounted for approximately 94% of telesales for CPs with at least 1,000 set-up orders over the January-December 2008 period, so approximately 6% of telesales are not covered by the cost estimates above.

We consider that there are three main reasons why it is sensible to extrapolate on the basis of sales volumes when seeking to generate estimates of the costs to industry as a whole:³³

- it is possible that some CPs in the industry no longer operate in practice, and/or that some firms have been classified as CPs when in fact they are not CPs but have set up their fixed-line voice services to self provide;
- smaller CPs may be able to implement call recording solutions without incurring additional expenditure because low sales volumes may mean that these CPs would not require, for example, a systems change in order to record calls; and
- the ‘successful’ industry set-up data is not split by medium of sale such as telesales, door to door, online. Some CPs, plausibly smaller CPs, may not engage in telesales as a route to market and, therefore, may not incur incremental costs as a result of a requirement to record telesales. Including all CPs when extrapolating costs, therefore, would overestimate likely costs to the industry.

Question A5.8

Do you agree with our assumption that volume of sales is a key driver of costs? If not, please provide an explanation and evidence to support your response.

³³ When extrapolating costs we have analysed fixed-line voice ‘successful’ set-up data by CP, encompassing Carrier-Pre Selection (CPS), Wholesale Line Rental (WLR) and services based on full LLU.

Exempting CPs

The CPs not covered by the formal information request will be smaller firms. These CPs may not have call recording systems in place. We have considered the case for exempting smaller firms from call recording obligations³⁴. However, exempting smaller CPs would undermine Ofcom's objective of establishing a level playing field in relation to record keeping obligations. Further, regulatory compliance incentives may not be fully aligned across the industry, impacting on the effectiveness, and threat, of Ofcom's enforcement activity. In addition, this is supported by complaints evidence as a large number (over 100) of smaller companies currently generate a substantial proportion (around 35%) of total mis-selling complaints received by the OAT.

Having considered the arguments, Ofcom considers that it is important that all CPs are required to record calls given the importance of setting a level playing field in relation to record keeping obligations.

We estimate costs/benefits of our policy options on an annual basis before calculating a net present value (NPV).

Evaluation of Options: NPV Calculation

It is the case that there are differences in the timing at which the costs and benefits will be realised by CPs and consumers. For instance, CPs will incur both upfront set-up costs and on-going costs in relation to the options. In contrast the benefits to consumers will tend to accrue on an on-going basis. Simply comparing the costs and benefits on an annual basis would not take this into account. A NPV calculation enables us not only to take into account the costs and benefits in aggregate but also allows us explicitly to take into account the different timings of the accrual of costs and benefits, using a discount rate to adjust the different costs and benefits over time to a common present value.

Our assessment of the potential benefits available to consumers from our policy options is based on a general reduction in the level of mis-selling. We have attempted to quantify the costs of the different options as far as possible. For example, we assume that our policy options in relation to Cancel Other result in benefits to consumers by reducing the number of Cancel Other (slam) requests over time which also reduces the amount of time spent by consumers dealing with slamming.

It is also the case that there are differences in the timing at which the costs and benefits will be realised by CPs and consumers. For instance, CPs will incur both upfront set-up costs and on-going costs in relation to the options. In contrast the benefits to consumers will tend to accrue on an on-going basis. Simply comparing the costs and benefits on an annual basis would not take this into account. A NPV calculation enables us not only to take into account the costs and benefits in aggregate but also allows us explicitly to take into account the different timings of the accrual of costs and benefits, using a discount rate to adjust the different costs and benefits over time to a common present value.

We have derived estimates of both the total likely one-off costs incurred by CPs and the on-going costs arising from the options.

We have estimated the annual financial loss associated with fixed-line (voice) mis-selling and slamming, as well as the annual loss due to time spent by consumers dealing with mis-selling and slamming issues. We consider that reducing the scale of these losses is a

³⁴ CPs with a lower volume of sales might be able to implement low cost solutions to record keeping.

reasonable proxy for the potential benefits which would accrue to consumers from reducing the scale of mis-selling and slamming.

We have considered the flow of costs and benefits over a 5-year period after implementation on the grounds that this probably represents a reasonable period over which to evaluate costs and benefits. We also consider that – given that actual costs and benefits will depend on the success of policy options – a 5 year horizon represents a reasonable trade-off given that longer horizons would involve significant uncertainty, and shorter horizons may not allow benefits to be realised sufficiently. In the case of call recording options we consider that 5-years are a reasonable period over which to evaluate the impact of new system solutions.

Question A5.9

Do you agree that it is reasonable to use a 5-year time period for our NPV analysis? Please provide an explanation and evidence to support your response.

The options we are proposing would have an implementation period of 12 months. We assume the one-off costs occur at the end of the 12 month implementation period. The ongoing costs and benefits then arise in continuous time from the end of the 12 month implementation period (i.e. Year 1 to Year 5). We use a continuous discount function when discounting the ongoing costs and benefits flows.

Projected Costs

As indicated above, we assess the estimated costs of the different components of our package of options. That is, we take into account:

- the costs from changing sales scripts;
- the costs from lengthening sales scripts;
- the costs of record keeping for telesales;
- the retrieval costs for investigations; and
- record keeping for Cancel Other.

We assume that the current level of telesales remains constant over our 5-year time horizon. We also assume that all of the identified cost categories above incur ongoing costs except for the costs attributed to changing sales scripts. We consider that such costs are most likely to be one-off in nature.

Question A5.10

Do you consider that costs attributed to changing sales scripts are likely to be one-off in nature? Please provide an explanation and evidence to support your response.

Given that our options are aimed at reducing the incidence of mis-selling activities and Cancel Other misuse, we assume that the costs of call recording will decrease over time. For instance, there is evidence that Cancel Other requests halved over the course of the 18 months following an earlier policy intervention. That is, following Ofcom's introduction of

consumer protection rules in 2005, Cancel Other 'slam' numbers fell from monthly volumes of 30,000 in early 2006 to around 15,000 in Autumn 2007.

For the purposes of our modelling, we have assumed that the options to clarify and simplify the existing regulations and to provide information at the point of sales on their own are important but in quantitative terms only have a modest impact on the level of general mis-selling. We assume that each measure would reduce these levels by around 1 percent per annum.

Question A5.11

Do you consider that the options to clarify and simplify the existing regulations and to provide information at the point of sales would each reduce levels of mis-selling by around 1 percent per annum? Please provide an explanation and evidence to support any alternative assumptions.

In the case of call recording for telesales and Cancel Other, we have assumed that the measures have the potential for a greater impact. In light of our experience of the introduction of rules related to mis-selling in May 2005, we assume that Cancel Other requests and general mis-selling will reduce by 50% within two years of implementation of the new regulations. We assume that there will be a 30% fall in the first year and then the remainder in year 2. Thereafter, we assume that Cancel Other requests and general mis-selling remain at 50% of the counterfactual for the remainder of the five year horizon.

Question A5.12

Do you consider that the options on call recording for telesales and Cancel Other could reduce mis-selling and Cancel Other requests by 30% in Year 1 and by 50% in Year 2? Please provide an explanation and evidence to support any alternative assumptions.

Projected Benefits

In order to make an assessment of the benefits that could accrue to consumers, we have adopted a counterfactual approach when projecting the benefits of our preferred options.

For example, we estimated that the *median* reported mis-selling financial loss derived from consumer research data was £10 million per annum. Therefore, as a counterfactual, we assume that absent any policy changes, annual financial loss associated with mis-selling would remain around this level over the five year period. We consider this to be a reasonable assumption on the basis that the monthly level of OAT mis-selling complaints requests has been reasonably stable over the last year or so.

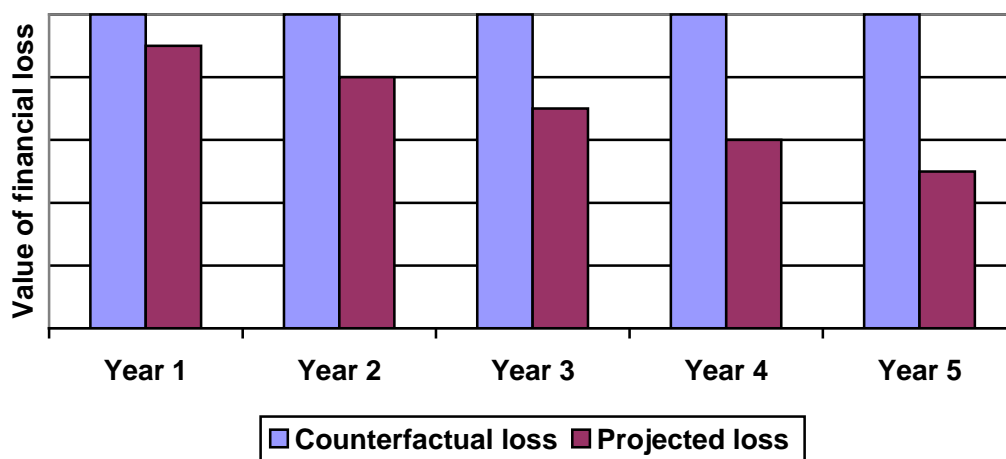
Our projection of the scale of the financial loss from mis-selling – and therefore the potential consumer benefit if mis-selling can be reduced – is made up of two items:

- the scale of financial loss per household; and
- the number of households affected by fixed-line (voice) mis-selling.

Our estimate of the consumer benefit in any one year is the difference between the projected financial loss under our options and our counter-factual. This can be seen Figure A5.1,

where the illustrative consumer benefit is the difference between the blue and purple bars in a given year. We estimate the scale of the financial loss using both the median and mean estimates of the scale of financial loss.

Figure A5.1: Illustrative consumer benefit



We assume that the number of households affected by mis-selling decreases over time as a result of our preferred options. This means that our projections of the scale of the financial loss will decrease over time as the number of households affected by mis-selling falls. We use the same methodology when estimating the projected financial loss from slamming.

Our projection of the cost to consumers from spending time dealing with mis-selling is made up of three items:

- the amount of time spent dealing with mis-selling per year;
- the number of households affected by mis-selling/slamming; and
- the value of time.

We have not adjusted the estimates of costs and benefits for the effect of inflation i.e. the estimates are in real terms. We have used HM Treasury's 3.5% real social discount rate to discount the cash flows back to the present time.

Assessment of options

Option: Simplifying and clarifying the regulations

We would expect our preferred option only to impose additional costs on CPs to the extent that they were not already complying with the current process-led approach and so have not factored this into our IA. However, we would expect a much more explicit prohibition on mis-selling to have a deterrent effect - albeit modest - on the current level of mis-selling.

As set out above, we assume the stand-alone benefits for our preferred option on simplifying and clarifying the regulations would reduce mis-selling levels by around 1 percent per annum. Because this option does not involve incremental costs to the industry, we assume that this option would have an impact during the implementation year, one year earlier than

occurs for options involving incremental costs. The benefits of this option derive from two items:

- fewer households affected by mis-selling compared to the counterfactual; and
- less time spent dealing with mis-selling compared to the counterfactual.³⁵

NPV Calculations

Based on our indicative modelling we estimate that this option could yield a net present value in the order of £2m to £7m (median to mean) over five years. Table 3 below sets out the modelling for the median measure of financial loss.

Table 3: NPV from simplifying and clarifying the regulations: median measure of loss

Year	2008	Implementation	1	2	3	4	5
Discount factor	-	1.00	0.97	0.93	0.90	0.87	0.84
Number of Cancel Other requests p.a. ('000)	149	149	149	149	149	149	149
Households affected by mis-selling ('000)	526	521	515	510	505	500	495
Benefits							
Loss avoided - Mis-selling (£m)	£0.0	£0.1	£0.2	£0.3	£0.4	£0.5	£0.6
Loss avoided - Slamming (£m)	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0
Time benefit (£m)	£0.0	£0.0	£0.0	£0.0	£0.1	£0.1	£0.1
<u>Total benefits (£ million)</u>	-	£0.1	£0.2	£0.3	£0.5	£0.6	£0.7
<i>Discounted total benefits (£ m)</i>	-	<i>£0.1</i>	<i>£0.2</i>	<i>£0.3</i>	<i>£0.4</i>	<i>£0.5</i>	<i>£0.6</i>
Costs							
Costs from simplifying & clarifying (£m)	-	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0
<u>Total costs (£ million)</u>	-	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0
<i>Discounted total costs (£ m)</i>	-	<i>£0.0</i>	<i>£0.0</i>	<i>£0.0</i>	<i>£0.0</i>	<i>£0.0</i>	<i>£0.0</i>
NPV (£ m)		£2.1					

Option: Information at Point of Sale

All CPs update their sales scripts at least once a year. We anticipate that the type of prompt we are requiring could be included as part of these regular updates. For this reason, the estimated costs shown below would not necessarily be incremental costs resulting from our policy options, and may be incurred anyway as part of normal business.

CPs listed a number of costs which are incurred to make a change to their sales script, for example, development, printing and distribution and time to train staff. The estimated cost to make a small change to the sales script varied widely from CP to CP. Further, two CPs were unable to provide an estimate of incremental costs. Some CPs stated that the cost was

³⁵ The benefits from providing information at point of sale is also assumed to reduce mis-selling levels by around 1 percent per annum.

negligible while another CP estimated the cost to be £40-50,000³⁶. The mean cost per CP was approximately £9,400. The ten CPs providing estimates made around 2.7 million total fixed-line (voice) sales over the last year, of which approximately 1.4 million were telesales. This would imply a cost per telesales of £0.07. Extrapolating this to the rest of the industry (total telesales of around 2.9 million), we estimate that costs to the entire industry would be approximately £0.19 million.

A few CPs also pointed out that adding the prompt could lengthen the sales call and this would result in additional costs³⁷. One CP estimated that the ongoing cost for every extra call minute was about £0.40. We estimate that adding the sales prompt would add (on average) an additional 20 seconds to each call thus the additional cost per call could be about £0.13. We estimate that a total of around 4.7 million fixed-line (voice) sales were made in the last year, of which approximately 2.9 million were telesales, so the total cost for extending the time of the sales call may be around £0.4 million.

Question A5.13

Do you agree that it is reasonable to assume that adding such a sales prompt would increase the call length by an additional 20 seconds? Please provide an explanation and evidence to support your response.

NPV Calculations

Based on our indicative modelling we estimate that our preferred option for simplifying and clarifying the regulations combined with providing information at point of sale could yield a NPV in the order of £1m to £10m (median to mean) over five years. Table 4 below sets out the modelling for the median measure of financial loss.

³⁶ The majority of this cost was driven by the need to implement the change through multiple external sales agencies and provide training to a large number of sales staff.

³⁷ For example, for staff time and call charges if the call was outgoing.

Table 4: NPV from providing information at the point of sale and simplifying and clarifying the regulations: median measure of loss

Year	2008	Implementation	1	2	3	4	5
Discount factor	-	1.00	0.97	0.93	0.90	0.87	0.84
Number of Cancel Other requests p.a. ('000)	149	149	149	149	149	149	149
Households affected by mis-selling ('000)	526	521	510	500	490	480	471
Benefits							
Loss avoided - Mis-selling (£m)	£0.0	£0.1	£0.3	£0.5	£0.7	£0.9	£1.1
Loss avoided - Slamming (£m)	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0
Time benefit (£m)	£0.0	£0.0	£0.0	£0.1	£0.1	£0.1	£0.2
<u>Total benefits (£ million)</u>	-	£0.1	£0.3	£0.6	£0.8	£1.0	£1.2
<i>Discounted total benefits (£ m)</i>	-	£0.1	£0.3	£0.5	£0.7	£0.9	£1.0
Costs							
Costs from simplifying & clarifying (£m)	-	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0
Costs from changing sales script (£m)	-	£0.2	£0.0	£0.0	£0.0	£0.0	£0.0
Costs from lengthening sales script (£m)	-	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4
<u>Total costs (£ million)</u>	-	£0.6	£0.4	£0.4	£0.4	£0.4	£0.4
<i>Discounted total costs (£ m)</i>	-	£0.6	£0.4	£0.4	£0.4	£0.3	£0.3
NPV (£ m)		£1.2					

This implies that the NPV from providing information at the point of sale on its own could lie in the range -£0.9m to £2.4m

Option: Record keeping for telesales

Our approach to estimating the costs of implementing call recording for telesales involved using responses from formal information requests and estimating costs in terms of 'one-off' costs and 'ongoing' costs.

The data from the information requests indicated that five CPs would not in fact incur any additional costs in relation to any of our call recording proposals³⁸. Three CPs were unable to provide an estimate for the costs of extending call recording to meet our proposals. The remaining four CPs reported varying costs depending on:

- the number of calls currently recorded;
- the volume of sales; and
- their current systems and the level of system development required.

³⁸ They already record all telesales calls and retain for at least six months.

For the four CPs who provided cost information the total incremental one-off cost of recording 100% of calls was estimated at £2.9 million and the total incremental ongoing cost was approximately £0.4 million.

The four CPs providing cost information made a total of around 1.3 million fixed-line (voice) sales over the last year³⁹, of which an estimated 700,000 sales were telesales⁴⁰. Based on this annual data the approximate one-off cost per telesale is £4.4⁴¹ and the ongoing cost is £0.6 per telesale (rounded to the nearest 10p). We use these numbers as the basis of our cost estimates when extrapolating costs for the rest of the industry.

The three CPs not able to provide cost information did provide some information about the extent to which their sales calls are already recorded. Based on the reported existing levels of sales recording, we conservatively estimate that the total number of additional calls which would need recording (to meet 100% call recording requirements) for these CPs would be 340,000⁴². Based on the cost per sale information calculated above, this would suggest an additional one-off cost of about £1.5 million and an ongoing cost of £0.2 million for these three CPs.

