

## Consumer Forum for Communications: response to Ofcom switching consultation

The Consumer Forum for Communications (CFC) is an informal group of organisations and individuals who are interested in influencing communications policy decisions from a consumer viewpoint. With support from Ofcom, members share information and views on such issues, both remotely and at quarterly meetings.

This response has been prepared on behalf of the Consumer Forum for Communications by Claire Milne and Linda Lennard. It reflects discussion at and after a stakeholder workshop held at Ofcom on 25 April 2012. The following organisations have contributed to the discussion and broadly support the response: AgeUK, Broadbandchoices.co.uk, Citizens Advice, Communications Consumer Panel, Communications Management Association, Consumer Focus, Which?. All members of the Consumer Forum for Communications have had the opportunity to contribute.

CFC members welcome Ofcom's latest proposals to introduce a unified Gaining Provider Led (GPL) switching process for all services provided to consumers over BT's Openreach copper infrastructure. We also welcome the stress on maximising consumer benefit that has led to the proposals for a Third Party Verification (TPV) system. Our views are explained in more detail below in answer to Ofcom's specific questions addressed to consumers.

We highlight the following points:

- **These proposals have been too long already in the making, and we are concerned about how much longer they are likely to take to come to fruition.** Clearly there is a fundamental difficulty in introducing new systems successfully, when their implementation depends on the co-operation of market players, not all of whom feel that they stand to gain from the new system. Realising the proposals may require fundamental change in market structure, such as Openreach being fully separated from the rest of BT.
- **We favour a GPL solution for a range of reasons:**
  - We agree with Ofcom on the wider competitive implications of minimising reactive save activity.
  - We see GPL as providing greater simplicity for consumers, by requiring them to contact only one provider in order to switch.
  - We note the prevalence of GPL systems elsewhere in Europe, which means that any harmonisation will observe the GPL principle; it also points to a widespread belief that GPL systems are better than Losing Provider Led (LPL) systems.
  - We are not persuaded that LPL solutions are better for enabling consumers to understand the implications of switching.
  - We see slamming as a serious problem which must be addressed by a variety of measures, but feel that reducing slamming (as LPL systems may do) should not be allowed to drive the approach to switching.
- The new switching arrangements are only one aspect of what is needed to make switching easy for consumers. Other essential elements are:
  - **Fully transparent and comparable market offers** from all players. The Broadband Speeds Code of Practice is a small step in the right direction, but much more is needed to help people to make good switching decisions in the first place. We refer here to the remarks and recommendations of the Independent Banking Commission on switching bank accounts; relevant extracts from their report are reproduced in the Annex.

- **Protection from mis-selling** (of which slamming – switching without the consumer's knowledge or consent - is an extreme form). This has to be addressed by a combination of methods, including stronger enforcement of existing rules.
- All three elements – switching arrangements, consumer information and protection against mis-selling – must work smoothly in tandem. If progress is made soon on the second two elements, this could reduce the burden on switching arrangements in coming years.
- We ask Ofcom to consider seriously promoting as industry good practice, or even ultimately requiring, **an initial period of service during which customers would be entitled to switch away from their new provider without penalty**<sup>1</sup>. This should provide a strong disincentive to all types of mis-selling, as well as a remedy for late-detected slamming. It could be thought of as an extended cooling-off period, which by including a period with the new provider enables an informed decision to be made. All communications services are experience goods, so cannot be fully understood in advance. An interesting possibility is to permit gaining providers to split the proposed 10 days of cooling off between pre-and post-switch – this could lead to competition to offer customers faster switching and longer trial periods.

*Question 5: Do you agree with our assessment of problem 1: multiple switching processes? If not please explain why you disagree..*

We agree there is a problem here, which gets more serious with time as more consumers have different services and bundles. We also agree that enhancing current processes (Options 1a and 1b) does not address this problem, while any of the harmonised processes does. The solution must also eventually encompass mobile, cable and currently unforeseen services. While in principle any harmonised process ought to be able to do this, for it to happen in practice the process must be designed with such future flexibility in mind.

*Question 7: Do you agree with our assessment of problem 2: Back end systems deficiencies? If not please state why you disagree.*

We have observed all the consumer and competitive difficulties referred to here, and again we agree that without new, harmonised systems the difficulties are only likely to get worse. We have not been able to study the different harmonised options in enough detail to be able to comment on Ofcom's views on their relative performance in this respect.

