

### Helping consumers get better deals

Consultation on end-of-contract and annual best tariff notifications, and proposed scope for a review of pricing practices in fixed broadband

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#### **CONSULTATION:**

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#### 1. Overview

Ofcom is tackling harmful practices that make it difficult for consumers to get the best deals. While there are good deals available to many, we are concerned that some customers may be paying too much for communications services. This is because companies choose to charge people different amounts based on whether they are in or out-of-contract, or the length of time they have been with their provider.

We are launching a review **to examine the scale of any harm resulting from pricing practices in the fixed broadband market**, who is affected, and determine whether there are any additional targeted actions we should take to protect broadband customers. This review will have a particular focus on vulnerable people, which may include people who are older, on lower incomes, or who have a physical or mental illness.

This adds to our existing <u>consultation into pricing practices in the mobile sector</u>, which is examining the need for regulation to prevent customers on bundled mobile handset and airtime contracts from overpaying.

We are also setting out our final proposals to impose new obligations on communications providers to give prominent and timely information to their customers about the services they buy through **end-of-contract notifications, which will also tell customers about the best tariffs available.**Equipping consumers with information at the right time will help them decide if they need to shop around or sign up to a new contract. Consumers will also get this information every year once they are out-of-contract.

#### What we are planning - in brief

We are launching a review of price differentials in the fixed broadband market, with a particular focus on vulnerable consumers. This review will establish the nature and extent of differences in prices by contract status, the scale of any harm resulting from these pricing practices, and who is affected. It will set out whether there are additional measures we should take to protect vulnerable consumers in particular.

Broadband, mobile, home phone and pay TV companies must send their residential and business customers end-of-contract notifications. <sup>1</sup> Residential customers would receive a standalone notification between 10 and 40 days before the end of their fixed commitment period. The notification would include the end date of the fixed commitment period, the services currently provided and the price paid, any changes to the service and price at the end of the fixed commitment period, and information about the notice period required to terminate the contract. Business customers would receive a similar notification.

All customers would also receive information on the best tariffs providers have available at the end of their fixed commitment period. This would give information about the best tariffs that their provider currently offers, which should include at least one SIM-only deal for customers on bundled handset and airtime contracts. This would also include information on discounts available to new customers to ensure that customers are made aware of these deals and can see if they are losing out and should think about switching.

All customers who remain out-of-contract would be given information about their contract and their provider's best tariffs at least annually. This means that those consumers would be informed of the best tariffs for the services they buy and can see if they are on the best deal.

Providers would have six months from the date of our final decision to implement these changes. Companies will need time to change their systems, so they are ready to send millions of customers notifications via text, email or letter.

We will assess the impact of the notifications. We will monitor the effectiveness of the notifications. For example, we will explore with providers the potential to conduct randomised control trials to assess the extent to which the notifications result in customers taking action.

<sup>&</sup>lt;sup>1</sup> For the purpose of this document, we use the term 'end-of-contract' as this is how consumers tend to talk about the end of their fixed commitment period or 'minimum contract period' or 'minimum term'. Where we refer to 'end-of-contract' or being 'in-contract' or 'out-of-contract', this refers to customers' fixed commitment period. In our previous consultation, we used the term 'minimum contract period' to refer to this, but we use 'fixed commitment period' in this document as it aligns more closely with the wording of relevant provisions in the European Electronic Communications Code, which we are now proposing to implement (see below).

#### Introduction

- 1.1 Many home phone, broadband, mobile and pay TV deals in the market today are offered on contracts with a fixed commitment period of 12, 18 or 24 months. Customers cannot leave until the end of this period, unless they pay an early termination charge. At the end of this fixed commitment period, customers are no longer tied into their existing deal and have different options available to them. Although practices differ across the sector, if the consumer does nothing at this point, their contract is likely to continue on a monthly rolling basis (this is also referred to as automatic prolongation). They may face a price increase, or elements of the deal they originally signed up to may change.
- 1.2 We want people to be able to take advantage of the wide choice of communication services available and shop around with confidence, so that at the end of their fixed commitment period they can get the best deals for their needs. This could mean taking up a new deal with their current provider, or switching to a new supplier.
- 1.3 We are concerned that while there are good deals available which benefit many consumers, the market is not working well for everyone. In particular, consumers who shop around generally benefit from competition and the choices available to them, but people who do not shop around typically pay higher prices.

#### Review of price differentials in the fixed broadband market

- 1.4 Fixed broadband providers are choosing to charge customers different amounts for an equivalent or substantially similar service based on whether the customer is in or out of their fixed commitment period. We are concerned that this pricing practice may be leading to some consumers paying more than they need to for their broadband service. While we consider that our proposals for end-of-contract and annual best tariff notifications will make a significant difference in helping to address some of our concerns, we are also considering what more may need to be done, including looking at whether further targeted intervention may be needed, particularly to protect more vulnerable consumers.
- 1.5 Our review of price differentials in the fixed broadband market will establish the scale of any harm caused and who is affected. It will include:
  - a detailed examination of the differences in prices by contract status along with the characteristics of consumers paying higher prices. We will explore the reasons why some consumers do not shop around to find a better deal and pay more than others; and
  - an assessment of the pricing practices used by providers, what drives firms to price differently, and whether this leads to poor outcomes for certain customers.
- 1.6 Our review will consider whether there are any further actions we should take, beyond the proposed new information requirements set out in this document, to ensure that vulnerable consumers in particular are protected.

#### **July 2018 Consultation**

- 1.7 In order to help consumers get better deals, in July 2018 we proposed to modify the General Conditions of Entitlement (the General Conditions) and to set new general conditions that would require providers to send end-of-contract notifications and one-off out-of-contract notifications to their residential and small business customers (the July 2018 Consultation). The purpose of these proposals was to ensure consumers are informed at an appropriate time about changes to their price or service, so that they can consider taking action.
- 1.8 Since then, the European Electronic Communications Code (the EECC) was formally approved by the EU Parliament on 14 November and by the EU Council on 4 December 2018. The EECC contains provisions that overlap with the proposals we set out in the July 2018 Consultation.
- 1.9 We are now consulting on the measures we propose to take to align our position in the July 2018 Consultation with the consumer protections under the EECC. Subject to the final proposals in this consultation, consumers and all businesses will benefit from strengthened protection measures that go beyond those set out in July 2018, including a requirement on providers to tell customers about their best tariffs.

#### **Next steps**

- 1.10 We invite responses to this consultation by 1 February 2019. Subject to our consideration of any responses, we will seek to publish a statement on end-of-contract notifications and annual best tariff notification as soon as possible. We propose that providers would have a period of six months to implement these measures, following the publication of our final statement.
- 1.11 We intend to publish findings from our review of price differentials in the fixed broadband market in Summer 2019. This will set out our view on the extent of consumer harm and any remedies we consider are appropriate. We plan to publish a final statement on this in early 2020.

<sup>&</sup>lt;sup>2</sup> In our July 2018 Consultation we defined small business as a business for which no more than 10 individuals work. Ofcom, Consultation on end-of-contract and out-of-contract notifications. Available at: <a href="https://www.ofcom.org.uk/consultations-and-statements/category-2/end-of-contract-notifications">https://www.ofcom.org.uk/consultations-and-statements/category-2/end-of-contract-notifications</a>.

# 2. Helping consumers get better deals in communications markets

#### Overview of Ofcom's work

#### Introduction

- 2.1 Many customers with broadband, mobile, pay TV and landline services have contracts with a fixed commitment period of 12, 18 or 24 months. This means they cannot leave their contract before the end of the fixed period without paying an early termination charge. However, once they reach the end of the fixed commitment period, they are no longer tied into their deal and have different options available to them, including to switch provider or terminate their contract without incurring this charge.
- 2.2 Practices vary across the sector, but for many customers who choose to take no action at this point, their contract will be subject to automatic prolongation and become a rolling monthly contract. They may face an increase in the price they pay, or there may be other changes to their service at this point.
- 2.3 One of Ofcom's main priorities is to help consumers who find it hard to access the best deals. At the end of their fixed commitment period, consumers must be able to take advantage of the wide choice of communication services available and shop around with confidence, so that they can get the best deals for their needs. This could mean taking up a new deal with their current provider, switching to a new provider, or making an informed decision to stay on an existing deal.
- 2.4 We are concerned that while there are good deals available which benefit many consumers, especially those who are well equipped to engage, the market is not working well for everyone. In particular, consumers who shop around generally benefit from competition and the choices available to them but people who do not shop around typically pay higher prices.

## We have a programme of work which aims to ensure that communications markets work effectively for consumers

2.5 In order to better understand the potential harm arising from industry pricing practices, how many people are affected and what action may be needed to improve outcomes for consumers, we launched a programme of work in July 2017 with the aim of ensuring that markets work effectively for consumers.<sup>3</sup> This programme of work is complementary to our

<sup>&</sup>lt;sup>3</sup> Ofcom, 14 July 2017, Helping consumers to engage in communications markets: Call for Inputs. Available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0014/104441/call-inputs-consumer-engagement-communications.pdf.

- strategic ambition to promote investment and competition to ensure that people and businesses get the communications services they need.
- 2.6 We published a Call for Inputs (seeking views from interested parties) and commissioned market research to help us better understand why some consumers may face difficulties engaging with communications markets.
- 2.7 In April 2018, we published an update that highlighted some of the results of this research. We found that some consumers lack confidence, knowledge and understanding of the communications services they buy.<sup>4</sup>
- 2.8 We found that many consumers are confused about the status of their contractual arrangements with providers. Around one in seven (14%) consumers were unaware of whether they are within or outside of their contract; and a similar proportion (12%) said they were 'in contract' but lacked clarity around when their contract ends. Furthermore, there was uncertainty among consumers about the price of their services when a contract ends. 5 We also found that consumers are unaware of the options, savings or benefits available to them at this point.
- 2.9 In addition to this research, we estimated based on industry data that, across the major UK communications providers, 20 million residential consumers were outside their fixed commitment period, and more than 10 million were on deals with an automatic price increase at the end of this period. We also found that most providers did not notify consumers of relevant information about the end of their fixed commitment period at an appropriate time. As a result, we observed that many consumers pay more because of higher prices or because they miss out on deals that could save them money.<sup>6</sup>
- 2.10 Furthermore, as shown in Figure 1 below, we found that average spend by customers of dual play, triple play and standalone pay TV who are out-of-contract is substantially higher than the spend by corresponding customers who are in-contract. In particular, we found that out-of-contract dual play customers spend on average 19% more than those who are

<sup>&</sup>lt;sup>4</sup> Ofcom, 27 April 2018, Helping consumers to engage in communications markets – Update on next steps. Available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0015/113451/Engagement-project-update April-2018.pdf

<sup>&</sup>lt;sup>5</sup> To broaden our understanding of consumer engagement issues in communications markets, Ofcom commissioned Critical Research to conduct quantitative consumer research (Ofcom, 2018. Critical Research: Consumer engagement quantitative research.). This is available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf\_file/0022/117076/Consumer-engagement-quantitative-research-2018-slide-pack.pdf

<sup>&</sup>lt;sup>6</sup> Ofcom, 31 July 2018, Helping consumers to engage in communications markets: Consultation on end-of-contract and out-of-contract notifications. Available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0019/117163/Consultation-end-of-contract-notifications.pdf

<sup>&</sup>lt;sup>7</sup> In our July 2018 Consultation we recognised that this evidence should be interpreted carefully, as the difference in the average spend of out-of-contract and in-contract customers may under or overstate the extent to which customers pay higher prices after the end of their minimum contract period. For example, the average spend for a service package could be higher in part because the group of out-of-contract customers is generally buying more services within that package compared with the corresponding group of in-contract customers. We nonetheless considered that the differences in spend between for standalone pay TV, dual play and triple play services indicated a potential for some out-of-contract consumers to make a saving if they were to re-contract for these services.

in-contract, where this figure is 26% for triple play and [ $\gg$ ]% for standalone pay TV. This is in contrast to mobile services and standalone landline, where we found that the average spend for in-contract customers is higher than the average spend of customers who are out-of-contract.<sup>8</sup>

Figure 1: Average spend of customers by contract status9

Service	Average in-contract spend (£ per month)	Average out-of- contract spend (£ per month)	Out-of-contract relative to in-contract spend
Dual Play	£35	£41	19% higher
Triple Play	£52	£65	26% higher
Standalone Pay TV	£[≫]	£[ <b>%</b> ]	[⊁]% higher
Standalone landline	£26	£24	6% lower
Mobile SIM-only	£17	£15	8% lower
Mobile handset	£31	£22	27% lower

Source: Ofcom analysis of provider data (see Annex 7 of the July 2018 Consultation for further details). The average spend data for standalone landline is from the Pricing Trends report 2018. 10

## We proposed new measures to protect consumers from harm arising at the end of fixed commitment periods

2.11 These findings led us to propose new measures to address the concerns we had identified. In July 2018, we published proposals to introduce end-of-contract notifications – whereby providers would be required to inform their customers when they are approaching the end of their fixed commitment period – as well as a one-off out-of-contract notification to customers who were already out-of-contract and had not previously been informed about their contract coming to an end (see Section 3).

<sup>&</sup>lt;sup>8</sup> Our July 2018 Consultation noted that the higher average spend for in-contract mobile customers could be due to a number of factors, including more expensive handsets.

<sup>&</sup>lt;sup>9</sup> The average spend of in-contract and out-of-contract customers implied by the provider data [ $\times$ ] is similar to the corresponding numbers in the 2018 Pricing Trends for Communication Services report for Q3 2017. The latter found an average monthly spend of £32 for customers in-contract and £39 for customers out-of-contract for dual play, £51 for customers in-contract and £63 for customers out-of-contract for triple play, and £36 for customers in-contract and £45 for customers out-of-contract for standalone pay TV.

<sup>&</sup>lt;sup>10</sup> Figure 30 'Average monthly spend for customers within the minimum contract period and outside the minimum contract period, by service type/combination: Q3 2017', p.44 in the Pricing Trends report

## We are examining the need for regulation to prevent customers on bundled mobile handset and airtime contracts from overpaying

- 2.12 In the mobile sector, we have found many customers on bundled handset and airtime contracts continue to pay the same price after the end of their fixed commitment period. 

  In many cases this means customers continue, in effect, to pay for the handset, even though they have paid it off. We assessed the scale of this issue and asked providers to address this issue on a quick, voluntary basis, without the need for formal consultation and regulation.
- 2.13 We were disappointed that this did not result in sufficient or firm commitments, and in September 2018 we published a consultation on mobile handsets seeking views on a range of potential solutions to ensure customers are not sold mobile airtime services and handsets in a way that operates against their interests. We are in the process of considering stakeholder responses.

#### We have already taken action to protect consumers

- 2.14 Where we see practices that are harmful to consumers, we take action. In 2017 we became concerned that landline-only customers, who are more likely to have vulnerable characteristics, were paying increasingly high line rental costs while wholesale costs for providers were falling. We set out proposals that BT (the biggest provider of landline-only services) should cut landline-only bills by £84 a year for up to one million consumers, representing a 37% price cut. BT agreed to these proposals in full.
- 2.15 We also have an ongoing enforcement programme looking into providers' early termination charges (ETCs), which seeks to ensure that providers give clear and transparent information to consumers about ETCs and that those ETCs are not excessive and do not put-off consumers from switching. This programme was launched as we receive a large number of complaints about ETCs from consumers, which indicated that some consumers were not aware of the circumstances in which an ETC can be charged and question whether such charges are fair.<sup>12</sup>

## Pricing practices which result in some consumers paying significantly more than others for the same service have attracted widespread interest

2.16 Pricing practices across a number of different sectors, including broadband and mobile, have attracted widespread interest and debate in recent months. First, the Government's Consumer Green Paper highlighted the large gap between the best and worst deals

<sup>&</sup>lt;sup>11</sup> Ofcom, 26 September 2018, Consultation: Helping consumers to get better deals in communications markets - mobile handsets. Available at: <a href="https://www.ofcom.org.uk/consultations-and-statements/category-2/consumers-communications-markets-mobile-handsets">https://www.ofcom.org.uk/consultations-and-statements/category-2/consumers-communications-markets-mobile-handsets</a>.

<sup>&</sup>lt;sup>12</sup> Enforcement programme into early termination charges: <a href="https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw\_01199">https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw\_01199</a>

received by consumers. More recently, Citizens Advice made a super-complaint to the Competition and Markets Authority (CMA) about "excessive prices for disengaged consumers". We will continue to work closely with the CMA in relation to the Citizens Advice super-complaint and with the Government in relation to delivering better outcomes for consumers more generally.

## We are now consulting on strengthened measures to give consumers more information about their services

2.17 In this document, we are consulting on final proposals for strengthened consumer protection measures which go beyond those set out in July 2018, including a requirement on communications providers to give their customers best tariff advice. Subject to stakeholder views in response to this consultation, we intend to introduce these measures as soon as possible in order to enhance protections for consumers at the earliest opportunity. We believe that the measures we are proposing have the potential to significantly reduce consumer harm arising from industry pricing practices in the communications sector. Once introduced, we will monitor their effectiveness with a view to strengthening them in future if necessary.

## We are reviewing whether further action needs to be taken to protect vulnerable consumers

- 2.18 We recognise that, for some consumers, the provision of more information may not be sufficient to prevent them from experiencing harm. We are therefore also launching a review into the impact of price differentials in the fixed broadband market, with a particular focus on outcomes for vulnerable consumers. This review will seek to establish the nature and extent of price differentials that depends on whether consumers are in or out-of-contract, and the extent to which this affects consumers in vulnerable circumstances.
- 2.19 We will use the results of our review to identify whether any additional remedies, beyond those we are proposing in this document, are appropriate to protect vulnerable consumers, and what form they should take.

## We will take forward work to make it easier for consumers to access data which may help them get better deals

2.20 Our work plan for 2019/20 includes a project on the future of consumer data which will seek to ensure consumers are provided with appropriate information to make informed decisions. We will consider the merits of providing consumers with easy access to their own usage data for the communications services they buy to allow them to search for

competitive deals that suit their own needs. <sup>13</sup> We will work closely with stakeholders on this, including inputting into the Government's Smart Data Review and taking forward any initiatives that come out of that Review, where appropriate.

#### **Next steps**

2.21 An overview of our planned timeline of activity in relation to the various work strands which comprise our programme of work aimed at helping consumers get better deals in communications markets is provided below:

Figure 2: Helping Consumers Get Better Deals in Communications Markets: Timeline of Activity



<sup>&</sup>lt;sup>13</sup> Ofcom, 2018, Annual Plan 2019-2020. Available at: <a href="https://www.ofcom.org.uk/consultations-and-statements/category-1/annual-plan-2019-20">https://www.ofcom.org.uk/consultations-and-statements/category-1/annual-plan-2019-20</a>

#### This document

- 2.22 The rest of this document is set out as follows:
  - Section 3 sets out our July 2018 Consultation proposals and the European Electronic Communications Code requirements;
  - Section 4 sets out proposals for the scope of end-of-contract and annual best tariff notifications;
  - Section 5 sets out proposals for end-of-contract notifications;
  - Section 6 covers the provider's best tariff advice;
  - Section 7 sets out how the end-of-contract notification should be sent;
  - Section 8 sets out our proposals for annual best tariff information;
  - Section 9 sets out our proposals for implementation and monitoring;
  - Section 10 contains our regulatory impact assessment for introducing end-of-contract notifications;
  - Section 11 contains our regulatory impact assessment for introducing annual best tariff notifications;
  - Section 12 sets out our provisional conclusions; and
  - Section 13 discusses our review of price differentials and consumer vulnerability in the fixed broadband market.
- 2.23 The Annexes are set out as follows:
  - Annex A1: Responding to this consultation
  - Annex A2: Ofcom's consultation principles
  - Annex A3: Consultation cover sheet
  - Annex A4: Consultation questions
  - Annex A5: Glossary and abbreviations
  - Annex A6: Notification of proposed new General Condition and modifications to the General Conditions under section 48A(3) of the Act.

# 3. The July 2018 Consultation and the new European Electronic Communications Code (EECC)

3.1 In this section we explain that, since our July 2018 Consultation, the European Electronic Communications Code (EECC) has been formally approved and contains provisions that overlap with our proposals. We also explain that we are now consulting on aligning our July proposals with the EECC and set out the legal framework that applies.

#### July 2018 consultation

3.2 As set out in Section 2, our July 2018 Consultation contained our proposals for end-of-contract and out-of-contract notifications. The consultation set out the harms that we had identified, proposals to introduce end-of-contract notifications and one-off out-of-contract notifications, and our assessment of the proportionality of our proposals.

#### 3.3 We said that:

- a) most providers do not inform customers when their fixed commitment period is coming to an end, or has ended, and what this means for price and service, or the options available to them. When notifications are sent, these encourage upgrades, with important information missing.
- b) Some consumers lack awareness of when their fixed commitment period ends and what this means for their price and the services they buy. They are also not clear about the options available to them, including that they could make savings by taking up a new deal;
- c) As a consequence of not having this information, a significant number of consumers allow their contracts to 'roll over' after the expiry of their fixed commitment period. Many pay higher prices or fail to benefit from improvements to packages.
- d) It is reasonable to expect that providers will treat their customers fairly, including informing them of important information at the appropriate time, to enable them to make informed decisions and protect them against unexpected and unwelcome changes to price or service.
- e) We consider it necessary for consumers to be informed near to the end of their fixed commitment period, including about the implications for their price and service if they do not engage and remain on their existing deal. Consumers who are already outside their fixed commitment period but were not previously informed should also receive this information as soon as possible.
- 3.4 We set out the following regulatory policy objectives:

- a) to ensure consumers are informed at an appropriate time when their fixed commitment period is coming to an end, and of any changes to price or services that will occur as a result; and
- b) to ensure consumers are informed that their fixed commitment period has already ended if they were not previously informed of this.
- 3.5 We proposed to set new general conditions that would require providers to send end-of-contract notifications and one-off out-of-contract notifications to their residential and small business customers. We made detailed proposals in relation to the scope, content and structure of end-of-contract notifications and out-of-contract notifications, as well as the method and timing of delivery.
- 3.6 We received 34 responses to the July 2018 Consultation, including from providers, consumer bodies and advocacy groups, industry bodies, another regulator, other organisations and individual consumers. The non-confidential responses are published on our website. 14 The relevant responses are discussed in Sections 4 7 of this consultation.

#### **European Electronic Communications Code**

- 3.7 The European Electronic Communications Code (EECC) is a new EU Directive which updates and replaces the four Directives that currently make up the EU regulatory framework for electronic communications. <sup>15,16</sup> It was proposed by the European Commission as part of a wider connectivity package in September 2016, and has been subject to the EU legislative process since then. Political agreement was reached in June 2018 and, following finalisation of the text, the EECC was formally approved by the EU Parliament on 14 November and by the EU Council on 4 December 2018. It is due to be published in the Official Journal of the European Union shortly, and will enter into force three days after publication.
- 3.8 Member States have until 31 December 2020 to transpose the EECC into national law. With respect to Brexit, we expect the terms of the Implementation Period, set out in the Withdrawal Agreement on the future relationship between the UK and EU, to require the UK Government to implement the EECC into national law by the EU's transposition deadline. The UK Government has stated that, in the event of a no-deal Brexit, it would be

 $<sup>^{\</sup>rm 14}$  Ofcom, July 2018 Consultation.

<sup>&</sup>lt;sup>15</sup> Framework Directive (2002/21/EC), Authorisation Directive (2002/20/EC), Access Directive (2002/19/EC) and Universal Service Directive (2002/22/EC), all as amended.

<sup>&</sup>lt;sup>16</sup> The directive establishing the EECC is available at: <a href="http://data.consilium.europa.eu/doc/document/PE-52-2018-INIT/en/pdf">http://data.consilium.europa.eu/doc/document/PE-52-2018-INIT/en/pdf</a>

- minded to implement the substantive provisions of the EECC into domestic law, on the basis that it would support the UK's domestic policy objectives.<sup>17</sup>
- 3.9 Title III of Part III of the EECC<sup>18</sup> contains rights for end-users, building on those currently contained in the Universal Service Directive. It specifies a range of protections for end-users, including in relation to:
  - a) information requirements for contracts;
  - b) transparency, comparison of offers and publication of information;
  - c) quality of service;
  - d) contract duration and termination;
  - e) switching and number portability, and
  - f) bundled offers.
- 3.10 The end-user protections in the EECC are subject to full harmonisation. This means that, in the areas those protections cover, Member States may not maintain or introduce end-user protections in national law that diverge from those provisions of the EECC, including more or less stringent provisions which would provide a different level of protection for end-users.<sup>19</sup>
- 3.11 Article 105(3) of the EECC contains provisions that overlap with the proposals we set out in the July 2018 Consultation. Specifically, it includes:
  - a) a requirement to inform end-users, before the end of a fixed commitment period, of the following:
    - i) that their contractual commitment is coming to an end;
    - ii) the means by which they can terminate the contract;
    - iii) best tariff advice relating to their services; and

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<sup>&</sup>lt;sup>17</sup> Department for Digital, Culture, Media and Sport, *Guidance: What telecoms businesses should do if there's no Brexit deal*, 13 September 2018. Available at: <a href="https://www.gov.uk/government/publications/what-telecoms-businesses-should-do-if-theres-no-brexit-deal/what-telecoms-businesses-should-

<sup>&</sup>lt;sup>18</sup> Articles 98 – 115, EECC.