Taking these costs together, the incremental cost of extending call recording to all calls and storage capabilities for the seven CPs who currently don't record and store all telesales would be about £4.4 million in one-off and £0.6 million in ongoing costs.

The twelve CPs we formally requested information from accounted for approximately 90% of total fixed-line telecommunications sales in the industry⁴³ over the last year. We need to derive an estimate of what proportion of these sales are actually telesales before extrapolating the cost per sale data to the rest of the industry. Ofcom received information on the percentage of sales completed by phone from nine of the twelve CPs. For these nine CPs, the mean percentage of sales completed by phone was 43%⁴⁴. Without any other data we assume the remaining three CPs covered by the formal information request also complete 43% of sales by phone.

In addition, for the CPs not covered in our formal information request we have assumed that they: complete 43% of sales by phone; do not currently record all calls; and will incur average costs per sale to implement/extend their call recording requirements in a manner similar to the calculations described above.

Question A5.14

Do you feel these assumptions are appropriate? If not, please provide an explanation and evidence to support any alternative assumptions.

³⁹ 'Over the last year' refers to the period January 2008 to December 2008 hereafter.

⁴⁰ Telesales are estimated using information request data on the percent of sales completed by phone. Two of the four CPs provided this data. A simple mean figure was calculated and used to estimate telesales for the remaining two CPs.

⁴¹ There was some confusion on the nature of the cost data we received from one CP. Specifically, it was unclear whether the data referred to all of their telesales or a smaller part of their telesales operations. We have assumed the cost data referred to all telesales, and therefore derived a cost per sale number based upon all telesales (rather than a smaller part of this CP's telesales operations). We use this cost per sale number as the basis for extrapolating costs to the rest of the industry. However, we use sales from the CP's smaller telesales operations when extrapolating costs for the rest of the industry.

⁴² On the basis of requiring all calls to be recorded

⁴³ Those CPs with 1,000 or more set up orders in 2008 are the basis of our calculations.

⁴⁴ In contrast, a weighted mean (weighted by sales) produces a mean of 65%.

Consideration of options for call recordings: telesales

Option 1

We would not anticipate that there would be any incremental costs for CPs associated with this option. However, we are concerned about the potential cost to consumers if mis-selling remains at current levels.

Option 2

We do not expect that this option will impose incremental costs on CPs given that it is simply clarifying existing obligations. Again, we remain concerned about the potential cost to consumers if mis-selling remains at current levels.

Option 3

Under this option, we would require CPs to keep recordings of the actual sale, plus any subsequent calls that were made as part of the sales process, where telesales is used by CPs as a channel to market.

Sub-option 3(i) - 75% call record keeping requirements (with no assumed tolerance levels)

Issues for consumers

As discussed in the IA, we anticipate that improved call recording requirements would help reduce mis-selling which can result in consumer harm and undermine confidence in the operation of the market. This should help to foster a competitive marketplace where consumers seek out the best deals.

Issues for Communications Providers

Eight of the 12 CPs who provided information indicated that they would not incur any additional costs under this option (see Table A5.1 for the current level of call recording by the 12 CPs). Three of the four CPs who do not currently record at least 75% of sales calls provided cost estimates for extending call recording to all telesales. To calculate the costs of this option we assume that:

- the one-off costs of implementing call recording do not vary according to the number of calls recorded (i.e. the one-off costs for recording all calls and 75% of calls are the same)⁴⁵.
- the ongoing costs e.g. maintenance and purchase of storage capacity are variable and directly proportional to the number of calls recorded. So for the CPs who don't already record 75% of calls, the ongoing costs for this option are 75% of the costs estimated for recording 'all' calls⁴⁶.

Based on the above assumptions, and given their volume of orders, the one-off and ongoing costs for the 3 CPs that provided cost information would be £2.9 million and £0.1 million respectively. Using the cost per sale information calculated previously, we estimate that the costs of complying with this option for the other CP in our sample would be £1.2 million in one-off costs and £0.1 million in ongoing costs. This brings the total cost for the four CPs

⁴⁵ This results in a one-off cost per sale of £4.4 (see earlier discussion).

⁴⁶ This results in an incremental ongoing cost per sale of £0.6 x 75%.

who would incur additional costs to £4.1 million in one-off costs and £0.2 million in ongoing costs.

We extrapolate these costs to the rest of the industry, which results in estimated total costs of £4.8 million in one-off costs and £0.3 in ongoing costs (see breakdown in Table 4).

We are aware that CPs may incur other indirect incremental costs as a result of the storage requirements. This may include costs to meet requests under the data protection act. At this stage we do not believe that the incremental costs involved would be significant and have therefore not undertaken an incremental cost assessment.

Question A5.15

Do you agree that these other indirect costs are not significant? If not, please provide an explanation and evidence to support your response.

As indicated above, we recognise that the costs to each CP will depend substantially their current call recording and storage situation. For some CPs the cost will be minimal because the existing systems already meet our requirements, but for others whose call recording is limited the costs may involve greater changes to existing systems.

In response to this we have proposed allowing CPs an implementation time of one year to comply with the proposals. This is to enable CPs to put in place adequate systems and will enable any costs to be spread over time which should minimise the burden on CPs.

Table 5: Incremental costs of requiring all CPs to make records of 75% record keeping requirements for sales based on best endeavours and retain records for six months

	Incremental costs (£ million)
Total industry one-off costs	4.8
Total industry ongoing costs	0.3
Twelve CPs one-off costs	4.1
Twelve CPs ongoing costs	0.2
Rest of industry one-off costs	0.7
Rest of industry ongoing costs	0.1

Note: Rounded to nearest 100,000.

Issues for competition

Improved telesales recording should reduce mis-selling. This is likely to have the effect of alleviating financial harm to consumers and restoring confidence in the operation of the market. In turn, consumers will feel more comfortable switching provider in the knowledge that they will not be mis-sold a product (or if they are mis-sold a product then evidence will be available to take appropriate action against the perpetrator). This should help to foster a competitive marketplace where consumers seek out the best deals.

Sub-option 3(ii) - 100% call record keeping requirements based on reasonable endeavours [with an explanation why 100% was not possible] and never less than 90%.

Issues for consumers

We anticipate that the benefits to consumers from sub-option 3(ii) should be greater than those detailed in sub-option 3(i) given the more stringent record keeping requirements under this option.

Issues for communications providers

This option will involve incremental costs to some CPs in the form of one-off costs and ongoing costs in relation to recording telesales.

Using the assumptions highlighted in the methodology, an estimate for the incremental cost of extending call recording and storage capabilities for the twelve CPs covered in the information request would be £4.4 million in one-off costs and £0.6 million in ongoing costs (i.e. for the seven CPs not currently recording all calls).

The 6% of industry telesales not accounted for by the sample of 12 CPs consists of approximately 160,000 telesales. Using this figure together with an assumed one-off cost per sale of £4.4 and an assumed ongoing cost per sale of £0.6 yields total one-off costs of £0.7 million and total ongoing costs of £0.1 million.

Question A5.16

Do you consider that one-off incremental costs per sale of £4.4 and ongoing incremental costs per sale of £0.6 are reasonable assumptions for the rest of the industry? Please provide an explanation and evidence to support any alternative assumptions.

This brings total industry costs of extending call recording to 100% of telesales to £5.1 million in one-off costs and £0.7 million in ongoing costs (see breakdown in Table 6).

Furthermore, Ofcom recognise that the costs to each CP will depend substantially on their current call recording and storage situation. For some CPs the cost will be minimal because the existing systems already meet our requirements, but for others whose call recording is limited the costs may involve greater changes to existing systems.

As before, we have proposed allowing CPs an implementation time of one year to comply with the proposals. This would enable CPs to put in place adequate systems and will enable any costs to be spread over time which should minimise the burden on CPs.

Table 6: Incremental costs of requiring all CPs to make records of 100% record keeping requirements for sales based on reasonable endeavours and retain records for six months

	Incremental costs (£ million)
Total industry one-off costs	5.1
Total industry ongoing costs	0.7
Twelve CPs one-off costs	4.4
Twelve CPs ongoing costs	0.6
Rest of industry one-off costs	0.7
Rest of industry ongoing costs	0.1

Note: Rounded to nearest 100,000.

Issues for competition

Improved telesales recording should reduce mis-selling. This is likely to have the effect of alleviating financial harm to consumers and restoring confidence in the operation of the market. In turn, consumers will feel more comfortable switching provider in the knowledge that they will not be mis-sold a product (or if they are mis-sold a product then evidence will be available to take appropriate action against the perpetrator). This should help to foster a competitive marketplace where consumers seek out the best deals.

Costs of investigations

One of the reasons for requiring CPs to record calls is so they will be available as evidence in the event of an Ofcom investigation. The record keeping proposals outlined previously will only deter CPs from mis-selling/abusing Cancel Other if there is a very strong likelihood that they will be used as evidence. Thus the ability for Ofcom to request and retrieve call recordings is integral to these proposals.

We would not ask CPs for call records as a matter of routine – they would only be requested in the event of an investigation. This means the costs associated with providing records to Ofcom for verification will fall on CPs who are investigated for alleged mis-selling practices. This provides a further incentive against engaging in bad selling practices.

We appreciate that CPs will incur some costs if requested to provide records to Ofcom. The main cost is likely to be staff time to retrieve and collate records requested. As part of the information request we asked CPs to estimate the costs of retrieving records for external verification (such as providing records to Ofcom). The costs estimates varied from £2.4 to £21.4 with a mean cost of £12 per record.

In three recent mis-selling/abuse of Cancel Other investigations Ofcom received between 8,000 and 13,000 call records. The average number of records received was 10,000. The exact number of records received in each investigation is likely to vary significantly depending on the volume of sales completed and the proportion of these which are telesales.

Based on the retrieval costs and number of records retrieved the estimated average cost of providing Ofcom with call recordings is £120,000 per investigation.

There could be significant variance around this estimate depending on whether there are economies or diseconomies of scale associated with record retrieval. Some CPs commented

that providing a few records for retrieval was less costly than providing 'bulk' retrievals because a few requests could be accommodated by existing staff but a large request would require more staff to be employed. On the other hand providing information for bulk retrievals might be more efficient because it is worthwhile to employ specialised resources and staff which might lower the average cost per record retrieved.

Going forward, Ofcom anticipates undertaking 4-6 alleged mis-selling/abuse of Cancel Other investigations per year so the total cost arising from investigations could lie in the range £480,000 to £720,000 per year, with a central estimate of £600,000. Clearly the number of investigations per year will vary according to the behaviour of market participants. It is important to note that the incidence of record retrieval costs would fall only on those CPs subjected to an investigation, not the industry as a whole.

If we implement call recording and record retention obligations on CPs we recognise that a future investigation asking for six months of records might result in a far larger number of records being produced than before the implementation of the obligations. In itself this may increase the costs of record retrieval. However, we anticipate that implementation of the proposals relating to mis-selling/abuse of Cancel Other and increased effectiveness of Ofcom's enforcement would deter CPs from undertaking bad practices and thus the number of investigations required should decrease over time. Further, it is unlikely that the entirety of these costs will be incremental in relation to our policy options. In the absence of other information, we assume that 50% of these costs are incremental, for the purposes of our NPV calculation.

NPV Calculations

Based on our indicative modelling we estimate that this option⁴⁷ could yield a net present value in the order of £11m to £67m (median to mean) over five years. Table 7 below sets out the modelling for the median measure of financial loss).

Table 7: NPV from preferred option on recording keeping for telesales: median measure of loss

Year	2008	Implementation	1	2	3	4	5
Discount factor	-	1.00	0.97	0.93	0.90	0.87	0.84
Number of Cancel Other requests p.a. ('000)	149	149	149	149	149	149	149
Households affected by mis-selling ('000)	526	521	368	263	263	263	263
Benefits							
Loss avoided – Mis-selling (£m)	£0.0	£0.1	£3.0	£5.0	£5.0	£5.0	£5.0
Loss avoided - Slamming (£m)	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0
Time benefit (£m)	£0.0	£0.0	£0.5	£0.8	£0.8	£0.8	£0.8
<u>Total benefits (£ million)</u>	-	£0.1	£3.5	£5.8	£5.8	£5.8	£5.8
<i>Discounted total benefits (£ m)</i>	-	<i>£0.1</i>	<i>£3.3</i>	<i>£5.4</i>	<i>£5.2</i>	<i>£5.1</i>	<i>£4.9</i>
Costs							
Record keeping: Telesales (£m)	-	£5.1	£0.7	£0.7	£0.7	£0.7	£0.7
Costs for Investigations (£m)	-	£0.6	£0.3	£0.3	£0.3	£0.3	£0.3

⁴⁷ Which incorporates our preferred options on simplifying and clarifying the regulations and information at point of sale.

Costs from changing sales script (£m)	-	£0.2	£0.0	£0.0	£0.0	£0.0	£0.0
Costs from lengthening sales script (£m)	-	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4
<u>Total costs (£ million)</u>	-	£6.3	£1.4	£1.4	£1.4	£1.4	£1.4
<i>Discounted total costs (£ m)</i>	-	£6.3	£1.4	£1.3	£1.3	£1.2	£1.2
NPV (£ m)		£11.4					

This implies that the incremental NPV of call recording over providing information at the point of sale combined with simplifying and clarifying the regulations could lie in the range £10.2m to £57.5m.

Sub-option 3(iii) – 100% call record keeping requirements (with no assumed tolerance levels).

We expect the costs of sub-option 3(iii) will be higher than those outlined in sub-option 3(ii) because of the absence of any tolerance levels. However, we have not been able to quantify these costs because not all of the CPs in our information request were able to estimate the incremental costs associated with 100% record keeping. Several reasons cited for this were the difficulty of assessing the costs of protecting against events such as data misplacement and power-cuts.

Option 4

Under this option, we would look to provide additional clarification of the current obligations in order to aid understanding in light of concerns that not all CPs are acting fully in accordance with current requirements relating to record keeping, as well as introducing new requirements on CPs to keep recordings of the actual sale, plus any subsequent calls that were made as part of the sales process, where telesales is used by CPs as a channel to market.

As a result Option 4 is an amalgamation of Options 2 and 3, and we expect the NPV to be in line with the calculations set out for Option 3.

Record keeping for Cancel Other

As discussed in the main document (see Section 7), our analysis suggests there is evidence of abuse of the Cancel Other process. For this reason, we consider several policy options:

Option 1

Currently, record keeping obligations only rest with BT. Under this option, therefore, this would remain the case and only BT would remain under obligations to make, and retain, records where Cancel Other is used. However, our concern here is that the proposal would not reduce the incidence of Cancel Other abuse in the market, as discussed in the main document (see Section 7).

Option 2

Under this option we would introduce industry-wide obligations in respect of record keeping obligations meaning that all CPs would be under the same obligations. This option would therefore allow CPs to retain the freedom to determine what records are made, and retained, in line with their particular business model and circumstances. Under this option, we would also look to issue guidance and clarification in order to aid understanding to assist all CPs meet their obligations under this option. We anticipate that the benefits of this option would be CPs tightening up their record keeping procedures.

We do not expect that this option will incur incremental costs to CPs given that it is simply clarifying existing obligations.

Question A5.17

Do you agree that this option will not result in incremental costs to CPs? If not, please provide an explanation and evidence to support your response.

Option 3

Under this option, we would require CPs to keep call recordings of the conversation between their customer and themselves where Cancel Other was applied.

For the sake of argument we assume that our proposals on telesales call recording and record retention do not overlap with any proposals for Cancel Other call recording and record retention. If there are cost savings from a CP complying with both our telesales and Cancel Other call recording and record retention proposals then our incremental cost estimates would tend to be overstated.

On call recordings, we note there are different standards that we could look to put in place and, in particular, for the purpose of consultation, we are considering the following sub-options:

Sub-option 3(i) - 75% call record keeping requirements (with no assumed tolerance levels).

For the sake of argument we assume that our proposals on telesales call recording and record retention do not overlap with any proposals for Cancel Other call recording and record retention. If there are cost savings from a CP complying with both our telesales and Cancel Other call recording and record retention proposals then our incremental cost estimates would tend to be overstated.

Issues for consumers

Our proposals should reduce the Cancel Other abuse because CPs will be required to make, and retain, records relating to Cancel Other requests. This means we would be able to enforce against those CPs who abuse the Cancel Other process. For example, if there is a suggestion that a CP is incorrectly using the Cancel Other process then Ofcom would be able to request records to prove that the system is being correctly used (or otherwise). The increased efficiency of Ofcom's enforcement should deter CP abuse of the system. A reduction in the incidence of Cancel Other abuse will benefit consumers who wish to switch CP.

Issues for communications providers

To estimate the costs of our proposals we asked 12 CPs to provide information about how they currently use the Cancel Other process and costs associated with recording Cancel Other requests.

Eleven of the CPs regularly used the Cancel Other process. All of the CPs kept some record of Cancel Other requests, but the type of record varied from CP to CP. The types of records kept included:

- telephone call recordings;
- letters/emails from customers; and
- notes in the customer management database/note against the customer account.

Most of the CPs kept records for at least six months. One CP kept call recordings for 60 days, but also recorded the request on a database which was kept indefinitely.

However, not all CPs recorded the direct communication from the customer to request use of Cancel Other. For example, where a Cancel Other request is received by telephone some CPs record the request into a database or make a note on the customers account but do not record the telephone call. Ofcom's proposals in relation to Cancel Other would require that the direct communication from the customer (e.g. letter, email or phone conversation) is recorded, and stored, as evidence that the Cancel Other is legitimate. Where Cancel Other requests are instead logged directly into a database or other system it is difficult to verify the exact nature of the customer, and we may be challenged in being able to provide conclusive evidence of non-compliance.

