

Consumer Switching:

Further proposals to reform switching of mobile services

16 September 2016

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Ombudsman Services' (OS) consultation response

General Comments

OS welcomes the opportunity to respond to this consultation. Specific information about OS can be found at Annex A, at the end of this document.

In general terms, OS supports Ofcom's proposals to modify the General Conditions of Entitlement and require mobile providers not to apply charges for any notice period beyond the date a consumer switches provider.

OS believes the modification is justified in circumstances where a consumer either (i) switches via the existing PAC process or (ii) switches via the extended formal switching process Ofcom proposed in March 2016.

We note Ofcom's conclusion that the risk of incurring "double charges" during a notice period may put consumers off from switching. In our view this concern is likely a minor one amongst several that, collectively, might add to a perception that switching is burdensome.

Other factors include concerns that a new supplier may provide poor network coverage, worries about losing a pre-existing number or being without it for a period of time, or a feeling that switching entails completing onerous paperwork or having to set up new banking instructions with a new provider.

Our research suggests that general consumer dissatisfaction might also contribute to apathy about switching. Communications services (encompassing mobile telephone, landline and broadband services) are the second most complained about goods and

services in the United Kingdom (accounting for 16% of all complaints).¹ In our view, it is possible consumers may avoid switching, concluding it is more trouble than its worth, especially if they have previously had bad experiences with communications providers.

In summary, OS welcomes the proposed changes as part of a wider range of actions by Ofcom to prompt further consumer engagement with the market.

Responses to the consultation questions

Q1 Do you agree that notice period requirements can give rise to difficulties and deterrents when consumers seek to switch? In particular do you agree that these are likely to include; unwanted double payments; difficulties coordinating the switch; and a deterrent to consumers who might otherwise have chosen to switch?

OS agrees that existing notice period requirements could potentially give rise to the difficulties described.

OS's complaints data indicates that very few consumers actually raise complaints about the switching process.

Over the five month period from 1 April to 31 August 2016 OS opened new 1,700 complaints about mobile phones. Of these a very small number – just 28 (1.65%) – pertained to problems with switching processes, specifically.

No consumers at all complained about incurring double payments during the notice period when switching. This is unsurprising given that such payments are currently not prohibited. We therefore presume consumers either expect to incur such charges or take steps to avoid them. It is, of course, possible consumers may simply decide not to switch at all in order to avoid such charges.

¹ Ombudsman Services' Consumer Action Monitor Report, January 2016, https://www.ombudsman-services.org/downloads/CAM2016_report.pdf

Of the switching complaints that were brought to our attention, the most prevalent problems related to loss of a pre-existing mobile number or the delayed transfer of existing mobile number. Anecdotally, we presume concerns of this happening would be a significant disincentive for some consumers, for example, those who use a mobile for work purposes. However, we must stress, our records indicate it is incredibly rare that consumers experience such difficulties when switching suppliers.

Q2 What is your view regarding the extent to which consumer harm might differ for consumers using the PAC process or C & R arrangements to switch?

In our view, the risk of a consumer incurring “double payments”, and therefore suffering harm, is likely greatest in circumstances where they have made use of either (i) the PAC process, or (ii) an extended switching process akin to the one Ofcom proposed in March 2016.

This is because a consumer who makes use of these processes may have limited say as to when their services will actually transfer. In short, it is more difficult for a consumer to control the switching process.

We also believe that the argument for preventing providers from raising overlapping charges in such circumstances is compelling. This is because there will be a clear continuity of service with no apparent period of overlap.

The case for prohibiting overlapping charges in circumstances where a consumer makes use of the existing C & R arrangements looks to be less compelling. This is because in this scenario there will be no obvious continuity of service. In principle, the consumer could make use of services from both the losing and gaining provider up to the point of termination with the losing provider.

Further, where a consumer does make use of existing C & R provisions, there will generally be more scope for them to proactively manage the process. For example, the consumer will be in a position to give 30 day notice to their existing supplier and arrange with their new supplier to begin to provide services after the period in issue has

expired. We therefore conclude that the potential for inadvertently incurring double charges should be reduced.

Finally, we presume it could be administratively relatively complicated to require losing providers to waive overlapping charges in circumstances where a consumer has used existing C & R arrangements to start services with a new provider (because, on the face of it, there will be no interaction between the two providers).

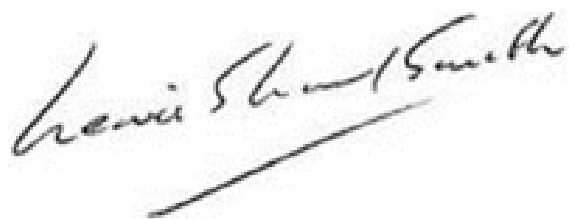
Q3 Do you agree that the removal of charges for notice beyond the switching and porting date is effective and proportionate in addressing the consumer difficulties and costs with switching we have identified?