<sup>&</sup>lt;sup>19</sup> Article 101, EECC. Recital 257 elaborates on the requirement for full harmonisation. It notes that divergent implementation of the rules on end-user protection has created significant internal market barriers affecting both providers and end-users. Those barriers should be reduced by the applicability of the same rules ensuring a high common level of protection across the EU. A calibrated full harmonisation of the end-user rights covered by the EECC should considerably increase legal certainty for both end-users and providers, and should significantly lower entry barriers and unnecessary compliance burden stemming from the fragmentation of the rules.

- b) a requirement to provide best tariff information to end-users at least annually.<sup>20</sup> <sup>21</sup>
- 3.12 The purpose, intended scope and objectives of Article 105 can be identified in the recitals that accompany the EECC. The aims of the EECC include ensuring effective protection of consumers and the applicability of fully harmonised end-user provisions to ensure a high common level of protection across the EU.<sup>22</sup>
- 3.13 This high-level of protection includes the availability of transparent, up-to-date and comparable information on offers and services, which are a key element for consumers in competitive markets where several providers offer services. To take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their best interest to do so. The possibility of switching between providers is considered to be key for effective competition in a competitive environment. The availability of transparent, accurate and timely information on switching should increase end-users' confidence in switching and make them more willing to engage actively in the competitive process.<sup>23</sup>

#### The purpose of this consultation

- 3.14 In the July 2018 Consultation, we set out our policy objectives and explained why we were proposing to require providers to send end-of-contract notifications and out-of-contract notifications to their customers. The EECC is now entering into force and confirms the case for intervention in this area. The purpose, intended scope and objectives of the EECC tie in with those we set out in our July 2018 Consultation.
- 3.15 We have a duty to secure those objectives of the EECC by 31 December 2020 (and, until then, not to do anything that would undermine their achievement). We have carefully considered the responses to our July 2018 Consultation and, taking the EECC objectives into account, there is nothing in those responses that would cause us to change our mind about the need for intervention in this area.
- 3.16 We also consider that we should align our proposals from the July 2018 Consultation with the requirements of the EECC, and are therefore now consulting on amended proposals

<sup>&</sup>lt;sup>20</sup> Article 105(3) provides as follows (emphasis added): "Where a contract or national law provides for automatic prolongation of a fixed duration contract for electronic communications services other than number-independent interpersonal communications services and other than transmission services used for the provision of machine to machine services, Member States shall ensure that, after such prolongation, end-users are entitled to terminate the contract at any time with a maximum one-month notice period, as determined by Member States, and without incurring any costs except the charges for receiving the service during the notice period. Before the contract is automatically prolonged, providers shall inform end-users, in a prominent and timely manner and on a durable medium, of the end of the contractual commitment and of the means by which to terminate the contract. In addition, and at the same time, providers shall give end-users best tariff advice relating to their services. Providers shall provide end-users with best tariff information at least annually."

<sup>&</sup>lt;sup>21</sup> The EECC uses the term "end-user", which is further explained in Section 4 of this consultation.

<sup>&</sup>lt;sup>22</sup> EECC, Recitals 3 and 257.

<sup>&</sup>lt;sup>23</sup> EECC, Recitals 265, 273 and 277.

that would implement the relevant parts of Article 105(3) of the EECC ahead of its transposition deadline.<sup>24</sup> In developing our proposals for implementation, we have sought to give effect to the EECC's objective of ensuring a fully harmonised, high-level of protection for consumers. In particular, by ensuring that they are given useful and effective information in order to make informed choices about the services they buy (and which should, in turn, lead providers to compete keenly). Given our earlier work on these issues, we see no reason to deprive UK consumers of the benefits and protections of Article 105(3) until the end of 2020, but instead intend (subject to this consultation) to introduce this high-level of protection for consumers as soon as possible.

- 3.17 An earlier transposition will also avoid providers potentially incurring wasted costs as a result of implementing our original July 2018 proposals, and then implementing a revised approach shortly thereafter when the EECC is transposed into national law.
- 3.18 We have assessed the impact of our proposals in a manner that we consider to be appropriate in light of this context. This assessment is set out in Sections 10 and 11. As part of that assessment, we have considered the impact of implementing the relevant parts of Article 105(3) EECC ahead of the deadline for transposition.
- 3.19 We propose to implement these proposals using our current powers to set general conditions under section 45 of the Communications Act 2003 (the Act).<sup>25</sup>

#### **Legal framework**

#### Our general duties

- 3.20 Section 3(1) of the Act states that it shall be our principal duty, in carrying out our 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.<sup>26</sup>
- 3.21 In performing our duties under section 3(1) of the Act, we are required 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, as well as any other principles appearing to us to represent best regulatory practice (section 3(3) of the Act).<sup>27</sup>

 $<sup>^{24}</sup>$  We propose that the draft general conditions would take effect 6 months after our final statement – see Section 9 - which would be approximately 13 months before the transposition deadline.

<sup>&</sup>lt;sup>25</sup> No amendment to our section 45 powers is required to enable us to implement the relevant parts of Article 105(3) EECC.

<sup>&</sup>lt;sup>26</sup> Consumer is defined in section 405(5) of the Act and includes people acting in their personal capacity or for the purposes of, or in connection with, a business.

<sup>&</sup>lt;sup>27</sup> Our regulatory principles can be found at: <a href="www.ofcom.org.uk/about-ofcom/what-is-ofcom">www.ofcom.org.uk/about-ofcom/what-is-ofcom</a>.

- 3.22 Section 3(4), provides that we must have regard, in performing our duties, to a number of matters (as they appear to us to be relevant), including the desirability of promoting competition in relevant markets; 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; the opinions of consumers in relevant markets and of members of the public generally; and the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in section 3(1) is reasonably practicable.
- 3.23 In addition, section 3(5) of the Act requires that, when performing our duty to further the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

#### **Duties for the purpose of fulfilling EU obligations**

- 3.24 As set out in section 4 of the Act, when exercising certain functions, <sup>28</sup> we must act in accordance with the six European Community requirements described there. These include requirements:
  - a) to promote competition in the provision of electronic communications services;
  - b) to secure that our activities contribute to the development of the European internal market; and
  - c) to promote the interests of all persons who are citizens of the European Union. 29

#### Powers and duties in relation to general conditions

- 3.25 Section 45 of the Act says that we may set general conditions which contain provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64. Under section 51(1)(a), we may set general conditions making such provisions as we consider appropriate for the purpose of protecting the interests of end-users of public electronic communications services. Section 51(2) sets out a non-exhaustive list of the specific types of general conditions that we may set in pursuance of this purpose. Section 51(2)(d) provides that we can, by general condition, "require the provision, free of charge, of specified information, or information of a specified kind, to end-users".
- 3.26 Section 47(2) governs the circumstances in which we can set or modify a general condition. It states that a condition can be set or modified where it is objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates<sup>30</sup>, not such as to discriminate unduly against particular persons or against a particular description of

<sup>&</sup>lt;sup>28</sup> Including those we propose to exercise in this document.

<sup>&</sup>lt;sup>29</sup> We have also had regard to the objectives in Article 3(2) of the EECC.

<sup>&</sup>lt;sup>30</sup> Section 47(3) states that the setting of a general condition is not subject to the test of being objectively justifiable, although we are likely to consider this in any event when assessing whether the condition is proportionate.

- persons, proportionate to what the condition or modification is intended to achieve, and transparent in relation to what it is intended to achieve.
- 3.27 We consider in Section 12 how the proposals set out in this document accord with our powers and duties.

# 4. Scope of end-of-contract and annual best tariff notifications

4.1 In this section we assess some of the specific requirements of Article 105(3) and set out how we propose to implement them. We propose that end-of-contract notifications and annual best tariff notifications should be sent in relation to all public electronic communications services and to all end-users, which would include both residential consumers and businesses.

#### **Relevant services**

#### **EECC** requirement

4.2 Article 105(3) applies to contracts for electronic communications services,<sup>31</sup> other than number-independent interpersonal communications services and other than transmission services used for the provision of machine to machine services.

#### Our previous proposal

- 4.3 In the July 2018 Consultation, we proposed to require all providers of public electronic communications networks and/or public electronic communications services (as currently defined in the General Conditions) to send end-of-contract notifications and out-of-contract notifications to their residential and small business customers.
- 4.4 We also set out that, in view of the definition of electronic communications services in the Act and the Framework Directive and case law of the European Court of Justice, our proposals would therefore apply to all providers of landline, broadband, mobile and pay TV services.<sup>32</sup>

<sup>&</sup>lt;sup>31</sup> The EECC contains a revised definition of an electronic communications service at Article 2(4): "'electronic communications service' means a service normally provided for remuneration via electronic communications networks, which encompasses, with the exception of services providing, or exercising editorial control over, content transmitted using electronic communications networks and services, the following types of services: (a) 'internet access service' as defined in point (2) of the second paragraph of Article 2 of Regulation (EU) 2015/2120; (b) interpersonal communications service; and (c) services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting;". A number-independent interpersonal communications service is defined in Article 2(7) as:"…an interpersonal communications service which does not connect with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans;". Transmission services used for machine-to-machine services are not defined in the EECC.

<sup>&</sup>lt;sup>32</sup> Ofcom, July 2018 Consultation, paragraphs 5.56 – 5.60.

#### **Stakeholder comments**

- 4.5 Sky and BT both commented on this:
  - a) Sky said that Ofcom does not have the legal power to apply the proposed General Condition to providers of pay TV services. It set out a number of detailed arguments in support of this position, based on its analysis of the relevant domestic and EU legislation and case law. It noted that the regulatory framework distinguishes between content and transmission, and that Ofcom may only regulate the provision of information to pay TV consumers if: (i) the service in question is not a content service; and (ii) the service is wholly or mainly an electronic communications service. With respect to (i), Sky also stated<sup>33</sup> that a service is a content service where it includes content produced by the service provider and/or content over which the service provider has editorial responsibility.
  - b) BT believed that any new obligations should apply equally to all pay TV providers, regardless of the business model used to provide those services to consumers. BT considered that consumers would receive a poorer experience if a new requirement only applied to a subset of pay TV services, as consumers would expect to be provided equally with information on all of their communications services. It also believed that competition would be distorted because some consumers would have less information on contract termination dates, which may affect switching levels.

#### How we propose to implement

4.6 We recognise that the regulation of content and the regulation of transmission are separate; the common regulatory framework for electronic communications does not seek to regulate broadcast content (which instead is regulated under the Audiovisual Media Services Directive). However, we maintain the view expressed in the July 2018 Consultation that we may regulate a pay TV service provided to an end-user as an electronic communications service insofar as it includes the conveyance of signals on an electronic communications network.<sup>34</sup> That does not preclude the broadcast content that is being conveyed to the end-user from being regulated as an audiovisual media service. We understand Sky's position to be that if the service provider exercises editorial control over any of the broadcast content, then it takes the entire service provided to the end-user outside the scope of regulation as an electronic communications service. We disagree with Sky and consider that this approach would undermine the aim of the regulatory framework of establishing a genuine internal market for these services. The Court of Justice has concluded that the exclusion of the activities of a provider from the scope of the regulatory

<sup>&</sup>lt;sup>33</sup> In reliance on the Opinion of AG Kokott in Case C-475/12 UPC DTH (at paragraph 35).

<sup>&</sup>lt;sup>34</sup> Sky noted that this formulation did not appear in the operative part of the judgment in *UPC/Hilversum* (Case C-518/11). However, this formulation was followed by the Court of Justice in the subsequent *UPC/Hungary* case (see paragraph 38 of that case).

- framework on the pretext that it does not restrict itself to conveying signals would deprive the framework of all meaning.<sup>35</sup>
- 4.7 In response to BT's comment, we are proposing to apply regulation to providers of public electronic communications services (see below). Whether a particular pay TV service falls within the scope of that definition for the purpose of the draft general conditions will depend on the specific nature of the service in question, and the specific circumstances under which it is provided, which should be assessed on a case-by-case basis.
- 4.8 As set out above, Article 105(3) applies to contracts for electronic communications services (subject to specified exclusions), <sup>36</sup> with that term defined in the EECC in a more expansive manner than in the current General Conditions. We are not proposing to transpose the new definition of electronic communications services from the EECC into the draft general conditions on which we are consulting. <sup>37</sup> We instead propose to apply those draft general conditions to providers of public electronic communications services, as currently defined in the General Conditions. We are satisfied that this is within the scope of Article 105(3).
- 4.9 With respect to the exclusions in Article 105(3):
  - a) we do not need to transpose the exclusion for number-independent interpersonal communications services, as these would not in any event be captured by the current definition of public electronic communications services; and
  - b) we propose to expressly exclude transmission services used for the provision of machine to machine services.

#### **End-users**

#### **EECC** requirement

4.10 Article 105(3) requires information to be sent to an end-user, which is defined as follows:38

**'end-user'** means a user not providing public electronic communications networks or publicly available electronic communications services;

4.11 A user is defined as follows:39

<sup>35</sup> UPC/Hilversum (Case C-518/11), paragraph 45.

<sup>&</sup>lt;sup>36</sup> We recognise that the provision within Article 105(3) in relation to annual best tariff information does not expressly state the contracts that are intended to be covered by that requirement. However, we consider that it follows from the inclusion of that provision within Article 105(3) that the requirement for annual best tariff information should apply to the same contracts as the preceding part of that paragraph.

<sup>&</sup>lt;sup>37</sup> To avoid having two different definitions of 'electronic communications services' applying to different provisions within the General Conditions for a period of time until we transpose the remainder of the EECC.

<sup>&</sup>lt;sup>38</sup> EECC, Article 2(14). This definition remains unchanged from Article 2(n) of the Framework Directive.

<sup>&</sup>lt;sup>39</sup> EECC, Article 2(13). This definition remains unchanged from Article 2(h) of the Framework Directive.

'user' means a natural or legal person using or requesting a publicly available electronic communications service;

4.12 The scope of Article 105(3) therefore encompasses both residential consumers and business users (except for a business which is itself a communications provider).

#### Our previous proposal

4.13 In our July 2018 Consultation, our end-of-contract notification and out-of-contact notification proposals applied to residential consumers and small business customers (as currently defined in the General Conditions). This would encompass residential consumers and businesses with 10 or fewer staff (except for a business that is itself a communications provider).

#### Stakeholder comments

- 4.14 A number of respondents argued that small businesses are different to residential consumers. Verastar commented that small businesses were more likely to be aware of the need to act at the end of their fixed commitment period, because "small businesses have the ability to run a business and are, in the main, carrying on a business for profit". Virgin Media noted that "small business customers may have dedicated account staff that manage their customer experience" and Vodafone suggested that small businesses may be cost aware, shop around more than residential consumers, and be more likely to buy their services through resellers. The Federation of Communication Services also said that small businesses are likely to be "much more" price aware than residential consumers.
- 4.15 However, some respondents noted similarities between residential consumers and small businesses. For example, Dixons Carphone argued that "demands on small business owners' time are not necessarily less than on consumers" and that small businesses are not inherently more likely to be "aware of when contractual minimum terms have expired and handsets have been paid off".
- 4.16 Virgin Media commented on the differences in communication service needs of businesses, highlighting that "where small business customers take business-grade broadband or phone services... these customers may have significantly more complex communication service needs. It is not clear that the same consumer protections that Ofcom envisages in this Consultation are warranted for these customers. In these circumstances, the customer is likely to have sophisticated needs and as a result, a more sophisticated approach to purchasing their required services."

#### How we propose to implement

- 4.17 Article 105(3) of the EECC is a full harmonisation provision, which seeks to preclude the implementation of more or less stringent provisions.<sup>40</sup> In order to align our previous proposals with Article 105(3), we are now proposing that end-of-contract notifications and annual best tariff notifications should be sent to all end-users,<sup>41</sup> which would include both residential consumers and businesses (except for a business which is itself a communications provider).
- 4.18 Having considered stakeholder responses, we acknowledge there are some differences between residential consumers and small businesses that have informed our proposals.
- 4.19 Given that end-of-contract and annual best tariff notifications will now apply to all businesses, we have expanded our consideration beyond small businesses to consider the differences between the way that all business customers might purchase and manage communications services compared to residential customers.
- 4.20 We recognise that the business landscape is large and varied, and that there are significant differences in the composition, character, and behaviour of businesses. In the UK, there are almost 5.8 million businesses in total, of which almost 5.5 million businesses employ fewer than 10 people. At the other end of the scale, there are just over 10,000 companies employing 250 or more people.<sup>42</sup>
- 4.21 Given that businesses can range from sole traders to those employing hundreds or thousands of people, their communications needs are also diverse. For example, businesses with 1-9 employees are much more likely than larger businesses to use 'standard' services such as PSTN phone lines and standard and superfast broadband, whereas those with more than 10 employees are more likely to use more specialised, higher capacity services such as dedicated internet access and leased lines.<sup>43</sup>
- 4.22 Whereas smaller businesses using standard services may have contracts that are similar to those used by residential consumers (with a significant proportion of smaller businesses actually using residential contracts for business use), the contracts used by larger

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<sup>&</sup>lt;sup>40</sup> EECC, Article 101.

<sup>&</sup>lt;sup>41</sup> In the draft general condition, we have used the defined term "Subscriber", instead of "End-User" (See Annex A6). A subscriber is defined as any end-user that is party to a contract with a provider of public electronic communications services for the supply of such services. We consider that it only makes sense for an end-of-contract notification or annual best tariff notification to be sent to the end-user that is a party to a contract for public electronic communications services.

<sup>42</sup> BEIS, 11 October 2018. Business Population Estimates for the UK and Regions 2018. Available at: <a href="https://www.gov.uk/government/statistics/business-population-estimates-2018">https://www.gov.uk/government/statistics/business-population-estimates-2018</a>

<sup>&</sup>lt;sup>43</sup> In 2016, Ofcom commissioned Jigsaw research to conduct quantitative research into the experiences of small and medium enterprises (SMEs) of communications services (Ofcom, 2016. Jigsaw: The SME experience of communications services: research report), this is available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf

- businesses for more specialist services tend to be individually negotiated with each supplier.<sup>44</sup>
- 4.23 In our 2016 SME research, we spoke to "the person within the organisation who has primary responsibility (sole or joint) for telecoms, IT and other communications services" and found that among companies with 10 or more employees, it was more likely that the respondent's job title reflected a specialism in this area (such as Telecoms Director or other IT specialist). This was in contrast to smaller companies (those with fewer than 10 employees), where this responsibility was more likely to rest with a director, owner or partner. This reflects a relationship between the size of companies and their total spend on communications services: the larger the business, the greater the spend and the greater the need for the management of these services to fall to a specialist.
- 4.24 Our research also found that when comparing SMEs with business tariffs to those with residential tariffs, awareness of key terms and conditions was slightly higher for those on a business contract, across landline, internet and mobile. <sup>46</sup> There was also higher awareness of early termination charges among those with a business contract (landline: 56% vs. 48%, internet: 57% vs. 50%, mobiles: 59% vs. 50%). <sup>47</sup>
- 4.25 Whilst not all businesses employ specialist staff to handle communication services, it is reasonable to expect that businesses by and large are better equipped with the skills and resources to manage operations. Businesses are likely to have better knowledge of, or are able to find out more easily, information about the services provided under their contract, in a way that residential consumers may not.
- 4.26 We therefore propose to differentiate between residential consumers and businesses on the basis that businesses may have more resources and are likely to be better equipped to manage their communications contracts. Furthermore, the diversity among businesses means it is difficult to specify rules that will be applicable to all business customers. These differences inform our proposal that in some instances the objectives of Article 105(3) of the EECC can be achieved for businesses by means of a lighter touch approach than we consider necessary for residential customers.
- 4.27 We highlight in the relevant sections below where we propose to implement differing approaches for residential consumers and businesses.

#### **Consultation questions**

4.28 We welcome stakeholder comments on the following questions in relation to the proposals set out in this section:

<sup>&</sup>lt;sup>44</sup> Ofcom, 2016. Jigsaw: The SME experience of communications services: research report.

<sup>&</sup>lt;sup>45</sup> Ofcom, 2016. Jigsaw: The SME experience of communications services: research report.

<sup>&</sup>lt;sup>46</sup> Ofcom, 2016. Jigsaw: The SME experience of communications services: research report, p119.

<sup>&</sup>lt;sup>47</sup> Ofcom, 2016. Jigsaw: The SME experience of communications services: research report, p119.

**Question 1**: Do you agree with the way we propose to implement the requirement to provide end-of-contract notifications in terms of the services they should cover?

**Question 2**: Do you agree with the way we plan to implement the requirement to send end-of-contract notifications and annual best tariff notifications to residential consumers and businesses?

Please provide evidence to support your views.

#### 5. End-of-contract notifications

- 5.1 In this section we consider the circumstances in which an end-of-contract notification is required. We then consider the information that providers should give end-users about the end of their fixed commitment period and how they can terminate their contract.<sup>48</sup> We propose to require providers to inform end-users of:
  - a) the date on which the fixed commitment period for the contract will end;
  - b) details of the services currently provided under that contract;
  - c) any applicable notice period, or, for mobile contracts, that a notice period may apply;
  - d) that early termination charges relating to that contract no longer apply from the point the fixed commitment period ends;
  - e) details of other contracts taken with the same provider; and
  - f) how to terminate the contract.
- 5.2 We outline draft guidance on how providers should comply with our requirements in the following areas:
  - a) details of the services provided under the contract;
  - b) details of other contracts taken with the same provider; and
  - c) how to terminate the contract.
- 5.3 The draft guidance sets out the minimum we would expect providers to do to meet the requirements of our draft general conditions.<sup>49</sup> We have also included in Section 7 some illustrative (and non-binding) examples of notifications to end-users.

#### Circumstances in which an end-of-contract notification is required

#### **EECC requirement**

5.4 Article 105(3) applies where a contract or national law provides for the automatic prolongation of a fixed duration contract. In our view, this means where a contract automatically 'rolls over' after the end of a fixed commitment period either because of the terms of the contract itself or national law.

<sup>&</sup>lt;sup>48</sup> In Section 6, we consider the requirement for end-users to be provided with best tariff advice at the same time.

<sup>&</sup>lt;sup>49</sup> We propose to include the final version of this guidance in our existing published guidance on General Condition C1, available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf

#### Our previous proposal

- 5.5 In our July 2018 Consultation, we proposed that end-of-contract notifications should be sent to residential consumers and small businesses ahead of the expiry of a fixed commitment period (which is already defined in the General Conditions), 50 but we did not make any further provision in respect of contract 'roll over'.
- 5.6 We also proposed that end-of-contract notifications should only be sent where the fixed commitment period is six months or more, as we did not consider that customers who take monthly rolling (30 day) contracts should be included given the short fixed period for these contracts.

#### Stakeholder comments

- 5.7 No respondent specifically objected to our proposed carve-out for contracts with a fixed commitment period of less than six months.
- 5.8 The Federation of Communication Services suggested that the practice of sending end-of-contract notifications should only be applicable to contracts up to 24 months and that, by limiting this, businesses with contracts of 24+ months would avoid receiving 'unnecessary notifications'.

#### How we propose to implement

- In order to align our previous proposals with the requirements of Article 105(3), we propose now to require that notifications should be sent to end-users before the expiry of a fixed commitment period, if the contract will be automatically prolonged after that point in accordance with the terms of that contract or governing law. This change will not substantively change the impact of our previous proposals, as we expect that most contracts with a fixed commitment period will automatically roll-over and continue after the expiry of that period.
- 5.10 Article 105(3) of the EECC is a full harmonisation provision, the intention of which is to ensure that the same level of protection applies across the EU with Member States not implementing more or less stringent provisions. <sup>51</sup> In order to align our previous proposals with Article 105(3), we are now proposing to remove the carve out for contracts with a fixed commitment period of less than six months. However, we continue to believe that there is no need for customers on monthly rolling (30 day) contracts to receive a notification. 30-day contracts that have an indefinite term with a 30-day notice period

<sup>&</sup>lt;sup>50</sup> Fixed Commitment Period is defined as a period beginning on the date that contract terms agreed by a Communications Provider and a Subscriber take effect and ending on a date specified in that contract, and during which the Subscriber is required to pay for services and facilities provided under the contract and the Communications Provider is bound to provide them and in respect of which the Subscriber may be required to pay a charge to terminate the contract. We also referred to this in the July 2018 Consultation as a 'minimum contract period'.

<sup>51</sup> EECC, Article 101.

(rather than a fixed commitment period of 30 days with an automatic roll-over) would fall outside the scope of the draft general condition. In light of the fact that Article 105(3) is a full harmonisation provision, we also propose not to adopt the suggestion of a carve out for contracts of over 24 months.