*Question 8: Do you have evidence to suggest that the incidence of slamming has changed significantly? Please provide any evidence you have to support your views.*

We do not have independent quantitative evidence. These figures do seem very high – it seems that misconduct and mistakes may now be more prevalent as a proportion of switches, partly because switching itself has declined. The 2007 Mott MacDonald/Schema report from the last mis-selling consultation<sup>2</sup> is probably still a useful source. It draws attention to the variety of forms that mis-selling and slamming can take, with customer error, process faults and losing provider errors all contributing significantly to the overall problems.

<sup>1</sup> This is already being done to some extent in the mobile market, where coverage may need testing. We envisage that customers would be liable to pay normal rental and usage charges for this initial period, and if not continuing with the service, they would naturally need to return or pay for any equipment supplied; but they would not be subject to early termination charges or any other penalty for deciding not to continue.

<sup>2</sup> Investigation into reported levels of telecoms mis-selling and slamming, Final report to Ofcom, <http://stakeholders.ofcom.org.uk/binaries/consultations/missellingprotection/statement/report.pdf>

*Question 9: Is there further action you think could be taken to help tackle slamming (e.g. preventative measures to stop it from occurring or enforcement activities after it has happened to act as a deterrent) under the existing processes? Please explain your answer.*

The Mott Macdonald/Schema report referenced above underlines the complexity of the slamming phenomenon. The report divides slamming into four levels (alongside another five types of related problems):

Level 1 slams – No contact with GP and no contract made

Level 2 slams – Contact with GP and no contract made

Level 3 slams – Misrepresentation

Level 4 slams – Customer agreed contract initially, but changed mind in cooling-off period; GP failed to cancel

In 2007 the first two levels dominated; however, given that Ofcom is uncertain about the current total, we must assume even greater uncertainty about how the total is currently made up. Different preventative measures are likely to be more effective in different cases; and success in preventing one kind of slam or other poor sales practice may have the side effect of channelling more energy into alternatives. A suite of preventative measures is needed, along with flexible responses from Ofcom to changing market conditions. We see no reason to dismiss stronger record-keeping requirements as one part of the suite.

But even if one in four switches is a slam, it seems a pity to slow down the other three if the slam can be prevented in another way. In this dynamic market, ten days will increasingly seem a long time to wait for something which people will believe can be done almost instantly (for example, the one working day limit for mobile number portability will influence expectations). It must be better, if possible, to identify and address the causes of slamming, such as sales staff incentive structures. As an enhancement to the proposed TPV system, a callback to the number to be switched could be considered when the initial call is not from that number, or where there are grounds for suspicion of slamming or mis-selling. In any case, there must be procedures for swift and free (to the victim) reinstatement with the original provider once slamming is known to have happened – which may take some time, eg until the first payment to the new provider.

We note with interest BEREC's switching case study on Belgium<sup>3</sup>, which states:

*The Belgian Telecoms Act gives BIPT greater powers of enforcement and, in particular, extends the remedies available to the NRA when enforcing mis-selling rules. One of the most notable provisions permits the NRA to issue a fixed penalty notice of €750 to the guilty provider in a case of mis-selling/slamming. It is also worth noting that the consumer is entitled to a full refund as a means of compensating them for the harm caused."*

We note that the 2008 Deloitte Touche report on switching arrangements<sup>4</sup> also mentioned financial compensation for wronged consumers, and/or financial incentives for good CP behaviour, and do not know why this approach has not been pursued. We suggest that Ofcom should add it to their armoury of regulatory interventions, or seek additional powers to do so if necessary.

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<sup>3</sup> BEREC Report on Best Practices to Facilitate Consumer Switching, BoR (10) 34 Rev 1, October 2010 (p. 65).

<sup>4</sup> Costs and timelines for moving to a single migrations process for transferable broadband and voice products, Deloitte and Touche, January 2008, at <http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/mobile/deloitte.pdf>

*Question 17: Do you think strengthening record keeping obligations for consent validation would increase protection against slamming? Would this be adequate to safeguard consumers now and in the future? Please explain your answer and provide any supporting evidence.*

Covered by previous question and answer.

*Question 10: Do you think it would be more appropriate to introduce stronger upfront consumer protections within the switching process or continue with the current reliance on enforcement to tackle slamming? Please explain your answer.*

We appreciate the intention of the TPV proposal to validate consumers' switching intentions. The proposed procedure should reduce certain forms of slamming and mis-selling. However, it does not appear to require authentication of the consumer involved in the call; if this is so, it would be ineffective against fraudulent or malicious switching, and against consumer-related error (eg differing ideas within a household).