Yes – In relation to consumers who switch either via the PAC process or via an extended formal switching process akin to the one Ofcom proposed in March 2016.

Q4 Do you agree with our proposal to enhance the two proposals to enhance the two proposed options for switching process reforms set out in the March 2016 consultation – i.e. Automated PAC and Gaining Provider Led – with proposals to remove charges for notice beyond the switching and porting date?

Yes – OS believes the proposals set out within the consultation look to be reasonable. The proposals should provide for smoother switching, ensuring consumers do not incur duplicate charges. The proposals look to have the added benefit of being easily comprehensible to consumers.

OS is happy to discuss its comments in more detail or to provide additional data from its dispute resolution work if it would further assist.



Lewis Shand Smith
Chief Ombudsman

16 September 2016

Annex A - Summary about OS

Established in 2002, The Ombudsman Service Ltd (TOSL) is a not for profit private limited company which runs a number of discrete national ombudsman schemes across a wide range of sectors including communications, energy and property.

We are an independent organisation and help our members to provide independent dispute resolution to their customers. Each scheme is funded by the participating companies under our jurisdiction. Our service is free to consumers and, with the exception of an annual subscription from the former Department of Energy and Climate Change (DECC) now the Department of Business, Energy and Industrial Strategy for the Green Deal, we operate at no expense to the public purse. OS governance ensures that we are independent from the companies that fall under our jurisdiction and participating companies do not exercise any financial or other control over us.

We have in the region of 10,000 participating companies. Last year we received 220,111 initial contacts from complainants and resolved 71,765 complaints. We saw a year on year increase in complaints of 118% between 2013 and 2014 and a further 35% increase between 2014 to 2015. In the energy industry alone we have witnessed a 336% increase in complaint volumes between 2013 and 2015. The company currently employs more than 600 people in Warrington and has a turnover in excess of £27 million.

In July 2015 the EU Alternative Dispute Resolution Directive (the ADR Directive) came into force requiring all member states to ensure that ombudsman or ADR schemes are available in every consumer sector. The former Department for Business Innovation and Skills (BIS) - now known as the Department for Business, Energy and Industrial Strategy, the government department responsible for implementing the ADR Directive in the UK, called upon the market to plug the gaps where no ADR provision existed and to coincide with this in August 2015 we formally launched our new portal (<http://www.consumer-ombudsman.org>). The launch of this website was welcomed by BIS and means that consumers can raise a complaint about a product or service in any sector where there is no existing redress provision - including retail, travel and home improvement.

Our complaints resolution service operates once a company's own complaints handling system has been exhausted, and we have the authority to determine a final resolution to each complaint. Our enquiries department handles primary contacts and makes decisions on eligibility. If a complaint is not for us, or has been brought to us too early, we signpost the consumer and offer assistance. Eligible complaints are then triaged. The simplest can be resolved quickly, usually by phone in two or three hours. Around 10% are dealt with in this way. For the majority of complaints we collect and consider the evidence from both parties, reach a determination and seek agreement; about 55% are settled like this. The most complex cases require a more intensive investigation; they may require more information and lead to further discussion with the complainant and the company to achieve clarification. The outcome will be a formal and binding decision.

Traditionally our key focus has been on handling individual complaints and ensuring that consumers, where appropriate, receive redress. In future we will take a much more proactive role. Firstly, through identifying and tackling issues in individual companies, and making recommendations to improve customer service and complaint handling. Secondly, by identifying systemic industry wide issues and either making recommendations for improvement, or referring them to the appropriate body for action. This will allow us to make a stronger contribution to tackling consumer detriment in the sectors in which we operate, and in addressing emerging problems before they become systemic.

We are 'Good for Consumers and Good for Business'.

For consumers, we offer a free, fast and accessible form of civil justice with no requirement for legal representation or specialist knowledge, and with a particular focus on access for vulnerable consumers. We ensure that complaints are dealt with swiftly in an impartial manner, and we make decisions based on what is fair and reasonable rather than the narrow remit of the law.

For businesses, we offer a fast and low-cost alternative to the courts, and make decisions based on expertise in industries. By looking to resolve disputes, we promote

brand loyalty and repeat purchasing as well as building reputation and trust. We offer guidance on improving standards of service hence sharpening competitiveness. We go beyond individual complaints to find broader trends which can be a source of innovation.

More broadly, we provide an efficient and effective means of addressing consumer detriment and building business capability without recourse to the public purse. We take pressure and cost away from small claims court and legal system and help to build consumer confidence which bolsters the economy.