#### **EECC** requirement on the content of the notification

- 5.11 Having considered the circumstances in which an end-of-contract notification is required, we now consider the content of that notification. Article 105(3) requires end-users to be informed of the following prior to the expiry of a fixed commitment period:
  - a) the end of the contractual commitment period; and
  - b) the means by which to terminate the contract.
- As set out in Section 3, these requirements are intended to ensure that consumers are able to make informed choices, and to change providers when it is in their best interest to do so.<sup>52</sup> They pursue the objective of providing end-users with transparent, accurate and timely information on switching, which should increase their confidence in switching and make them more willing to engage actively in the competitive process.<sup>53</sup> They also contribute to ensuring that end-users across the EU have a high-level of protection when using electronic communications services.<sup>54</sup>
- 5.13 Communications markets are complex, with a variety of different services (landline, broadband, pay TV and mobile) available to purchase either on a standalone basis, or in bundles. Some consumers may split their communications services across two or more providers, whereas other consumers will contract for all their communications needs with a single provider.
- 5.14 Many services can be provided within a single contract. It is also increasingly common for providers to include additional benefits with their core services (e.g. free additional services offered by the provider itself, such as cloud storage or call screening services, or free subscriptions to third party services such as Netflix or Spotify). These additional benefits are likely to be considered valuable by some consumers and could therefore be an important consideration when deciding whether to renew their existing contract or to shop around.<sup>55</sup>
- 5.15 Some end-users may have separate contracts with the same provider for each individual service (which may be a legacy of taking up those services at different points in time). End-users may be unaware of the contractual arrangements that apply to their communications

<sup>&</sup>lt;sup>52</sup> EECC, Recital 273.

<sup>&</sup>lt;sup>53</sup> EECC, Recital 277.

<sup>&</sup>lt;sup>54</sup> EECC, Recitals 257.

<sup>&</sup>lt;sup>55</sup> Ofcom, 2018. Critical Research: Consumer engagement quantitative research.

- services, knowing only that they pay a certain amount of money to a particular provider per month.
- 5.16 Finally, we know that consumers sometimes do not understand how notice periods and early termination charges operate:
  - a) some consumers are unaware that they can switch to another provider at the end of their fixed commitment period without paying an early termination charge, and
  - b) some consumers are unaware that they may still need to give notice to their provider even after the end of their fixed commitment period.<sup>56</sup>
- 5.17 We consider that all of this context should be taken into account when implementing the requirements of Article 105(3), to ensure that the underlying objectives are achieved in a way that is useful and effective for end-users. The way we implement the requirements should therefore give end-users meaningful information on the end of their contractual commitment period and how they can terminate their contract, which should enable them to make informed choices and increase their confidence and willingness to engage in the competitive process. We outline our specific proposals below.

#### Specifying words or language to be used in the notification

- 5.18 Similar to our July 2018 Consultation, we do not propose to prescribe the actual words or language to be used in relation to the information to be provided in the notification.
- 5.19 Stakeholder responses on this were mixed; Sky suggested that Ofcom should not prescribe the specific language used in notifications, but uSwitch and Dixons Carphone were in favour of a more prescriptive approach to ensure clear messages that are more likely to be in consumers' best interests.
- 5.20 We have considered the results of our 2018 end-of-contract notification qualitative research, which included testing comprehension of different language used. We found that levels of comprehension of the different parts of the message (e.g. "Your contract is coming to an end", "If you do nothing your price will increase") did not differ depending on the position of each individual message in the communication or on the amount of non-essential information also included. We also found that use of more consumer-friendly language aided comprehension (e.g. "Your minimum contract term for [service] ends on 31st May, this means that from then you are free to cancel or switch this service at any time without incurring a cost" was better understood than "Your minimum contract term

<sup>&</sup>lt;sup>56</sup> See, for example, the research referred to at paragraph 3.20 of the July 2018 Consultation.

<sup>&</sup>lt;sup>57</sup> Ofcom commissioned Jigsaw Research to conduct qualitative research into attitudes and understanding of different content within end-of-contract notifications (Ofcom, 2018. Jigsaw: End-of-contract notifications: Attitudes to and understanding of alternative content options), this is available at:

 $<sup>\</sup>frac{\text{https://www.ofcom.org.uk/}}{2018.pdf} \frac{\text{data/assets/pdf}}{\text{file/0020/117074/Qualitative-end-of-contract-notification-research-July-2018.pdf}}{\text{data/assets/pdf}}$ 

- for [service] ends on 31<sup>st</sup> May. This means that from then on you won't have to pay an early termination charge if you cancel or switch this service").
- 5.21 We remain of the view that we should not be prescriptive in terms of the exact wording required, as we recognise that some providers adopt a particular style when communicating with their customers and we would not want our proposals to restrict their ability to communicate with their customers in the most effective way to convey the information in the notification.

#### End of the contractual commitment period

- 5.22 We consider that, for end-users to be usefully and effectively informed about the end of their contractual commitment, they must be told:
  - a) the date on which their fixed commitment period for the contract will end; and
  - b) details of the services that are provided to them under that contract.

#### The date on which the fixed commitment period for the contract will end

#### Our previous proposal

5.23 In the July 2018 Consultation, we proposed that an end-of-contract notification should include the date on which the customer's fixed commitment period ends.

#### **Stakeholder comments**

5.24 Respondents agreed that end-of-contract notifications should include the date on which the customer's fixed commitment period ends.

#### How we propose to implement

5.25 We consider that the date on which the fixed commitment period will end is essential for end-users to be informed about the end of their contractual commitment. We therefore propose to require providers to include this in the end-of-contract notification.

#### Details of the services currently provided under that contract Our previous proposal

5.26 In the July 2018 Consultation, we proposed that an end-of-contract notification should include the services which the provider currently provides to the customer under that contract, including additional benefits that accompany the contract, such as free subscriptions to other services (e.g. Netflix, Spotify).

#### **Stakeholder comments**

5.27 Several respondents thought it was not sufficiently clear which services were required to be included. A number of respondents raised concerns that in some scenarios, notifications could lead to consumers becoming confused or overloaded with information.

5.28 Two confidential responses [ $\gg$ ] noted the technical difficulty in including third party services because [ $\gg$ ].

#### How we propose to implement

- 5.29 As noted above, one of the objectives of informing end-users about the end of their fixed commitment period is to enable them to make informed choices and to switch providers when it is in their best interest to do so. We therefore consider it essential that end-users are reminded of which services they take under the relevant contract so that they understand which services are reaching the end of the fixed commitment period. These details will assist end-users in making informed choices about their services. It will also serve as a reminder of any additional services that they receive under the contract, and which they may want to take into account as they shop around.
- 5.30 We have considered the points made about the possibility of information overload. Prior to our July 2018 Consultation, we conducted end-of-contract notification qualitative research to test consumer comprehension of potential notification messages and to identify any issues with the volume of information, any misleading or worrying information, and messaging that may have a negative impact on consumers' behaviour. 58 Participants in this research identified a number of pieces of information as being essential for inclusion in the end-of-contract notification which could help them determine whether they wanted or needed to take any action. Participants thought that including a breakdown of the current service/contract was essential to the end-of-contract notification. 59 In particular, it would act as a reminder of the services they currently take and would allow them to review what they are paying for and to consider whether they still require those services.
- 5.31 Whilst this approach may require a number of services to be listed, it is important that consumers are provided with comprehensive information on the services within their contract, given that providers cannot be certain which services any individual customer would consider to be valuable. For example, BT raised whether services such as Call Protect should be listed. In our view, some consumers may regard this as a valuable aspect of the voice services they buy from BT.
- 5.32 We therefore propose to require providers to inform end-users of the services which the provider currently provides under the contract to which the end-of-contract notification relates.
- 5.33 We acknowledge that providers may face difficulties obtaining information about services from third parties if there is no billing information retained by the provider and no agreement in place with those third parties. We have also considered the cost to providers of including this information within notifications (see Section 10). Therefore, we propose

<sup>&</sup>lt;sup>58</sup> Ofcom, 2018. Jigsaw: End-of-contract notifications: Attitudes to and understanding of alternative content options.

<sup>&</sup>lt;sup>59</sup> Ofcom, 2018. Jigsaw: End-of-contract notifications: Attitudes to and understanding of alternative content options. Slides 15, 27, 55.

<sup>&</sup>lt;sup>60</sup> BT Call Protect is a service for BT landline customers to help prevent nuisance calls.

that provision of information about third party services is only required where the provider itself bills the consumer for these services, in which case the provider would have the information in the relevant billing database.

- In Section 4, we set out our view that it is reasonable to differentiate between residential consumers and businesses on the basis that businesses may have more resources and are likely to be better equipped to manage their communications contracts. Furthermore, the diversity among businesses means it is difficult to specify rules that will be applicable to all of them. Specifically, the list of services that larger businesses may take under a contract may be too large and impractical to provide. Therefore, in the draft guidance below, we have set out different expectations for end-of-contract notifications being sent to residential and business customers:
  - a) For residential consumers, we expect providers to include a comprehensive list of all services provided under that contract, including all ancillary services, and third-party services if that provider is charging for them.
  - b) We expect businesses to receive a message explaining that there may be multiple services provided under the contract, but these do not need to be listed.

#### **Draft General Condition**

Our draft general condition provides that an end of contract notification should include the following information:

"...details of the services provided by the Regulated Provider to the Subscriber under that contract;"

#### **Draft Guidance**

For subscribers on residential contracts, we expect the provider to give a comprehensive list of all services which form part of the contract. This would include all ancillary services currently provided. We do not expect the provider to include information on services provided by third-parties if that provider is not charging for that service.

For subscribers on business contracts, we do not expect the provider to give a comprehensive list of all services which form part of the contract. Instead we expect the provider to include a message explaining that there may be multiple services as part of the contract.

#### Means by which to terminate the contract

- 5.35 We consider that, for end-users to be usefully and effectively informed about the means by which to terminate their contract, they must be told about:
  - a) any applicable notice period or, for mobile contracts, that a notice period may apply;

- b) early termination charges relating to that contract which no longer apply from the point the fixed commitment period ends;
- c) details of other contracts taken with the same provider; and
- d) how to terminate the contract;

## Any applicable notice period or, for mobile contracts, that a notice period may apply

#### Our previous proposal

5.36 In the July 2018 Consultation, we proposed that an end-of-contract notification should include details of any applicable notice periods.

#### **Stakeholder comments**

5.37 Vodafone noted that for mobile customers it is not possible to be specific about the notice period because the customer can use different switching processes where different timeframes apply, e.g. using a PAC<sup>61</sup> or using a standard disconnection process.

#### How we propose to implement

- 5.38 As set out above, some consumers do not understand notice periods, including that they may still need to give notice after their fixed commitment period ends.
- 5.39 We therefore consider that, as part of the requirement to tell end-users how to terminate their contract, providers should also inform end-users about the length of their notice period. This enables them to plan on an informed basis if they decide to switch and change provider. For example, they can avoid terminating their contract and switching provider before the end of the notice period and potentially having to pay for both old and new services at the same time.
- 5.40 We recognise the point highlighted by Vodafone and accept that it may not be possible to give a specific notice period for mobile contracts. We also note that, from 1 July 2019, new mobile switching rules will come into force which will allow customers to use a new Auto-Switch process. The new rules will ban notice periods for any customer using this process, but customers who switch or terminate their contract by other means will still be subject to notice periods.<sup>62</sup>

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<sup>&</sup>lt;sup>61</sup> Porting Authorisation Code.

<sup>62</sup> Under the new rules, consumers will be able to request and automatically receive a unique code by text, or through their online account, which they can give to their new provider to switch. Once the switch has taken place, the consumer's old mobile provider will no longer be able to charge them for a notice period, so people using the Auto-Switch process will not have to pay for a service they no longer use after the switch date. If consumers choose not to use this service, (e.g. they cancel their old contract without requesting a code and separately set up a contract with their new provider) they may still be charged notice by their old provider after they have switched. For more information, see Ofcom's Consumer switching statement 2017, https://www.ofcom.org.uk/ data/assets/pdf file/0023/108941/Consumer-switching-statement.pdf

5.41 We therefore propose to require providers to inform end-users of any applicable notice period, or, for mobile contracts, that a notice period may apply.

## Early termination charges relating to that contract which no longer apply from the point the fixed commitment period ends

#### Our previous proposal

5.42 In the July 2018 Consultation, we proposed that an end-of-contract notification should inform the customer that early termination charges no longer apply following the end of the fixed commitment period.

#### **Stakeholder comments**

5.43 A few respondents, including the Communications Consumer Panel and ACOD (CCP-ACOD) noted the importance of using plain language that consumers can understand. Vodafone said that providers should avoid terminology such as 'early termination charges' as consumers may not understand it.

#### How we propose to implement

- 5.44 As noted above, some consumers do not know that they can switch to another provider after the end of their fixed commitment period without paying an early termination charge.
- 5.45 We consider that it is necessary for end-users to understand that, from the end of the fixed commitment period, they are able to terminate their contract without early termination charges applying. If end-users mistakenly believe that these charges will continue to apply after the end of the fixed commitment period, then this may prevent them from switching or changing deal. Equally, if they are unsure about whether early termination charges will apply, then it may dissuade them from engaging and considering their options.
- 5.46 Inclusion of this information also helps to avoid unintended consequences that may otherwise arise when notifications are sent in advance of the end of the fixed commitment period, by ensuring that end-users are aware that early termination charges will be payable up to the date the fixed commitment period ends.
- 5.47 Our research shows that including information about early termination charges helped to clarify the conditions consumers are subject to, and participants were generally in favour of its inclusion in an end-of-contract notification.<sup>63</sup>

<sup>&</sup>lt;sup>63</sup> Ofcom, 2018. Jigsaw: End-of-contract notifications: Attitudes to and understanding of alternative content options. Slide 28.

- 5.48 In relation to stakeholder responses, we consider that it is for providers to decide how to communicate effectively with their customers and we expect them do so in a way that is clear and not deliberately misleading.
- 5.49 We therefore propose to require providers to inform end-users that early termination charges will not apply from the end of the fixed commitment period. In our view, this is an integral part of informing customers about how to terminate their contract.

# Details of other contracts taken with the same provider

#### Our previous proposal

5.50 In the July 2018 Consultation, we proposed that an end-of-contract notification should include a list of other services taken with the same provider pursuant to other contracts.

#### Stakeholder comments

- 5.51 A number of providers raised concerns about the proposed requirement to list other services taken with the same provider pursuant to other contracts. These included concerns about the complexity of linking together different billing systems and databases to enable the services under different contracts to be listed together. It was suggested that this should only apply to contracts that would be financially impacted by a change or termination of contract. Providers also raised concerns that listing other services would confuse customers and result in information overload. Sky suggested this information should instead be provided in online accounts, with a link to this included in the notification.
- 5.52 The CCP-ACOD, some individual respondents, and Sky highlighted problems arising from linked or dependent contracts for services intended to be consumed together but which may have different contractual terms. 64 They were concerned that under our proposals an end-of-contract notification may not make a consumer aware of all the implications of terminating their contract, for example that they may lose a discount on a linked service or incur early termination charges on a dependent contract that would also terminate.
- 5.53 A number of providers raised concerns about the complexity of identifying concurrent services for small businesses, given businesses were likely to have multiple products with

<sup>&</sup>lt;sup>64</sup> We provided the example in our <u>July 2017 Call for Inputs: Helping consumers to engage in communications markets</u> of a consumer with an 18-month fixed commitment period for their line rental contract and a discount on a 12-month fixed commitment period broadband contract dependent on taking landline rental from the same provider. In this scenario a consumer would receive an end-of-contract notification for the broadband contract first at which point the consumer may have to pay an early termination charge on the longer line rental contract to switch service immediately or pay a non-discounted price for broadband until the end of the line rental contract. Sky in their response provided the example of Sky Multiscreen which is dependent on a Sky TV subscription. If a consumer ends their Sky TV subscription at the end of the fixed commitment period, the Sky Multiscreen subscription would automatically terminate at the same time and the customer would need to pay an early termination charge for the remaining fixed commitment period for Sky Multiscreen. Sky was concerned that the requirement to state that no early termination charges apply would be confusing in this scenario.

various end dates. Another provider, Virgin Media, raised concerns about billing systems that made it difficult to identify concurrent services provided to businesses.

#### How we propose to implement

- 5.54 As noted above, informing end-users about how to terminate their contract is intended to enable them to make informed choices, and to switch providers where it is in their interests to do so. We set out above that some end-users have two or more contracts for services with the same provider, and that some may be unaware of the detail of their contractual arrangements.
- 5.55 We consider that information on other relevant contracts that a consumer or business may have with the same provider is necessary for them to understand the relationship between the contract to which the end-of-contract notification relates and those other contracts. If there are financial or service impacts that might occur in one contract as a result of the termination of another, consumers and businesses should be informed of this and be able to factor this into any decision to terminate the contract. This information could be important in deciding whether to move to a different contract with the same provider or switch to another provider.
- 5.56 Our consumer research shows that participants consider the information about other contracts from the same provider, where the cost of the other contract(s) are dependent on the customer also having the services to which the end-of-contract notification relates, to be essential to that notification.<sup>65</sup>
- 5.57 We recognise that there could be complexity in delivering this information and that this could result in costs to providers, which is discussed further in Section 10. We have made a revision to our proposals to ensure that consumers and businesses are sufficiently informed by the end-of-contract notification about the impacts of terminating their contract while imposing the least costs on providers.
- 5.58 In the July 2018 Consultation, we proposed that providers list the services taken pursuant to other contracts. We now consider that it is sufficient for the contract itself to be highlighted and not the specific services provided under it, as consumers will be able to find out further information on the specific services if required.
- 5.59 In July, we also proposed that all contracts should be listed. We now only consider it necessary that consumers are informed of other contracts where there is a financial link to the core contract (in respect of which the end-of-contract notification is being given), or where there is an interdependency between the core contract and the other contract. These two categories of other contracts are the ones relevant to any decision to terminate the core contract.

<sup>&</sup>lt;sup>65</sup> Ofcom, 2018. Jigsaw: End-of-contract notifications: Attitudes to and understanding of alternative content options. Slide 15.

- 5.60 Therefore, we propose that providers are required to provide details of other contracts that they provide to the same residential consumer or business in the end-of-contract notification and set out guidance on this below.
- In Section 4, we set out our view that it is reasonable to differentiate between residential consumers and businesses on the basis that businesses may have more resources and are likely to be better equipped to manage their communications contracts. Furthermore, the diversity among businesses means it is difficult to specify rules that will be applicable to all business customers. Specifically, the list of contracts required for larger businesses may be too large and impractical to provide. Therefore, in the draft guidance below, we have set out different expectations for residential consumers and businesses:
  - a) notifications for residential consumers should include a list of any other contracts where there is a financial link to the core contract (i.e. the contract for which the end-of-contract notification is given), or where there is an interdependency between the core contract and the other contract; and
  - b) notifications for business customers should include, where relevant, a message explaining that if the customer terminates the contract, other contracts may be affected (but it is not necessary for the provider to specifically list these contracts).

#### **Draft General Condition**

Our draft general condition provides that an end-of-contract notification should include the following information:

"...details of other contracts for Public Electronic Communications Services between the Regulated Provider and the Subscriber;"

#### **Draft Guidance**

For subscribers on residential contracts, we expect the "details of other contracts" to comprise a list of other contracts where there is a financial link to the core contract (i.e. the contract for which the end-of-contract notification is given), or where there is an interdependency between the core contract and the other contract. This would include, for example, any contract which would change because the core contract is terminated. It would also include any other contract which if itself changed would entail a change in the core contract.

For subscribers on business contracts, we do not expect providers to list other contracts the customer has with them. Instead we expect providers, where relevant, to include a message explaining that if the customer terminates the core contract, other contracts may be affected.

#### How to terminate the contract

- 5.62 Article 105(3) requires end-users to be informed of the means by which to terminate their contract.
- 5.63 For end-users to be able to act on the information provided in the end-of-contract notification, they need to be informed of the means by which they can terminate the contract. We therefore propose to require providers to inform end-users how to terminate the contract.
- 5.64 Providers therefore must include accurate and up-to-date contact information for this purpose. We set out in the guidance below our proposal that providers, in their notifications, should also offer end-users a range of methods by which they can contact the provider to terminate their contract(s), in line with the existing guidance in relation to General Condition C1.3.

#### **Draft General Condition**

Our draft general condition provides that an end-of-contract notification should include the following information:

"...how the Subscriber may terminate that contract;"

#### **Draft Guidance**

In complying with this requirement, providers should take into account our existing guidance in relation to General Condition C1.3 on conditions and procedures for contract termination. In particular, that guidance states that providers should offer a range of communication options for end-users to terminate their contracts.<sup>66</sup>

<sup>&</sup>lt;sup>66</sup> Ofcom's Guidance under General Condition C1 – Contract Requirements, page 2. Available at:
<a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf

# **Consultation questions**

5.65 We welcome stakeholder comments on the following questions in relation to the proposals set out in this section:

**Question 3:** Do you agree that end-of-contract notifications should be sent to end-users before the expiry of a fixed commitment period, if the contract will be automatically prolonged after that point?

**Question 4**: Do you agree with our proposal not to specify in a prescriptive way the words and language used in end-of-contract notifications?

**Question 5:** Do you agree with our implementation proposal for the end-of-contract notification to include the date on which the fixed commitment period will end?

**Question 6:** Do you agree with our implementation proposal for the end-of-contract notification to include details of the services which the provider currently provides to the end-user under the relevant contract?

**Question 7:** Do you agree with our implementation proposal that the end-of-contract notification must include information regarding notice periods?

**Question 8:** Do you agree with our implementation proposal that the end-of-contract notification must include information regarding early termination charges?

**Question 9:** Do you agree with our implementation proposal that the end-of-contract notification must include information regarding other contracts which the provider currently provides to the end-user?

**Question 10:** Do you agree with our implementation proposal that the end-of-contract notification must include information regarding how to terminate the contract?

Please provide evidence in support of your views.

# 6. Best tariff advice

- 6.1 In this section, we discuss our proposals to require the provision of best tariff advice in end-of-contract notifications and how we expect providers to interpret and comply with this requirement.
- 6.2 In providing best tariff advice, we propose to require providers to inform end-users of:
  - a) the monthly subscription price for their contract, and any changes to that after the end of the fixed commitment period;
  - b) changes to the services provided because the fixed commitment period is ending;
  - c) options available to the customer; and
  - d) the provider's best tariffs.
- 6.3 We additionally propose to require providers to inform residential consumers of the date on which the fixed commitment period ends for those contracts with the same provider that we have proposed should be listed in the end-of-contract notification (see Section 5).
- 6.4 To provide additional clarification on how providers should provide best tariff advice, we outline draft guidance on how providers should comply with our requirements in relation to residential consumers in the following areas:
  - a) any changes the provider is making to the services provided because the fixed commitment period is ending;
  - the options available to the customer after the fixed commitment period has ended;
     and
  - c) the provider's best tariffs.
- The draft guidance sets out the minimum we would expect providers to do to meet the requirements of our draft general condition. We have also included in Section 7 some illustrative (and non-binding) examples of the best tariff advice they could give to residential consumers.

# **EECC** requirement

Article 105(3) of the EECC requires that, at the same time as informing end-users about the end of their contractual commitment, providers must give them best tariff advice relating to their services. It reflects that the availability of information on offers and services is a key element for consumers in competitive markets where several providers offer services.<sup>67</sup> It pursues the objectives that:

<sup>&</sup>lt;sup>67</sup> EECC, Recital 265

- a) end-users across the EU should have a high-level of protection;68
- b) to take full advantage of competition, consumers should be able to make informed choices and to change providers when it is in their best interest to do so;<sup>69</sup> and
- transparent, accurate and timely information on switching should increase end-users' confidence in switching and make them more willing to engage actively in the competitive process.
- 6.7 Communications markets are complex. Consumers face choices between large numbers of providers and services, with providers competing to attract consumers and taking steps to keep them. The requirements of Article 105(3) should be implemented in a way that achieves its objectives usefully and effectively for consumers in that context.
- That means giving consumers real and meaningful ways to protect their interests by making and giving effect to informed choices about the services they buy and who they buy them from. Where they are no longer bound by the fixed commitment period of their contract, they should be able to take advantage of the good deals that are available to them from providers who compete keenly for their business.
- 6.9 The way we implement the requirements should therefore enable consumers to assess whether they are on the best tariff and, if not, what the best tariff would be. If they want to switch to that tariff, they should be able to. That involves giving consumers clear and straightforward information, so they can:
  - a) understand what they currently get from their providers and how this changes when the fixed commitment period of the contract ends and the contract rolls-over;<sup>71</sup>
  - b) see what other contracts they have with their provider and when those contracts end;
  - c) know what options are available for seeking a better deal; and
  - d) be told about the best tariffs their provider offers and whether they are available to the consumer.