Where a customer requests Cancel Other by email or letter the CP would be required to store this communication as evidence of the request. Based on the information received from CPs we believe the cost of keeping and storing this communication will be minimal – particularly because only a few Cancel Other requests are received by these means. Ofcom's view is that this form of communication in relation to Cancel Other is unlikely to be the norm given timeframes involved.

We understand the majority of Cancel Other requests are made by telephone. Table 7 categorises each CPs current approach to call recording for Cancel Other requests based on the information request:

Table 8: Categorisation of current approach to call recording for Cancel Other

Level of Call recording and storage	Number of CPs
Record all CO requests received by telephone and store for at least 6 months	4
Record some CO requests received by telephone	4
No recording of CO requests received by telephone	3
Unable to provide meaningful response	1

A number of CPs noted that although Cancel Other requests were call recorded they were not necessarily categorised as Cancel Other requests. As a result retrieval of the records would be difficult and further system development would be required to meet Ofcom's proposals. This means that even where CPs record all Cancel Other requests there may still be incremental costs from meeting our proposals.

Two CPs were able to provide estimates for the costs of complying with the Cancel Other call recording proposals. The total one-off costs were estimated to be £0.34 million and the total ongoing costs for 75% record keeping requirements based on best endeavours were £0.12 million⁴⁸. These CPs made a total of about 15,000 Cancel Other requests over the last year⁴⁹, which would imply on a per use basis a one-off cost of around £22 and an ongoing cost of around £8.

On a per call basis, the costs of recording Cancel Other requests are significantly higher than costs of recording sales calls. This is due to a number of factors:

- fewer Cancel Other requests were received meaning costs would be spread over a smaller number of uses;
- there is potentially an overlap between call recording of sales and call recording of Cancel Other. To the extent that there is an overlap, our estimate of costs will be overstated;
- a lower level of Cancel Other recording currently in place compared to telesales recording. Most CPs had some infrastructure in place for recording sales calls, even if this did not cover all calls. For Cancel Other requests a larger amount of system development could be required; and
- overall the costs can be higher due to the need to implement recording in multiple call centres.

Across the entire industry there were around 149,000 uses of the relevant Cancel Other categories over the last year. Approximately 101,000 of these uses were generated by CPs

⁴⁸ As with the record keeping for sales calculations, we assume that only ongoing costs vary with the number of telesales. As a result, the £0.12 million cost figure is 75% of the ongoing costs reported by the two CPs.

⁴⁹ Defined as Cancel Other orders applied against other CP's

included in our information request and 72,000 of these requests were from CPs who would not incur any additional costs to meet our proposals (as indicated by the information request). If we take the cost per use of Cancel Other by CPs not providing information in our information request as around £22 and the ongoing cost as around £8, then the total one-off incremental costs for the remaining 30,000 Cancel Other requests for the CPs in our information request would be approximately £0.7 million and approximately £0.2 million in ongoing incremental costs.

The information request demonstrated that not all CPs would incur incremental costs from our Cancel Other proposals because they already make, and retain, records of 100% of Cancel Other requests. Furthermore, we consider that not all CPs in the industry use the Cancel Other facility, and would not, therefore, fall under our proposals. As a result, we do not consider it appropriate to extrapolate costs for the rest of the industry on the basis of one-off costs of around £22 and ongoing costs of around £8 per Cancel Other request. Instead, we consider that it may be more appropriate to take an estimate of costs which takes account of the fact that not all CPs will incur incremental costs⁵⁰.

We use the total one-off and ongoing costs for the 12 CPs in the information request and divide these by the total number of Cancel Other requests attributed to these 12 CPs. This results in average one-off costs of £6.5 and ongoing costs of £2.4 per Cancel Other request.

Using these cost per use of Cancel Other figures to extrapolate costs for the rest of the industry results in total industry incremental costs of £1 million in one-off costs and £0.4 million in ongoing costs per year (see Table 8 for a breakdown).

Table 9: Incremental costs of requiring all CPs to implement 75% record keeping requirements for Cancel Other based on best endeavours and retain records for six months

	Incremental costs (£ million)
Total industry one-off costs	1.0
Total industry ongoing costs	0.4
Twelve CPs one-off costs	0.7
Twelve CPs ongoing costs	0.2
Rest of industry one-off costs	0.3
Rest of industry ongoing costs	0.1

Note: Rounded to nearest 100,000.

Issues for competition

We expect our proposals to give an incentive to CPs not to abuse the Cancel Other facility. In turn, this should protect consumers who wish to switch provider, and will increase consumer confidence in switching. This should encourage competition on the merits.

Sub-option 3(ii) - 100% call record keeping requirements based on reasonable endeavours [with an explanation why 100% was not possible] and never less than 90%.

Issues for consumers

⁵⁰ This methodology differs slightly to the approach taken when extrapolating industry costs for the policy options on telesales. This is because the policy options for telesales would apply to all CPs using telesales, whereas not all CPs use the Cancel Other facility.

We expect sub-option 3(ii) to have greater benefits to consumers than sub-option 3(i) because 100% call record keeping requirements is likely to yield a greater incentive for CPs not to mis-sell than compared to 75% call record keeping requirements.

Issues for communications providers

We adopt the same methodology to estimate the costs in sub-option 3(ii) as we used in sub-option 3(i).

However, in sub-option 3(ii) the incremental ongoing costs per Cancel Other are those as reported by CPs directly. This raises the total incremental cost estimates. A breakdown of the costs is shown below in Table 10.

Table 10: Incremental costs of requiring all CPs to implement 100% record keeping requirements for Cancel Other based on reasonable endeavours and retain records for six months

	Incremental costs (£ million)
Total industry one-off costs	1.0
Total industry ongoing costs	0.5
Twelve CPs one-off costs	0.7
Twelve CPs ongoing costs	0.3
Rest of industry one-off costs	0.3
Rest of industry ongoing costs	0.2

Note: Rounded to nearest 100,000.

Issues for competition

We expect our proposals to give an incentive to CPs not to abuse the Cancel Other facility. In turn, this should protect consumers who wish to switch provider, and will increase consumer confidence in switching. This should encourage competition on the merits.

Sub-option 3(iii) – 100% call record keeping requirements (with no assumed tolerance levels).

Issues for consumers

We expect sub-option 3(iii) to have similar issues for consumers as sub-option 3(ii) because under sub-option 3(ii) if CPs are unable to record 100% of calls, then in practice we expect CPs to record close to 100% of calls.

Issues for communications providers

As with call recording for telesales, we would expect that the costs of sub-option 3(iii) to be higher than those for sub-option 3(ii).

Issues for competition

We expect our proposals to give an incentive to CPs not to abuse the Cancel Other facility. In turn, this should protect consumers who wish to switch provider, and will increase consumer confidence in switching. This should encourage competition on the merits.

NPV Calculations

To project the costs of recording Cancel Other requests in Year 1, our estimate of industry costs is based on our estimate of the total one-off costs to the industry divided by the total number of Cancel Other requests in 2008 (i.e. £6.5 per request) multiplied by our estimate of the reduced total number of Cancel Other requests in Year 1. In subsequent years, the industry cost is calculated as the on-going cost estimate (calculated in a similar fashion to the estimated one-off costs discussed above: £3.2) multiplied by our estimated annual volume of Cancel Other requests. Given that we anticipate a fall in Cancel Other requests over time, the projected costs of recording Cancel Other requests also decline over the 5 year time horizon.

Based on our consumer research and data on the number of Cancel Other (slam) requests over the past year, we estimate that around 675,000 people suffered from mis-selling/slamming (households affected by mis-selling combined with the number of Cancel Other requests). Assuming that people spend 0.5 hours per year dealing with mis-selling, this would equate to approximately 340,000 hours.

Based on our indicative modelling we estimate that our preferred options on Cancel Other could yield a net present value in the order of -£1m to £4m (median to mean) over five years. Table 11 below sets out the modelling for the median measure of financial loss.

Table 11: NPV from preferred option on recording keeping for Cancel Other: median measure of loss

Year	2008	Implementation	1	2	3	4	5
Discount factor	-	1.00	0.97	0.93	0.90	0.87	0.84
Number of Cancel Other requests p.a. ('000)	149	149	104	75	75	75	75
Households affected by mis-selling ('000)	526	526	526	526	526	526	526
Benefits							
Loss avoided - Mis-selling (£m)	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0
Loss avoided - Slamming (£m)	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0
Time benefit (£m)	£0.0	£0.0	£0.1	£0.2	£0.2	£0.2	£0.2
<u>Total benefits (£ million)</u>	-	£0.0	£0.1	£0.2	£0.2	£0.2	£0.2
<i>Discounted total benefits (£ m)</i>	-	<i>£0.0</i>	<i>£0.1</i>	<i>£0.2</i>	<i>£0.2</i>	<i>£0.2</i>	<i>£0.2</i>
Costs							
Record keeping: CO (£m)	-	£1.0	£0.3	£0.2	£0.2	£0.2	£0.2
<u>Total costs (£ million)</u>	-	£1.0	£0.3	£0.2	£0.2	£0.2	£0.2
<i>Discounted total costs (£ m)</i>	-	<i>£1.0</i>	<i>£0.3</i>	<i>£0.2</i>	<i>£0.2</i>	<i>£0.2</i>	<i>£0.2</i>
NPV (£ m)		-£1.2					

Options as a package

Table 12 shows the key assumptions for projected costs and benefits from implementing all of our preferred options as a package, based on the median estimate of the scale of financial loss. The package of options therefore takes into account clarifying and simplifying regulations, information at point of sale, and call recording for telesales and Cancel Other requests together. Further, we assume no further benefit from our package of options in years 3, 4 and 5. This scenario yields a NPV of £10.5m.

Table 12: Net present value from all our preferred options based upon the median estimate of the scale of financial loss

Year	2008	Implementation	1	2	3	4	5
Discount factor	-	1.00	0.97	0.93	0.90	0.87	0.84
Cancel Other requests p.a. ('000)	149	149	104	75	75	75	75
Households affected by mis-selling ('000)	526	521	364	260	260	260	260
Benefits							
Loss avoided - Mis-selling (£m)	£0.0	£0.1	£3.1	£5.1	£5.1	£5.1	£5.1
Loss avoided - Slamming (£m)	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0
Time benefit (£m)	£0.0	£0.0	£0.6	£1.0	£1.0	£1.1	£1.1
<u>Total benefits (£m)</u>	-	£0.1	£3.7	£6.1	£6.1	£6.1	£6.1
<i>Discounted total benefits (£m)</i>	-	£0.1	£3.6	£5.7	£5.5	£5.3	£5.1
Costs							
Record keeping: Telesales (£m)	-	£5.1	£0.7	£0.7	£0.7	£0.7	£0.7
Record keeping: CO (£m)	-	£1.0	£0.3	£0.2	£0.2	£0.2	£0.2
Costs for Investigations (£m)	-	£0.6	£0.3	£0.3	£0.3	£0.3	£0.3
Costs from changing sales script	-	£0.2	£0.0	£0.0	£0.0	£0.0	£0.0
Costs from lengthening sales script	-	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4
<u>Total costs (£m)</u>	-	£7.3	£1.7	£1.6	£1.6	£1.6	£1.6
<i>Discounted total costs (£m)</i>	-	£7.3	£1.7	£1.5	£1.5	£1.4	£1.4
NPV (£ m)		£10.5					

Table 13 shows the key assumptions for projected costs and benefits from implementing all of our preferred options as a package, based on the mean estimate of the scale of financial loss. This scenario yields a NPV of £71.7m.

Table 13: Net present value from all our preferred options based upon the mean estimate of the scale of financial loss

Year	2008	Implementation	1	2	3	4	5
Discount factor	-	1.00	0.97	0.93	0.90	0.87	0.84
	149						
Cancel Other requests p.a. ('000)		149	104	75	75	75	75
Households affected by mis-selling ('000)	526						
		521	364	260	260	260	260
Benefits							
Loss avoided - Mis-selling (£m)	£0.0	£0.4	£11.3	£18.6	£18.6	£18.6	£18.6
Loss avoided - Slamming (£m)	£0.0	£0.0	£0.7	£1.2	£1.2	£1.2	£1.2
Time benefit (£m)	£0.0	£0.0	£0.6	£1.0	£1.0	£1.1	£1.1
<u>Total benefits (£m)</u>	-	£0.4	£12.6	£20.8	£20.9	£20.9	£20.9
Discounted total benefits (£m)	-	£0.4	£12.2	£19.4	£18.8	£18.1	£17.5
Costs							
Record keeping: Telesales (£m)	-	£5.1	£0.7	£0.7	£0.7	£0.7	£0.7
Record keeping: CO (£m)	-	£1.0	£0.3	£0.2	£0.2	£0.2	£0.2
Costs for Investigations (£m)	-	£0.6	£0.3	£0.3	£0.3	£0.3	£0.3
Costs from changing sales script	-	£0.2	£0.0	£0.0	£0.0	£0.0	£0.0
Costs from lengthening sales script	-	£0.4	£0.4	£0.4	£0.4	£0.4	£0.4
<u>Total costs (£m)</u>	-	£7.3	£1.7	£1.6	£1.6	£1.6	£1.6
Discounted total costs (£m)	-	£7.3	£1.7	£1.5	£1.5	£1.4	£1.4
NPV (£ m)		£71.7					

On balance, we consider that there are net benefits associated with our preferred options taken together as a package.

Question A5.18

Do you consider that these estimates are reasonable? If not, please provide an explanation and evidence to support your response.

IA questions

This appendix contains a list of the questions we have asked stakeholders in this IA.

Question A5.1: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option? If not, please provide an explanation and evidence to support your response.

Question A5.2: To what extent is it possible to assess the impact that this option might have on the current level of mis-selling in its own right? Please provide an explanation and evidence to support your response.

Question A5.3: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option? Please provide an explanation and evidence to support your response.

Question A5.4: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option? Please provide an explanation and evidence to support your response.

Question A5.5: Do you agree that this option will not result in incremental costs to CPs? Please provide an explanation and evidence to support your response.

Question A5.6: Do you agree with this proposal in the light of the NPV estimate? Please provide an explanation and evidence to support your response.

Question A5.7: Do you agree that orders are an appropriate proxy for sales? Please provide an explanation and evidence to support your response.

Question A5.8: Do you agree with our assumption that volume of sales is a key driver of costs? If not, please provide an explanation and evidence to support your response.

Question A5.9: Do you agree that it is reasonable to use a 5-year time period for our NPV analysis? Please provide an explanation and evidence to support your response.

Question A5.10: Do you consider that costs attributed to changing sales scripts are likely to be one-off in nature? Please provide an explanation and evidence to support your response.

Question A5.11: Do you consider that the options to clarify and simplify the existing regulations and to provide information at the point of sales would each reduce levels of mis-selling by around 1 percent per annum? Please provide an explanation and evidence to support any alternative assumptions.

Question A5.12: Do you consider that the options on call recording for telesales and Cancel Other could reduce mis-selling and Cancel Other requests by 30% in Year 1 and by 50% in Year 2? Please provide an explanation and evidence to support any alternative assumptions.

Question A5.13: Do you agree that it is reasonable to assume that adding such a sales prompt would increase the call length by an additional 20 seconds? Please provide an explanation and evidence to support your response.

Question A5.14: Do you feel these assumptions are appropriate? If not, please provide an explanation and evidence to support any alternative assumptions.

Question A5.15: Do you agree that these other indirect costs are not significant? If not, please provide an explanation and evidence to support your response.

Question A5.16: Do you consider that one-off incremental costs per sale of £4.4 and ongoing incremental costs per sale of £0.6 are reasonable assumptions for the rest of the industry? Please provide an explanation and evidence to support any alternative assumptions.

Question A5.17: Do you agree that this option will not result in incremental costs to CPs? If not, please provide an explanation and evidence to support your response.

Question A5.18: Do you consider that these estimates are reasonable? If not, please provide an explanation and evidence to support your response.

Annex 6

Notification of proposed modification under section 48(2) of the Communications Act 2003

Proposal for modification of General Condition 14 on Codes of Practice and Dispute Resolution under section 48(1) of the Act published by the Director General of Telecommunications on 22 July 2003

1. Ofcom in accordance with section 48(1) of the Act hereby makes the following proposals for the modifications to General Condition 14 on Codes of Practice and Dispute Resolution.
2. The draft modification is set out in the Schedule to this Notification.
3. The effect of, and Ofcom's reasons for making, the modification referred to in paragraph 1 above is set out in the accompanying explanatory statement.
4. Ofcom considers that the proposed modification referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the proposals.
5. In making the proposed modifications set out in this Notification, Ofcom has considered and acted in accordance with the six Community requirements in section 4 of the Act, their general duties in section 3 of the Act.
6. Representations may be made to Ofcom about the proposals set out in the Notification and the accompanying statement by 5pm on 27 May 2009.
7. The modification shall enter into force 12 months after the publication of the final notification.
8. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1) (a) of the Act.
9. In this Notification:
 - 'Act' means the Communications Act 2003;
 - 'the Director' means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
 - 'Ofcom' means the Office of Communications.
9. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them, otherwise any word or expression shall have the meaning it has in the Act.
10. The Interpretation Act 1978 shall apply as if this modification were an Act of Parliament.

11. Headings and titles shall be disregarded.

12. The schedule to this Notification shall form part of this Notification.

Claudio Pollack.

A person authorised under paragraph 18 of the Schedule to the Office of Communications Act 2002

17 March 2009

Schedule

The General Condition and Guidelines shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference).