We note that Ofcom will be consulting further on implementation details and look forward to engaging on the all-round best arrangements for consumer empowerment and protection.

*Question 11: Do you agree with our assessment of Problem 3: Insufficient customer consent? If not, please explain why you disagree.*

Covered by previous question and answer.

*Question 12: Do you agree with our assessment of Problem 4: Lack of awareness of the implications of switching? If not, please explain why you disagree.*

We agree there is a problem here, but see it more broadly than the way it is presented in the document. Consumers need to know not only what they may lose by switching away from their LP, but how this compares with what they stand to gain from their potential GP. Therefore we do not agree that even in this respect a LPL process is preferable.

We believe that customers should be able to understand the implications of switching **before** they decide to switch, not only during the switching process. This may be hard to achieve fully, with increasingly complex terms and conditions from both losing and gaining providers; but the losing provider's Early Termination Charges will often be the main factor, and this can and should be dealt with in bills or online account information.

A full answer to the question of what would actually be lost in a switch would require an improbable level of co-operation between losing and gaining providers (though standardised presentation of offers, which the BEREC report points out are a main request of consumers to facilitate switching, would help). Certainly, losing providers cannot answer this question – the best they could do is to explain to the customer exactly what services are included in the current package.

In order to provide such an explanation, the LP's agents are presumably accessing the customer's records on a company database, so it is not clear why this information too cannot be available in bills or presented in online account information. General principles of transparency suggest that it should be easily available. A further point worth noting is that LP personnel asked by a potential switcher for details of this kind will inevitably feel tempted to stray into sales mode, and some will succumb – with adverse consequences for competition.

Overall, the best way to deal with this difficulty may be a penalty-free post-switch period with the new provider. Only then will the customer be in a position to make a full valid comparison of the new package with the old. In any case, informed switching decisions would be much assisted by improved levels of transparency and comparability for all providers' offers. It is certainly not clear that LPL processes deal with the problem significantly better than GPL processes.

*Question 13: Do you agree with our assessment of Problem 5 Unnecessary switching costs/hassle? If not, please explain why.*

We agree with the importance of keeping processes simple, as has already been discussed under problems 1 and 2 above. This factor alone is enough for us to favour GPL processes over LPL processes, as the latter require the consumer to contact both LP and GP while the former require the consumer to contact only the GP (even if many also choose to contact their LP). The processes are obviously difficult for providers' customer-facing staff as well as for customers themselves, and even with the best intentions from all concerned there is ample scope for confusion.

*Question 14: Are there any other key problems with the existing Notification of Transfer and Migration Authorisation Code processes that we have not identified? Please provide evidence to support your answer.*

Ofcom seems to have identified the main process-related problems. As already mentioned, we strongly urge Ofcom to broaden its vision to encompass consumer information as well as switching processes. As the Independent Commission on Banking (ICB) commented in relation to current bank accounts,

"Improving the switching process alone will not necessarily lead to more effective switching: transparency must also be improved so that customers can identify the products that best suit their needs..."

While banking and telecommunications obviously have significant differences, all the specific suggestions made by the ICB in paragraphs 8.71 and 8.74 of their full recommendations (reproduced for convenience in the annex to this response) seem to be relevant to telecommunications, and we urge Ofcom to consider them. If it finds them inapplicable, we should like to understand why this is so.

*Question 18: Do you think that the introduction of a requirement to include specific information about early termination charges (ETC) and/or minimum contract periods (MCPs) in bills should form part of the enhancements to the current NoT process? What are the likely costs and benefits of such an approach? Please provide any evidence to support your answer.*

This sounds like a sensible requirement, in the general interests of transparency, whatever else is done. To help people assess their switching options, every bill (and the online account, if one exists) should include the contract start and end dates (at minimum length), early termination provisions and the current ETC, or the method for calculating it. This should be a very low cost measure.

Useful examples are available from the energy sector in this regard. For example, Ofgem is proposing to standardise certain elements of bills, annual statements and price increase notification letters (as part of the proposals emanating from Ofgem's recent Retail Market Review). These include proposals for requirements to use consistent wording for the key information provided across the industry; and to provide a standardised summary box which should include applicable

termination fees and end date for fixed term period where relevant, (as well as information about tariffs and energy consumption).