# Monthly subscription price currently paid, and any changes to that after the end of the fixed commitment period

## Our previous proposal

6.10 In the July 2018 Consultation, we proposed that an end-of-contract notification should include the monthly subscription price currently paid by the customer for those services

<sup>&</sup>lt;sup>68</sup> EECC, Recital 257

<sup>&</sup>lt;sup>69</sup> EECC, Recital 273

<sup>&</sup>lt;sup>70</sup> EECC, Recital 277

<sup>&</sup>lt;sup>71</sup> This information is also essential to understanding what the end of their contractual commitment period means in terms of how the price they pay and the service they receive will change once this period has come to an end.

(including any historical discounts); and any change to that price at the end of the fixed commitment period.

#### Stakeholder comments

#### 6.11 We received the following responses:

- a) Some respondents (Three and Virgin Media) disagreed with the inclusion of the monthly price and the subsequent price after the fixed commitment period has ended.
- b) Other respondents (First Utility, Vodafone, MoneySavingExpert and uSwitch) agreed with our proposal to include the change to the customer's monthly price at the end of the fixed commitment period. Vodafone suggested this should only be included where there will be an increase; this would allow operators the option to not include it if there is a price decrease, or if the price remains the same.
- c) uSwitch referred to their own research and suggested adding an aggregated price (such as an annual or total cost of the contract), and a future cost projection for the equivalent time period, which they felt would help demonstrate the 'scale of the cost' to the consumer.
- d) BT and [≫] disagreed on the inclusion of historical discount information within the notification and requested clarity on the type of discounts which would need to be included. Both BT and [≫] believed the information would be confusing (if all discounts were to be listed e.g. one-off discounts, referral discounts) and not achieve the aim of ensuring consumers have the most relevant information on their price and service. BT believed the most important information remains the current price, so customers can compare this to the service they are considering switching to.
- e) Andrew Griffiths suggested we require mobile operators to state the cost of the handset element separately, alongside the airtime price, and require providers to state whether they will continue charging for the handset after the fixed commitment period has ended. Three suggested that the proposed notifications may not adequately address split handset finance and airtime agreements, where the finance agreement is not subject to the end-of-contract notification.
- f) Some respondents (Virgin Media and Sky) highlighted a potential situation whereby the monthly price shown in the notification may differ from the price being paid at the time the fixed commitment period ends, and whether factors such as pay-per-view content or temporary offers affect what the consumer recognises as the price of the service they are paying for. Sky suggested the option to include a statement saying the information provided may no longer be accurate if the customer has made a change to those services.

#### How we propose to implement

- 6.12 Telling end-users the monthly subscription price they currently pay and how this would change (or not) is essential for them to assess what they will have to pay if they do not act. It is a key element of their ability to compare their existing price against the new one offered to them by their provider and against the provider's best tariffs (or another provider's) and to decide which tariff is best.
- 6.13 Participants in our 2018 end-of-contract notification qualitative research identified monthly price changes at the end of the period as essential information in a notification, which could help them determine whether they wanted or needed to take any action.

  Most thought that, if the amount they were paying was going to change after the end of the period, it should be incumbent on the provider to let the customer know this.<sup>72</sup>
- 6.14 In relation to the responses raised:
  - a) We consider it important for both the current monthly subscription price and the monthly subscription price that would apply at the end of the fixed commitment period to be provided, even where there is no change. Our research found that participants considered it important for the notification to include the current price, even where it does not change, to give them clarity about what they would pay in the future.<sup>73</sup>
  - b) We acknowledge the research provided by uSwitch but note that participants in our qualitative research preferred price information to be presented as a monthly rather than an annual figure, as this would be more helpful to them in terms of budgeting.
  - c) Although we previously considered it important to inform consumers whether any discounts had applied to the price they paid during their fixed commitment period, 74 we acknowledge the points made by respondents about historical discounts. Given our proposals for provision of providers' best tariffs below, we no longer propose that this information is necessary. It was intended to inform consumers of available discounts that might be available to them again if they did take action. The information on best tariffs would ensure they have this advice.
  - d) We do not propose at this time to require the cost of the mobile handset and the airtime charge to be separately identified. As set out in Section 2, we are separately looking at the issues arising from bundled mobile handset and airtime contracts. We outline below (paragraph 6.35) that we are proposing that providers must inform relevant customers of the option to move to a SIM-only deal and include at least one SIM-only tariff in the end-of-contract notification.
  - e) In relation to Three's point, we acknowledge that separately financed handset contracts will not be subject to our proposed end-of-contract notifications and best

<sup>&</sup>lt;sup>72</sup> Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slides 15, 26, 52.

 $<sup>^{73}</sup>$  Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slides 26 and 29.

<sup>&</sup>lt;sup>74</sup> Without needing to provide the actual price paid or the value of the discount.

- tariff advice. However, under the Consumer Credit Act there is a requirement to provide a statement which will show amongst other information, the amount of each instalment which remains to be paid and the date on which these are due. We also set out in our July 2018 Consultation that where these agreements are completed, providers have sent notifications that the agreement has been fulfilled.
- f) We do not consider that additional content, such as pay-per-view content, forms part of the customer's subscription price for (regulated) electronic communications services and therefore should be provided. This information is unlikely to assist consumers when comparing offers for the electronic communications services that are available in the market (which show the monthly subscription price). We would support providers providing additional, helpful information, such as advice on prices changing if the customer has made a change to the services they buy.
- 6.15 We therefore propose that providers are required to provide the monthly subscription price currently paid by the customer and the monthly subscription price that will come into effect at the end of the fixed commitment period.

# Changes to the services provided because the fixed commitment period is ending

## Our previous proposals

6.16 In the July 2018 Consultation, we proposed that an end-of-contract notification should include information about any changes to the service(s) provided once the fixed commitment period ends.

#### Stakeholder comments

6.17 No respondent commented on our proposed policy.75

#### How we propose to implement

- 6.18 Knowing how their deal will change at the end of their fixed commitment period is another key part of an end-user's assessment of whether their new tariff, if their contract rolls-over, is the best one for them. Our 2018 end-of-contract notification qualitative research supports this view. Participants told us that including a breakdown of their current service/contract and any changes was essential to the end-of-contract notification.
- 6.19 We therefore propose to require that details of any changes to services be provided as part of providers' best tariff advice in the end-of-contract notification.

<sup>&</sup>lt;sup>75</sup> Sky made a drafting comment on how we reflected this requirement in the draft general condition, suggesting that we should refer to changes to service "because" the fixed commitment period is ending (rather than changes to service "upon" the fixed commitment period ending). We have adopted this suggested change.

- In Section 4, we set out our view that it is reasonable to differentiate between residential and business customers on the basis that businesses may have more resources and are likely to be better equipped to manage their communications contracts. Furthermore, the diversity among businesses means it is difficult to specify rules that will be applicable to all businesses. For these reasons, we have proposed a different approach to businesses in terms of requiring services provided under the contract to be listed in an end-of-contract notification.
- 6.21 For similar reasons, we also consider it appropriate to propose different guidance for residential consumers and businesses about changes to their services:
  - a) For residential consumers, we expect providers to list any changes to the services
    provided under the contract that will take effect at the end of the fixed commitment
    period.
  - b) For businesses, we do not expect providers to list such changes. Instead we expect them to include a message in the end-of-contract notification explaining that the services under the contract may change.

#### **Draft General Condition**

Our draft general condition provides that an end-of-contract notification should include the following information:

"...details of any changes to the services referred to in (b) that will come into effect because the Fixed Commitment Period for that contract is ending;"

The "services referred to in (b)" are: "...the services provided by the Regulated Provider to the Subscriber under that contract;"

#### **Draft Guidance**

For subscribers on residential contracts, we expect providers to list any changes to the services provided under the contract that will take effect because the fixed commitment period is ending.

For subscribers on business contracts, we do not expect providers to list such changes. Instead, we expect providers to include a message in the end-of-contract notification, explaining that the services under the contract may change upon the fixed commitment period ending.

# Details of contracts taken with the same provider should include the date on which the fixed commitment period ends

6.22 Making an informed choice about whether they are on the best tariff often involves consumers deciding whether to buy separate or bundled services. Bundling services may offer consumers significant savings. To help make that choice, they need to know when the

- fixed commitment period for any other contracts they may have with the same provider will end.
- 6.23 With that information, consumers are better placed to assess whether they should sign up to a new deal for the service to which the end-of-contract notification relates or wait and bundle services when the fixed commitment periods under their other contracts end.
- 6.24 In Section 5, we set out our proposals for how details of other contracts taken with the same provider should be listed in an end-of-contract notification. Our proposals contain different guidance for residential consumers and businesses, where providers would not be required to list the other contracts provided to their business customers.
- Therefore, we consider that it is appropriate, for the same reasons, that the date on which the fixed commitment period ends for other contracts is only provided to residential consumers, and for those contracts that we propose should be listed. As set out in Section 5, this is limited to those other contracts where there is a financial link to the core contract (i.e. the contract for which the end-of-contract notification is given), or where there is an interdependency between the core contract and the other contract. These are likely to be the contracts for services which consumers have already bundled and should consider bundling again.
- Alongside this requirement, it is important that more generally consumers are aware that they may be able to get a better deal if they bundle their services. Therefore, we expect providers to include, when giving information to residential consumers about the options available to them at the end of their fixed commitment period, that they could get a better deal if they bundle the services they have with that or any other provider. We have set this out in the section below.

# Options available to the customer after the fixed commitment period has ended

#### Our previous proposals

6.27 In the July 2018 Consultation, we proposed the inclusion of information about the options available to the customer after the fixed commitment period has ended, including a message that the customer may be able to make savings by exploring those options. We also proposed that the notification to customers of mobile services must include SIM-only as one of the options.

#### Stakeholder comments

No respondents disagreed with the inclusion of information about options for customers after the end of the fixed commitment period. Two respondents (Three, [ $\approx$ ]) stated that the option for the customer to consider SIM-only deals should only be included in notifications sent to customers who are on mobile handset and airtime contracts, and not

those on SIM-only contracts as this would cause confusion among those customers already on these contracts.

## How we propose to implement

- 6.29 End-users have a range of providers and services to choose from. Residential consumers, in particular, may find those choices complex. There is potential for them to confuse consumers and hinder their ability to make decisions that are in their best interests. There is also potential for providers to take advantage of that confusion, offering better deals to active consumers at the expense of those who do not switch.
- 6.30 Some consumers are unaware of the savings they could make through switching their tariff or provider. Our 2018 quantitative consumer engagement research found that 51% of out-of-contract dual play customers, for example, did not know how much they could save by signing up to a new contract or provider. 24% of out-of-contract dual- and triple-play customers, and 17% of standalone pay TV customers, did not think they could make any savings.<sup>76</sup>
- 6.31 Findings from our qualitative consumer engagement research in 2017 point to a similar conclusion. Less engaged consumers held a belief that any financial gains to be made from shopping around for a new deal would not be large enough to justify the perceived 'hassle' and time involved in doing so.<sup>77</sup>
- 6.32 In our 2018 end-of-contract notification qualitative research, participants considered that giving consumers additional information regarding their options (such as the fact they could shop around for a new deal or switch to a new provider), alongside the date that their fixed commitment period ends, gives a more complete picture of their options. Indeed, even among the less engaged participants, being provided with all the relevant information in a single communication was considered essential.
- 6.33 For those reasons, it is important that a provider's best tariff advice includes information, in clear terms, about the options available. This includes the possibility of switching provider and, for residential consumers in particular, informing them that providers may offer new customers better deals and switching may save them money.
- 6.34 Accordingly, we propose to require providers to include a message in their best tariff advice giving details of the options available to end-users at the end of their fixed commitment period.

<sup>&</sup>lt;sup>76</sup> Ofcom, 2018. Critical Research: Consumer engagement quantitative research. Slide 53. Available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0022/117076/Consumer-engagement-quantitative-research-2018-slide-pack.pdf

<sup>&</sup>lt;sup>77</sup> In July 2017, Ofcom commissioned Futuresight to conduct qualitative research to better understand why consumers do not engage fully, or at all, with communications markets (Ofcom, 2018. Futuresight: Engagement qualitative research report) this is available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0022/113458/Engagement-Qualitative-Research-Report,-2017.pdf. See page 21.

- 6.35 In addition, we propose to provide guidance as to what information we would expect the options message to include for residential consumers. We expect it to include advice to residential consumers that they can:
  - a) stay on their existing contract;
  - b) switch to a new one with the same provider (including but not limited to those referred to as part of the provider's best tariffs);
  - c) switch to a new contract with a different provider; and
  - d) for mobile consumers on bundled handset and airtime contracts only, switch to a SIM-only deal.
- 6.36 The advice should also state that some providers may offer new customers better deals and that they may get a better deal if they bundle the services they have with that or any other provider.
- 6.37 Information on each of these points would reflect the choices available to the residential consumer at the end of their fixed commitment period. They would convey advice about the options to obtain a best tariff, helping residential consumers to make an informed decision about it.
- 6.38 We do not propose to take the same approach in relation to businesses. In Section 4, we set out our view that it is reasonable to differentiate between them and residential consumers on the basis that businesses may have more resources and are likely to be better equipped to manage their communications contracts. Therefore, whilst providers must comply with the requirement to give businesses information about their options, we do not consider it necessary to give similar guidance on the way we expect them to do it.

#### **Draft General Condition**

Our draft general condition provides that an end-of-contract notification should include the following information for subscribers on residential and business contracts:

"...details of the options available to the Subscriber at the end of the Fixed Commitment Period for that contract;"

#### **Draft Guidance**

We expect "details of the options available" to include advice to subscribers on residential contracts that they can:

- a. stay on their existing contract;
- b. switch to a new contract with the same provider (including but not limited to those referred to as part of the provider's best tariffs);
- c. switch to a new contract with a different provider; and

d. for subscribers on bundled handset and airtime mobile contracts only, switch to a SIM-only deal.

The advice should also inform subscribers on residential contracts that some providers may offer new customers better deals and that they may get a better deal if they bundle the services they have with that or any other provider.

# The provider's best tariffs

- 6.39 The complexity of choices end-users face can also mean it is difficult for them to identify specific tariffs that would best meet their needs. Part of best tariff advice therefore should be information which enables end-users to understand what suitable tariffs are available.
- 6.40 This information would be the counterpart to advice about the consumer's options. Having both would enable them to make detailed comparisons between the choices open to them and an informed decision about whether to stay on their existing deal, sign up to a new one or switch. That would give real and meaningful effect to the consumer protection objectives that lie behind Article 105(3) of the EECC.
- 6.41 We note again the evidence from our research, referred to above and set out in our July 2018 Consultation, that shows some consumers lack awareness of the options available to them once the fixed commitment period of their contract ends, and of the savings they could make if they took action.
- 6.42 We are therefore proposing to include a requirement that best tariff advice should include the provider's best tariffs. This would address the shortfalls in end-users' awareness and enable them to assess whether they should take action. We also propose to give guidance on how providers should meet that requirement in respect of residential consumers.
- 6.43 The draft guidance for residential consumers reflects some key design principles which emerged from our 2018 consumer research. One is that information is likely to be most useful to residential consumers, in deciding if they are on the best tariff, where it is precise, specific and complete. It is also important to strike an appropriate balance between giving them sufficient information to make informed choices and not providing so much as to cause confusion or unnecessary complexity.
- 6.44 The draft guidance focuses in particular on the following matters:
  - a) providers should give residential consumers at least one and up to three best tariffs;
  - the tariffs should be based on similarity to the consumer's previous usage where relevant, and otherwise based on service packages that are most similar to what the consumer currently receives;
  - c) one tariff should be the cheapest tariff available to the consumer receiving the advice;
  - d) one tariff should be the cheapest tariff available to any consumer (if not the same as in (c));

- e) one tariff can be the cheapest upgrade tariff;
- f) one tariff should be a SIM-only tariff where the consumer has a bundled handset and airtime contract; and
- g) tariffs should be for a bundle of services where the consumer receives them under a single contract with the provider, or has financially linked or interdependent contracts with the same provider and where the fixed commitment period(s) is about to end or has already ended.
- 6.45 For businesses, we expect providers to meet the requirement to include the provider's best tariffs in an appropriate way without the need for such guidance. Again, this is because, as discussed in Section 4, businesses are likely to have more resources and be better equipped to manage communications contracts. We also recognise the significant diversity among business customers, which means it is difficult to specify guidance that will be applicable to all business customers. On that basis, we do not propose to set out any additional expectations about the provision of the provider's best tariffs to businesses.

# Other providers' tariffs

- 6.46 We have considered whether best tariff advice should include information about tariffs available from other providers. However, this approach would likely require considerable time and resource on the part of providers to work in practice, which we do not currently think is necessary to our aims. For example, providers would have to continually ensure that they are up to date with the best tariffs available from other providers, a complex task given the number of services available on the market at any given point. This complexity means that there is also a risk of inaccuracies and misunderstanding, which may result in consumers receiving incorrect information, potentially leading to confusion and frustration.
- 6.47 As set out above, we are now expecting providers to tell consumers in an end-of-contract notification that they can switch to a new provider, and that some providers may offer new customers better deals. We think this should aid consumers being aware of this option and prompt them to seek out tariffs from other providers themselves.

# Tariffs based on consumer's usage where relevant and otherwise based on similar service packages

- 6.48 The tariffs provided to consumers should be as relevant as possible to the choice they have to make when the fixed commitment periods of their contracts end. They should reflect the tariffs that are available at the relevant time, so that the consumer has information to inform the choice they have to make between staying on their deal or switching deal or provider.
- 6.49 We propose to provide guidance that providers should use to give comparison tariffs to consumers based on the consumer's previous usage, where relevant, and otherwise based

- on packages that are most similar to what the consumer currently receives. We discuss each approach below.
- In either approach we expect providers to focus on the main aspects of the services provided to the consumer under the relevant contract because these are likely to be essential to any comparison. For example, providers of mobile and broadband services provide services including calls, SMS and data, with connection speeds and allowances associated with these. We consider these to be the main services, and aspects of those services, that form the service package a consumer receives from their provider and which we would expect best tariffs to be based on. The provider may also include other services, like over-the-top content services for music and video streaming or cloud storage, but we would consider these subsidiary to the main services.

#### Consumer's previous usage

- 6.51 Where it is relevant, providers should use a consumer's previous usage of the main aspects of the consumer's services to inform their best tariffs for that consumer. Providers should make a reasonable judgement as to the period of time over which they should consider usage. For example, a provider could analyse a consumer's average use over the previous 12 months.
- 6.52 Basing best tariffs on usage would result in better outcomes for consumers because the tariffs would be tailored to their individual consumption history. This might help them to identify those tariffs which best reflect their needs. However, we recognise that this approach may be costlier for providers than basing tariffs on similar service packages, given the need to extract customer usage data and conduct additional analysis. This is discussed further in Section 10. We also recognise that this approach is likely to be more appropriate for some services than others, which we discuss in more detail below.
- 6.53 There are some research findings which suggest basing tariffs on a consumer's usage has advantages. Our 2018 quantitative consumer engagement research found that more than half of in-contract mobile customers (54%) considered how much data they were using per month when taking out their current mobile package, while 42% considered how many minutes they used, and 36% how many texts they were sending. 78 Dual play customers also took their data usage into consideration when taking out their current bundle 28% took into account how much data they were using each month. 79 This indicates that consumption is an important consideration for many consumers.
- 6.54 Our 2017 qualitative consumer engagement research found that informing consumers of their usage data as part of an end-of-contract notification could help them to make a more informed choice about their communications services. 80 That data was viewed as being particularly helpful if it highlighted where a customer was paying for a service or product

<sup>&</sup>lt;sup>78</sup> Ofcom, 2018. Critical Research: Consumer engagement quantitative research. Slide 50.

<sup>&</sup>lt;sup>79</sup> Ofcom, 2018. Critical Research: Consumer engagement quantitative research. Slide 51.

<sup>&</sup>lt;sup>80</sup> Ofcom, 2018. Futuresight: Engagement qualitative research report. Page 52.

- which they were not using. Providing tariff details which are based on usage could therefore provide customers with important advice about whether they need to revise their package to one that better reflects their needs.
- 6.55 Receiving tariff details which reflect usage may therefore be helpful to consumers for whom usage is a key consideration. In addition, for those who do not currently consider it when taking out a service, there is arguably a greater risk that they may be on a deal which is unsuitable. Therefore, being provided with tariffs based on usage could lead them to choosing a better tariff for their needs.
- 6.56 We consider that tariffs based on a consumer's usage is most likely to be relevant and appropriate for mobile services. This is because the prices of mobile packages tend to differ based on the specific allowance of each service (i.e. minutes, texts and data). In addition, many mobile operators already inform consumers of their usage (and some recommend packages to consumers based on this).
- 6.57 We envisage several ways in which this approach would work well in the case of mobile services. For example, if a mobile consumer does not routinely use most of their data allowance, the provider's best tariffs would likely contain at least one with a lower data allowance than they currently have, which is likely to be cheaper and potentially more reflective of their needs. Or, conversely, the provider's best tariff for a consumer who frequently exceeds their data allowances, and pays additional charges for more data, may be one with a higher allowance.
- 6.58 In the case of broadband services, we consider that providing tariffs based on usage is likely to be less relevant. This is because these services tend to be sold as inclusive packages, where the amount that a consumer pays does not differ based on their usage of the service. If this were not the case (and a provider were to offer a limited broadband service), then it may be more relevant for a provider to base tariffs on a consumer's previous usage of the service.
- 6.59 We recognise there are circumstances where a consumer's prior consumption may not be a good indicator of their future needs. This could include where their usage is constrained by their current allowance and so does not reflect their true requirements. Alternatively, they may choose a data allowance which is more than they typically use to act as a safeguard against going over their monthly allowance and facing charges for doing so.81
- 6.60 In addition, as new services become available and network speeds increase, it is likely that many consumers will use more data in future than they have done in the past. That suggests historic consumption information may not always be indicative of future need.

<sup>&</sup>lt;sup>81</sup> Our 2018 quantitative consumer engagement research, for example, found that half of mobile consumers who were aware of their data allowance have data leftover at the end of a typical month, and that two in five of these consumers took a contract with more data than they needed for peace of mind. Ofcom, 2018. Critical Research: Consumer engagement quantitative research. Slide 48.

However, in our view, none of these factors negates the value of providing tariffs informed by usage data.

#### Similar packages

- 6.61 Where it is not relevant or appropriate for a provider to base the best tariffs they give to a customer on their usage, we would expect providers to list tariffs for service packages which most closely match the customer's existing package of services.
- There are some advantages to an approach to showing best tariffs based on similar packages. In particular, it is likely to be easier for consumers to assess how their current deal compares to tariffs for similar packages, as well as whether their provider makes better offers to other customers for which they are not eligible. It is also likely to be relatively straightforward for providers to implement.
- 6.63 However, we consider it appropriate that this approach is only used where usage-based tariffs are not relevant, as there are some limitations to this approach. In particular, if consumers are not well suited to their current deal, but nonetheless receive advice about a similar package of services, this may result in them remaining on a deal less well suited to their needs.

## Up to three best tariffs

- 6.64 We propose that providers should give residential consumers at least one and up to three tariffs options in line with the following guidance.
- 6.65 Providing up to three tariffs should strike a balance between providing consumers with a selection of different relevant tariffs, while not being presented with excessive information which may over-complicate their assessment and choice of a new tariff. Expecting providers to list up to three tariffs would also mean that where a provider only offers one or two tariffs that may be relevant to the consumer they should only include these.

#### **Cheapest tariff**

We expect that wherever a tariff is put to a consumer, the price given should be the cheapest for the relevant service package (whether based on similar packages or usage).
 We propose in our guidance that providers should include the cheapest tariff available to the consumer receiving the advice and, where not the same, the cheapest tariff which the provider makes available to any consumer.

#### Cheapest tariff available to the consumer receiving the advice

6.67 A provider's best tariffs should include the cheapest tariff which they are prepared to offer the consumer. A core aspect of the consumer's choice, to stay with their provider or not, is to know what deal they would get if they stayed.

#### Cheapest tariff available to any consumer

- 6.68 We propose that best tariffs should also include the cheapest tariff which the provider makes available to any consumer for the relevant service package (whether based on similar packages or usage). That tariff should be included even if the specific consumer to whom the advice is sent is not eligible for it (for example, if it is only offered to some categories of customer, such as new ones).
- 6.69 Given the shortfalls in consumers' awareness of the savings they can make by switching tariff or provider, 82 and the objective of Article 105(3) that consumers should receive best tariff advice in order to make an informed choice about what deal is best for them, requiring the provider to state its cheapest overall tariff is important. It is an essential part of a consumer's ability to assess the favourability of the terms on which their provider is prepared to contract with them. They can use it to make an informed choice about whether to stay with that provider in the knowledge they may not be receiving its best tariff or switch.
- That ability is a central aspect of the consumer protection Article 105(3) is meant to provide. Where a provider's best tariffs expose considerable differences between their prices for in- and out-of-contract consumers, consumers would be able to identify whether remaining with their provider is in their best interests or if they could lose out by doing so. It would help them decide whether to switch and take advantage of the benefits of competition between providers (by becoming a new customer of another provider). Receiving information on the cheapest tariff available might also encourage consumers to engage with their provider to negotiate their price or package. Without advice on the cheapest deals, we do not consider that consumers would have received meaningful best tariff advice.
- 6.71 In order to ensure that they are able to act on the tariffs provided, it is important that consumers are also told about any eligibility restrictions that apply to the tariffs presented to them. The provider should state clearly if a consumer is not eligible for a particular tariff and why. For example, if a tariff was only available to new customers, this should be explicitly stated, so that consumers do not mistakenly believe they will be able to access it.