14. CODES OF PRACTICE AND DISPUTE RESOLUTION

Basic Code of Practice regarding provision of Public Electronic Communications Services

- 14.1 The Communications Provider shall produce a basic Code of Practice for its Domestic and Small Business Customers which sets out at least where such customers may avail themselves of the information required to be published under Condition 10.2, as relevant to the provision of Public Electronic Communications Services. The Code of Practice shall be drafted in plain English which is easy to understand, and copies of the Code of Practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

Codes of Practice for Premium Rate Services, NTS Calls⁵¹ [and calls to Personal Numbers]⁵²

- 14.2 Within two months of this Condition entering into force, all Originating Communications Providers who provide Premium Rate Services, NTS calls [or calls to Personal Numbers], as appropriate shall:
- (a) establish and thereafter maintain a Code of Practice for the provision of information relating to Premium Rate Services for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 1 to this Condition;
 - (b) establish and thereafter maintain a Code of Practice for NTS Calls [and calls to Personal Numbers] for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 2 to this Condition; and
 - (c) comply with the provisions of the Codes of Practice referred to at 14.2 (a) and (b) above.
- 14.3 The codes of practice referred to in Condition 14.2 shall be drafted in plain English which is easy to understand, and copies of the codes of practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

Codes of Practice for Complaints

⁵¹ Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.

⁵² Review of the 070 personal numbering range, Statement and notification, 27 February 2009 to take effect on 28 August 2009.

- 14.4 Within one month of this Condition entering into force, the Communications Provider shall establish and thereafter maintain procedures that conform with any applicable Code of Practice for Complaints for the handling of complaints made by its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

Codes of Practice for Sales and Marketing^{53,54}

- 14.5 Those Communications Providers who provide Fixed-line Telecommunications Services shall:

- (a) establish and thereafter maintain a Code of Practice for Sales and Marketing for dealing with its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 3 to this Condition; and
- (b) comply with the provisions of the Code of Practice for Sales and Marketing established according to Condition 14.5(a) above.

- 14.6 The Code of Practice for Sales and Marketing shall be drafted in plain English which is easy to understand, and copies of it shall be provided on request and free of charge to any Domestic and Small Business Customer, and be prominently available on the Communications Provider's public website.

Dispute Resolution

- 14.75 The Communications Provider shall implement and comply with a Dispute Resolution Scheme, including any final decision of the Dispute Resolution Body made in accordance with that Scheme, for the resolution of disputes between the Communications Provider and its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

Code on the provision by Service Providers of consumer protection information for the provision of Services⁵⁵

- 14.86 Within two months of this Condition entering into force, all Service Providers shall:

- (a) comply with the requirements set out in the Code at Annex 4.3.

- 14.97 In this Condition⁵⁶:

⁵³ Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005.

⁵⁴ Protecting consumers from mis-selling of telecommunications services, Notification, 22 May 2007 – deleting text in 14.5 and adding text in 14.6.

⁵⁵ Regulation of VoIP Services, Notification, 29 March 2007, obligations in Annex 4 in force from 29 May 2007.

⁵⁶ Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005 – applies to insertion of definitions (a), (d), (h), (j), (m) – (p), and (s) – (v), Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006 – applies to insertion of definitions

- ~~(a)~~ **“Cable Network”** means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;
- ~~(b)~~~~(a)~~ **“Communications Provider”** means a person who provides Public Electronic Communication Services to Domestic and Small Business Customers;
- ~~(c)~~~~(b)~~ **“Code of Practice for Complaints”** means a Code of Practice approved from time to time by the Director for the purpose of this Condition in accordance with sections 52 and 53 of the Act;
- ~~(d)~~ **“Code of Practice for Sales and Marketing”** means a Code of Practice established in accordance with Condition 14.5(a);
- ~~(e)~~~~(c)~~ **“Dispute Resolution Body”** means the body of persons responsible for administering a relevant Dispute Resolution Scheme;
- ~~(f)~~~~(d)~~ **“Dispute Resolution Scheme”** means procedures approved or established from time to time by the Director for the purpose of this Condition in accordance with sections 52, 54 or 55 of the Act;
- ~~(g)~~~~(e)~~ **“Domestic and Small Business Customer”** means, in relation to a Communications Provider, a Customer of that Provider who is neither-
- (i) himself a Communications Provider; nor
 - (ii) 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);
- ~~(h)~~ **“Fixed-line Telecommunications Services”** means Narrowband call and/or line rental services provided to Domestic and Small Business Customers;
- ~~(i)~~~~(f)~~ **“Guidelines”** mean the guidelines as set out in either Annex 1, 2 or 3 to this Condition;
- ~~(j)~~ **“Narrowband”** means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network;
- ~~(k)~~~~(g)~~ **“Mobile Number”** means a Telephone Number, from a range of numbers in the National Telephone Numbering Plan, that is Adopted or otherwise used to identify Apparatus designed or adapted to be capable of being used while in motion;]

(i), (k) and (l), Regulation of VoIP Services, Notification, 29 March 2007 - applies to insertion of definitions (q) and (r), Protecting consumers from mis-selling of telecommunications services, Notification, 22 May 2007 – applies to insertion of definitions (a) “Cable Network” and (j) “Narrowband”, modification of definition (h) “Fixed-line Telecommunications Services” and deletion of definitions (a) “Carrier Pre-selection”, (j) “Indirect Access”, (o) “Pre-selected Provider”, (p) “Relevant Period”, (s) “Subscriber”, (t) “Wholesale Calls”, (u) “Wholesale Inputs”, (v) “Wholesale Line Rental”. Review of the 070 personal numbering range, Statement and notification, 27 February 2009 – applies to insertion of (k) “Mobile Number”, (n) “Personal Number”, (o) “Personal Numbering Service”, (p) “Personal Numbering Service Provider” to take effect on 28 August 2009.

- (+)(h) **“NTS Calls”** means calls to numbers identified in the National Telephone Numbering Plan as Special Services operating on the 08 number range and including calls to 0500 freephone numbers, but excluding calls to 0844 04 numbers for Surftime internet access services, calls to 0808 99 numbers for flat rate internet access call origination and calls to 0870 numbers;
- (+)(i) **“Originating Communications Provider”** means a Communications Provider on whose network a call originates;
- (+)(j) **“Personal Number”** means a Telephone Number, from a range of numbers in the National Telephone Numbering Plan, assigned by a Personal Numbering Service Provider, which allows a Subscriber to receive calls or other communications at almost any Telephone Number, including a Mobile Number;
- (+)(k) **“Personal Numbering Service”** means a service based on number translation that enables End-Users to be called or otherwise contacted, using a single Personal Number, and to receive those calls or other communications at almost any Telephone Number, including Mobile Numbers;
- (+)(l) **“Personal Numbering Service Provider”** means a provider of Personal Numbering Services;]
- (+)(m) **“Publicly Available Telephone Services”** means a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for End-Users with disabilities or with special social needs and/or the provision of non-geographic services;
- (+)(n) **“Public Telephone Network”** means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data;
- (+)(o) **“Service”** means a Public Electronic Communication Service, but only to the extent it comprises the conveyance of speech, music or sounds;
- (+)(p) **“Service Provider”** means a provider of a Service;

Annex 1 to General Condition 14⁵⁷

Guidelines for codes of practice for handling customer enquiries and complaints about Premium Rate Services

1. Introduction and overview

- 1.1 The key objective of these Guidelines is to ensure that Originating Communications Providers provide their domestic and small business customers with readily accessible and accurate information relating to Premium Rate Service ("PRS") calls;
- 1.2 These Guidelines seek to ensure that there is a clear framework within which Originating Communications Providers should be working, providing reassurance to customers and consumer representatives as to what constitutes good practice in the provision of information to customers in relation to complaints and enquiries about PRS calls.

2. Status of code

- 2.1 All Originating Communications Providers who provide PRS are required under General Condition 14.2 to establish a Code of Practice for PRS Calls for their domestic and small business customers (the "Code"), which conforms with these Guidelines, and to comply with the provisions of the Code.
- 2.2 Compliance with the Code does not guarantee compliance with any other legal requirements.
- 2.3 Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.

3. Customer information and advice

- 3.1 Originating Communications Providers shall provide the following information and advice to their customers:
 - (i) information about the role of Originating Communications Providers in relation to:
 - a. general PRS enquiries and requests for number checks via the number-checker facilities provided by the Independent Committee for the Supervision of Telephone Information Services ("ICSTIS") on the ICSTIS website (www.icstis.org.uk);
 - b. dealing with formal complaints about abuses of service content, the ICSTIS Code of Practice and alleged scams.
- 3.2 In so doing Originating Communications Providers shall provide:
 - (i) information about the role and remit of ICSTIS in dealing with complaints and how to go about making a formal complaint to ICSTIS via the website, helpline or by in writing;

⁵⁷ Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.

- (ii) information about the tariffs that apply on their network for calls to any PRS number range;
- (iii) basic information about how PRS services work including whether the call(s) in question were routed to service providers (SPs) hosted on the Originating Communications Provider's own network or on the network of a Terminating Communications Provider (TCP), together with a basic explanation of how revenue sharing with SPs operates;
- (iv) information about how consumers can bar access from their telephone to all or specific PRS number ranges for reasons of cost or content;
- (v) information about the purpose of the Telephone Preference Service ("TPS") and Fax Preference Service ("FPS") and how to go about registering with such services;
- (vi) information about how internet diallers operate and how consumers can identify and take action, such as improving their computer's security, to avoid further instances of these or similar scams;
- (vii) in the case of mobiles, in addition to the above, information about how premium rate SMS/MMS/WAP billed services operate and how consumers can unsubscribe from these;
- (viii) information on the role of the Telecoms Ombudsman schemes in resolving disputes concerning PRS calls;
- (ix) information on other options available to consumers for seeking refunds in cases of abuse or scams involving PRS calls;
- (x) contact details of individual SPs or the TCPs which host them; and where available – typically via ICSTIS" website at www.icstis.org.uk;
- (xi) SPs customer service contact details where consumers can obtain further information about services provided on the PRS numbers found on their bills.

4. Processes and Procedures

- 4.1 Procedures should be in place for Originating Communications Providers' enquiry and helpdesk staff to know of the existence and content of the Code in order for them to be able respond to complaints and enquiries about PRS calls and to monitor their compliance with the Code.
- 4.2 There should be fully documented procedures in place to make customers and advice agencies aware of the existence and content of the Code, for example by referring to the Code in sales and marketing literature and by making the Code available through Originating Communications Providers' websites.
- 4.3 The Code shall be drafted in plain English, which is easy to understand, and copies of the Code are to be provided on request, and free of charge, to customers.
- 4.4 The Code shall include the name and contact details (including e-mail address) of the Originating Communications Provider's representative who is responsible for the Originating Communications Provider's compliance with the Code.

5. Terms used in these Guidelines

5.1 Terms used in these Guidelines shall have the same meaning, if any, as set out in Condition 14.

Annex 2 to General Condition 14⁵⁸

Guidelines for codes of practice for the publication of prices of calls to Number Translation Services [and Personal Numbers]

- 1.1 The key objective of these Guidelines is to ensure that Originating Communications Providers provide their Domestic and Small Business Customers with readily accessible and accurate information relating to the usage charges for NTS Calls [and calls to Personal Numbers] on their networks.
- 1.2 These Guidelines seek to ensure that there is a clear framework within which Originating Communications Providers should be operating in relation to the publication and provision of information to domestic and small business customers about usage charges for NTS Calls [and calls to Personal Numbers].
2. **Status of code**
 - 2.1 All Originating Communications Providers who provide NTS Calls [and calls to Personal Numbers] are required under General Condition 14.2 to establish a Code of Practice for their domestic and small business customers (the “Code”), which conforms with these Guidelines and to comply with the provisions of the Code.
 - 2.2 Compliance with the Code does not guarantee compliance with any other legal requirements.
 - 2.3 Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.
3. **Customer information and advice: published price lists and websites**
 - 3.1 The Originating Communications Provider that is responsible for the retail billing of NTS Calls [and calls to Personal Numbers] to the end-user shall publish the usage charges required to be published under General Condition 10.2(d)(ii) for NTS Calls [and calls to Personal Numbers] on its website and in published price lists in a way that gives those charges the same prominence in terms of location and format given to charges for geographic calls, calls to mobiles and call packages, including bundles.
 - 3.2 Without prejudice to the generality of paragraph 3.1, Originating Communications Providers shall give prominence to the following, in particular:
 - (i) any usage charges that apply for calls to freephone numbers including details of when those charges will apply;
 - (ii) usage charges for NTS Calls which include variations by time of day. For example, “08xx calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax”;

⁵⁸ Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.
Review of the 070 personal numbering range, Statement and notification, 27 February 2009 – added reference to “calls to Personal numbers”, paragraph 3.2(iii) on usage charges for calls to Personal Numbers and paragraph 4.3 on prominence – to take effect on 28 August 2009.

- [(iii) usage charges for calls to Personal Numbers which include variations by time of day. For example, “070 calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax”];
- (iv) whether or not any special offers, discount schemes or call bundling arrangements apply to NTS Calls [and calls to Personal Numbers], including details of which of those arrangements apply to which number range;

4. **Customer information and advice: advertising, promotional material and new customers**

- 4.1 Originating Communications providers shall publish in their advertising and promotional material which refer to call pricing, alongside maximum prices applying to NTS Calls [and calls to Personal Numbers], a clear reference as to where on websites and published price lists the complete set of NTS Call charges, as specified in paragraph 3.2, can be found.
- 4.2 When a new customer signs up for the provider's service, Originating Communications Providers shall provide, alongside maximum prices applying to NTS Calls [and calls to Personal Numbers] in the relevant correspondence, a clear reference as to where on websites and published price lists the complete set of NTS Call [and Personal Numbers call] charges, as specified in paragraph 3.2, can be found.
- [4.3 Wherever an Originating Communications Provider states a price for a call package or bundle which includes geographic calls the Originating Communications Provider must include a prominent statement indicating whether or not this price includes NTS Calls and calls to Personal Numbers.]

5. **Processes and Procedures**

- 5.1 Procedures should be in place for Originating Communications Providers' enquiry and helpdesk staff to know of the existence and content of the Code in order for them to be able respond to complaints and enquiries about [NTS] calls [and calls to Personal Numbers] and to monitor their compliance with the Code.
- 5.2 There should be fully documented procedures in place to make customers and advice agencies aware of the existence and content of the Code, for example by referring to the Code in sales and marketing literature and by making the Code available through Originating Communications Providers' websites.
- 5.3 The Code shall be drafted in plain English, which is easy to understand, and copies of the Code are to be provided on request, and free of charge, to customers.
- 5.4 The Code shall include the name and contact details (including e-mail address) of the Originating Communications Provider's representative who is responsible for the Originating Communications Provider's compliance with the Code.

6. **Terms used in these Guidelines**

- 6.1 Terms used in these Guidelines shall have the same meaning, if any, as set out in Condition 14.

Annex 3 to General Condition 14^{59,60}

Guidelines for sales and marketing codes of practice for Fixed-Line Telecommunications Services

The following elements to be included within sales and marketing codes of practice

1. Introduction and overview

1.1 Objectives to be outlined:

- to provide Domestic and Small Business Customers (“Customers”) with protection from harmful conduct arising from irresponsible sales and marketing activity;
- to ensure good practice and responsible selling in the marketing of Fixed-line Telecommunications Services, and to help Customers understand the service and behaviour to be expected;
- to provide a clear framework within which responsible Communications Providers (“Providers”) should be working, providing reassurance to Customers and consumer representatives as to what constitutes good practice in the sales and marketing of Fixed-line Telecommunications Services.

1.2 The code to deal primarily with issues arising before, during and at the point of sale, with particular emphasis on the avoidance of mis-selling and misrepresentation, and ensuring customer understanding of the services offered and the key terms of any contracts they are entering into.

1.3 Procedures to be in place for sales and marketing staff, and agents, to be informed of the Codes of Practice for Sales and Marketing (“the Code”) and its contents, and for monitoring their compliance with it.

1.4 Procedures to be in place, and fully documented, for Customers and advice agencies to be made aware of the Code and its contents such as, for example, making reference to the Code in sales and marketing literature, as part of the Providers’ “notification of transfer” letter (referred to in paragraphs 6.11 and 6.12).

1.5 Codes to be drafted in plain English, and to be made available on public websites, and copies of it to be provided on request, and free of charge, to Customers.

1.6 A named person, responsible for compliance, with relevant contact details, including an e-mail address, to be provided.

2. Status of code

2.1 Codes to explain that Providers who engage in sales and marketing for Fixed-line Telecoms Services are required under General Condition 14.5 to establish the Code in accordance with these Guidelines, and comply with the provisions of the Code.

⁵⁹ Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005.

⁶⁰ Protecting consumers from mis-selling of telecommunications services, Notification, 22 May 2007 – amended paragraphs 1.1, 1.2, 1.5, 1.6, 2.1, 2.2, 2.3, 4.2, 5.5, 6.1, 6.3, 6.9, 10.1 and deleted paragraph 10.2 (address of Citizens Advice Bureau) and item 4 in the table (Telecommunications (Open Network Provision)(Voice Telephony) Regulations 1998 SI 1998 No. 1580).

2.2 Codes to explain that compliance with the Code does not guarantee compliance with any legal requirement.

2.3 Codes to explain that non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.

3. Sales, marketing advertising and promotion

3.1 Customer approaches may occur in a wide range of ways e.g. by TV, radio or press advertising, promotions in shops or shopping centres, post, fax, electronic mail, telephone or in person. Regardless of the way in which sales and marketing activities are conducted, Providers to act responsibly and compliantly.

3.2 Customers' legal rights and wishes to be respected where they have registered with any relevant preference service, including the Mailing Preference Service, the Telephone Preference Service, the Fax Preference Service and the E-mail Preference Service.

3.3 Advertising and promotion to comply with the British Codes of Advertising and Sales Promotion and all other applicable advertising codes. In addition, advertising and promotional literature to be clear, unambiguous, accurate and fair, containing no false or misleading information about price, value or service and, in particular, must not denigrate other Providers.