Ofcom could also consider requiring providers to issue an annual statement to their customers with information about the services provided and the principal terms and conditions, including any discounts and introductory offers, fixed terms and termination charges. Again a precedent for this exists in the energy sector. Ofgem's recent consultation on its Retail Market Review stated that the annual statement is seen as a critical tool to help consumers to engage with the market (*The Retail Market Review: Domestic Proposals*, Ofgem, 2011). Ofgem also emphasised the importance of ensuring that relevant key information is presented clearly and in one place, and separate from other types of correspondence.

*Question 23: Are there any particular data protection and/or privacy related issues that you think would need to be considered under the GPL TxC and/or the GPL TPV options? Are these issues likely to be significantly different to the issues that need to be considered under the current processes? Please explain your answer.*

We are unclear what measures can ensure that the data are not used for marketing purposes, nor what level of confidence there will be in their accuracy. As has been pointed out, Communication Providers have a built-in incentive not to keep a central database updated. The UK industry's failure to implement a central database for number portability does not lead one to expect rapid progress towards a central switching database.

*Question 24: Are there circumstances in which you can envisage that consumers would be likely to be distressed and/or harmed by the sharing of their personal data as required under the GPL TxC and/or the GPL TPV options? Do you think that consumers will object to the sharing of their data in this way? Please explain your answer.*

Please see answer to previous question.

*Question 41: Do you agree with our assessment that the TPV option should be preferred to the USN option. If not, please provide your reasoning.*

The short summary referred to merely states Ofcom's conclusions; we have not been able to explore the GPL options sufficiently to be able to comment in depth on their relative merits. As already mentioned, we are concerned that the TPV system currently proposed does not authenticate customers' information.

Whatever system is adopted must allow for consumers' varied communications needs. A range of barriers can prevent consumers from engaging fully with communications markets and services and hinder switching processes. These include communications systems and interfaces that involve long menus and/or are costly to access, and over-reliance on online methods which exclude those without internet access.

Similarly information may be presented in ways that do not take account of the range of consumer needs, such as those of people with sight loss or other impairments. Other examples include poorly designed or operated call centres which may present difficulties for people with hearing or speech impairments; and requirements to input reference numbers or security codes before being able to speak to an adviser which can, for example, disadvantage consumers with dexterity or memory problems.

It is critical to ensure that consumer information and consumer contacts with providers and other relevant organisations, such as the Third Party Verification body, meet the range of people's needs and do not present unnecessary barriers. Information on terms and conditions should be freely and easily available in a wide range of formats. Similarly communications systems should operate in ways that are inclusive and meet consumers' needs, including those of people with physical and/or sensory impairments.

It would also potentially be useful for Ofcom to consider introducing Standards of Conduct for communications providers. For example, Ofgem is currently proposing to introduce stronger and broader Standards of Conduct (SOCs) for the major energy suppliers which would apply to all interactions between suppliers and consumers. Ofgem is also proposing to make these Standards legally binding by incorporating them into an overarching, enforceable licence condition (*The Retail Market Review: Domestic Proposals*, Ofgem, 2011).

More broadly Ofcom should encourage communications providers and other organisations, such as the proposed Third Party Verification body, to adopt and implement the BSI standard *BS 18477:2010 Inclusive service provision. Requirements for identifying and responding to consumer vulnerability*, which is designed to be used alongside existing policies to help organisations better understand vulnerability and to deal with consumers in a fair way.

*Question 44: Do you have any other comments on our option assessment?*

It is worth noting that the BEREC report already quoted shows that the great majority of switching processes elsewhere in the EU are of the GPL variety. This further supports a GPL solution, in two ways:

- GPL is a more natural switching process design; our current LPL processes largely result from historical accident, and have little merit beyond the fact that they exist, plus a sectional benefit to certain CPs.
- Any European harmonisation of switching processes will be towards GPL solutions.

## Annex

### Switching bank accounts: extracts<sup>5</sup> from the final report of the Independent Commission on Banking<sup>6</sup>

#### Summary of recommendations on switching and transparency

6.18 The consultation on the Interim Report has indicated that a greatly improved switching system can be introduced without undue cost<sup>7</sup>. The Commission therefore recommends the early introduction of a redirection service for personal and small business current accounts which, among other things, provides seamless redirection for more than a year, catches all credits to and debits from the old account, and is free of risk and cost to customers. This should boost confidence in the ease of switching and, together with greater transparency, enhance the competitive pressure exerted on banks through customer choice. The Commission has considered recommending account number portability. It appears that redirection may deliver many of the benefits of account number portability at lower cost. However, this should be reevaluated in future.