#### **Upgrade tariffs**

One of the tariffs given to a consumer as part of the provider's best tariffs could be an upgrade tariff, if the provider considers this to represent a consumer's best tariff. To reduce the risk of providers encouraging consumers to switch to tariffs which are unsuitable for them, we would expect the provider to have a reasonable objective justification for regarding an upgrade tariff as best tariff advice for the consumer. It should

<sup>82</sup> See, for example, Ofcom, 2018. Critical Research: Consumer engagement quantitative research, slide 53.

- be one which the average consumer would agree is amongst the provider's best tariff options for them.
- 6.73 An upgrade tariff might, for example, be based on an upgraded technology which is cheaper than, or the same price as, the consumer's current package. For instance, it might be a superfast broadband tariff provided to a standard broadband customer, if the superfast tariff would be cheaper than, or the same price as, taking out a new standard broadband tariff.

# SIM-only tariff

- 6.74 The provider's best tariff for mobile consumers with a bundled handset and airtime deal should include at least one SIM-only deal. This is because, at the end of a bundled handset and airtime contract, consumers do not need to pay the same price. They could move to a SIM-only tariff and retain their current handset, as an alternative to remaining on their current deal or upgrading their handset and signing up to a new bundled handset and airtime tariff. This would, in most cases, represent a saving for the consumer and would be their best tariff.
- 6.75 In our July 2018 Consultation we proposed that, in end-of-contract notifications for those on mobile deals, providers must include a message about SIM-only options. Our 2018 quantitative consumer engagement research found that a quarter of consumers on mobile handset contracts were unaware of the possibility of moving to a SIM-only deal at the end of their fixed commitment period.83 Of these, some continued to pay the higher price for their mobile service even when their minimum term had ended.
- As set out in paragraph 6.35, in addition to at least one SIM-only deal included as part of the provider's best tariffs, we are proposing that providers inform bundled handset and airtime mobile consumers that one of their options is to switch to a SIM-only deal at the end of their contract. Included with at least one specific SIM-only tariff, this would be an effective reminder to these consumers that a SIM-only deal may be a good option for them, and would likely save them money.

#### **Bundled services**

- 6.77 Many residential consumers take a bundle of services from their provider because it is cheaper or otherwise in their interests to do so. Providers' best tariff advice should reflect that.
- 6.78 Our draft guidance, therefore, sets out our expectation that, as a general rule, we would expect providers to tell consumers about tariffs for a bundle of services where the consumer has other services with the same provider. This would ensure that the tariffs

<sup>83</sup> Ofcom, 2018. Critical Research: Consumer engagement quantitative research.

provided cover the services consumers have already decided to bundle and may wish to consider bundling again.

- 6.79 We would apply that general rule where the consumer's bundle of services is provided under a single contract with a common fixed commitment period. We would also apply it where the services are provided under different contracts which are financially linked or inter-dependent and their fixed commitment periods have already ended or will end on the same or close dates. In those cases, as set out in section 7, we expect providers to aggregate end-of-contract notifications into a single message. It should include best tariffs for a bundle covering all of the services provided under the relevant contracts.
- 6.80 We propose to apply one exception to the general rule. Where the consumer receives services under separate contracts in which the fixed commitment periods do not end on the same, or sufficiently close, dates (i.e. they are 'non-coterminous'), we would not expect providers to include in their best tariffs any tariffs in relation to contracts which remain within the fixed commitment period for a further significant period of time. Consumers are likely to be liable to pay an early termination charge in relation to those contracts if they exit early, which may not be in their best interests.
- 6.81 For example, a residential consumer may receive voice, broadband and pay TV services from the same provider under separate contracts that are financially linked, but the fixed commitment period for the pay TV service may have a later expiry date than the others. We would expect the best tariffs provided when the fixed commitment period ends for the voice and broadband services to refer only to those two services. In addition, as set out in paragraph 6.25 the notification would include the fixed commitment period end date for the pay TV contract.

#### **Draft General Condition**

The draft general condition provides that an end-of-contract notification should include the following information in respect of a Subscriber's contract:

"...the Regulated Provider's best tariffs."

#### **Draft Guidance**

For subscribers on residential contracts, the information we expect providers to give as part of the 'the Regulated Provider's best tariffs' should include:

- a. at least one and up to three tariffs;
- b. the cheapest tariff available to the subscriber receiving the tariff advice;
- c. the cheapest tariff available to any subscriber (if not the same as in (b)); and
- d. a SIM-only tariff where the consumer has a bundled handset and airtime contract

In addition to (b) to (d), a provider may include the cheapest upgrade tariff if, with reasonable objective justification, the provider considers this to represent a subscriber's best tariff.

Providers should state clearly if a subscriber is not eligible for a tariff and explain why they are not eligible.

Tariffs should be based on similarity to a subscriber's previous usage of the main aspects of the services provided to them, where relevant. Where usage is not relevant, the tariffs should be based on service packages that, in relation to the main aspects of the subscriber's services, are most similar to the services the subscriber currently receives.

For subscribers that have multiple services with the same provider tariffs should usually be for a bundle in relation to those services.

Where the different elements of the bundle are under separate contracts, tariffs should be provided for services for all of the contracts where the fixed commitment period is about to expire or has expired (provided those contracts have a financial link to, or an inter-dependency with, the contract(s) in relation to which the end-of-contract notification is given).

As an exception to the general position on bundled tariffs, we do not expect tariffs to be provided in relation to any contracts which remain within their fixed commitment period for a further significant period of time.

#### Interaction with GDPR

- 6.82 A number of respondents raised questions in response to the July 2018 Consultation about the interaction between our proposals and data protection legislation. They noted that the notification may be considered marketing, and asked for clarity around how end-of-contract notifications should be treated. The Information Commissioner's Office noted that the inclusion of an offer is likely to result in the communication falling within the definition of direct marketing. If a service provider incorporates offers into their end-of or out-of-contract material at any point, they will need to adhere to the specific requirements of the GDPR, DPA and PECR relating to this activity.<sup>84</sup>
- 6.83 Although we have now amended our proposals in order to implement the EECC, data protection will remain a relevant consideration. We therefore set out below our view on how our proposals interact with the GDPR (although compliance with data protection legislation is each provider's obligation and they should seek their own legal advice on it).

<sup>&</sup>lt;sup>84</sup> Information Commissioner's Office (ICO) response to the July 2018 Consultation. Available at: https://www.ofcom.org.uk/ data/assets/pdf file/0018/127062/Information-Commissioners-Office-ICO.pdf

- 6.84 The EECC provides that it is without prejudice to measures taken at EU or national level (in accordance with EU law) relating to the protection of personal data and privacy. The requirements of the EECC, and therefore also our draft general conditions, are accordingly subject to the requirements of the GDPR and related national legislation. The requirements of the GDPR and related national legislation.
- 6.85 This means, amongst other obligations, that in preparing and sending end-of contract notifications (and annual best tariff notifications set out in Section 8 below), providers must process personal data lawfully, fairly and transparently. Complying with their data protection obligations is a matter for providers and we would expect them to do so.<sup>87</sup>
- 6.86 The rules on direct marketing are also relevant. The GDPR gives individuals an absolute right to object to their data being used for direct marketing purposes. Direct marketing is not defined in the GDPR, but is defined in the DPA<sup>88</sup> as follows:

"direct marketing means the communication (by whatever means) of advertising or marketing material which is directed to particular individuals" 89

6.87 Elements of the proposed end-of-contract notification (and annual best tariff notification set out in Section 8) are likely to be considered direct marketing (e.g. the provider's best tariffs<sup>90</sup>). Where a customer has opted-out of direct marketing, we expect the provider to send that customer an end-of-contract or annual best tariff notification that contains as many of the required elements as lawfully possible.

<sup>85</sup> EECC, Article 1(3).

<sup>&</sup>lt;sup>86</sup> E.g. the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

<sup>&</sup>lt;sup>87</sup> For more information, see ICO's guide to the GDPR at: <a href="https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/">https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/</a>

 $<sup>^{\</sup>rm 88}$  In the context of the ICO's duty to publish a Code of Practice on direct marketing.

<sup>&</sup>lt;sup>89</sup> DPA, Section 122. The ICO has issued guidance on direct marketing, available at: <a href="https://ico.org.uk/media/1555/direct-marketing-guidance.pdf">https://ico.org.uk/media/1555/direct-marketing-guidance.pdf</a>

<sup>&</sup>lt;sup>90</sup> Although, within the provider's best tariffs, the customers may be informed of a tariff which is not available to him or her (e.g. because it is only available to new customers and not existing customers).

# **Consultation questions**

6.88 We welcome stakeholder comments on the following questions in relation to the proposals for best tariff advice set out in this section:

**Question 11:** Do you agree with our implementation proposal that best tariff advice should include the monthly price currently paid, and any changes after the end of the fixed commitment period?

**Question 12:** Do you agree with our implementation proposal that best tariff advice should include changes to the service provided because the fixed commitment period is ending?

**Question 13:** Do you agree with our implementation proposal that best tariff advice should include the date on which the fixed commitment period ends for financially linked or otherwise dependent contracts taken with the same provider, for subscribers on residential contracts?

**Question 14:** Do you agree with our implementation proposal that best tariff advice should include the options available to the subscriber after the fixed commitment period has ended?

**Question 15:** Do you agree with our implementation proposal that best tariff advice should include the provider's best tariff and with our draft guidance for subscribers on residential contracts that:

- a. providers should give residential consumers at least one and up to three best tariffs;
- b. the tariffs should be based on similarity to the consumer's previous usage where relevant, and otherwise based on service packages that are most similar to what the consumer currently receives;
- c. one tariff should be the cheapest tariff available to the consumer receiving the advice:
- d. one tariff should be the cheapest tariff available to any consumer (if not the same as in (c));
- e. one tariff can be the cheapest upgrade tariff;
- f. one tariff should be a SIM-only tariff where the consumer has a bundled handset and airtime contract; and
- g. tariffs should be for a bundle of services where the consumer receives them under a single contract with the provider or has financially linked or interdependent contracts with the same provider and where the fixed commitment period(s) is about to end or has already ended.

Please provide evidence in support of your views.

# 7. How the end-of-contract notification should be sent

- 7.1 This section sets out our proposals for how the end-of-contract notification, including best tariff advice, should be sent covering the timing and form of the notice, and accessibility.
- 7.2 We propose to require providers:
  - a) to send the end-of-contract notification in a timely manner (between 10 and 40 days before the end of the fixed commitment period);
  - b) to send the end-of-contract notification as a standalone communication via a durable medium, in a manner which meets our expectations of prominence (as outlined below); and
  - c) to send the end-of-contract notification in a format such as electronic, braille or large print, where customers have registered to receive bills in an alternative format.
- 7.3 In this section we also include guidance where we consider it is necessary to provide more information about meeting our proposed requirements, and in areas where more flexibility is needed depending on the end-user and the services that they subscribe to. We have draft guidance in the following areas relating to the end-of-contract notification:
  - a) the time period for the end-of-contract notification to be sent;
  - b) the order in which information should be provided; and
  - c) the information that should be included when sending the notification by SMS.

# **Timing of notice**

#### **EECC** requirement

7.4 Article 105(3) requires information to be provided "in a timely manner" and "before the contact is automatically prolonged".

#### Our previous proposal

7.5 In our July 2018 Consultation, we proposed that end-of-contract notifications should be sent 40-70 days before the end of the fixed commitment period.

# Stakeholder comments and our response

7.6 Responses to our proposal on the timing of the end-of-contract notification were mixed.

Some suggested a shorter length of time between the end of the fixed commitment period and when the notification is sent; others suggested a longer length of time. Some

- suggested shortening the period of time during which the notification should be sent out. Others called for more research to determine the optimum timing.
- 7.7 BT and Hyperoptic commented that our proposed time window was too short and that it should be increased to allow flexibility for customers to benefit from early upgrades, support the provider in better planning of other communications to the customer, and give the customer more time to consider the options available.
- Other respondents ([><], First Utility, Three, uSwitch and Vodafone) suggested that the proposed period of 40-70 days was too far ahead of the end of the fixed commitment period, and that up to 30 days before the end date should be mandated instead. uSwitch suggested 14-21 days, because consumers are less likely to act the further from the fixed commitment period it is, and notice periods tend not to be longer than 30 days. They were concerned that consumers who wished to act early could incur an early termination charge if they terminated their contract before the end of the fixed commitment period, while those who chose to delay upon receipt of the notification may have forgotten about it by the time it came to act. First Utility also stated that broadband customers would need no more than 30 days to switch, as switching from the Openreach network would take around two weeks, so 30 days would be an appropriate notice period.
- 7.9 Some respondents, such as Citizens Advice and uSwitch, suggested additional research was necessary to determine the most effective notification timing. For example, Citizens Advice suggested randomised control trials to determine a time when consumers are most likely to be receptive to prompts to engage. They believed there is a risk of notifications being sent too late, after a consumer may already have upgraded with their provider without knowing they could have saved money or explored other options, or sent too early when the consumer is unable to switch because they are still within their fixed commitment period.
- 7.10 BT stated that providers should have the flexibility to combine notifications for multiple contracts so consumers have all the information necessary to make a decision, including those consumers who have contracts for multiple services.

#### How we propose to implement

7.11 As set out in Sections 3 and 5, in order to take full advantage of the competitive environment, end-users should be able to make informed choices and to change providers when it is in their best interest to do so and that transparent, accurate and timely information on switching should increase end-users' confidence in switching and make them more willing to engage actively in the competitive process.<sup>91</sup>

<sup>&</sup>lt;sup>91</sup> EECC, Recitals 273 and 277

#### **Single notification**

7.12 We propose to require providers to send one end-of-contract notification, including best tariff advice, to end-users before the end of their fixed commitment period. We consider that notifying end-users of this information once is the least burdensome way to provide them with important information about coming to the end of their fixed commitment period and with best tariff advice. This does not preclude providers from sending additional notifications if they so choose, e.g. at the end of the fixed commitment period.

#### **Timeframe for sending notifications**

- 7.13 We propose to require providers to send end-of contract notifications, including best tariff advice, in a timely manner, as set out in Article 105(3), before the end of the fixed commitment period. Below we provide guidance as to what we consider to be the appropriate approach for providers to deliver notifications in a timely manner.
- 7.14 We have balanced a number of factors when setting our expectations on the timeframe providers should use to ensure notifications are sent in a timely manner before the end of the fixed commitment period.
- 7.15 In our July 2018 Consultation we designed our proposal with the aim of reflecting evidence from our research that customers want to be notified near to the time they are required to take action but sufficiently in advance so that they have time to consider taking action, particularly if they want to avoid any automatic price increase or change in service at the end of their fixed commitment period. We therefore proposed to require notifications to be sent 40-70 days before the end of the fixed commitment period, taking into account that customers may have to give up to 30 days' notice before they can cancel their subscription.
- 7.16 We have taken account of stakeholder responses and recognise that our proposed time period would have meant that a consumer would not be able to act immediately on the information in the notification and in some circumstances may have had to wait in excess of a month before they could act. We accept that this could create an additional barrier to consumer action by requiring them to remember to return to the matter at a later date.
- 7.17 Therefore, to ensure the notification is effective, we consider that end-users should receive end-of-contract notifications, including best tariff advice, when they are nearing the end of their fixed commitment period so that they are informed at a time when they are able to make decisions on how they want to proceed, and, if appropriate, take necessary steps with minimal delay. This may include shopping around for other offers and giving the required notice if they want to cancel or switch.
- 7.18 Ofcom's 2017 qualitative research found many participants wanted to receive a notification at least a month before the end of the minimum contract period, some (potentially those more informed about notice periods) wanted to receive the notifications two months prior. There was a universal preference for the notification to be sent towards

the end of their fixed commitment period, rather than at the end. 92 Our 2018 end-of-contract notification qualitative research also showed that participants ideally wanted to receive an end-of-contract notification a month or so before the end of the fixed commitment period as this was close enough that it seems relevant, but far enough in advance to allow time to have a think and/or look around. However, this research also showed that notice periods were not well understood. 93 We are aware that other research submitted in response to our July 2018 consultation suggests 21 days before the end of the fixed commitment period to be the optimum point for consumers to receive a notification. 94

- 7.19 We have also taken into account that while 30-day notice periods may apply, the length of any notice period may vary by provider, service and/or whether the customer is switching. For example, for services switched within the Openreach network, the notice period tends to be aligned with the transfer period, i.e. minimum of 10 working days. For mobile contracts, some providers charge 30 days' notice from the day the PAC is requested, some from the day the PAC is used (the day of the number port), and others do not charge for notice once a number port has taken place. From 1 July 2019 new mobile switching rules will ban all notice period charges after the switching date.<sup>95</sup>
- 7.20 Under our new proposals we expect providers to send notifications to residential consumers between 10 and 40 days before the end of the fixed commitment period. We consider that it is appropriate to bring this period closer to the end of the fixed commitment period so that consumers receive the notification at a time when they would likely be able to act immediately, either to give notice that they want to cancel or switch their service, should they wish to do so.
- 7.21 Specifying that the notification should be sent no closer than 10 days before the end of the fixed commitment period ensures all consumers have some time to consider their options and take action should they wish to.
- 7.22 A window of 30 days during which to send the notification also gives providers some flexibility so they can stagger their customer's communications. This will help avoid any consumer confusion by, for example, allowing the end-of-contract notification to be sent at a different time to other campaigns. It also allows providers to batch their communications if they choose and gives scope to enable multiple notifications to be aggregated where a

<sup>&</sup>lt;sup>92</sup> Ofcom, 2018. Futuresight: Engagement qualitative research report. Page 51.

<sup>&</sup>lt;sup>93</sup> Ofcom, 2018. Jigsaw: End-of-contract notifications: Attitudes to and understanding of alternative content options. Slides 10, 24.

<sup>&</sup>lt;sup>94</sup> uSwitch commissioned quantitative research from Opinium to test how consumers might behave in response to receiving a contract notification (uSwitch, 2018. Opinium: Ofcom end of contract and out of contract notifications – understanding the optimal message). The uSwitch evidence base does not solely focus on the telecommunications market and includes data from energy and insurance services, learnings from other sector regulators and their expertise as a consumer-focused service. It is available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0021/127074/uSwitch.pdf
<a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0021/127074/uSwitch.pdf
<a href="https://www.ofcom.org.uk/">95</a> See Ofcom's Consumer switching statement 2017. Available at:

- customer is approaching the end of the fixed commitment period of more than one contract, as discussed further below.
- 7.23 In Section 4, we set out our view that it is reasonable to differentiate between residential consumers and businesses on the basis that businesses may have more resources and are likely to be better equipped to manage their communications contracts. Furthermore, the diversity among businesses means it is difficult to specify rules that will be applicable to all businesses. Specifically, notice periods and processes for changes to services may be considerably more complicated for some larger businesses and therefore 'timely' will mean different time periods for different types of businesses. Therefore, we are not proposing to give guidance on the specific timeframe within which providers should send end-of-contract notifications to business customers.

#### **Aggregation of notices**

- 7.24 Where a customer is approaching the end of the fixed commitment period of more than one contract we expect they should receive an end-of-contract notification for these contracts together in a single message. This will help aid their understanding of which services are reaching the end of their fixed commitment period, the options available to them and also when considering the provider's best tariffs. For example, we are aware that customers buying triple-play services (landline, broadband and pay TV), can have small delays between the provisioning of their landline and broadband services and their pay TV services. It would benefit these customers to receive a single notification advising of the end of the fixed commitment periods and best tariff advice for all of the triple-play services.
- 7.25 We have given providers a 30-day window when setting out our expectations as to the timeframe in which notifications should be sent to residential consumers. This gives providers some flexibility to aggregate notifications for contracts within this time period where the end of the fixed commitment period dates are close together. Providers will have similar flexibility when sending end-of-contract notifications to businesses.

#### **Draft General Condition**

The draft general condition contains the following requirement:

"Regulated Providers must send an End of Contract Notification in a timely manner, before the end of the Subscriber's Fixed Commitment Period."

#### **Draft Guidance**

We expect providers to send notifications to subscribers on residential contracts between 10 and 40 days before the end of the fixed commitment period.

Where a subscriber is approaching the end of the fixed commitment period of more than one contract we expect providers to aggregate end-of-contract notifications into a single

message and expect this to be delivered within the timeline outlined above before the end of the fixed commitment period.

#### Form of notice

# **EECC** requirement

- 7.26 Article 105(3) requires the end-of-contract notification to be provided in a prominent manner, and on a durable medium.
- 7.27 A "durable medium" is not defined in the EECC itself, but is defined in the Consumer Rights Directive as follows:

'durable medium' means any instrument which enables the consumer or the trader 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;

# Our previous proposal

#### **Durable medium**

7.28 In the July 2018 Consultation, we proposed that end-of-contract notifications should be sent by durable medium (as currently defined in the General Conditions).

#### Order of information and marketing messages

7.29 We proposed that the end date of the fixed commitment period and any resulting price changes should appear upfront in the end-of-contract notification. Where an offer from the provider is included, we proposed that this information should appear at the end of the notification, as one of the options available to the customer at the end of the fixed commitment period.

#### Standalone communication and preferred method of communication

7.30 We proposed that the end-of-contract notification should be a standalone communication and that providers should send the notification using the individual customer's preferred method of contact. In cases where the provider does not know the customer's preferred contact channel, we proposed that the end-of-contract notification should be sent using the same contact channel for providing or notifying the customer of available bills.

<sup>96</sup> Directive 2011/83/EC

#### **SMS** notifications

7.31 Given the need to keep SMS (text messages) relatively simple and concise in the interest of effective messaging, we proposed certain core information which the provider must include in the main body of an end-of-contract notification sent via SMS. The provider would be required to provide the other details in either another durable medium (SMS, letter or email), or via a link in the SMS which should take the customer to their online account.

#### Stakeholder comments

#### **Durable medium**

7.32 There were no objections to the delivery of end-of-contract notifications via a durable medium.

#### Order of information and marketing messages

7.33 Respondents generally agreed that the end date and any change in price should appear up front in any notification, before any offers.

#### Standalone communication and preferred method of communication

- 7.34 Some respondents agreed with the requirement for notifications to be sent as standalone letters or emails. TalkTalk, for example, noted the risk that providers include the notification alongside bills or marketing information where it may be lost amongst other information, reducing consumer switching. uSwitch believed it is important that consumers can easily recognise the purpose of the notification.<sup>97</sup>
- 7.35 Others, such as Virgin Media, disagreed with the notification being standalone, noting consumers may not understand the current monthly price, and noting the potential benefit of providers being able to send end-of-contract notifications alongside billing information which would enable consumers to compare and contrast the monthly price against their net billed figure.
- 7.36 BT agreed with delivering via the preferred method but felt the default preference if unknown should not be the same as the bill communication. BT said there is considerable cost involved when sending paper bills and considered it more appropriate to communicate by SMS, MMS, email or their online account. MoneySavingExpert thought end-of-contract notifications should always be sent by letter regardless of whether the consumer chose paperless billing or not.

<sup>&</sup>lt;sup>97</sup> uSwitch, 2018. Opinium: Ofcom end of contract and out of contract notifications – understanding the optimal message.

#### **SMS** notifications

7.37 Several providers (Vodafone, [≫] and Tesco Mobile) said SMS should be an available communication method for all consumers, with [≫] highlighting [≫]. MoneySavingExpert were concerned SMS would allow providers to bury information in the linked information and that certain groups who used mobiles less would be disadvantaged.

# How we propose to implement

#### **Durable medium**

7.38 We propose to require providers to send end-of-contract notifications, including best tariff advice, by durable medium, as required by Article 105(3) and currently defined in the General Conditions. 98

#### **Prominence**

- 7.39 We propose to require providers to send end-of-contract notifications, including best tariff advice, in a prominent manner. However, we consider that there are a number of elements to ensuring sufficient prominence:
  - a) whether the end-of-contract notification and best tariff advice needs to be sent as a standalone communication;
  - b) how the required content of an end-of-contract notification, including best tariff advice, can be practically delivered when it is sent by SMS; and
  - c) whether the information within an end-of-contract notification should be ordered in a particular way.
- 7.40 We consider these in turn below and set out at the end our draft guidance on how providers should meet the requirement to ensure that end-of-contract notifications and best tariff advice are sent in a prominent manner.

#### Standalone communication

7.41 In order to ensure that the notification is sufficiently prominent, and therefore achieves its purpose of informing end-users about coming to the end of their fixed commitment period and providing best tariff advice, we consider that the notification should be a standalone communication sent separately from bills, general marketing information or other service messages from providers. This is to ensure that the end-user does not mistake the end-of-contract notification with other messages, or overlook or dismiss it. This equally applies to

<sup>&</sup>lt;sup>98</sup> Durable Medium means paper or email, or any other medium that: (a) allows information to be addressed personally to the recipient; (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information; and (c) allows the unchanged reproduction of the information to be stored.