4. Recruitment and sales training

4.1 Appropriate procedures to be set up for the selection of staff involved with direct contact with customers for the purposes of sales and marketing activity.

4.2 Providers to be responsible for ensuring that sub-contractors (third party agencies) also set up equivalent selection procedures. Third party agencies shall not include resellers to whom telephony services are sold on a wholesale basis.

4.3 Whilst operating within current employment legislation, recruitment of sales staff to have regard to:

- behaviour and appearance, recognising that the sales person may be seen as the "public face" of the industry;
- security – references and relevant convictions for criminal offences to be checked and taken into account;
- evidence of mis-selling or lack of integrity in any previous selling employment.

4.4 The following requirements related to sales staff based in the UK to be observed:

- the applicant must provide proof of National Insurance number, proof of address and two references;
- referees cannot be related to the applicant;
- business referees must not both be from the same company;

- if a sales person leaves for any reason a copy of his or her sales records (including all recordings and notes on sales) will be retained for a minimum period of six months;
- reasonable endeavours to be made to retrieve the identification badges of staff leaving the company.

4.5 For sales staff not based in the UK, equivalent procedures to be applied, and documented.

4.6 Providers to satisfy themselves that they have taken reasonable steps to ensure that every such person is trained so as to have a sufficient understanding that any relevant advice given by such person is not misleading. Topics covered to include:

- arrangements for competition in the supply of telecommunications in the UK;
- the different telephone options provided by the company and how these differ from other competitive telecoms products (which may or may not be offered by the company); for example, Indirect Access, Carrier-Pre Selection, Wholesale Line Rental or Wholesale Calls;
- the process for ordering the telephone service;
- the relevant principles of consumer protection law;
- the prices charged by the employing company and its other terms and conditions of service and, in particular, methods of payment, duration of contract and any termination fees;
- the nature, and cost, of any additional services on offer;
- the process for cancelling the contract both during the cooling-off period and at any time following commencement of the service;
- the existence of the sales and marketing Code of Practice and the benefits provided; and
- the procedure for handling customer complaints.

4.7 Responsibility for compliance with the Code by representatives, and any sales agency acting on their behalf, to lie with the Provider. The Provider to identify the title of the person accountable for ensuring that the company and its agents observe the Code, and the title of the person responsible for handling complaints relevant to the code.

4.8 Remuneration systems, to be documented, and not to be such as to encourage misleading or exploitative sales practices. The Provider to be kept informed of incentive schemes used by any agencies it employs for sales and marketing.

5. Customer contact

5.1 Discretion to be used when visiting consumers' homes, particularly during the hours of darkness. No face to face contact to be made outside the hours of 08.00 to 20.00, and no telephone calls to be made outside the hours of 08.00 to 21.00, unless at the customer's request

- 5.2 — Representatives involved in face-to-face sales and marketing to be issued with identity badges that clearly display the name of the Provider they represent and a unique identification number for that representative. The identity badge to also display the representative's name, a photograph of the representative and an expiry date for validity of the card. The information on the card to be presented in such a way that does not require close examination. Identity cards must also be made available with key information in Braille, on request
- 5.3 — All representatives to immediately identify themselves, the company they represent and the purpose of the call and the expected call duration. If visiting or meeting in person, they should draw the Customers' attention to their identity card.
- 5.4 — Reasonable steps to be taken to keep informed of local authority initiatives, password schemes etc, such as the Local Distraction Burglary Initiative.
- 5.5 — All representatives to be courteous, use appropriate language and offer clear and straightforward explanations. All information should be factual and accurate. Representatives should not misrepresent the services being offered by the Provider nor those of other Providers. Representatives should not engage in conduct that misleads or deceives or is likely to mislead or deceive Customers. Representatives to ensure that Customers entering into contracts understand, and intend to enter into them.
- 5.6 — Representatives to cease contact with any person who indicates that the contact is inconvenient, unwelcome, inappropriate or too long. If the Customer requests it, the discussion to be ended immediately and, if making a doorstep call, the premises to be left immediately.
- 5.7 — Representatives not to abuse the trust of vulnerable Customers e.g. those who are elderly or whose first language is not English, or who have special needs. Providers should have a policy regarding such Customers, including that their representatives do not pursue sales presentations to Customers whom they believe may be vulnerable.
- 5.8 — Where there is sheltered housing, nursing homes or residential care facilities contact to be made with the warden or other person in authority before any approach is made to the Customer.
- 5.9 — No sales or marketing activity to be conducted that is directed to those who are under the legal age for entering into contracts.
- 5.10 — Sales and marketing campaign records to be maintained for six months, including the date and the approximate time of the contact with the Customer. Records to be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

6. — Entering into a contract — information, order forms and contracts

- 6.1 — All reasonable steps to be taken to ensure that the person entering into a contract is authorised to enter into the contract for the Fixed-line Telecommunications Services/bills at the premises, and that the person entering into a contract understands, and intends to enter into the contract (i.e. explicit consent of the Customer is obtained before transferring a line).

6.2 — Order forms and contract forms to be designed such that the contractual nature of the document is clear to the Customer, and it contains a statement of the contractual nature of the document immediately adjacent to where the Customer signs the document so the statement cannot easily be obscured or concealed. Customers to sign over the word “contract”.

6.3 — The Customer to be given the information set out in this paragraph, in writing, and during the sales call, in a clear, comprehensible, prominent and accurate manner.

- essential information including the identity of the company, its address, telephone, fax and e-mail contact details, as appropriate;
- a description of the telephone service sufficient to enable the customer to understand the option that the customer has chosen, and how it works;
- information about the major elements of the service, including the cost of any standing charges, the payment terms, line rental, key call types and details of “protected or special support” arrangements;
- the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision. Where there may be significant delay in the likely date of provision, the Customer to be informed;
- the existence of a right of cancellation, the duration of the switchover period during which time that right may be exercised and the process for exercising it;
- the period for which the charges remain valid; and
- any minimum period of contract, minimum contract charges, and any early termination charges, if applicable.

6.4 — Customers to be made aware of the existence of the Code, and preferably provided with a summary. Copies of it to be provided on request, and free of charge, to Customers.

6.5 — At the Customers request, full written information about tariffs to be made available.

6.6 — If a Customer signs an order form following face to face contact, or enters into a written contract, the customer must be given a copy of the order form or contract, as well as the following details in writing either at the same time or within 5 working days, unless previously supplied in writing prior to contract:

- Information about any after-sales services or guarantees; and
- Arrangements for the termination of the contract.

6.7 — Orders placed by distance selling means to comply with Distance Selling Regulations, which are set out in the table below.

6.8 — In the case of internet orders, a well sign-posted hyperlink to this information which is easily visible to the web site visitor to be prominently displayed with the information being capable of being easily downloaded and printed.

6.9 — During the switchover period (i.e. the period before a Customer’s order can be activated) there should be “no cost” cancellation for Customers where they change

their mind. Customers to be made aware that they have the right to change their mind during the switchover period.

6.10 — Customers to be permitted to cancel orders and terminate contracts by telephone, in writing, by fax or by e-mail.

6.11 — Providers to send a mandatory letter in accordance with the industry-agreed process informing the customer of the details of the transfer, and the following to be clearly communicated:

- date of notification;
- CLI(s) affected;
- list of services affected/unaffected, e.g. IA call barring;
- date of switchover;
- the sender's contacts details for any queries.

6.12 — The notification will be by letter although may be sent electronically where Customers have initiated contact by applying online, and have confirmed online that they wish all future correspondence to be sent electronically. Otherwise Customers would need to positively request by written correspondence that information be sent electronically.

6.13 — Providers to keep under review the procedures by which contracts are agreed and to take appropriate steps to prevent recurrence of any problem identified.

6.14 — In all cases, Customers to be contacted along similar timescales to the industry-agreed process described in paragraph 6.11 to confirm that the Customer understands that they have entered into an agreement, are happy to proceed with the agreement and are content with the way in which the sales and marketing activity was conducted.

6.15 — Such Customer contact to be either part of the mandatory Customer "notification of transfer" letter referred to in paragraph 6.11 or through a separate process. This contact to be made by a person not engaged directly in activities leading to the promotion of sales contracts.

6.16 — If it is found that the contract was not understood or intended, or if the order matured before the expiry of the switchover period, and the Customer wishes to cancel, Providers to terminate the contract without charge or other penalty to the Customer.

7. — Consumer protection and other legal requirements

7.1 — Procedures to comply with all applicable legislation and appropriate amendments (see table below for examples).

8. — Audit

8.1 — Providers to carry out regular audits of systems, procedures and documentation to ensure that they are acting compliantly with all aspects of the Code.

9. — Customer complaints procedure

9.1 Providers' internal procedures for handling Customer complaints to also include those relating to their sales and marketing activities. Providers to ensure that all their staff and representatives who deal directly with Customers are made aware of this procedure, and that they should inform Customers of the existence of their complaints procedure in accordance with their current obligations.

9.2 The complaints procedure to set out how Customers may complain about the company's sales and marketing activity and what further steps are available if they believe their complaint has not been dealt with satisfactorily.

9.3 In addition, Customers also to be made aware of any dispute resolution arrangements as recognised by Ofcom. Currently Ofcom has approved two schemes: the Office of the Telecommunications Ombudsman ("Otel") and the Communications and Internet Services Adjudication Scheme ("CISAS").

9.4 Providers to liaise regularly with Ofcom and the relevant consumer groups to monitor the number and nature of complaints under its code.

10. Distributing the code: creating awareness

10.1 The Code to be available to Customers on request, free of charge and in a reasonable range of formats, and to be made available on the Provider's public website.

Legislation of particular relevance to sales and marketing of particular telephony products

Particular attention is drawn to the following regulations (as amended, where appropriate), in addition to all other appropriate consumer protection law and advertising Codes of Practice

	Title	Comment
1.	The Unfair Terms in Consumer Contracts Regulations 1999 SI 1999 No 2083	<ul style="list-style-type: none"> introduces controls over unfair standard terms in contracts with consumers requires written contracts with consumers to be in plain, intelligible language
2.	The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 SI 1987 No 2117	<ul style="list-style-type: none"> requires that written notice of cancellation rights (min 7 days) in prescribed form is given to consumers entering into contracts at their homes or in other places (e.g. shopping precincts)
3.	The Consumer Protection (Distance Selling) Regulations 2000 SI 2000 No 2334	<ul style="list-style-type: none"> requires extensive information to consumers before and after consumers enter into contracts using channels of marketing such as direct response press or TV adverts, telemarketing, mail order, etc requires cancellation rights (min 7 working days) to be given to consumers, starting from the date of delivery of prescribed information provides that making demands for payment for services not ordered by consumer is a criminal offence
4.	Various Misleading Advertising Regulations	
5.	Consumer Protection Act 1987 (Part III)	

6.	Consumer protection legislation	<p>Civil responsibilities</p> <ul style="list-style-type: none"> • Misrepresentation Act 1967 • Unfair Contract Terms 1977 • Sales of Goods Act • Supply of Goods and Services Act 1982 • Consumer Protection 1987 • Sale and Supply of Goods Act 1994 • Control of Misleading Advertising Regulations 1988 SI 1988 No 915 • Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 SI 1987 No 2117 • Unfair Terms in Consumer Contracts Regulation SI 1999 No 2083 <p>Criminal liabilities</p> <ul style="list-style-type: none"> • Trade Descriptions Acts 1968 • Administration of Justice Act 1970 • Fair Trading Act 1973 • Price Act 1974 • Consumer Protection Act 1987 (Parts II, III, IV and V) • Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 SI 1987 No 2117 • Consumer Protection (Distance Selling) Regulations 2000 SI No 2334
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Annex 43 to General Condition 14⁶¹

Code on the provision by Service Providers of consumer information to Domestic and Small Business Customers for the provision of Services

Provision

1. This code (the 'Code') sets out the minimum requirements for all Service Providers to ensure that their Domestic and Small Business Customers are provided with information about any feature and/or limitation in that Service Provider's Service that differs from a Publicly Available Telephony Service provided over the Public Telephone Network, in the ways set out in paragraph 4 below.
2. Different sections of the Code may be applicable to different Service Providers, depending on what Services the Service Provider is providing.
3. These requirements are in addition to the information required to be made available by the Service Provider under the General Conditions of Entitlement and any Codes of Practice set under the General Conditions of Entitlement.

Scope

4. The Code requires the Service Provider to provide information to its Domestic and Small Business Customers on:
 - a) service reliability;
 - b) Emergency Calls;
 - c) the ability to Port Numbers; and,
 - d) Other information for Domestic and Small Business Customers.

Service Reliability

5. Each Service Provider shall provide to its Domestic and Small Business Customers clear and readily accessible information regarding whether its Service may cease to function if there is a power cut or power failure, or a failure of the Broadband Connection.
6. The information in paragraph 5 above shall be provided during the Sales Process, within the Terms and Conditions of Use, and in any User Guide issued by the Service Provider.
7. The following text is an indicative example of the information to be provided in paragraph 5 above, that can be adapted to the specific requirements of Service Providers:

"IMPORTANT INFORMATION: If your Broadband Connection fails, your voice service will also fail. Your service may cease to function if there is a power cut or failure. These failures may be caused by reasons outside our control."

⁶¹ Regulation of VoIP Services, Notification, 29 March 2007.

Emergency Calls

8. Some Services may not offer any access to Emergency Calls or access to Emergency Calls may be offered by the Service Provider over its Service but the reliability of this access may be affected by a power cut or power failure, or by failure of the Customer's Broadband Connection.
9. This section is intended to ensure that Service Providers provide their Domestic and Small Business Customers with relevant information about their ability to make Emergency Calls.

No Access to Emergency Calls

10. Where the Service provided by the Service Provider does not provide access to Emergency Calls, the Service Provider shall:
 - a) provide the Domestic and Small Business Customers, clear and readily accessible information at the Point of Signature, in the Terms and Conditions of Use and in any User Guide; that its Service does not provide access to Emergency Calls. The same information must also be provided to prospective Domestic and Small Business Customers as part of the Sales Process;
 - b) take reasonable steps to ensure that Domestic and Small Business Customers acknowledge in the form of a signature (or online equivalent), at the Point of Signature, that they understand that the Service will not provide any access to Emergency Calls, (the following text is an example of the wording that could be used):

"I understand that this service does not allow calls to the emergency services numbers 999 and 112."
 - c) provide evidence to Ofcom of the acknowledgement in paragraph 10 (b) above, within five working days; following a written request from Ofcom;
 - d) as part of the Terms and Conditions of Use, supply its Domestic and Small Business Customer with a clear and readily accessible printed statement, or an on-screen statement that the Domestic and Small Business Customer is encouraged to print out, that Emergency Calls cannot be made using the Service;
 - e) during the Sales Process, give the Domestic and Small Business Customer the choice whether to receive Labels (at no charge, other than reasonable postage and packaging if applicable) which state that Emergency Calls cannot be made using the Service, and recommend that the Domestic and Small Business Customer use these Labels on or near the relevant Service Access Terminal;
 - where a screen or display is used with the Service, a Label could be an on-screen message or display using a clear and readily accessible graphic, words or icon that Emergency Calls cannot be made using the Service; or
 - in these and other circumstances a Label could be (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file).

- f) if Emergency Calls are made from the Service Access Terminal, provide a network announcement stating (for example):

“Calls to Emergency Services cannot be made from this handset; please hang up and call from an alternative telephone service such as a traditional landline or mobile phone.”

- g) This announcement shall be interspersed with a Number Unavailable Tone for the benefit of hearing-impaired users.

Reliability of Access to Emergency Calls

11. Where the Service Provider provides access to Emergency Calls but the Service may cease to function if there is a power cut or failure or a failure of the Broadband Connection the Service Provider shall:

- a) provide its Domestic and Small Business Customers with clear and readily accessible information, during the Sales Process, in the Terms and Conditions of Use and in any User Guide; that, although access to Emergency Calls is provided, the Service may cease to function if there is a power cut or failure, or a failure of the Broadband Connection;
- b) take reasonable steps to ensure that Domestic and Small Business Customers acknowledge in the form of a signature (or online equivalent), at the Point of Signature, that they understand that Emergency Calls will fail if there is a power cut or failure, or a failure of the Broadband Connection, (the following text is an example of the wording that could be used):

“I understand that this service allows calls to the emergency services numbers 999 and 112. However I understand that calls will fail if there is a power cut or my broadband connection fails.”

- c) provide evidence to Ofcom of the acknowledgement in paragraph 11 (b) above, within five working days; following a written request from Ofcom;
- d) during the sales process, give the Domestic and Small Business Customer the choice whether to receive (at no charge other than reasonable postage and packaging if applicable), Labels which state that Emergency Calls may fail:
 - where a screen or display is used with the Service, a Label would normally be an on-screen message or display using a clear and readily accessible graphic, words or icon that Emergency Calls cannot be made using the Service; and
 - in other circumstances a Label would normally be (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file).

Emergency Location Information

12. In respect of Emergency Location Information:

- a) where the Service provided by the Service Provider does provide access to Emergency Calls and the Service is to be used principally at a single fixed

location, the Service Provider shall require its Domestic and Small Business Customers to register with it the address of the place where the Service is going to be used prior to activation of the Service (the location information), so that up-to-date location information can be used for Emergency Location Information;

- b) where the Service Provider has reasonable expectation that, or has been informed that, the service is to be accessed from several locations, the Service Provider shall recommend that its Domestic and Small Business Customers register and update the location information with it, whenever accessing the Service from a new location, so that up-to-date information can be used for Emergency Location Information;
- c) the Service Provider shall advise its Domestic and Small Business Customer at the Point of Signature, in any User Guide, and in any Terms and Conditions of Use of any limitations on the location information that will be provided to the Emergency Services as Emergency Location Information, if the location information they have provided is not up-to-date. This advice shall be clear and readily accessible;
- d) where the Service Provider does not provide Emergency Location Information, it shall provide clear and easily accessible information to this effect to all Domestic and Small Business Customers at the Point of Signature, in any User Guide, and in any Terms and Conditions of Use. The same information shall also be made available to prospective Domestic and Small Business Customers as part of the Sales Process.