6.19 Improving the switching process alone will not necessarily lead to more effective switching: transparency must also be improved so that customers can identify the products that best suit their needs, forcing banks to offer the prices and services that customers seek. Therefore, the Commission recommends that interest foregone is included on customers' annual statements, and that the FCA<sup>8</sup> takes further action to require transparency in future, such as making account usage information available to consumers electronically, or requiring that product ranges include a standardised option comparable across the industry.

#### Full recommendations on transparency

8.71 The Commission views transparency and comparability of PCAs and BCAs<sup>9</sup> as a crucial counterpart to improving the switching process: improving the technicalities of switching alone will not lead to an increase in competition unless customers can identify the best account to switch to. The OFT, and the FCA once it has been established, should work with the banks to improve transparency across all retail banking products, and in particular for PCAs and BCAs. Banks should provide data on the cost of their services (including before and after any introductory period) for a sample of representative customer profiles to demonstrate potential costs, and should provide price information in an accessible form in response to any reasonable request from a price comparison site.

8.72 As a first step, the Commission recommends that interest foregone relative to the Bank of England base rate should be incorporated into the annual statements that are currently being introduced in response to the OFT's initiatives on PCAs. Providing transparency on foregone interest is important for two reasons: it will make customers conscious of the overall cost of their account, enabling them to judge whether they are receiving sufficient benefits for that price; and in addition, it will allow free-if-incredit current accounts to be compared to accounts that charge a management

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<sup>5</sup> Original footnotes have been omitted; those here are added by the current author.

<sup>6</sup> Available from <http://bankingcommission.independent.gov.uk/>

<sup>7</sup> Paragraph 8.55 says: "Preliminary discussions with the Payments Council suggest that these costs could be in the order of £650mn to £850mn."

<sup>8</sup> Financial Conduct Authority (yet to be established)

<sup>9</sup> Personal Current Accounts and Business Current Accounts

fee but also pay higher rates of interest, encouraging a greater diversity of transparent pricing models. In the current low interest rate environment, interest foregone will appear low, but this will change as the base rate normalises.

8.73 The FCA should carry out customer research to identify the best way to present foregone interest on bank statements, and should require banks to provide this information in the standardised way it identifies. Foregone interest should appear on bank statements as soon as possible, and in any event no later than January 2013. This is a low-cost measure that will provide useful additional information to enable customers to understand pricing structures better.

8.74 In addition, once the OFT's current transparency remedies have been implemented, the Commission recommends that the FCA consider the following options for improving transparency further.

- Full account usage information from at least the previous 12 months could be made available in electronic form, allowing the development of price comparison models that could identify the optimal current account based on the customer's actual transaction history. For example, the customer could upload their data to a comparison site, which would provide a tailored response showing which products would best suit their situation. This could potentially be done as part of the Government's 'mydata' project. This idea received strong support from consumer groups that responded to the Interim Report.
- The FCA could consider how the complexity and number of price tariffs could be rendered more easily manageable. For example, in some industries, suppliers are required to include in their product range one 'vanilla' product type with standardised characteristics that can be compared across the industry. In this case, competition would take place on a small number of price variables easily understood and comparable by consumers.
- As well as standardised, comparable current accounts, the FCA could consider requiring that SME credit product ranges also include a 'vanilla' product based on a reasonably small number of standardised variables, to allow intermediaries or price comparison sites to search across banks to identify the best price.
- The FCA and/or Money Advice Service could create a price comparison tool to assess the key features of current accounts and show which had the lowest annual cost for a customer with a particular set of characteristics. This could provide a template for private sector providers to improve their service in this area. As price comparison sites gain prominence in consumer decision making in financial areas, the FCA should consider a code of practice or a kite-mark scheme to ensure that these sites are providing independent objective advice to consumers.
- Comparison tools could also be developed to take into account non-price characteristics of banking products. The FCA could develop a standard questionnaire addressing non-price attributes of current account providers. One tool in this area is being developed by FairBanking, who provided evidence to the Commission on their research to develop a kite-mark indicator for banking products that contribute to 'financial well-being'. The Government and/or FCA could consider supporting the development of such tools.