- notifications sent by letter which we consider must be sent separately to other communications.
- 7.42 Most respondents to our July 2017 Call for Inputs did not state whether an end-of-contract notification should be sent in a specific format, but MoneySavingExpert said that it should be a distinct communication and separate from any bills. This echoes the views of the majority of participants in our 2015 end-of-contract notification research who preferred the idea of a standalone communication from the provider to receiving the information with a bill.<sup>99</sup>
- 7.43 We therefore propose to require providers to send end-of-contract notifications separately from any other communication.

#### Flexibility on method of communication

- 7.44 We no longer propose to require the notification to be delivered via a preferred method of communication, meaning providers will be free to determine this. We do not consider that this requirement is necessary to ensure that the end-of-contract notification is sufficiently prominent. Consumers will be used to receiving communications via many different channels and it is not clear that any single one will be more effective at ensuring an end-user is appropriately informed.
- 7.45 In cases where providers are only able to communicate with their customers by letter then this will need to be the channel used. We are also concerned that SMS may not be a suitable method of delivery for all consumers, particularly for some vulnerable consumers. We would therefore expect providers to take this into account when communicating with these consumers.
- 7.46 Providing flexibility to providers, where this is available, should also ensure lower costs of delivery (as discussed further in Section 10).

#### **SMS** notifications

- 7.47 We recognise that it is not practically possible for all the proposed content in an end-of-contract notification, including best tariff advice, to be sent by SMS.
- 7.48 In order to ensure that the end-of-contract notification is an effective message, there is a need to keep it relatively simple and concise when sent by SMS. Providers should be able to include certain information in the body of the message and provide the other details in either another durable medium (SMS, letter or email), or via a link in the SMS which should take the customer to their online account (where this is available). It is important that certain core information must be provided in the body of the message to ensure that recipients understand the purpose of the message and can decide whether they need to

<sup>&</sup>lt;sup>99</sup> Ofcom, 2015. End-of-contract notification research. Available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0024/74715/end-of-contract-notification-research.pdf

- seek out further information. It should be clear in the SMS where the other information is available.
- 7.49 In our 2018 qualitative research, we tested end-of-contract notifications using SMS with mobile customers. For the group discussions, participants were sent example notifications via text message to their mobile phones. While this format was acceptable to all, it was presented as the only option. There was agreement that text was better suited to shorter communication (i.e. the 'basic version' that was tested) but some noted that the 'basic version' lacked information that was considered 'essential' e.g. price change information or notice periods. As such, participants suggested multiple texts may be a solution. 100
- 7.50 We propose to give guidance to providers on how they should ensure that the end-of-contract notification is sufficiently prominent when sent by SMS. We consider that the following information will ensure that end-users understand the purpose of the message:
  - a) the date on which the fixed commitment period for that contract will end;
  - b) the monthly subscription price currently paid by the customer;
  - c) the monthly subscription price that will come into effect once the fixed commitment period ends;
  - d) details of the options available at the end of the fixed commitment period; and
  - e) a message that further information, including provider's best tariffs, is available and where it is available.

#### **Order of information**

- 7.51 The notification should be sufficiently prominent to achieve its purpose of informing endusers about the end of their fixed commitment period and providing best tariff advice. We therefore consider it is important that certain information is given upfront to make endusers aware of the purpose of the communication and to highlight information essential to their decision-making.
- 7.52 Evidence from our research suggested that participants considered it essential that the end-of-contract notification should lead with the date their fixed commitment period ends, as this sets the context for the rest of the communication. Participants also thought that it was 'crucial' to be told about any price change, as it would inform their decision on whether to engage.¹¹¹¹ Other aspects considered crucial or essential were: the ability to cancel or switch without charges, notice periods, and end dates for other contracts with the same provider (where applicable).

<sup>&</sup>lt;sup>100</sup> Ofcom, 2018. Jigsaw: End-of-contract notifications: Attitudes to and understanding of alternative content options. Slides 31-36

<sup>&</sup>lt;sup>101</sup> Ofcom, 2018. Jigsaw: End-of-contract notifications: Attitudes to and understanding of alternative content options. Slides 15, 19, 42, 52-53.

- 7.53 Research also showed that an end-of-contract notification that led with an 'offer' may be discarded or overlooked because it would be perceived as marketing information. 102
- 7.54 In order for the notification to be prominent, we therefore consider it important that the provider's best tariffs follow all other information. This will ensure that end-users receive information upfront that enables them to recognise the communication to be a message about their contract status.
- 7.55 We propose to set this out in guidance to ensure that the end-of-contract notification is sufficiently prominent, with certain information provided upfront.

#### Flexibility on method of communication

- 7.56 We no longer propose to require the notification to be delivered via a preferred method of communication, meaning providers will be free to determine this. We do not consider that this requirement is necessary to ensure that the end-of-contract notification is sufficiently prominent. End-users will be used to receiving communications via many different channels and it is not clear that any single one will be more effective at ensuring an end-user is appropriately informed.
- 7.57 In cases where providers are only able to communicate with their customers by letter then this will need to be the channel used. We are also concerned that SMS may not be a suitable method of delivery for all consumers, particularly for some vulnerable consumers. We would therefore expect providers to take this into account when communicating with these consumers.
- 7.58 Providing flexibility to providers, where this is available, should also ensure lower costs of delivery (as discussed further in Section 10).

#### **Draft General Condition**

Our draft general condition includes the following requirement:

"Regulated Providers must send an End of Contract Notification via a Durable Medium that is separate and distinct from any other communication, and otherwise in a prominent manner."

#### **Draft Guidance**

We expect providers to provide information in the end-of-contract notification with the following given first:

- a. the date on which the fixed commitment period for that contract will end;
- b. the current monthly subscription price paid by the subscriber and the monthly subscription price that will come into effect once the fixed commitment period ends.

<sup>&</sup>lt;sup>102</sup> Ofcom, 2018. Jigsaw: End-of-contract notifications: Attitudes to and understanding of alternative content options. Slides 15, 25, 44.

The provider's best tariffs should come at the end of the notification.

For an end-of-contract notification sent via SMS the following information must appear in the SMS message:

- a. the date on which the fixed commitment period for that contract will end;
- b. the monthly subscription price currently paid by the subscriber;
- c. the monthly subscription price that will come into effect once the fixed commitment period ends;
- d. details of the options available at the end of the fixed commitment period; and
- e. a message that further information, including the provider's best tariffs, is available and where it is available.

## **Accessibility**

## **EECC** requirement

7.59 Article 105(3) of the EECC does not include any specific provision in relation to accessibility. However, Article 111 addresses the need for end-users with disabilities to have access to electronic communications services equivalent to that enjoyed by the majority of end-users, and to benefit from the choice of providers and services available to the majority of end-users.

## Our previous proposal

7.60 In the July 2018 Consultation, we proposed to amend Condition C5.13 of the General Conditions (which specifies measures to meet the need of vulnerable consumers and endusers with disabilities) to require providers to make end-of-contract notifications available in accessible formats to consumers who are blind or vision impaired. These accessible formats were to be made available upon request, and free of charge.

## Stakeholder comments and our response

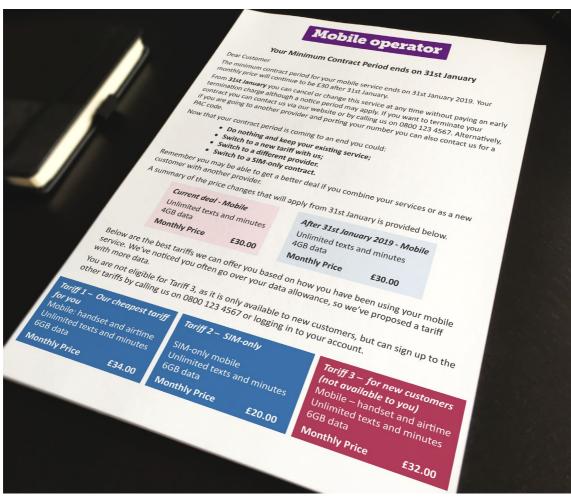
7.61 Of those respondents that commented on the accessibility requirements in our July 2018
Consultation, CCP-ACOD welcomed our proposal to require providers to make end-ofcontract notifications available in accessible formats to consumers who are blind or visually
impaired. MoneySavingExpert also stated that alternative formats, such as braille or large
print should also be made readily available where applicable.

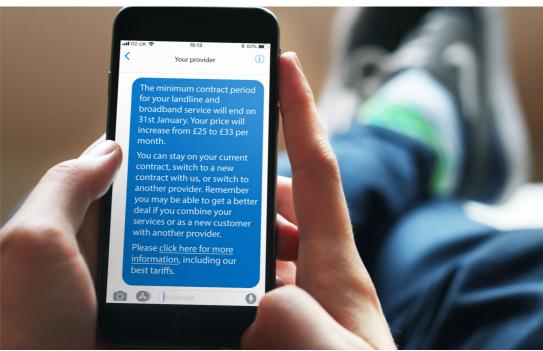
## How we propose to implement

7.62 It is our view that vulnerable consumers and/or consumers with disabilities should have comparable access to end-of-contract notifications. This view is supported by responses to our July 2018 Consultation.

- 7.63 We propose to require providers to send end-of-contract notifications in a format such as electronic, braille or large print, where customers have registered to receive bills in an alternative format.
- 7.64 This requirement on providers to send such notifications in accessible formats will ensure that customers receive these notifications in a form that is most suitable for them.

# **Examples of end-of-contract notifications**





# **Consultation questions**

7.65 We welcome stakeholder comments on the following questions in relation to the proposals set out in this section:

**Question 16**: Do you agree with our proposed implementation on the timing of the end-of-contract notification?

**Question 17**: Do you agree with our proposed implementation regarding the form of the end-of-contract notification?

**Question 18:** Do you agree with our proposals to ensure accessibility of the end-of-contract notification?

Please provide evidence to support your views.

# 8. Annual best tariff notifications

- 8.1 In this section we outline our proposals regarding the provision of annual best tariff information, setting out the information to be provided and the form of notification in which it should be given. Our proposals are based on those set out in Sections 5, 6 and 7 in relation to end-of-contract notifications, best tariff advice and how the notifications should be sent.
- 8.2 We propose that we should require providers to send end-users an annual best tariff notification in respect of contracts for services where the end-user is outside their fixed commitment period. In that notification, providers would be required to tell end-users of:
  - a) the fact that they are not within a fixed commitment period for the contract;
  - b) details of the services provided under the contract;
  - c) any applicable notice period, or, for mobile contracts, that a notice period may apply;
  - d) details of other contracts taken with the same provider;
  - e) the monthly subscription price;
  - f) the options available to the customer; and
  - g) the provider's best tariffs.
- 8.3 We also propose guidance on how providers should comply with our requirements in the following areas regarding the information to be included in the notification:
  - a) details of other services provided under the contract;
  - b) details of other contracts taken with the same provider;
  - c) the options available to the customer; and
  - d) the provider's best tariffs.
- 8.4 In relation to how the annual best tariff notification should be sent, we propose to require providers:
  - a) to send the annual best tariff notification to customers within twelve months of the entry into force of the condition, or within twelve months of receiving an end-of-contract notification, and at least once per year after that point;
  - b) to send the annual best tariff notification as a standalone communication via a durable medium, in a manner which meets our expectations of prominence; and
  - c) to send the annual best tariff notification in a format such as electronic, braille or large print, where customers have registered to receive bills in an alternative format.
- 8.5 We have also proposed guidance in the following areas relating to how the annual best tariff notification should be sent:

- a) the order in which information should be provided; and
- b) the information that should be included when sending the notification by SMS.

## **EECC** requirement

8.6 Article 105(3) contains the following requirement:

"Providers shall provide end-users with best tariff inforation at least annually."

- 8.7 This requirement is part of the same provision as the requirement for best tariff advice to be included in an end-of-contract notification when a contract's fixed commitment period ends. It is intended to achieve the same objectives and therefore should be read in a similar way. In particular, it reflects that the availability of information on offers and services is a key element for consumers in competitive markets where several providers offer services. It also pursues the objectives that:
  - a) end users should have a high-level of protection;
  - b) to take full advantage of competition, consumers should be able to make informed choices and switch when this is in their best interests; and
  - that transparent, accurate and timely information on switching should increase endusers' confidence in switching and make them more willing to engage actively in the market.
- 8.8 This provision seeks to protect end-users where they are no longer bound by fixed commitment periods and are in a position to shop around for the best deal. To engage in the market actively and with confidence, and to make informed choices, they must be given information that enables them to assess whether they are on the best tariff and, if not, what that tariff would be.
- 8.9 This information should enable end-users to identify what they are provided with under their existing deal and what a different deal might offer them. End-users should be able to assess whether doing nothing and remaining on their current deal is their best option and, if there are better deals available, they should be able to switch to them. We outline our proposals for achieving this below.

# Overlap with out-of-contract notifications

8.10 In our July 2018 Consultation, we proposed that providers should send a one-off out-of-contract notification to each of their domestic and small business customers that are already beyond their contractual fixed commitment period. We considered that this was necessary to ensure that consumers are informed that they are 'out-of-contract' (if they were not previously informed of this), and we consulted on the content, structure, form and timing of the proposed out-of-contract notification.

- 8.11 The requirement for annual best tariff information in Article 105(3) addresses broadly the same harm as our out-of-contract notification proposal. In particular, we were concerned that some customers are not aware that they are out-of-contract or are not aware that they are likely to pay a higher price as an out-of-contract customer. Our proposal was intended to ensure consumers are appropriately informed of their contractual position, together with the relevant implications of remaining on their existing deal. As set out above, the EECC provides remedies to encourage end-users to engage with the market and to make informed choices, so as to take full advantage of competition between providers.
- 8.12 We do not consider that we can maintain our out-of-contract notification proposals in the form on which we previously consulted, given that Article 105 of the EECC is a full harmonisation provision. Therefore, we set out below how we now propose to address the requirement in Article 105(3) for annual best tariff information.

## How we propose to implement

## When annual best tariff information should be sent

- 8.13 In Section 5 we propose that end-users should receive an end-of-contract notification if they are "in-contract" i.e. their fixed commitment period has not yet ended. In line with Article 105(3), providers must also give best tariff information to end-users at least annually. We propose that they are required to send this (only) to end-users who are "out-of-contract" (i.e. beyond their fixed commitment period). They should send a single notification each year in relation to those contracts where the end-user is out-of-contract at the relevant time.
- 8.14 This would mean end-users have best tariff information when they are no longer bound by fixed commitment periods and are in a position to take advantage of the best deals available.

# Information to be provided

- 8.15 We propose to require providers to inform end-users of:
  - a) the fact that they are not within a fixed commitment period for the relevant contract or contracts;
  - b) details of the services currently provided under that contract;
  - c) any applicable notice period, or, for mobile contracts, that a notice period may apply;
  - d) details of other contracts taken with the same provider;
  - e) the monthly subscription price;
  - f) the options available for seeking a better deal; and
  - g) the provider's best tariffs.

## Informing the end-user they are not within a fixed commitment period for the contract

- 8.16 In our July 2018 Consultation, we proposed that providers send a one-off out-of-contract notification including the date on which the fixed commitment period had ended. In response, Sky and Tesco Mobile said it would not be necessary to include that date. In implementing this part of the EECC, we agree.
- 8.17 To assess whether they are on the best tariff, end-users need to know they are beyond their fixed commitment period and can terminate their contract and sign up to a new deal. We therefore propose that the provider must state in the annual best tariff notification that the end-user is not within a fixed commitment period for the relevant contract(s) but need not say when it ended.

## Details of the services provided under the contract

- 8.18 In general, to make an informed choice about whether to remain on their existing deal or assess their other options, end-users need to know what services they receive from their provider. We note in that regard the evidence set out in Section 5.
- 8.19 A key aspect of this is knowing what services they receive under the contracts for which they are outside their fixed commitment period and which are the subject of the annual best tariff notification. End-users need to understand the services for which they are free to switch deals or providers. We therefore propose to impose a requirement to provide details of the services provided under the relevant contract.
- 8.20 For the reasons set out in Section 5 on end-of-contract notifications (where we have considered the differences between residential consumers and businesses), we propose different guidance about the way providers should comply with this requirement. In particular:
  - a) we expect providers to give residential consumers a comprehensive list of all services, including all ancillary services, and third-party services if that provider is charging for them; and
  - b) for businesses, providers should include a message explaining that there may be multiple services provided under the contract, but these do not need to be listed.

## **Draft General Condition**

Our draft general condition provides that an annual best tariff notification should include the following information:

"...details of the services provided by the Regulated Provider to the Subscriber under that contract;"

#### **Draft Guidance**

For subscribers on residential contracts, we expect the provider to give a comprehensive list of all services which form part of the contract. This would include all ancillary services

currently provided. We do not expect the provider to include information on services provided by third-parties if that provider is not charging for that service.

For subscribers on business contracts, we do not expect the provider to give a comprehensive list of all services which form part of the contract. Instead we expect the provider to include a message explaining that there may be multiple services as part of the contract.

## Any applicable notice period, or, for mobile contracts, that a notice period may apply

- 8.21 We propose that it is necessary to include in the annual best tariff notification a statement of the applicable notice period. End-users are provided with the notification so they can make informed choices about whether to switch deals or providers. They should be able to make those choices and put them into practice effectively. That includes giving them information so they can plan their decision in a way that best suits their interests. For example, so they can avoid switching provider before the end of the notice period and having to pay for both old and new services at the same time.
- 8.22 Slightly different requirements apply in relation to mobile services. Similar to the requirements outlined in Section 5 for the end-of-contract notification, where the contract is for a mobile service, the provider may instead include a message that a notice period may apply. This is because it may not be possible to give a specific notice period for mobile contracts.

## Details of other contracts taken with the same provider

- 8.23 To assess their best tariff option, end-users also need information about other contracts they have with the same provider. In particular, if there are contracts which are still within a fixed commitment period.
- 8.24 This information would help end-users understand the relationship between different contracts they may have with the same provider. For example, whether terminating one contract may affect another (in terms, for example, of the charges payable or the services received). It would form part of a set of information they need in order to assess whether they should stay on their current deal or move to a new one, without the risk of unintended consequences. We therefore propose that details of other contracts taken with the same provider are included in the annual best tariff notification.
- 8.25 Again, for the reasons set out in Section 5 on end-of-contract notifications (where we have considered the differences between residential consumers and businesses), we propose different guidance about the way providers should comply with these requirements for different groups of end-users. In particular, we would expect providers to give residential consumers a list of all financially-linked or inter-dependent contracts they have with that provider. For businesses, however, we expect providers, where relevant, to include a message explaining that if the customer terminates the contract, other contracts may be affected.

8.26 Some additional points are also relevant for residential consumers. In Section 6, we set out that, in order for consumers to make an informed choice about whether they are on the best tariff, consumers need to decide whether to buy separate or bundled services. To help make that choice, they need to know when the fixed commitment period for other contracts they have with the same provider will end. We therefore propose that the annual best tariff notification provided to residential consumers also includes the date on which the fixed commitment period ends for those other contracts that we propose should be listed. These are most relevant to the choices consumers make about bundling services.

#### **Draft General Condition**

Our draft general condition provides that an annual best tariff notification should include the following information:

"...details of other contracts for Public Electronic Communications Services between the Regulated Provider and the Subscriber;" and

[for residential subscribers] "...the dates on which the Fixed Commitment Periods end for the other contracts referred to [above]"

#### **Draft Guidance**

For subscribers on residential contracts, we expect the "details of other contracts" to comprise a list of other contracts where there is a financial link to the core contract (i.e. the contract for which the annual best tariff information is given), or where there is an interdependency between the core contract and the other contract. This would include, for example, any contract which would change because the core contract is terminated. It would also include any other contract which if itself changed would entail a change in the core contract.

For subscribers on business contracts, we do not expect providers to list other contracts the customer has with them. Instead we expect providers, where relevant, to include a message explaining that if the customer terminates the contract, other contracts may be affected.

## Monthly subscription price

8.27 In Section 6 we propose that reminding end-users of their current monthly subscription price is important to assist them in assessing their options and making an informed decision about whether to remain on their existing deal. The same applies when they are out of contract. We therefore propose to apply the same requirement to the annual best tariff notification.

#### Options available for seeking a better deal

8.28 In complex markets, consumers may be confused as to what, if anything, they can do next when they are outside a fixed commitment period. To identify the best tariffs available to

- them, and whether doing nothing and remaining on their existing tariff is their best option, they need to know what options they have.
- 8.29 We therefore propose a requirement that providers should inform end-users of the options available to them when they are outside their fixed commitment period. We also propose to apply the same guidance in this regard as in relation to end-of-contract notifications (see Section 6). That is, we would expect the information given to residential consumers to include that they can:
  - a) stay on their existing contract;
  - b) switch to a new one with the same provider (including but not limited to those referred to as part of the provider's best tariffs);
  - c) switch to a new contract with a different provider; and
  - d) for mobile consumers on bundled handset and airtime contracts only, switch to a SIM-only deal.
- 8.30 The advice should also state that some providers may offer new customers better deals and that they may get a better deal if they bundle the services they have with that or any other provider.
- 8.31 We do not propose to take the same approach in relation to businesses. In Section 4, we set out our view that it is reasonable to differentiate between them and residential consumers on the basis that businesses may have more resources and are likely to be better equipped to manage their communications contracts. Therefore, whilst providers must comply with the requirement to give businesses information about their options, we do not consider it necessary to give similar guidance on the way we expect them to do it.

## **Draft General Condition**

Our draft general condition provides that an annual best tariff notification should include the following information for subscribers on residential and business contracts:

"...details of the options available to the Subscriber..."

#### **Draft Guidance**

We expect "details of the options available" to include advice to subscribers on residential contracts that they can:

- a. stay on their existing contract;
- b. switch to a new contract with the same provider (including but not limited to those referred to as part of the provider's best tariffs);
- c. switch to a new contract with a different provider; and
- d. for subscribers on bundled handset and airtime mobile contracts only, switch to a SIM-only deal.

The advice should also inform subscribers on residential contracts that some providers may offer new customers better deals and that they may get a better deal if they bundle the services they have with that or any other provider.

#### Provider's best tariffs

- 8.32 To give effect to Article 105(3) providers must give end-users best tariff information relating to their services. We consider that this must include information that enables end-users to understand what tariffs are available from their current provider. This will enable them to make an informed choice about whether they should stay on their existing deal or move to a new one. We therefore propose to require providers to include their best tariffs in the annual best tariff notification.
- 8.33 We have detailed draft guidance on provider's best tariffs in Section 6. For the reasons set out there and to ensure the best tariffs requirements are implemented in a way that is likely to be effective for end-users, we propose to apply the same guidance to the requirement to provide annual best tariff notifications.
- 8.34 The draft guidance focuses in particular on the following matters:
  - a) providers should give residential consumers at least one and up to three best tariffs;
  - b) the tariffs should be based on similarity to the consumer's previous usage where relevant, and otherwise based on service packages that are most similar to what the consumer currently receives;
  - c) one tariff should be the cheapest tariff available to the consumer receiving the advice;
  - d) one tariff should be the cheapest tariff available to any consumer (if not the same as in (c));
  - e) one tariff can be the cheapest upgrade tariff;
  - f) one tariff should be a SIM-only tariff where the consumer has a bundled handset and airtime contract; and
  - g) tariffs should be for a bundle of services where the consumer receives them under a single contract with the provider or has financially linked or interdependent contracts with the same provider and where the fixed commitment period(s) has ended.
- 8.35 For businesses, we propose to give providers discretion to provide give best tariffs in a way they consider appropriate.

#### **Draft General Condition**

The draft general condition provides that an annual best tariff notification should include the following information in respect of a Subscriber's contract:

"...the Regulated Provider's best tariffs."

## **Draft guidance**

For subscribers on residential contracts, the information we expect providers to give as part of the 'the Regulated Provider's best tariffs' should include:

- a. at least one and up to three tariffs;
- b. the cheapest tariff available to the subscriber receiving the tariff advice;
- c. the cheapest tariff available to any subscriber (if not the same as in (b)); and
- d. a SIM-only tariff where the consumer has a bundled handset and airtime contract.

In addition to (b) to (d), a provider may include the cheapest upgrade tariff if, with reasonable objective justification, the provider considers this to represent a subscriber's best tariff.

Providers should state clearly if a subscriber is not eligible for a tariff and explain why they are not eligible.

Tariffs should be based on similarity to a subscriber's previous usage of the main aspects of the services provided to them, where relevant. Where usage is not relevant, the tariffs should be based on service packages that, in relation to the main aspects of the subscriber's services, are most similar to the services the subscriber currently receives.

For subscribers that have multiple services with the same provider tariffs should usually be for a bundle in relation to those services.

Where the different elements of the bundle are under separate contracts, tariffs should be provided for services for all of the contracts where the fixed commitment period has expired (provided those contracts have a financial link to, or an inter-dependency with, the contract(s) in relation to which the annual best tariff notification is given).