Ability to Port Numbers

- 13. Where the Service Provider does not offer Number Portability, the Service Provider shall provide clear and readily accessible information to its Domestic and Small Business Customers in any User Guide and the Terms and Conditions of Use to this effect. The same information shall also be provided to prospective Domestic and Small Business Customers as part of the Sales Process.

Other information for Customers

- 14. In addition to the requirements set out above, the information describing the Service made available by a Service Provider to a prospective Domestic and Small Business Customer shall make it clear and readily accessible as part of the Sales Process if any of the following facilities or features are not available by means of the Service:
 - access to a Directory Enquiry Facility;
 - access to operator assistance services (as described in General Condition 8.1);
 - Calling Line Identification Facilities;
 - provision of a Directory on request;
 - special measures for end users with disabilities (as described in General Condition 15); and
 - the non-itemisation of calls which are made from a Subscriber's telephone which are free of charge.

15. The Service Provider shall also make clear and readily accessible, any restrictions on the Number Ranges or Country Codes that may be called using the Service. Where such numbers cannot be dialled, it is recommended that dialling such numbers should produce the standard Number Unavailable Tone.

DEFINITIONS

For the purposes of the Code, the definition of the following terms is:

‘Broadband Connection’ means the Domestic or Small Business Customer’s broadband service which provides speeds which are higher than those attainable over a dial up connection which are 56kbit/s over an analogue line; 64kbit/s over an ISDN2 digital channel and 128kbit/s over the two bonded channels of an ISDN2 line;

‘Calling Line Identification Facilities’ means facilities by which the Telephone Number of a calling party is presented to the called party prior to the call being established;

‘Country Codes’ means the international dialling code e.g. 44 for the UK;

‘Emergency Calls’ means calls to 999 or 112 or its equivalent;

‘Emergency Location Information’ means information concerning the location from where a call to the Emergency Organisations can be made, that is provided by Service Providers to Emergency Organisation’s Operators as part of the handling of such a call;

‘Internet Protocol’ means the method by which data is sent over the internet or intranet;

‘Label’ means a mechanism for annotating a Service Access Terminal with a brief message. A Label can consist of an electronic notice that is displayed whenever the Service is used or (at the Customer’s choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file);

‘Number Portability’ the facility by which a Domestic and Small Business Customer can transfer their Telephone Number when switching between Service Providers;

‘Number Ranges’ means a set of contiguous numbers of a specified or unspecified size;

‘Number Unavailable Tone’ means a continuous tone which differs from dial tone and indicates a dialled number is unavailable or out of service;

‘Point of Signature’ means the point in the process of concluding a contract immediately before the Domestic and Small Business Customer indicates his/her agreement to enter into the contract;

‘Port Numbers’ means the process to transfer Telephone Numbers to a new Service Provider;

‘Sales Process’ means the process of providing information to the prospective Domestic and Small Business Customer about the Service and of establishing the Domestic and Small Business Customer’s requirements for the Service before the making of the contract to provide that Service. This includes leaflets and marketing material. It does not include advertisements;

‘Service Access Terminal’ means the equipment used to access the Service;

'Terms and Conditions of Use' means the contract agreed by the Domestic and Small Business Customer for the provision of the Service;

'User Guide' means the document giving the Domestic and Small Business Customer information about how to use the Service. This does not include any document concerned solely with the operation of a Service Access Terminal.

Annex 7

Notification of proposed modification under section 48(2) of the Communications Act 2003

Proposal for insertion of a new General Condition 24 - Sales and Marketing of Fixed-Line Telecommunications Services, which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General of Telecommunications on 22 July 2003.

1. Ofcom in accordance with section 48(2) hereby make the following proposals for insertion of a new General Condition 24 on Sales and Marketing of Fixed-Line Telecommunications Services.

2. The draft modification is set out in the Schedule to this Notification.

3. The effect of, and Ofcom's reasons for making, the proposals referred to in paragraph 1 above is set out in the accompanying explanatory statement.

4. Ofcom considers that the modification referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the proposed modifications.

5. In making the proposals set out in this Notification, Ofcom has considered and acted in accordance with their general duties in section 3 and of the Act and the six Community requirements in section 4 of the Act.

6. Representations may be made to Ofcom about the proposals set out in this Notification by 5pm on 27 May 2009.

7. The modification shall enter into force 12 months after the date of publication of the final Notification.

8. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.

9. In this Notification:

a. "the Act" means the Communications Act 2003;

b. 'the Director' means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

c. "Ofcom" means the Office of Communications; and

10. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.

11. For the purpose of interpreting this Notification:

- a. headings and titles shall be disregarded; and
 - b. the Interpretation Act 1978 shall apply as if this Act were an Act of Parliament.
12. The Schedule to this Notification shall form part of this Notification.

Signed by:

Claudio Pollack

A person authorised by OFCOM under paragraph 18 of the Schedule to the Office of Communications Act 2002

17 March 2009

Schedule

Proposals for the setting of a new General Condition 24 on Sales and Marketing of Fixed-Line Telecommunications Services

24. SALES AND MARKETING OF FIXED-LINE TELECOMMUNICATIONS SERVICES

Scope

- 24.1 A Communications Provider who provides a Fixed-Line Telecommunications Service to Domestic and Small Business Customers ('the Customer') must comply with this General Condition with respect to such Customers.
- 24.2 This General Condition is only applicable where the Customer is transferring a Fixed-Line Telecommunications Service between Communication Providers.

Mis-selling prohibition

- 24.3 When selling or marketing Fixed-Line Telecommunications Services, the Gaining Communications Provider must not:
- (a) engage in dishonest, misleading or deceptive conduct;
 - (b) engage in aggressive conduct; or
 - (c) contact the Customer in an inappropriate manner.

Responsibility

- 24.4 Where the Communications Provider engages representatives, such as any sales agency, to act on its behalf in the sale and marketing of Fixed-Line Telecommunications Services, the Communications Provider shall procure that such representatives comply with the requirements of this General Condition.

Publication of relevant obligations

- 24.5 The Communications Provider must:
- a) publish a comprehensive summary of its obligations under this General Condition in an easily accessible and reasonably prominent manner on its website or, where there is no such website, by making it available in its registered office during normal office hours for inspection free of charge by members of the general public; and
 - b) provide a copy of this General Condition to a Customer free of charge upon reasonable request.

Information at Point of sale

24.6 The Gaining Communications Provider must take all reasonable steps to ensure that before entering into a Contract for a Fixed-Line Telecommunications Service the Customer who is transferring the line:

- a) is authorised to do so;
- b) intends to enter into the Contract; and
- c) is provided with the information set out below in a clear, comprehensible, prominent and accurate manner, in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:
 - (i) the identity of the legal entity the Customer is contracting with; its address; and telephone, fax and/or e-mail contact details;
 - (ii) a description of the Fixed-Line Telecommunications Service; the key charges, including minimum contract charges, and any early termination charges, if applicable; payment terms; the existence of any termination right, including termination procedures; the likely date that the Fixed-Line Telecommunications Service will be provided; and any minimum period of contract;
 - (iii) the possibility of existing contractual liabilities arising on terminating any arrangement with their existing Communications Provider(s); and
 - (iv) the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision of the service.

Post-sales information

24.7 Where the Customer enters into a Contract for a Fixed-Line Telecommunications Service, the Gaining Communications Provider and the Losing Communications Provider must each send the Customer a letter, within three Working Days of receiving notification, that the Customer is transferring their Fixed-Line Telecommunications Service, in paper or another Durable Medium, which clearly sets out, as appropriate:

- (i) the date of the letter;
- (ii) the Calling Line Identification of [all Electronic Communications Services] which are affected;
- (iii) the list of services affected/unaffected;
- (iv) the proposed switchover date;
- (v) relevant contact details;
- (vi) the right to terminate the Contract, the means by which the right to terminate can be exercised and the date by which the right to terminate must be exercised; and

- (vii) the possibility of existing contractual liabilities arising on terminating any arrangement with their existing Communications Provider(s).

24.8 The letter must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically.

Customer's termination rights

24.9 When the Customer enters into a Contract to transfer a Fixed Line Telecommunications Service the Gaining Communications Provider must allow the Customer to terminate the Contract within 10 Working Days of entering into that Contract without charge or any other form of compensation being required to be given by the Customer to the Gaining Communications Provider.

24.10 The Gaining Communications Provider must have procedures for the Customer to exercise their right to terminate their Contract pursuant to General Condition 24.9 without unreasonable effort or expense as to the procedure to be followed, including the ability to contact the Gaining Communications Provider to terminate the Contract by two or more of the following contact methods:

- (i) telephone;
- (ii) e-mail; and
- (iii) post.

Records retention

24.11 The Gaining Communications Provider must use reasonable endeavours to create and keep all records regarding the sale of its Fixed-Line Telecommunications Service, including voice recordings of relevant telephone contact with the Customer, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place where the Contract was entered into, where relevant, and be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

24.12 The Gaining Communications Provider must provide the records referred to in General Condition 24.11 on request to Ofcom.

Training

24.13 The Communications Provider must ensure that all staff involved in direct contact with Customers for the purpose of sales and marketing activity and/or Cancel Other are appropriately trained to comply with this General Condition.

Monitoring

24.14 The Communications Provider must monitor, including conducting regular audits, its compliance with this General Condition, including compliance on its behalf by any representatives or sales agency engaged by it, and take appropriate steps to prevent the recurrence of any problem(s) identified.

Cancel Other process

24.15 The Losing Communications Provider shall only be permitted to use Cancel Other in the following circumstances:

- (a) where a request for CPS, WLR and/or LLU has been made without the Customer's express knowledge and/or consent ("Slamming"), that is, in the following circumstances:
 - (i) where the Customer has never been contacted by the Gaining Communications Provider;
 - (ii) where the Customer has been contacted by Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;
 - (iii) where the Customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or
 - (iv) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider;
- (b) at the Customer's request, where the Gaining Communications Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");
- (c) where the telephone line is ceased during the Transfer Period ("Line Cease");
- (d) for other specified reasons not related to a Customer's request to cancel a transfer, and agreed by the relevant industry forum and approved by Ofcom; and
- (e) in such other circumstances as defined by Ofcom.

24.16 Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Communications Provider shall take reasonable steps to ensure that Slamming and/or Failure to Cancel has actually taken place.

24.17 After using Cancel Other, the Losing Communications Provider shall confirm the cancellation of the order in writing to the Customer, unless this is not possible or appropriate, including where the customer is deceased.

24.18 Where a Customer order is cancelled using Cancel Other, the Losing Communications Provider must use reasonable endeavours to retain all contacts regarding the use of Cancel Other on the Fixed-Line Telecommunications Service, including voice recordings of relevant telephone contact with the Customer, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer and be such as to allow

subsequent identification of the person(s) involved and to assist in dealing with any complaint or query.

- 24.19 The Losing Communications Provider must provide the records referred to in General Condition 24.18 on request to Ofcom.
- 24.20 The Losing Communications Provider shall record its reasons for using Cancel Other in each case, according to categories (a) (i) to (iv) and categories (b) to (e) set out at paragraph 24.15 above.
- 24.21 Where the Losing Communications Provider communicates with the Customer in order to comply with this General Condition, it must not make any statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Communications Provider and/or remain in a Contract with the Losing Communications Provider.

Definitions

24.23 For the purpose of this Condition:

- a) “**Cable Network**” means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;
- b) “**Cancel Other**” means the industry term for a functionality that enables the Losing Communications Provider to cancel wholesale orders (during the switchover period) placed by the Gaining Communications Provider where slamming has been alleged by the customer;
- c) “**Communications Provider**” means the provider of an Electronic Communications Network and/or Electronic Communications Service, both as defined in section 32 of the Act;
- d) “**Domestic and Small Business Customer**” has the meaning set out in section 52 (6) of the Act;
- e) “**Durable Medium**” means any instrument which enables the Customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- f) “**Fixed-Line Telecommunications Services**” means Narrowband call and/or line rental services provided to Domestic and Small Business Customer;
- g) “**Gaining Communications Provider**” means the Communications Provider to whom the customer is transferring to;
- h) “**Losing Communications Provider**” means the Communications Provider to whom the customer is transferring from;
- i) “**Narrowband**” means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network; and
- j) “**Transfer Period**” means the period of 10 Working Days from entering into that Contract prior to the service being transferred; and

- k) “**Working Days**” means the hours between 09.00 – 17.00 on Monday to Friday with the exception of bank holidays.

Annex 8

Guidelines in respect of General Condition 24

Draft Guidelines to General Condition 24: Sales and Marketing of Fixed-Line Telecommunications Services

Introduction

- A8.1 General Condition 24 ('GC24') sets out a number of provisions in respect of the sales and marketing of Fixed-Line Telecommunications Services⁶² with which the relevant Communications Provider providing a Fixed-Line Telecommunications Service ('the Gaining Communications Provider') must comply.
- A8.2 GC24 also comprises provisions relating to the use of Cancel Other with which the relevant Communications Provider providing a Fixed-Line Telecommunications Service ('Losing Communications Provider') must comply. Cancel Other is a consumer protection mechanism designed to ensure that Customers are not switched between Communications Providers without their permission. Therefore, Cancel Other should only be used in certain circumstances, in particular, where the Customer believes they are a victim of slamming.

Purpose of these guidelines

- A8.3 These Guidelines are produced by Ofcom to help Communications Providers and Customers understand their rights and obligations under GC24 and are intended to assist Communication Providers in achieving compliance.
- A8.4 The Guidelines set out some useful summaries, examples and guidance on the approach Ofcom is likely to take to enforcing GC 24. In particular, these guidelines:
- seek to provide clarity on the meaning of some of the terms and concepts used in GC24 so as to inform Communications Providers and stakeholders of Ofcom's general view on them; and
 - describe factors that Ofcom might consider when applying the relevant requirements or obligations set out in GC24.

Disclaimer

- A8.5 For the avoidance of doubt, where the Guidelines set out examples of the way in which Ofcom considers a Communications Provider may comply with a General Condition, Ofcom is not bound by this and Ofcom will at all times determine compliance on the basis of individual circumstances whilst having regard to these guidelines. If in any given situation we decide to depart from the principles set out in these guidelines we will normally set out our reasons for doing so.

⁶² means narrowband calls and/or line rental services provided to Domestic and Small Business Customers, including Carrier-Pre Selection, Wholesale Line Rental and services provided over full LLU.

- A8.6 These Guidelines are not in any way incorporated into the General Conditions set by Ofcom. The obligations which apply to a Communications Provider will be determined solely according to the General Conditions. However, when applying GC24, as stated in A8.5 above, Ofcom will have regard to these guidelines and will normally set out its reasons when departing from the principles set out therein. Ofcom advises Communications Providers to seek independent legal advice if they are unsure of their obligations under the General Conditions.

Scope of General Condition 24

- A8.7 GC 24.1 specifies that this General Condition is applicable to all Communications Providers which offer a Fixed-Line Telecommunications Service to Domestic and Small Business Customers (who are referred to in this document as 'Customers').
- A8.8 GC24.2 specifies that this General Condition is only applicable where the Customer is transferring to, from or between Fixed-Line Telecommunications Providers for the relevant service in question. For the avoidance of doubt, therefore, it does not cover situations where there is an existing relationship between the Communications Provider and the Customer for the relevant Fixed-Line Telecommunications Service in question.

Mis-selling prohibition

- A8.9 GC 24.3 sets out prohibitions on the Gaining Communications Provider regarding inappropriate types of sales and marketing behaviour (generally described as 'mis-selling'). Such prohibited mis-selling behaviour includes, but is not limited to:
- the omission of relevant information (for example, the terms and conditions attached to a specific offer including any restrictions on, or limitations of the offer).
 - the provision of false and/or misleading information (for example, about tariffs, potential savings or promising offers or gifts which do not actually materialise). Misleading conduct includes deceiving a customer or providing the customer with misinformation which is likely to affect a customer's purchase decision;
 - aggressive conduct, such as harassment, coercion, or applying unacceptable pressure on a Customer to enter into a contract, such as threatening or intimidating behaviour or refusal to leave (in case of doorstep selling); and
 - 'slamming', an extreme form of mis-selling, where Customers can find themselves switched from one company to another without their knowledge and/or consent. Forms of slamming can include, for example, passing off (i.e. where representatives claim to represent a different company from the company they are actually working for), Customers being told they are merely signing up for information and then being switched from one company to another, or forging of Customers' signatures on contracts without the Customer being aware.
- A8.10 Below we have included examples of approaching Customers that Ofcom considers to be inappropriate:
- current or prospective Customers should not be approached at an inappropriate time of day. For example, we would not expect any outbound Customer contact, including doorstep selling and telesales to take place at an unreasonable time of

day, say before 8.00am and after 8.00pm, unless the Customer requests otherwise;

- where sales representatives do not introduce themselves clearly and fully and state the purpose of the contact at the start of any sales and marketing activity to current or prospective Customers. The representatives should clearly state the name of the company or organisation they are working for and, where they are an agent for another company or organisation on whose behalf they are selling or marketing services, the name of that other company or organisation and that they are authorised to sell on their behalf;
- where sales representatives are discourteous, use inappropriate language (for example aggressive and/or intimidating language) and do not offer clear and straightforward explanations;
- where sales representatives do not cease contact with any person who indicates that the contact is inconvenient, unwelcome, inappropriate or too long. If the Customer requests it, the discussion should be ended immediately and, if making a doorstep call, the premises should be left immediately; and
- where sales representatives with direct Customer contact take advantage of vulnerable Customers; e.g. those who are elderly or whose first language is not English.