As an exception to the general position on bundled tariffs, we do not expect tariffs to be provided in relation to any contracts which remain within their fixed commitment period.

For businesses, we propose to give providers discretion to provide best tariffs in a way they consider appropriate.

## Two or more contracts outside of their fixed commitment period

8.36 In some cases, an end-user will have two or more contracts with a provider that are outside of their fixed commitment periods at the time an annual best tariff notification is

- sent. We propose that, in those cases, the annual best tariff information for those contracts should be combined into a single notification.
- 8.37 For example, the end-user may have contracts for landline and broadband services, both of which are outside their fixed commitment periods, but which on their own would require annual best tariff notifications to be sent at separate times. Rather than send two separate best tariff notifications on separate dates, the provider should combine both in a single notification sent at the time a notification first becomes due.

## **Timing of Notice**

8.38 Article 105(3) requires providers to provide end-users with best tariff information at least annually. We propose that a provider must send an annual best tariff notification to customers within twelve months of the entry into force of the condition, or within twelve months of receiving an end-of-contract notification, and at least once per year after that point.

## **Form of Notice**

- 8.39 We propose to require annual best tariff notifications to:
  - a) be delivered via a durable medium; and
  - b) give customers the necessary information in a prominent manner.
- 8.40 As for end-of-contract notifications, we propose that the following elements are relevant to ensuring sufficient prominence, and we consider each of these below:
  - a) sending the annual best tariff notification as a standalone communication;
  - b) ordering the information within an annual best tariff notification in a particular way; and
  - c) the required content when it is sent by SMS.

#### **Durable medium**

8.41 Article 105(3) requires end-of-contract notifications, including best tariff advice, to be delivered via a durable medium (as outlined in Section 7). We propose that the same should apply to the delivery of the annual best tariff notification. Both notifications serve similar purposes and should take similar forms which are similarly effective. Providing the information in a durable medium enables consumers to store and use it to inform their choices about the services they take for as long as it is relevant to them.

#### **Prominence**

8.42 We have outlined proposals to require providers to give end-users end-of-contract notifications in such a way that the information they contain is provided in a prominent

- manner (see Section 7). For similar reasons, to ensure the annual best tariff notification usefully and effectively meets its consumer protection objectives, we propose that the same applies to it.
- 8.43 In Section 7, we propose that, in order to ensure the end-of-contract notification is given sufficient prominence, it should be a standalone communication, sent to consumers separately from their bill or other service message from their provider. This is to ensure the consumer does not mistake, overlook or dismiss the end-of-contract notification and instead is more likely to use it to make informed choices about their services. This appears to us to be equally relevant to the annual best tariff notification.
- 8.44 It is also important that certain information is given to consumers upfront, to make them aware of the purpose of the communication and to highlight points that are essential for them to engage in the competitive process.
- 8.45 To that end, information about the fixed commitment period and the current monthly subscription price is particularly important. In considering end-of-contract notifications in Section 7, we refer to evidence from our 2018 end-of-contract notification qualitative research, where respondents felt information regarding the end date of the fixed commitment period should lead an end-of-contract notification. Participants also highlighted that information about their current price was essential to inform their decision on whether to engage.
- 8.46 Our provisional view is that the same should apply to the annual best tariff notification to ensure this information is given sufficient prominence. Ensuring consumers have information in a form they are likely to understand and react to is key to giving them an effective ability to make informed choices about the services that best suit their needs and to benefit from competition between providers.
- 8.47 Accordingly, for the notification to meet the need for prominence, it is important that the provider's best tariff notification gives the following information first:
  - a) the message that the fixed commitment period for a particular contract (or contracts) has ended; and
  - b) the current monthly subscription price under that contract (or contracts).
- 8.48 In Section 7 we have also considered the information that should be included in an SMS message having regard to the practicality of including a large amount of content in a single message. We recognise that here is a need to keep SMS messages relatively simple and concise. Therefore, we also propose that a similar approach should apply where providers send annual best tariff notifications by SMS. We expect the following information to appear in the SMS:
  - a) a message that the fixed commitment period for a particular contract (or contracts) has ended;

- the current monthly subscription price paid by the customer under that contract (or contracts);
- c) details of the options available at the end of the fixed commitment period; and
- d) a message that further information, including provider's best tariffs, is available and where it is available.

#### **Draft General Condition**

Our draft general condition includes the following requirement:

"Regulated Providers must send an Annual Best Tariff Notification via a Durable Medium that is separate and distinct from any other communication (subject to Condition C1.19(d)), and otherwise in a prominent manner." 103

#### **Draft Guidance**

We expect providers to provide information in the annual best tariff notification with the following given first:

- a. the message that the fixed commitment period for a particular contract (or contracts) has ended; and
- b. the current monthly subscription price under that contract (or contracts).

The provider's best tariffs should come at the end of the notification.

For an annual best tariff notification sent via SMS the following information must appear in the SMS message:

- a. a message that the fixed commitment period for a particular contract (or contracts) has ended;
- b. the current monthly subscription price paid by the subscriber under that contract (or contracts):
- c. details of the options available at the end of the fixed commitment period; and
- d. a message that further information, including the provider's best tariffs, is available and where it is available.

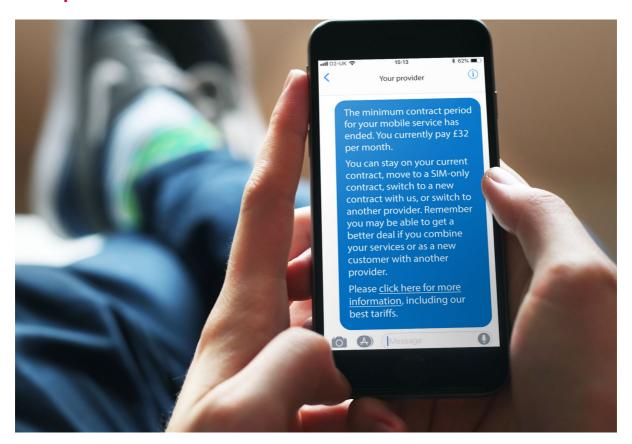
# **Accessibility**

8.49 Article 105(3) of the EECC does not include any specific provision in relation to accessibility. However, Article 111 addresses the need for end-users with disabilities to have access to electronic communications services equivalent to that enjoyed by the majority of end-users, and to benefit from the choice of providers and services available to the majority of end-users.

<sup>&</sup>lt;sup>103</sup> Condition C1.19(d) requires annual best tariff information to be combined into a single communication for all contracts that are outside of their fixed commitment periods at the time an annual best tariff notification is sent.

8.50 For this reason, we propose to require providers to send annual best tariff notifications in the same way as end-of-contract notifications. As described in Section 7, providers must send the notification in a format such as electronic, braille or large print, where customers have registered to receive bills in an alternative format.

## **Example of an annual best tariff notification**



# **Consultation questions**

We welcome stakeholder comments on the following questions in relation to the proposals set out in this section:

**Question 19:** Do you agree with our implementation proposal for annual best tariff notifications to be sent only to end-users who are outside of their fixed commitment period?

**Question 20:** Do you agree with our proposed implementation of the requirement to send annual best tariff notifications by specifying that providers must inform end-users of:

a. the fact that they are not within a fixed commitment period for the relevant contract or contracts;

- b. the services which the provider currently provides under that contract or contracts;
- c. any applicable notice period(s);
- d. details of other contracts the end-user has with the provider;
- e. the monthly subscription price(s); and
- f. the options available.

**Question 21:** Do you agree with our proposed implementation of the requirement to send annual best tariff notifications by specifying that providers must inform end-users of the provider's best tariffs and with our draft guidance for subscribers on residential contracts that:

- a. providers should give residential consumers at least one and up to three best tariffs;
- b. the tariffs should be based on similarity to the consumer's previous usage where relevant, and otherwise based on service packages that are most similar to what the consumer currently receives;
- c. one tariff should be the cheapest tariff available to the consumer receiving the advice;
- d. one tariff should be the cheapest tariff available to any consumer (if not the same as in (c));
- e. one tariff can be the cheapest upgrade tariff;
- f. one tariff should be a SIM-only tariff where the consumer has a bundled handset and airtime contract; and
- g. tariffs should be for a bundle of services where the consumer receives them under a single contract with the provider or has financially linked or interdependent contracts with the same provider and where the fixed commitment period(s) has ended.

**Question 22**: Do you agree with our proposed implementation on the timing of the annual best tariff notification?

**Question 23:** Do you agree with our proposal to implement the annual best tariff requirements by specifying that providers should combine the best tariff information in a single notification for those end-users who have two or more contracts outside of their fixed commitment period?

**Question 24**: Do you agree with our implementation proposals regarding the form of the annual best tariff notification?

Please provide evidence to support your views.

# 9. Implementation Period and Monitoring

- 9.1 In this section we set our proposals for the implementation period for end-of-contract and annual best tariff notifications, and our proposals for monitoring them.
- 9.2 We propose that six months is an appropriate time period for the implementation of our proposals for both the end-of-contract notification and the annual best tariff notification.
- 9.3 To monitor the implementation of end-of-contract and annual best tariff notifications, we propose to:
  - a) require providers to keep a record of each end-of-contract and annual best tariff notification they send for a period of at least 12 months;
  - b) request additional data from providers as they roll-out their end-of-contract and annual best tariff notifications, to assess the impact on end-users;
  - c) conduct on-going consumer research by focusing on engagement and satisfaction, where possible linked to the receipt of end-of-contract and annual best tariff notifications; and
  - d) explore the potential with providers to conduct a randomised control trial to assess the effectiveness of different formats of notifications.

## **Implementation Period**

## **EECC** requirement

9.4 The requirements of the EECC must be implemented into national law by 31 December 2020. In Section 3, we have explained why we consider it appropriate to implement the relevant parts of Article 105(3) earlier. In particular, that Article recognises the need for a high level of consumer protection in relevant areas. We see no reason to deprive UK consumers of the benefits of that protection until the end of 2020. An earlier implementation will also avoid providers potentially incurring wasted costs from implementing two sets of proposals.

## Our previous proposal

9.5 In our July 2018 Consultation, we proposed that the new general conditions in relation to end-of-contract notifications should take effect six months, and for the out-of-contract notifications within nine months, after the publication of our final statement.

## Stakeholder comments and our response

9.6 Some respondents (CCP-ACOD, First Utility, Decision Tech, MoneySavingExpert, MoneySupermarket, Andrew Griffiths) to our July 2018 Consultation believed the

- implementation timescales should be shorter, stating the harm incurred by consumers to be of material enough concern to justify earlier implementation.
- 9.7 Other respondents (Gamma, Sky, BT, [≫], Post Office, Virgin Media) believed the implementation timescales were too short and should either be extended to recognise operators needed to have systems in place to address the required content, or the content should be curtailed as per their suggestions so as not to contain certain contractual or saving details.

## How we propose to implement

- 9.8 We have not altered our estimate that our proposed end-of-contract notifications would take six months to implement.
- 9.9 As highlighted in our July 2018 Consultation, most providers already have systems and processes in place that allow them to communicate service and marketing messages with their customers on a regular basis and on an ad hoc marketing campaign basis. However, we recognise that this is not done in a consistent way between providers and that it is appropriate to give providers an appropriate period of time to implement our proposals.
- 9.10 An implementation period will also be particularly relevant to ensuring that the notifications include personalised information, such as pricing and service information.
- 9.11 Although we have now included the provision of providers' best tariffs in our end-of-contract notifications, we have also removed some of the requirements from our previous proposals. In particular, we have given providers more flexibility on the method of communication and removed the requirement to include historical discounts. We are also proposing that providers should have more flexibility on the services and contracts to be listed, such as only listing other contracts that are financially linked to the core contract or interdependent with it, and removing the need to list third party services that the provider does not bill the customer for. For the annual best tariff notification, we are not proposing that providers should include the historical date on which the fixed commitment period ended for the contract in question. We are also proposing that providers have greater discretion around the content of the notifications for businesses.
- 9.12 We previously proposed a nine-month implementation period for out-of-contract notifications. This period included six months to implement systems changes and three months to stagger the sending out of these notifications. In the case of annual best tariff notifications, we do not consider that this additional three-month implementation period is necessary as the nature of the requirement to send annual best tariff notifications is different. We are proposing that providers must send these notifications within twelve months of the condition coming into effect, or within twelve months of the customer receiving an end-of-contract notification, and at least once per year after that point. Therefore, a six-month implementation period prior to this is sufficient for providers to make any necessary systems and process changes.

- 9.13 Following the implementation period, the sending end-of-contract and annual best tariff notifications will naturally be staggered over time by customers' contract end dates.
- 9.14 Therefore, we consider that six months is an appropriate time period for the implementation of our proposals for both the end-of-contract notification and the annual best tariff notification.

## **Monitoring**

## Stakeholder responses

- 9.15 In response to our July 2018 Consultation, some respondents, including Citizens Advice and Which?, welcomed our proposed approach but recommended additional evidence gathering, including testing of notifications.
- 9.16 Which? highlighted that Ofcom should take learnings from the effectiveness of end-of-contract notifications in other sectors (such as insurance and energy) when considering how best to monitor the implementation of the notifications. They recommended Ofcom undertake field trials to test the extent to which there is 'potential' for the notifications to 'encourage consumers to switch or negotiate their contract when it ends and, as part of this, ensure that the most relevant information is included in these notifications'. CCP-ACOD, CFC and Which? welcomed further detail on how Ofcom will monitor implementation of the proposals and how success will be measured over time.
- 9.17 Citizens Advice suggested Ofcom conduct randomised control trials for mobile consumers specifically to test aspects of the end-of-contract notification such as the most effective notification content and timing and other potential levers for engagement to include within the notification, such as data usage.

## **Ensuring the effectiveness of our notifications**

9.18 The UK competition network recently published a report setting out the lessons learned by regulators about the selection, design and testing of different types of consumer facing interventions ("the UKCN report"). 104 The UKCN report identifies a set of high-level principles, which are of particular relevance to the design and monitoring of the end-of-contract and annual best tariff notifications:

• Leverage the experience and resources of the private sector – Try to learn from relevant private-sector approaches, both in terms of what works well and what does not. It may also be possible to directly involve the private sector in an intervention, by directing their commercial incentives to deliver better consumer outcomes.

<sup>&</sup>lt;sup>104</sup> Helping people get a better deal: Learning lessons about consumer facing remedies, Prepared by the Financial Conduct Authority and the Competition and Markets Authority, on behalf of the UK Competition Network, October 2018. Available at: <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/744521/UKCN\_consumer\_remedies\_project\_-lessons\_learned\_report.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/744521/UKCN\_consumer\_remedies\_project\_-lessons\_learned\_report.pdf</a>.

- **Test the remedy** The process of identifying and designing effective remedies benefits significantly from testing. Initial assumptions about what is likely to work may be incorrect.
- Good analysis is not enough Take account of real-life behaviour, pay careful
  attention to detailed implementation, use effective communication, demonstrate
  sound judgement in balancing needs of different groups, and act as advocates for
  policy reform.
- Review effectiveness Ex-post evaluations of effectiveness can provide important insights and lessons for existing and future interventions, as well as helping other regulators if they encounter similar problems in the future.<sup>105</sup>
- 9.19 In sections 4 8, we identify our proposed approach to implementing the end-of-contract and annual best tariff notifications required by the EECC. In formulating our proposals, we have used the qualitative research testing carried out ahead of the July 2018 Consultation. In addition, we have sought to reflect stakeholder responses to that consultation in developing our revised proposals. We also intend to carry out further testing of our proposals on providers' best tariffs.
- 9.20 In the high-level principles set out above, and as recognised in stakeholder responses to our July 2018 Consultation, it is best practice to monitor and evaluate the effectiveness of consumer facing remedies. This is particularly the case here, as we would want to ensure that any requirements and guidance imposed on providers mean end-users receive meaningful notifications that enable them to make informed choices. This is important to ensure that the objectives and requirements of the EECC have been implemented appropriately. We would also want to test that our intervention has not given rise to any adverse or unintended consequences.
- 9.21 In the remainder of this section we address the approach we propose to take to monitor our proposals. In short:
  - We propose a requirement on providers to keep a record of each end-of-contract and annual best tariff notification they send.
  - We will request additional data from providers as they roll-out their end-of-contract and annual best notifications, to assess the impact on end-users.
  - We will conduct on-going consumer research by focusing on engagement and satisfaction, where possible linked to the receipt of end-of-contract and annual best tariff notifications.
  - We will explore the potential with providers to conduct a randomised control trial to assess the effectiveness of different formats of notifications.

<sup>&</sup>lt;sup>105</sup> The other principles identified in the UKCN report are: understand the problem; be bold in identifying possible remedy options; and let consumers stay in control.

## Requirement on providers to keep records of the notifications they send

- 9.22 To monitor the implementation of end-of-contract and annual best tariff notifications, we propose to require that providers keep a record of each end-of-contract and annual best tariff notification they send to an end-user, and the date on which it was sent, for a period of at least 12 months. This information will ensure that data is available on the notifications that providers have sent to their end-users.
- 9.23 We do not anticipate that this requirement would have a material impact on providers, as they are already able to store personalised information on their customers.

#### Requesting data from providers

9.24 We intend to collect data from providers to gain an understanding of the extent to which end-of-contract and annual best tariff notifications, as well as differences in their content and timing, may impact on consumer knowledge and outcomes.<sup>106</sup>

#### **Consumer research**

9.25 We propose to monitor the effectiveness of end-of-contract and annual best tariff notifications using a combination of existing consumer research vehicles and additional bespoke research. 107

#### Field trials

- 9.26 An alternative way to establish the effectiveness of our proposals would be to conduct randomised control trials. The use of trials would enable us to establish a causal relationship between the notifications sent and consumer knowledge and outcomes. It would also allow us to estimate the magnitude of that causal relationship, and how this may vary depending on different types of notifications.
- 9.27 We would welcome expressions of interest from providers to collaborate on running trials. In particular, we would be interested in working with providers to design different versions of the proposed notifications, and to then test their relative effectiveness on consumer knowledge and behaviour.

# **Consultation questions**

We welcome stakeholder comments on the following questions in relation to the proposals set out in this section:

<sup>&</sup>lt;sup>106</sup> For example, in terms of: the number of consumers who go out-of-contract, the number of consumers engaging with their provider and mentioning the end-of-contract notification, the incidence of re-contracting / switching provider, the difference between the in-contract and out-of-contract spend, the price levels before and after the introduction of our proposed notifications.

<sup>&</sup>lt;sup>107</sup> Some of the metrics we are considering are: the incidence of re-contracting / switching provider, consumer awareness of contract status, consumer engagement metrics, consumer views on the usefulness of our proposed notifications.

**Question 25:** Do you agree with our implementation proposals for the timescale within which providers must comply with the end-of-contract and annual best tariff notification requirements?

**Question 26**: Do you agree with the way we plan to monitor the effectiveness and impact of end-of-contract and annual best tariff notifications?

Please provide evidence to support your views.

# 10. Regulatory Impact Assessment for introducing end-of-contract notifications

## Introduction

- 10.1 In this Section, we set out the impacts on providers and end-users<sup>108</sup> of implementing the proposed end-of-contract notifications, as described in Sections 4, 5, 6 and 7.
- 10.2 Our assessment of impacts is as follows:
  - We describe the likely impacts on end-users and providers of our overall proposals to introduce end-of-contract notifications. We also address comments we received in response to our July 2018 Consultation, where relevant.<sup>109</sup>
  - We then consider the impacts of specific elements of our proposed end-of-contract notification on which stakeholders responded following our July 2018 Consultation.
  - We describe the impact of including a provider's best tariffs as part of the end-ofcontract notification, which was not part of our proposals in the July 2018
     Consultation
  - Finally, we discuss the impact of implementing the EECC before the transposition deadline.

# **Overall impact assessment**

## Impact on end-users

## July 2018 Consultation

- 10.3 In our July 2018 Consultation we set out three distinct impacts of end-of-contract notifications which would serve to benefit consumers:
  - We considered that end-of-contract notifications provide information which some consumers are lacking when they reach the end of their fixed commitment period. We considered that end-of-contract notifications would allow some of these consumers to

<sup>&</sup>lt;sup>108</sup> End-users in this context refers to the residential consumers and businesses which will receive the end-of-contract notifications we propose in this consultation.

<sup>&</sup>lt;sup>109</sup> As we no longer propose to introduce a one-off out-of-contract notification, we do not address stakeholders' comments we received in response to questions related to the impact of such notifications.

- avoid going out-of-contract, which in turn could benefit them in terms of lower prices and/or a service better suited to their needs. 110,111
- We considered that end-of-contract notifications can reduce the time and effort consumers require to remember or search for information relevant to their decision on whether and how to act at the end of their fixed commitment period.
- We considered that end-of-contract notifications could assist the competitive process by enhancing the ability of consumers to take informed decisions and penalise providers for not offering sufficiently attractive deals. This would consequently put downward pressure on prices, and upward pressure on service and quality, to the benefit of consumers.
- 10.4 Separately, we recognised in the July 2018 Consultation that end-of-contract notifications may affect providers' pricing decisions, which in turn could result in a negative impact on (some) consumers. We highlighted that providers may be willing to offer lower in-contract prices currently, in order to attract customers on which they can earn higher out-of-contract prices at some point in the future. In this case, limiting the number of customers who go out-of-contract as a result of our end-of-contract notifications may in turn reduce the incentive for providers to offer low in-contract prices.<sup>112</sup>
- 10.5 We recognised in the July 2018 Consultation that some of the benefit we identify above would be offset in part if providers would increase prices. While we did not have evidence to determine whether providers would raise prices, we considered that there are several factors which suggest that there would be a net benefit to consumers even if they do:
  - We considered that an increase of the in-contract price is not likely to offset in full the reduction in out-of-contract prices paid by those who avoid being out-of-contract.
  - The reduction in time and effort for those who currently seek out the information included in the end-of-contract notification would offset any increase of the in-contract price, at least partially.
  - Competition benefits would offset any incentive to increase in-contract prices, at least partially.
  - There may be other benefits arising from receiving end-of-contract notifications which we have not quantified.

 $<sup>^{110}</sup>$  In Annex 6 of our July 2018 Consultation we concluded that only a relatively limited number of consumers would have to avoid being out-of-contract to ensure that the benefits of our proposals would exceed the costs.

<sup>&</sup>lt;sup>111</sup> In our assessment as part of our July 2018 Consultation we used the difference between the average spend of incontract and out-of-contract consumers as a proxy for the benefit that could be achieved. We noted that this difference should be interpreted carefully, as it may under or overstate the extent to which customers pay higher prices after the end of their fixed commitment period. However, we found it remained relevant given that we observed such differences as part of the tariffs available at the time. We also recognised that a consumer who chooses to re-contract may incur some search costs, reducing the net benefit that could be achieved. We therefore tested the sensitivity of our analysis to reducing the benefit to half that of the difference in average spend of in-contract and out-of-contract consumers.
<sup>112</sup> By making a price increase at the end of the fixed commitment period more transparent, the end-of-contract notification may reduce the number of consumers who go out-of-contract.

#### **Stakeholder comments**

- 10.6 We received several comments from stakeholders regarding our assessment of the impact of end-of-contract notifications on consumers:
  - Consumers who benefit. Stakeholders (i.e. Sky, Gamma, ISPA, BT) argued that some
    consumers choose to stay out-of-contract knowingly and would not see benefits from
    our reforms.
  - **Standalone landline.** Post Office argued that they do not alter the price for their home phone only contracts as consumers go out-of-contract, which would make our proposed end-of-contract notification format redundant.
  - Provider incentives. Several stakeholders (BT, Three, Dixons, Hyperoptic, Vodafone)
    raised concerns about the longer-term impact of end-of-contract notifications, which
    included: the effect on providers' incentives and pricing decisions, the effect on the
    competitive landscape and potential negative impacts on more vulnerable consumers.
  - Measure of benefit. Sky criticised our approach to using the average difference between in- and out-of-contract prices to estimate the potential benefits of the end-of-contract notifications. It suggested that some of the price difference may be due to product-mix effects (for example, if consumers who are out-of-contract tend to buy more services). Sky also suggested that we had ignored potential one-off costs consumers will need to incur when switching, which will reduce the benefit. Furthermore, Sky suggested that not all consumers face a price rise at the end of the fixed commitment period and benefits to them are unclear. Hyperoptic also commented that the difference in prices paid between in-contract and out-of-contract customers should not all be considered as a penalty, and that the out-of-contract price may just be the normal price.
  - Business customers. Except for Small Businesses who use a residential contract, stakeholders (BT, FCS, ISPA, ITSPA, Verastar and Vodafone) felt we overestimated the harm to businesses, and thus the benefits of introducing end-of-contract notifications for this customer group. Additionally, BT considered that the level of detail in the proposed notification would make it more difficult for businesses to engage with it, due to the complex nature of business contracts.