Responsibility

A8.11 GC24.4 states that the Communications Provider, where it engages representatives and agencies to act on its behalf, must procure that these representatives comply with the requirements of GC24.

A8.12 In other words:

- the Communications Provider may engage representatives or agents to act on its behalf; but
- the obligations under the General Condition are always the Communications Provider's;
- the Communications Provider is responsible for the actions of those it engages to sell and market its services; and
- the Communications Provider is liable where it, or those it engages on its behalf, act in breach the General Condition.

A8.13 Accordingly, the Communications Provider must ensure that it and its staff, sales representatives and agents who are involved in sales and/or cancellations of Fixed-Line Telecommunications Services to Customers on behalf of the Communications Provider:

- are aware of GC 24; and
- are required to comply with the obligations therein.

- A8.14 The Communications Provider must also monitor its and its representatives' and agents' compliance with those obligations. And, it is responsible for the creation and retention of records in accordance with the General Condition, even where the relevant contact with the Customer is by its representative or agent on its behalf and even if the relevant records are created and/or retained by the representative or agent on its behalf.
- A8.15 There are a number of ways in which Communications Providers could seek to ensure they comply with the General Condition and, in particular, where they engage representatives or agents to act on their behalf. Ofcom does not intend to prescribe exactly how the requirements are to be met. However, there are a number of practical steps a Communications Provider could take, in Ofcom's view, to assist it in meeting its obligations under General Condition 24.4 (although taking them would not necessarily amount to compliance with the General Condition). Such steps include:
- in order to ensure awareness of the General Condition amongst its representatives and agents, the Communications Provider could communicate the General Condition through account managers, in print through sales bulletins or newsletters, or on websites dedicated to its representatives' or agents' sales and cancellation channels;
 - in order to put provisions in place which require representatives and agents to comply with the behavioural obligations, the Communications Provider could include such requirements in contracts with those representatives and agents; and
 - in order to ensure appropriate compliance monitoring, the Communications Provider could carry out spot checks and mystery shopping and conduct sample checks of its representatives' and agents' sales and marketing and cancellations material. In addition to its own complaints data, the Communications Provider could also put provisions in place which allow it to collect complaints data made directly to its representatives and agents.

Publication of relevant obligations

- A8.16 GC 24.5 sets out that the Gaining Communications Provider has to make a comprehensive summary of its obligations under GC24 available on its website or, where there is no such website, in its head offices. Upon reasonable request, a copy of the GC should be provided to customers, free of charge. The Communications Provider could do this by providing the customer with a paper copy of the GC in their shops, by sending a hard or soft copy to the customer, or by making it available for download or printing on their website.
- A8.17 Ofcom considers reasonable requests to include all requests made by consumers, unless proven to be trivial or a repeat request. Free of charge means there should be no cost to the consumer other than those costs incurred for the provision of the GC (i.e. postage costs).
- A8.18 In relation to the obligation to publish this information on a Communication Provider's website, Ofcom considers 'an easily accessible and reasonably prominent manner' to mean providing a clear reference to the obligations under GC24 on a consumer related part of the Communications Provider's website.

Information at Point of Sale

- A8.19 GC 24.6 contains a number of provisions relating to information requirements that the Gaining Communications Provider must comply with at the point of sale, when the Customer expresses a positive intention to transfer their service to a new Communication Provider.
- A8.20 Ofcom requires that the Gaining Communications Provider must use reasonable endeavours to ensure these requirements are met. There are a number of ways for the Gaining Communications Provider to achieve this goal and we do not intend to prescribe exactly how these requirements are met. However, there are some practical steps that Gaining Communications Providers could take, in Ofcom's view, to assist them in meeting their obligations (although, again, taking them may not necessarily amount to compliance), including:
- in order to ensure Customers are authorised to take out a contract, the Gaining Communications Provider may wish to consider whether to require sales records to include an explicit check of the Customer's identity, age and/or address (for example, utility bills, a copy of a passport or driving licence);
 - in respect of the provision of information to the Customer, Gaining Communications Providers may wish to ensure there is a check list available or include such a checklist in their training material for their sales representatives which ensures that Customers are provided with all the key relevant information about a service as part of their decision making. This includes advice relating to the fact that the Customer may have existing contractual liabilities with their existing Communications Provider(s). In essence, Customers must be able to make an informed choice as to whether or not to enter into a new contract;
 - any claims, offers or incentives to attract customers must not mislead them by stating an untruth or half-truth or through failing to state or not make sufficiently prominent an important term or condition likely to affect their decision;
 - order forms and contract forms to be designed such that the contractual nature of the document is clear to the Customer, and it contains a statement of the contractual nature of the document immediately adjacent to where the Customer signs the document so that the statement cannot easily be obscured or concealed. Alternatively customers to sign over the word contract; and
 - take all reasonable steps to ensure that before entering into relevant contracts Customers are authorised, and intend to enter into, a new contract. This includes obtaining Customers' explicit consent to enter contracts. Getting customers to enter into contracts through negative opt-out means should therefore be avoided. Ofcom considers this to mean that consumers have been informed that they are entering into a contract and have given positive consent, either verbally or in writing.
- A8.21 The information must be provided in one of two ways.
- first, in paper or another Durable Medium which is available or accessible to the Customer. This is likely to mean the information must be provided in written format, to be handed over to the Customer at the point of sale (including, but not restricted to leaflets, letters etc.); and

- second, where the Customer enters the contract by telephone, the information must be provided in the sales call. The information must also then be sent to the Customer in paper or another Durable Medium within three Working Days of the sales call. What this is likely to require is described above.

Post sales information

- A8.22 GC24.7 contains provisions relating to the sending out of mandatory 'notification of transfer' letters from both the Gaining and Losing Communications Providers which are to be sent out within three Working Days of receiving electronic notification that the customer is transferring their Fixed-Line Telecommunications Service.
- A8.23 The post sales information requirements set out at GC24(i) to (vii) specify a number of pieces of information that must be provided to the Customer by the Communications Providers as part of the mandatory 'notification of transfer' letters.
- A8.24 Under GC 24.8 the notification must be by letter unless the Customer has explicitly agreed to receive correspondence electronically. Ofcom considers this to mean that the letter may be sent electronically where Customers have initiated contact by applying online, and have confirmed online that they wish the information to be sent electronically. Ofcom also considers that such agreement must only be given on an opt-in basis (i.e. 'please tick this box to receive notification electronically') rather than opt-out (i.e. 'please untick this box if you do not wish to receive notification electronically'). Otherwise, Customers would need to positively request by written correspondence that information be sent electronically.

Customer's termination rights

- A8.25 GC24.9 sets out that there should be "no cost" cancellation for Customers where they change their mind within the ten working days switchover period (which is the period before the Customer's order is activated in accordance with the agreed industry switching process). Ofcom considers "no cost" to mean that there should be no charge to the customer. In Ofcom's view, the only legitimate costs should be those costs incurred for using the means of cancellation (e.g. the price of a stamp or non-premium rate phone call).
- A8.26 GC24.10 contains provisions relating to the need for Gaining Communications providers to have procedures in place so that Customers are able to terminate contracts without unreasonable effort or expense in the termination procedure such as where the process of termination requires consumers to take unreasonable steps to terminate e.g. reliance on letters/faxes.
- A8.27 At a minimum, Ofcom would expect that Customers should be able to terminate using two or more of the prescribed contact methods set out in GC24.10 (i) to (iii). Ofcom would also expect that there should be no onerous or expensive administrative steps or conditions to be followed, such as onerous validation requirements or complex IVR systems.

Records retention

- A8.28 GC 24.11 requires the Gaining Communications Provider to use reasonable endeavours to produce and keep all records regarding the sale of its Fixed-Line Telecommunications Service for a period of not less than six months from the date the record was created. This includes a requirement to retain voice recordings of all relevant telephone contact with the Customer.

- A8.29 Ofcom considers examples of records in this respect to include (but not be limited to) signed copies of contracts, either in electronic or paper form, check lists intended to confirm that the consumers agrees, and understands, what they are signing up to, copies of emails and correspondence, notes of a conversation with the Customer or the Customer's internet confirmation to buy a certain service and where, telesales are used, voice recordings.
- A8.30 We consider "reasonable endeavours" to mean as close to 100% as possible and, where, not achievable, an explanation as to why this was not possible. We would expect no less than 90%.
- A8.31 We consider "relevant telephone contact" to include all contact made with the Customer as part of the sales call, including the sales call(s) as well as any follow-up sales calls/verification calls.
- A8.32 By "the means through which the contract was entered into", we mean retail outlets, telesales or websales. In the event a contract was entered into at a retail outlet, the records should contain sufficient information to be able to identify the outlet, for instance by providing the address of the outlet.
- A8.33 Ofcom is likely to consider that records should be such as to provide sufficient information to validate that the Customer provided positive consent for the purpose of the transaction and all its terms, as well as information about the type of contract, the date the contract was entered into or amended and the sales representative involved in case the Customer questions having entered into a contract, or has complaints or queries regarding their contract.

Training

- A8.34 GC 24.13 requires Communications Providers to ensure that any person selling their service ('involved in direct contact with Customers') is 'appropriately trained' to comply with GC 24 as well as consumer protection law. Direct contact includes telesales and marketing as well as face to face contact.
- A8.35 There are a number of ways for the Communications Provider to achieve this goal and we do not propose to prescribe exactly how this requirement is to be met. However, there are some practical steps that Communications Providers can take to assist with meeting their obligations (although, again, taking them may not necessarily amount to compliance), including where they engage sales representatives and agents:
- putting contractual provisions in place in respect of mandatory training;
 - providing all their staff, representatives and agents with training courses, manuals and product information regarding the Fixed-Line Telecommunications Service;
 - providing all their staff, representatives and agents with training courses and manuals on using sales related systems;
 - providing all their staff, representatives and agents with information on new products;
 - providing all their staff, representatives and agents with training and information on processes, such as ordering a new phone or Customer credit checking.

- A8.36 In respect of ensuring there is appropriate training, Ofcom considers ‘appropriately trained’ to include that all staff, sales representatives, and any sales agencies, acting on the Communications Provider’s behalf have been made familiar with and gained sufficient understanding of:
- arrangements for competition in the supply of telecommunication in the UK;
 - the different telephone options provided by the gaining Communications Provider and how these differ from other competitive telecoms products (which may or may not be offered by the Communications Provider (e.g. IA, CPS, WLR, LLU);
 - the process for ordering the telephone service;
 - the major elements of the Communications Provider’s services;
 - the key terms and conditions of the Communications Provider’s contracts including information listed at GC24.5 (c)(i)(ii);
 - the nature, and cost, of any additional services on offer;
 - the process for cancelling the contract both during the cooling-off period and at any time following commencement of the service;
 - the relevant principles of consumer protection law; and
 - the relevant obligations under this General Condition.

Monitoring

- A8.37 GC24.14 requires that Communications Providers ensure that they have procedures in place to monitor compliance with this General Condition, including compliance by any representatives or sales agencies engaged by it, and to take appropriate steps to prevent the recurrence of any problem(s) identified.
- A8.38 There are a number of ways for the Communications Provider to achieve this goal and we do not propose to prescribe exactly how this requirement is to be met. However, there are some practical steps that Communications Providers can take to assist them to meet their obligations (although, again, taking them may not necessarily amount to compliance). These include the following:
- on discovery of an instance of non-compliance with the Code, Communications Providers will vigorously pursue the matter and will ensure that the complaint is properly investigated within reasonable timeframes (e.g. no more than ten working days) and identify an appropriate explanation for any apparent breach of the Code;
 - in the case of serious or repetitive breaches of the Code by its staff or sales representatives and agents who are involved in sales and cancellations of Fixed-Line Telecommunications Services on its behalf, Communications Providers should send a written warning to the offending party. The written warning will include details of sanction(s) that will be imposed on that party should that party continue to be in breach of the Code; and

- providing always that it acts proportionately, a Communications Provider may wish to invoke contractual penalties, including termination of that party's contract, if it fails to cease and desist its non-compliant behaviour after a written warning.

Cancel Other

- A8.39 Cancel Other is a consumer protection mechanism designed to ensure that Customers are not switched – transferred between Communications Providers - without their express knowledge and/or consent. Therefore, Cancel Other should only be used in certain circumstances, in particular, where the Customer believes they are a victim of slamming.
- A8.40 To ensure compliance with this General Condition Ofcom expects all losing Communications Providers to apply Cancel Other only in the following circumstances:
- (a) Where a request for a fixed-line telecommunications service has been made without the Customer's express knowledge and/or consent ("Slamming") or at the Customer's request, that is, in the following circumstances:
 - i) where the Customer confirms that they were never contacted by the Gaining Communications Provider i.e. where a customer does not recall any contact from a service provider and could not therefore have known about, or consented to, the transfer;
 - ii) where the Customer confirms that there has been contact with the Gaining Communications Provider, but they had not given the Gaining Communications Provider authorisation to transfer some or all of its telephone calls and/or line rental to the Gaining Communications Provider;
 - iii) where the Customer confirms that they agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the Customer has not agreed to purchase. An example would be where a customer buys a mobile phone and an order is submitted for CPS; or
 - iv) where the Customer confirms that they agreed to transfer some or all of its telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that it is making an agreement with a different communications provider ("passing off").
 - (b) at the Customer's request, where the Customer confirms that the Gaining Communications Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel").
 - (c) where the telephone line is ceased during the transfer period ("Line Cease"); and
 - (d) for other specified reasons not related to a Customer's request to cancel a transfer, and agreed by the service providers forum.
- A8.41 As set out in A8.40 (a) (i) to (iv) Ofcom considers that the primary purpose of Cancel Other is to protect consumers from slamming, and the Losing Communications Provider must take reasonable steps to ensure that slamming has actually taken place before cancelling the order.

- A8.42 The Losing Communications Provider is not permitted to use Cancel Other where a customer has placed the order, but wants to change their mind, for e.g. because the information he has received from the service provider does not seem consistent with what they were told at the time of the sale, or because they felt pressured by the sales agent into placing an order. In such cases, the Losing Communications Provider should direct the consumer back to the Gaining Communications Provider to cancel the order.
- A8.43 In respect of 'Passing off', Ofcom considers that this constitutes slamming because the customer has no knowledge of, and has not consented to, a transfer to the service provider which placed the order. In this case, they are likely to believe, for e.g., that they have ordered a new service or payment method from their existing telecoms provider. Ofcom considers that this is qualitatively different from other types of mis-selling where the service provider correctly identifies itself, but gives misleading information about the products or services that it is providing.
- A8.44 Other permitted instances of Cancel Other by the Losing Communications Provider include the following:
- in cases of failure to cancel, i.e. where a service provider has failed to cancel a transfer after the customer has requested this. While the Gaining Communications Provider is required to cancel a transfer if the customer asks it to do so during the transfer period, Ofcom considers that consumers also need a "safety net" mechanism that enables them to cancel a transfer when a Gaining Communications Provider has failed to do so.

Losing Communications Providers will therefore be permitted to use Cancel Other where a Gaining Communications Provider has failed to cancel a transfer when the customer has requested this. However, Ofcom considers that this safety net should be implemented in such a way that it will only be used where a Gaining Communications Provider fails to cancel a transfer, and not simply because a customer has contacted the Losing Communications Provider for peace of mind and asked it to ensure that the transfer has been cancelled.

Before it uses Cancel Other in cases of failure to cancel, the Losing Communications Provider must, therefore, take reasonable steps to ensure that failure to cancel has, in fact, taken place. Ofcom considers that the Losing Communications Provider should only use Cancel Other if the customer would otherwise be transferred to the Gaining Communications Provider against their wishes. In practice, where the Losing Communications Provider submits a Cancel Other in response to a customer's allegation that the Gaining Communications Provider has failed to cancel the transfer, this Cancel Other will not be actioned unless no instruction to cancel has been received from the Gaining Communications Provider by day 9 of the transfer period (or day 8 for WLR orders). If the Gaining Communications Provider submits a cancellation before day 9 (or day 8 for WLR orders), this cancellation order will take precedence and no Cancel Other will be recorded.

- In cases of line cease and other cases not related to slamming or failure to cancel. Unlike the two categories discussed above (slamming and internal customer miscommunication), the Losing Communications Provider's use of Cancel Other in cases of line cease does not follow a conversation with a customer about an order. When the Losing Communications provider places an order to cease a line, a consequence of this is that any pending orders relating to

that line are cancelled automatically. Such cancellations are recorded as Cancel Other.

Ofcom considers that the Losing Communications Provider's ability to use Cancel Other where the line has been ceased is a necessary administrative mechanism.

A8.45 To give customers certainty and transparency, Ofcom proposes that Losing Communications Providers should be required to confirm the cancellation of the cancelled order wherever it uses Cancel Other, unless this is not possible.

A8.46 Cancel Other should not be used by the Losing Communications Provider in the following circumstances:

- to frustrate the transfer process, particularly in situations where, for example, the Customer has not yet paid their bill, the notice period has not been served or where disconnection or termination of charges apply. These charges should be included in the final bill, and settled in accordance with standard payment terms;
- in cases of internal miscommunication which is where a request for service has been or may have been made by a person other than the person named on the bill but who may have identified themselves as an authorised decision maker.

In many cases, where a customer contacts a Losing Communications Provider following internal customer miscommunication, it will appear to the customer that slamming has occurred. However, Ofcom considers that this is not an appropriate use of Cancel Other given that the named account holder may not be the only authorised decision maker in a household or business, where decisions about fixed-line telecoms services are often made jointly. In such circumstances, Ofcom considers that where the named account holder disagrees with this decision, it is up to those individuals, and not the Losing Communications Provider to resolve. Similarly, in the case of businesses, Ofcom considers that if an individual takes a decision they are not authorised to make, this is a matter for the organisation concerned, and should not be for the Losing Communications Provider to resolve. Where internal customer miscommunication has occurred, the customer can cancel the transfer by contacting the service provider within the ten-day transfer period, if the household or organisation has decided it does not want it.

Accordingly, Ofcom believes that it is therefore necessary for the Losing Communications Provider to investigate the possibility that such apparent slams are, in fact, the result of internal customer miscommunication, by asking questions, for example whether anyone else in the household or organisation or business could have placed the order. Losing Communications Providers should therefore ensure that there are adequate procedures in place which enable individuals other than the named account holder to make decisions on an account, subject to a verification process which requires those individuals to provide information that would only be available to an authorised decision maker.

Reason codes

A8.47 Each time the Losing Communications Provider uses Cancel Other, it must record the reason, selecting the appropriate "reason code" from a list corresponding to the permitted uses of Cancel Other, as agreed by the industry, and approved by Ofcom.

Annex 9

Proposed amendments to current sales and marketing obligations under GC14.5

The following table summarises proposed amendments to current obligations for sales and marketing as set under GC14.5. Material changes, in substance, are in italics, bold and underlined.

	Activity	Current obligation	Proposed obligation
1	High level obligation	<p>"14.5 During the Relevant Period, those Communications Providers who provide Fixed-line Telecommunications Services or the Wholesale Inputs to Fixed-line Telecommunications Services, shall:</p> <p>(a) establish and thereafter maintain a Code of Practice for Sale and Marketing for dealing with its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 3 to this Condition; and</p> <p>(b) comply with the provisions of the Code of Practice for Sales and Marketing established according to Condition 14.5(a) above."</p>	<p>"24.3 When selling or marketing Fixed-Line Telecommunications Services, the Gaining Communications Provider must not:</p> <p>(a) engage in dishonest, misleading or deceptive conduct;</p> <p>(b) engage in aggressive conduct; or</p> <p>(c) contact the Customer in an inappropriate manner."</p>
2	Information at Point of sale	<p>"6.1 All reasonable steps to be taken to ensure that the person entering into a contract is authorised to enter into the contract for the Fixed-line Telecommunications Services/bills at the premises, and that the person entering into a contract understands, and intends to enter into the contract (i.e. explicit consent of the Customer is obtained before transferring a line).</p> <p>6.3 Where a direct approach to the Customer takes place, the Customer to be given the information set out in this paragraph, in writing, and during the sales call, in a clear, and comprehensible, prominent and accurate manner:</p> <ul style="list-style-type: none"> • essential information including the identity of the company, its address, telephone, fax and e-mail contact details, as appropriate; • a description of the telephone 	<p>" 24.6 The Gaining Communications Provider must take all reasonable steps to ensure that before entering into a Contract for a Fixed-Line Telecommunications Service the Customer who is transferring the line:</p> <p>a) is authorised to do so;</p> <p>b) intends to enter into the Contract; and</p> <p>c) is provided with the information set out below in a clear, comprehensible, prominent and accurate manner in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:</p> <p>(i) the identity of the legal entity the Customer is contracting with; its</p>

		<p>service sufficient to enable the customer to understand the option that the customer has chosen, and how it works;</p> <ul style="list-style-type: none"> • information about the major elements of the service, including the cost of any standing charges, the payment terms, line rental, key call types and details of "protected or special support" arrangements; • the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision. Where there may be significant delay in the likely date of provision, the Customer to be informed; • the existence of a right of cancellation, the duration of the switchover period during which time that right may be exercised and the process for exercising it; • the period for which the charges remain valid; and • any minimum period of contract, and minimum contract charges, and any early termination charges, if applicable any." 	<p>address; and telephone, fax and/or e-mail contact details;</p> <p>(ii) a description of the Fixed-Line Telecommunications Service; the key charges, including minimum contract charges, and any early termination charges, if applicable; payment terms; the existence of any termination right, including termination procedures; the likely date of the Fixed-Line Telecommunications Service will be provided; and any minimum period of contract;</p> <p><u>(iii) the possibility of existing contractual liabilities arising on terminating any arrangement with their existing Communications Provider(s);</u> and</p> <p>(iv) the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision of the service.</p>
3	Post sales information	<p>"6.11 Providers to send a mandatory letter in accordance with the industry-agreed process informing the customer of the details of the transfer, and the following to be clearly communicated:</p> <ul style="list-style-type: none"> • date of notification; • CLI(s) affected; • list of services affected/unaffected, e.g. IA call barring; • date of switchover; • the sender's contacts details for any queries. <p>6.12 The notification will be by letter although may be sent electronically where Customers have initiated contact by applying online, and have confirmed online that they wish all future correspondence to be sent electronically. Otherwise Customers</p>	<p>"24.7 Where the Customer enters into a Contract for a Fixed-Line Telecommunications Service, the Gaining Communications Provider and the Losing Communications Provider must each send the Customer a letter, within three Working Days of receiving notification that the customer is transferring their Fixed-Line Telecommunications Service, in paper or another Durable Medium, which clearly sets out, as appropriate:</p> <ul style="list-style-type: none"> (i) the date of the letter; (ii) the Calling Line Identification of [all Electronic Communications Services] which are affected; (iii) the list of services affected/unaffected; (iv) the proposed switchover date; (v) relevant contact details;

		would need to positively request by written correspondence that information be sent electronically."	<p>(vi) the right to terminate the Contract, the means by which the right to terminate can be exercised and the date by which the right to terminate must be exercised; and</p> <p><u>(vii) the possibility of existing contractual liabilities arising on terminating any arrangement with their existing Communications Provider(s).</u></p> <p>24.8 The letter must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically."</p>
4	Customer's termination rights	"6.10 Customers to be permitted to cancel orders and terminate contracts by telephone, in writing, by fax or by e-mail."	<p>"24.9 When the Customer enters into a Contract to transfer a Fixed Line Telecommunications Service the Gaining Communications Provider must allow the Customer to terminate the Contract within 10 Working Days of entering into that Contract without charge or any other form of compensation being required to be given by the Customer to the Gaining Communications Provider.</p> <p>24.10 The Gaining Communications Provider must have procedures for the Customer to exercise their right to terminate their Contract pursuant to General Condition 24.9 without unreasonable effort or expense as to the procedure to be followed, including the ability to contact the Gaining Communications Provider to terminate the Contract <u>by two or more</u> of the following contact methods:</p> <p>(i) telephone numbers;</p> <p>(ii) e-mail address; and</p> <p>(iii) postal address."</p>
5	Records retention	"5.10 Sales and marketing campaign records to be maintained for six months, including the date and the approximate time of the contact with the Customer. Records to be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query."	"24.11 The Gaining Communications Provider must use reasonable endeavours to create and keep all records regarding the sale of its Fixed-Line Telecommunications Service, <u>Including voice recordings of relevant telephone contact with the Customer</u> , for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place where the

			<p>Contract was entered into, where relevant, and be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.</p> <p>24.12 The Gaining Communications Provider must provide the records referred to in General Condition 24.11 on request to Ofcom."</p>
6	Publication of relevant obligations	<p>"14.6 The Code of Practice for Sales and Marketing shall be drafted in plain English which is easy to understand, and copies of it shall be provided on request and free of charge to any Domestic and Small Business Customer, and be prominently available on the Communications Provider's public website."</p>	<p>"24.5 The Communications Provider must publish:</p> <p>a) a comprehensive summary of its obligations under this General Condition in an easily accessible and reasonably prominent manner on its website or, where there is no such website, by making it available in its registered office during normal office hours for inspection free of charge by members of the general public; and</p> <p>b) provide a copy of this General Condition to the Customer free of charge upon reasonable request."</p>
7	Training	<p>"4.1 Appropriate procedures to be set up for the selection of staff involved with direct contact with customers for the purposes of sales and marketing activity.</p> <p>4.2 CPs to be responsible for ensuring that sub-contractors (third party agencies) also set up equivalent selection procedures. For the avoidance of doubt, third party agencies shall not include resellers to whom telephony services are sold on a wholesale basis.</p> <p>4.3 Whilst operating within current employment legislation, recruitment of sales staff to have regard to:</p> <ul style="list-style-type: none"> • behaviour and appearance, recognising that the sales person may be seen as the "public face" of the industry; • security – references and relevant convictions for criminal offences to be checked and taken into account; • evidence of mis-selling or lack of integrity in any previous selling 	<p>"24.13 The Communications Provider must ensure that all staff involved in direct contact with Customers for the purpose of sales and marketing activity and/or cancellations are appropriately trained to comply with this General Condition."</p>

		<p>employment.</p> <p>4.4 The following requirements related to sales staff based in the UK to be observed:</p> <ul style="list-style-type: none"> • the applicant must provide proof of National Insurance number, proof of address and two references; • referees cannot be related to the applicant; • business referees must not both be from the same company; • if a sales person leaves for any reason a copy of his or her sales records (including all recordings and notes on sales) will be retained for a minimum period of six months; • reasonable endeavours to be made to retrieve the identification badges of staff leaving the company. <p>4.5 For sales-staff not based in the UK, equivalent procedures to be applied, and documented.</p> <p>4.6 CPs to satisfy themselves that they have taken reasonable steps to ensure that every such person is trained so as to have a sufficient understanding that any relevant advice given by such person is not misleading.</p> <p>Topics covered to include:</p> <ul style="list-style-type: none"> • arrangements for competition in the supply of telecommunications in the UK; • the different telephone options provided by the company and how these differ from other competitive telecoms products (which may or may not be offered by the company); for example, IA, CPS, WLR or Wholesale Calls; • the process for ordering the telephone service; • the relevant principles of consumer protection law; • the prices charged by the employing company and its other 	
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8	Monitoring	<p>"8.1 Providers to carry out regular audits of systems, procedures and documentation to ensure that they are acting compliantly with all aspects of the Code."</p>	<p>"24.14 The Communications Provider must monitor, including conducting regular audits, its compliance with this General Condition, including compliance on its behalf by any representatives or sales agency engaged by it, and take appropriate steps to prevent the recurrence of any problem(s) identified."</p>
9	Cancel Other process - proper use	<p>"BT shall only be permitted to use Cancel Other in the following circumstances:</p> <p>a) where a request for CPS and/or WLR has been made without the Customer's express knowledge and consent ("Slamming"), that is, in the following circumstances:</p> <p>i. where the Customer has never been contacted by the Gaining Provider;</p> <p>ii. where a Customer has been contacted by Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of his telephone calls and/or line rental to the Gaining Provider;</p> <p>iii. where the Customer has agreed to purchase a product or service from the Gaining Provider and the Gaining Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or</p>	<p><u>"24.15 The Losing Communications Provider shall only be permitted to use Cancel Other in the following circumstances:</u></p> <p><u>(a) where a request for CPS, WLR and/or LLU has been made without the Customer's express knowledge and/or consent ("Slamming"), that is, in the following circumstances:</u></p> <p><u>(i) where the Customer has never been contacted by the Gaining Communications Provider;</u></p> <p><u>(ii) where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;</u></p> <p><u>(iii) where the Customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has</u></p>

		<p>iv. where the Customer has agreed to transfer some or all of his telephone calls and/or line rental to the Gaining Provider having understood, as a result of a deliberate attempt by the Gaining Provider to mislead, that he is making an agreement with a different communications provider;</p> <p>b) at a Customer's request, where the Gaining Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");</p> <p>c) where the telephone line is ceased during the Transfer Period ("Line Cease");</p> <p>d) for other specified reasons not related to a Customer's request to BT to cancel a transfer, and agreed by the CPS and WLR Service Providers Forum (the "SPF");</p>	<p><u>submitted a request for a different product or service which the Customer has not agreed to purchase; or</u></p> <p><u>(iv) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider;</u></p> <p><u>(b) at the Customer's request, where the Gaining Communications Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");</u></p> <p><u>(c) where the telephone line is ceased during the Transfer Period ("Line Cease");</u></p> <p><u>(d) for other specified reasons not related to a Customer's request to cancel a transfer, and agreed by the relevant industry forum and approved by Ofcom; and</u></p> <p><u>(e) in such other circumstances as defined by Ofcom."</u></p>
10	Cancel Other process - records retention and transparency obligations	<p>"2. Before using Cancel Other in cases of Slamming and/or Failure to Cancel, BT shall take reasonable steps to ensure that Slamming and/or Failure to Cancel has actually taken place;</p> <p>3. After using Cancel Other, BT shall confirm the cancellation of the CPS and/or WLR order in writing to the Customer, unless this is not possible or appropriate, including where the customer is deceased;</p> <p>4. Where a Customer is the subject of Cancel Other, BT shall keep a record of all contact made with that Customer during the Transfer Period where such contact relates to BT's use of Cancel Other and BT shall retain such records for a period of at least six months;</p> <p>5. Subject to paragraph 4 above, BT</p>	<p><u>"24.16 Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Communications Provider shall take reasonable steps to ensure that Slamming and/or Failure to Cancel has actually taken place.</u></p> <p><u>24.17 After using Cancel Other, the Losing Communications Provider shall confirm the cancellation of the order in writing to the Customer, unless this is not possible or appropriate, including where the customer is deceased.</u></p> <p><u>24.18. Where a Customer order is cancelled using Cancel Other, the Losing Communications Provider must use reasonable endeavours to retain all contacts regarding the use of Cancel Other of the Fixed-Line Telecommunications Service, including voice recordings of</u></p>

		<p>shall provide, within 15 working days of a reasonable request by a Gaining Provider, save in exceptional circumstances, the following information (in relation to that Gaining Provider):</p> <ul style="list-style-type: none"> • a randomly selected representative sample, covering a period of one month, of the records of contact between BT and a Customer, where such contact relates to BT's use of Cancel Other, in instances of Slamming and/or Failure to Cancel. Such BT's use of Cancel Other records shall include recordings of Customer-initiated calls to BT where available; and • all records of any contact between BT and an individual Customer specified by the Gaining Provider, where such contact relates to BT's use of Cancel Other, in instances of Slamming and/or Failure to Cancel. Such records shall include recordings of Customer-initiated calls to BT where available;" 	<p><u>relevant telephone contact with the Customer, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer and be such as to allow subsequent identification of the person(s) involved and to assist in dealing with any complaint or query.</u></p>
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Annex 10

Glossary

Act: means the Communications Act 2003

Broadband: a service or connection which is capable of supporting ‘always-on’ services which provide the end-user with high data transfer speeds.

BT: British Telecommunications plc.

Cable Network: means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable.

Cancel Other: is the industry term for a functionality that enables the Provider losing the customer to cancel wholesale orders (during the switchover period) placed by an alternative Provider where slamming has been alleged by the customer.

Communications Provider: a person who provides an Electronic Communications Network or provides an Electronic Communications Service, as defined in the Act.

Carrier Pre-Selection: means a facility which allows a Subscriber to whom a Publicly Available Telephone Service is provided by means of a Public Telephone Network to select which Pre-selected Provider of such Services provided wholly or partly by means of that Network is the Pre-selected Provider he wishes to use to carry his calls by designating in advance the selection that is to apply on every occasion when there has been no selection of Provider by use of a Telephone Number.

Early Termination Charge: a charge for consumers who terminate their contract before the end of any Minimum Contract Period (or Subsequent Minimum Contract Period).

Fixed-line Telecommunications Services: means Narrowband call and/or line rental services provided to Domestic and Small Business Customers.

Full LLU” means services where the provision of access to the copper wires from the customer premises to a BT exchange allows a competing provider to provide the customer with both voice and data services over such copper wires.

Gaining Communications Provider: Provider to whom the customer is transferring.

General Conditions of Entitlement: a set of regulations that apply to anyone who provides an electronic communication service or an electronic communications network.

Inappropriate save: relates to inappropriate activity on the part of the CP to retain their customer and is contrary to General Condition 1.2.

Local loop: The access network connection between the customer’s premises and the local serving exchange, usually comprised of two copper wires twisted together.

Local Loop Unbundling (LLU): a process by which a dominant provider’s local loops are physically disconnected from its network and connected to a competing provider’s networks. This enables Communications Providers other than the incumbent to use the local loop to provide services including broadband to end users.

Losing Communications Provider: Provider from whom the customer is transferring.

Migration Authorisation Code (MAC): a unique code that a customer obtains from the losing broadband service provider and gives to the gaining provider, that allows the service to be transferred from an existing service provider seamlessly and with little or no disruption of service.

Minimum contract period: a minimum (fixed-term) contractual period set at the start of a contract (often for 12 to 18 months).

Narrowband: means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network.

Notification of Transfer ('NoT') process: is the switching process used for fixed-line telecommunications services. It works on the basis of consumers only having to contact their gaining CP in order to switch, and being well informed of an impending switch before it happens (through receipt of letters) and a 10-day switchover period

Ofcom: Office of Communications. The regulator for the communications industries, created by the Office of Communications Act 2002.

OAT (Ofcom Advisory Team): the team within Ofcom responsible for dealing with complaints and enquiries from members of the public.

Openreach: BT's access services division.

Portability Authorisation Code: a unique code that a customer obtains from the losing mobile service provider and gives to the gaining provider, that allows the customer number to be transferred from the losing provider.

Public Telephone Network: means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data.

PSTN: Public Switched Telephone Network.

Save: means marketing activity which is undertaken by the losing Communications Provider during the switchover period in an attempt to persuade the customer not to switch to a new Communications Provider.

Slamming: where a customer is switched from one provider to another without the express knowledge and consent of that customer.

Switchover period: the period before a customer's order can be activated.

Wholesale Line Rental: a facility by which BT provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) on the BT.