#### **Our current view**

- 10.7 Overall, we consider that our amended proposal to introduce end-of-contract notifications in Sections 5 to 7 will generate the same type of impacts on end-users as those we identified in our July 2018 Consultation. However, as a result of harmonising our proposals with the EECC, we recognise that our revised proposals will expand benefits to end-users:
  - **End-users.** Providers will be required to send an end-of-contract notification to all end-users, including all businesses. As such, benefits will now accrue to a larger group of end-users.

- Provider's best tariffs. The addition of the provider's best tariff to the end-of-contract
  notification should enhance the effectiveness of the message in realising the beneficial
  impacts on end-users we identify above.<sup>113</sup>
- While we recognise stakeholder views that some end-users knowingly go out-of-contract, we continue to believe that end-of-contract notifications will provide information that some end-users are currently lacking. Our consumer research shows that a significant number of consumers are either unaware of whether they are in or out-of-contract, and / or do not know when their fixed commitment period ends. In addition, some consumers do not know what will happen to the price they pay, or the services they receive, at the end of their fixed commitment period. Furthermore, some consumers are not aware of the options and savings available to them as they reach this point. Combined with the fact that providers generally do not notify customers at the end of their fixed commitment period, some end-users will not change to a better deal as they are unaware that they can renew or switch.
- 10.9 We also continue to believe that end-of-contract notifications will allow some of these end-users to make more informed decisions, and benefit by re-contracting at a lower price and/or onto a deal better suited to their needs. Given the fully harmonised requirements of the EECC in relation to end-of-contract notifications, which we consider is appropriate to implement now rather than in 2020, we have not updated our analysis on the potential size of the benefits. That said, we note that the sensitivity analysis in our July 2018 Consultation addressed the comments provided by stakeholders on the magnitude of the benefit to consumers who avoid going out-of-contract. In any case, we do not consider that the stakeholder responses we received evidenced that consumers would not be able to make savings, or benefit from a more suitable deal, by re-contracting earlier as a result of the proposed end-of-contract notification.
- 10.10 Separately, we acknowledge that the impact of our proposals may differ between services (e.g. standalone landline versus other services) and types of end-users (i.e. residential and business), but we believe that the beneficial impacts on end-users will remain regardless. In any case, the EECC requires us to apply measures across the range of public electronic communications services and end-users.
- 10.11 Finally, we recognise that there may be some price realignment as our proposals influence providers' pricing incentives, where this could affect both in-contract and out-of-contract prices. 114 However, it is not clear that this will occur, as it will be in providers' interests to compete to attract new end-users and to retain existing customers. 115 Moreover, and as we discussed in our July 2018 Consultation, we consider that several factors would suggest

<sup>&</sup>lt;sup>113</sup> Given our proposals on the provider's best tariff is a new requirement, we consider the likely impacts of including this specific element in the end-of-contract notification later in this chapter.

<sup>&</sup>lt;sup>114</sup> There may be some incentive for providers to raise out-of-contract prices, for example, if consumers who continue to go out-of-contract following the receipt of an end-of-contract notification are on average less price sensitive.

<sup>&</sup>lt;sup>115</sup> In the case of out-of-contract prices, we noted in our July 2018 consultation that end-of-contract notifications could limit the financial penalty to consumers who would continue to go out-of-contract. That is, the notifications could reduce providers' incentive to raise out-of-contract prices, as such price increases will now be more transparent and hence induce more consumers to switch away.

that end-users will benefit in aggregate, even if providers were to increase some prices. In this context we note that the obligation to provide an annual best tariff notification will increase transparency of pricing, which in turn should further limit the ability of providers to significantly raise prices to those who continue to go out-of-contract.

## Impact on providers

#### **July 2018 Consultation**

- 10.12 In our July 2018 Consultation we identified the following costs to providers of introducing end-of-contract notifications:
  - Implementation costs. This included costs associated with system development required to introduce the functionality used to prepare and deliver end-of-contract notifications, integrating these functions with existing systems and staff training. <sup>116</sup>
  - Ongoing costs. This included the cost of generating and distributing end-of-contract
    notifications, accounting for the costs of sending letters, emails and SMS. We also
    considered that providers may incur higher customer service costs, although we did
    not quantify these, or opine on the extent to which they were part of our assessment.

#### **Stakeholder comments**

- 10.13 Following consideration of stakeholder responses to our July 2018 Consultation, we have removed several requirements that we previously consulted on. The requirements we have removed should reduce the cost of implementing the end-of-contract notification we proposed in this consultation:
  - More flexibility on the method of communication. Several stakeholders argued that sending information via letter / post is costly. BT said there is considerable cost involved when sending paper bills and they considered it more appropriate to communicate via electronic means. In our revised proposal, we no longer require the notification to be delivered using the end-user's preferred method of communication (if known), meaning providers will be free to determine the method(s) used to send the notification. We anticipate that this added flexibility will reduce costs by allowing providers to limit further the number of notifications to be sent via a letter.
  - Removal of requirement to include historical discounts. BT indicated that including
    historical discount information could be confusing for customers, would drive
    consumer calls to call centres and increase costs to providers. We are no longer
    proposing to require providers to include information on end-users' historical
    discounts, thus removing these costs.
  - More flexibility on listing the services under the contract. We no longer require
    providers to list the third-party services they do not bill for in the notification for

<sup>&</sup>lt;sup>116</sup> In this context we accounted for the cost of extracting relevant information for the notification, potentially from different databases held by a provider.

- consumers. Moreover, we no longer propose that services under the contract, or any changes to those services, are listed for businesses. We explain this further below.
- More flexibility on the additional contracts to be listed. We are also proposing to
  allow providers more flexibility in relation to listing the other contracts an end-user
  may have with a provider. We explain this further below.
- 10.14 Separately, stakeholders highlighted a number of further areas where our July 2018 Consultation did not sufficiently consider the costs implied by our proposals, but which remain relevant in the context of our revised proposals.
  - Personalisation. Stakeholders argued that the extent of personalisation of our proposed end-of-contract notifications would introduce significant additional cost. This included the requirements to list all services covered by the end-of-contract notifications and list other services provided under different contracts with the same provider.
  - **Standalone messages.** Post Office argued that the requirement to send standalone messages implied that providers who have a higher percentage of customers on paper bills would be penalised. They argued that it would be less costly if they can send the notification together with the bill.
  - Business customers. Several stakeholders argued that it is more difficult and costly to send end-of-contract notifications to business customers due to the range of products taken by business customers, and the difficulty of identifying contract end dates for these customers. [%] also pointed out that implementing an end-of-contract notification process covering business customers on legacy services would require significant investment.
  - **Switching costs.** Stakeholders argued that we had not modelled categories of costs that providers would incur due to the proposed end-of-contract notifications. [%] and Tesco argued that we should include in our cost estimates the increased call centre costs resulting from inbound customer calls. Since we expect end-of-contract notifications to increase switching, [%] is of the opinion that we should consider the increase in the number of switching fees that providers will incur from Openreach as consumers change provider (that is, this would increase the overall switching costs).
  - **Resellers.** BT mentioned that our proposals could impact the contractual terms between providers and their indirect sellers.

#### **Our current view**

10.15 Overall, we consider that our proposed implementation of the EECC to introduce end-of-contract notifications will incur implementation and ongoing costs for providers which are similar to those we identified in our July 2018 Consultation. However, as a result of harmonising our proposals with the EECC, we recognise that our revised proposals include additional elements which will add costs for providers. In particular:

- **End-users.** Providers will be required to send an end-of-contract notification to all end-users, including all businesses. As such, they would incur additional implementation and ongoing costs to send end-of-contract notifications to all businesses and not just those we proposed in July that fell under the Small Business definition.
- Provider's best tariffs. Providers will be required to provide their best tariffs in their
  end-of-contract notifications. They will incur additional implementation costs for
  developing the ability of their systems to identify best tariffs, which is considered
  further in the section below. Given that this information will be added to the end-ofcontract notification, we do not foresee significant additional ongoing costs.
- 10.16 That said, we note above that our revised proposals remove a number of requirements on providers which were part of our original proposals in the July 2018 consultation. This should in turn address several issues raised by stakeholders in response to the July 2018 consultation, and aid to temper the implementation and ongoing costs of end-of-contract notifications.
- 10.17 Separately, we recognise that providers may incur additional costs as a result of increased switching amongst consumers. That said, we note that the net impact on providers need not be significant:
  - Any increase in costs paid to Openreach as a result of gaining new customers will also come with the incremental revenue from those customers. To the extent that new customers generate increased costs for providers, we consider that these costs are likely to be factored into the current prices charged to new customers.
  - While providers may incur increased customer service costs following the circulation of end-of-contract notifications, these calls will also give providers the opportunity to improve retention of customers they may otherwise lose.
- 10.18 In addition, we understand from BT that the introduction of end-of-contract notifications may impact on contractual terms between providers and their indirect sellers. We anticipate that any such impacts will be managed through business as usual discussions between these parties and we do not need to take account of these impacts here.
- 10.19 Finally, we recognise that personalisation of the notifications, and the requirement to send these on a standalone basis, may imply additional costs to providers. We discuss each of these elements further in the following section.

# Impacts of specific elements of the end-of-contract notification

10.20 Based on the responses to our July 2018 Consultation, there are three main areas of stakeholder interest in relation to the impacts of specific elements of our proposed end-of-

contract notifications. <sup>117</sup> Below we assess the incremental impact on providers and endusers of including these elements in our proposed end-of-contract notifications.

## Services provided to the end-user under the contract

- 10.21 In our July 2018 Consultation we required that the end-of-contract notification should list all services currently provided to the customer under the relevant contract, including any services provided by third parties as part of the contract (e.g. Netflix, Spotify).
- 10.22 In response to our July 2018 Consultation, stakeholders argued that it would be costly to include information on all services provided as part of the relevant contract. They highlighted that listing the services provided by third parties would raise the complexities of developing the end-of-contract notification (e.g. because third party services would not be kept in their billing system), which in turn would increase the implementation costs for our proposed policy.<sup>118</sup>
- 10.23 Separately, stakeholders noted that it would be more complex to include the level of detail that we proposed in our consultation for businesses, as many businesses take a large range of services with varying contract lengths. They argued that complexity such as this would in turn raise the implementation cost of our proposed end-of-contract notifications.
- 10.24 As detailed in Section 5, our revised proposals will require providers to include within an end-of-contract notification details of the services provided under the contract. However, we have amended our proposals as follows:
  - For residential consumers, we still expect providers to list those services. However, we would not expect providers to list third-party services which they do not bill for.
  - For businesses, we do not expect providers to list the services provided under the relevant contract. Instead, we expect providers to include a message explaining that there may be multiple services the business has as part of their contract. <sup>119</sup>

#### Impact on providers

10.25 We recognise that providers may incur additional implementation costs to list in the end-of-contract notification the services taken by a consumer under that contract. However, we do not consider that these costs will be significant. We understand that providers will store information on the contract terms offered at the point of sale in their system, and that residential contracts are sufficiently standardised for that information to be merged in marketing or billing systems. Moreover, we no longer require providers to list third-party services which they do not bill for, which should further limit the implementation cost.

<sup>&</sup>lt;sup>117</sup> Several stakeholders also commented on our proposals for a one-off out-of-contract notification. As set out above, a one-off out-of-contract notification is not included in our implementation of the EECC, so we do not discuss stakeholder responses on this issue.

 $<sup>^{118}</sup>$  For example, O2 argued that [><]. Likewise, BT argued that Ofcom should acknowledge the additional development costs associated with the requirement to list all related services, as [><].  $^{119}$  See Section 5.

10.26 In contrast, we do not expect providers to list all the services that are included within the contract for businesses, but only explain that there may be multiple services which form part of the contract. We consider that there will be zero or negligible incremental cost to providers of including such a non-personalised message.

#### Impact on end-users

- 10.27 As set out in Section 5, the inclusion of services provided under the relevant contract in the end-of-contract notification will improve consumers' ability to make more informed decisions. Therefore, it could deliver the following benefits: 120
  - Consumers will better understand what services are coming to the end of their fixed commitment period, and what changes will be made to these services at this point.<sup>121</sup>
     This should ensure that they are better placed to re-contract on a cheaper deal, or a deal which is more suited to their needs.<sup>122</sup>
  - Listing these services will reduce the time and effort consumers would have to expend
    to remind themselves of the services included in their contract, and what will happen
    to these services, and thus facilitate comparison with other offers available in the
    market.
- 10.28 Similarly, informing businesses that the contract for which they receive an end-of-contract notification may include several services will act as a useful reminder. This will aid businesses in taking account of the full scope of their contract when engaging with the market, which in turn will assist them in changing to a better deal.

## Details of other contracts taken with the same provider

- 10.29 In our July 2018 Consultation we proposed to require that end-of-contract notifications should list services taken by a customer pursuant to other contracts with the same provider.
- 10.30 In response to our consultation, several stakeholders argued that including a list of related services would increase the complexity of implementation, as it would require linking customers across databases that store the relevant information on different services taken. Stakeholders considered that this would raise the implementation costs of our proposed end-of-contract notification beyond what was reflected in our analysis.
- 10.31 A number of providers specifically raised concerns about the complexity of including information on all concurrent services for small business customers, given that businesses were likely to have multiple products with various end dates. In addition, Virgin Media

<sup>&</sup>lt;sup>120</sup> We note that these benefits apply only to the services listed in the end-of-contract notification. As such, they will not accrue for third party services a provider does not bill for, and which they decide accordingly not to refer to in the notification.

We detail the services that providers are required to provide details of in the end-of-contract notification in Section 5.
 We detail our proposals in relation to changes to services provided at the end of the fixed commitment period in Section 6.
 For example, where a consumer will have to pay for a service that may have previously been free or at a lower price, they may wish to switch to an alternative offering where such services remains free.

- raised concerns about billing systems that made it difficult to identify concurrent services provided to business customers.
- 10.32 Separately, providers also raised concerns that listing the services within these other contracts would confuse customers and result in information overload.
- 10.33 As set out in Sections 5 and 6, we have amended our proposals in acknowledgement of this stakeholder input. We propose to limit our proposals to requiring end-of-contract notifications to include only the details of other contracts taken with the same provider, and not the services provided under those contracts. We have also proposed guidance that:
  - for residential consumers, we expect the "details of other contracts" to comprise a list
    of contracts where there is a financial link to the core contract, or where either
    contract is dependent on the other. The date on which the fixed commitment period
    ends for those other contracts should also be listed; and
  - for businesses, we do not expect providers to list other contracts the customer has
    with them. Instead we expect providers, where relevant, to include a message
    explaining that other contracts may be affected if the customer terminates the
    contract for which they receive the notification.

## Impact on providers

- 10.34 We recognise that providers would incur additional implementation costs to develop endof-contract notifications which list financially linked or interdependent contracts taken by
  the consumer with the same provider. That said, our amended proposal should
  significantly limit the implementation cost for an end-of-contract notification that includes
  this information, as we would expect providers' billing and marketing systems to already
  link such contracts.
- 10.35 In contrast, we do not expect providers to incur similar costs to implement our proposed end-of-contract notifications for businesses, as we only expect them to include a message highlighting that other contracts may be impacted, where relevant. We consider that there will be zero or negligible incremental cost to providers of including such a non-personalised message.

## Impact on end-users

- 10.36 As set out in Section 5, end-users should be informed of financial or service impacts that might occur in one contract because of terminating another. In practice, this can reduce the cost to end-users who would prefer to avoid incurring an additional charge, or a loss in service, of a dependent contract but would be unable to do so if they are not reminded of this at the time they receive the end-of-contract notification.
- 10.37 In addition, listing financially linked and interdependent contracts for consumers can reduce the time and effort they would have to incur to search for this information.

## Requirement to send end-of-contract notifications as a standalone message

- 10.38 In our July 2018 Consultation, we proposed that end-of-contract notifications should be a standalone communication. We included the requirement for providers to send these messages using the individual customer's preferred method of communication.
- 10.39 In response to our July 2018 Consultation, BT and Post Office argued that there is a considerable cost involved in sending end-of-contract notifications via a letter. In addition, BT argued that it is more appropriate to interact with consumers by SMS, MMS, email or their online account.
- 10.40 Where an end-of-contract notification would have to be sent by post, some stakeholders argued that these notifications should be able to incorporate them into existing bills. This would allow the end-user to be informed, while simultaneously reducing the associated implementation and compliance cost.
- 10.41 In contrast, uSwitch agreed with our proposal that the end-of-contract notification should be a standalone communication, to ensure that consumers can easily recognise the purpose of the notification and retain the information in it.
- 10.42 We set out in Section 7 why we propose to retain the requirement that providers send end-of-contract notifications separately from any other communication. However, we have amended our proposals to remove the requirement to send end-of-contract notifications using a customer's preferred method of communication.

#### Impact on providers

- 10.43 We recognise that requiring providers to send end-of-contract notifications as a standalone message (rather than bundled with other communications) will increase the ongoing cost of sending these messages.
- 10.44 However, we do not consider that these costs are disproportionate, particularly now that we allow greater flexibility for providers to send these messages using less costly communication methods (i.e. SMS and email). Moreover, there is a further opportunity for provider to save costs by aggregating notifications for contracts whose fixed commitment end dates are sufficiently close.

## Impact on end-users

- 10.45 As set out in Section 7, we consider it is important that end-of-contract notifications should be sent separately from bills, general marketing information or other service messages from providers. This would include notifications sent by letter, which must be sent separately from other messages.
- 10.46 This requirement is to ensure that the end-user does not mistake, overlook or dismiss the end-of-contract notification. Absent this requirement, the end-of-contract notification would not achieve as effectively the purpose of improving end-users' ability to make more informed decisions. Not including this requirement would therefore reduce the ability to achieve the beneficial impact on end-users which we have identified above.

## Impact of the requirement to add the provider's best tariffs

10.47 In Section 6, we have proposed a requirement to include the provider's best tariffs as part of the information within the end-of-contract notification and set out guidance on how we would expect providers to meet this requirement in relation to consumers.

## Impact on end-users

- 10.48 Including a provider's best tariffs is likely to aid end-users' ability to make informed choices on whether to find a better deal at the end of their fixed commitment period. For example, it can reduce the time and effort they would have to incur to search for potential deals available at their current provider. It can also allow end-users to switch to a deal which is better than the one they would otherwise have identified.
- 10.49 In addition, for residential consumers, including the cheapest tariff available to any consumer could highlight the lower tariffs provided to new customers. This would highlight to consumers the potential benefit from switching provider. Likewise, telling consumers that they may be able to find a better deal by switching provider should further encourage them to shop around. This would in turn benefit some consumers by allowing them to identify a deal better suited to their need. It could also increase the competitive intensity, potentially lowering prices.
- 10.50 Further, we consider that consumers will benefit from a provider's best tariff tailored to their usage where relevant. However, we recognise that the impact on individual end-users will depend on their characteristics and their specific behavioural response:
  - If a consumer has usage patterns in line with their current service, then the
    incremental benefit in tailoring the best tariff to their needs may be relatively limited.
    That is, it would be limited to reducing the time and effort required for users to search
    for their usage data to make such an assessment. These benefits may be particularly
    limited where information on usage is readily available.<sup>123</sup>
  - If an end-user has usage patterns which are very different to their current service, then there may be significant benefits to providing them with a best tariff tailored to their needs. In particular, this information may allow some of them to switch more easily to a deal which better suits their needs. Without this information, some consumers may not realise that an alternative deal may suit their usage better, or they would have to search for their usage data to make such an assessment.
  - If an end-user's usage patterns are subject to large variations month by month, then the incremental benefit in tailoring the service to their needs may be limited. That is, it could create confusion where their current choice of service is in fact appropriate for capturing these fluctuations.

<sup>&</sup>lt;sup>123</sup> In some cases, providers put usage data on customer account pages (particularly mobile providers) so usage data should be readily available in these cases, if not the comparable tariffs for that usage.

- 10.51 To the extent that providers include an upgrade tariff, this will typically be in addition to the provider's other best tariffs. 124 Providing information on an upgrade tariff may therefore increase consumer awareness of the choice available to them, which in turn will allow some consumers to switch earlier to a deal which is better suited to their needs. In addition, including such offers may reduce the time and effort consumers would otherwise incur to search for all relevant products that their provider is currently offering.
- 10.52 Finally, we note that the benefits to end-users from the provider's best tariffs might be lower if it is more difficult for them to compare their current deal to the suggested tariffs. This may occur if the provider's best tariffs contain services that suit their usage, or are an upgrade from their current service, but that are very different to their current service.

#### Impact on providers

- 10.53 We recognise that providers will incur implementation costs to identify the appropriate tariffs to include in the end-of-contract notification. These include:
  - the cost of setting up a system to identify the appropriate best tariffs to include for a
    given end-user's end-of-contract notification, and integrating those systems with
    existing processes; and
  - ongoing cost of generating the provider's best tariffs and any maintenance of the associated systems.
- 10.54 We consider that these costs are likely to be higher where a provider's best tariffs are based on usage data rather than on similarity to the services the consumer currently receives. For instance, in the former case providers may need to link different systems to extract information on realised usage, and link this to the different offers they make available. Costs may also be higher where a provider opts to include an upgrade tariff, for example where this requires the development of systems which can link customers according to their characteristics to the relevant upgrade offer. That said, the net effect is likely limited as providers would presumably include such an offer where it enhances their ability to retain a customer.

#### Impact of implementing the EECC before the transposition deadline

- 10.55 As set out in Section 3, the provisions in the EECC must be implemented by 31 December 2020. However, we are proposing to implement the relevant parts of Article 105(3) sooner. We have considered whether there are substantial additional impacts associated with this.
- 10.56 We consulted on introducing end-of-contract notifications in July 2018 and indicated that we were likely to have concluded this work in early 2019. Considering responses received, it is likely we would have required providers to introduce a version of these notifications

<sup>&</sup>lt;sup>124</sup> An upgrade tariff may be included if the provider has a reasonable objective justification for believing that it may be the best tariff for that consumer. This would be provided in addition to the other best tariff advice. The only instance where the upgrade tariff might be the only tariff shown is where an upgrade is the cheapest tariff available to any consumer.

- well in advance of the transposition deadline of the EECC. Therefore, for those elements of our proposals that were already covered by our July 2018 Consultation, there is limited impact from implementing the relevant provisions of the EECC before December 2020.
- 10.57 That said, there may be an impact from implementing earlier those proposals that are additional to the ones included in our July 2018 consultation. We consider that there is a positive impact on end-users of implementing these additional provisions sooner than the transposition deadline. In particular, large businesses will accrue the benefits we identified above much earlier than they would if we were to implement by 31 December 2020. In addition, consumers and small businesses will realise earlier the additional benefits from including a provider's best tariff in the end-of-contract notification.
- 10.58 We consider that the impact of early implementation of the additional provisions will have a relatively limited impact on providers. For implementation costs, we think a cost increase is likely to be limited to providers starting to incur these costs earlier. In contrast, we recognise that it would increase the overall ongoing costs of our proposals, as we would require providers to start distributing end-of-contract notifications for larger businesses earlier than would be the case otherwise. We think such incremental costs for consumers and small businesses are negligible, as providers would have incurred the ongoing costs associated with distribution of the notifications as a result of our July 2018 proposals.
- 10.59 Moreover, and as set out in Section 3, since we understand from providers that their costs may be raised where policy is introduced incrementally, aligning our proposals from the July 2018 Consultation with the requirements of the EEEC could avoid providers potentially incurring wasted costs. These would occur if providers had incurred initial costs as a result of implementing our July 2018 proposals, and then incurred further costs to implement a revised approach shortly thereafter when the EECC is transposed into national law. If so, , the additional costs that might arise from an earlier implementation date could be offset, at least in part, against lower system set-up costs arising from implementing all necessary systems changes at the same time.

#### **Consultation questions**

10.60 We welcome stakeholder comments on the following:

**Question 27**: Do you agree with the impacts from the introduction of end-of-contract notifications we identify in our assessment?

Please provide evidence to support your views.

<sup>&</sup>lt;sup>125</sup> Given the extent of the concern identified as part of our July 2018 Consultation, we do not consider that there is scope to delay the implementation of end-of-contract notifications to December 2020.

## 11. Regulatory Impact Assessment for introducing annual best tariff notifications

#### Introduction

11.1 In this section we consider the impacts associated with the provision of annual best tariff notifications on end-users and providers. We also address the impact of early implementation of the EECC.

#### Impact of our proposed annual best tariff notification

#### Impact on end-users

- 11.2 As described in Section 8, an annual best tariff notification is intended to assist end-users who are out-of-contract in making informed choices. This, in turn, would allow them to take advantage of competition between providers when they chose to switch or recontract with their current provider. The annual best tariff notification will therefore have the same type of benefits as we have identified for end-of-contract notifications in Section 10.
- 11.3 In short, these notifications will remind end-users that they are out-of-contract, and inform them of the options that are available to them. They would:
  - provide information to end-users who are outside of their fixed commitment period, which some of them otherwise may have lacked. Best tariff information would allow some of these end-users to re-contract, which in turn could benefit them in terms of lower prices and/or a service better suited to their needs.
  - reduce the time and effort end-users require to remember or to search for information relevant for their decision on how to act now that they are outside of their fixed commitment period.
  - could assist the competitive process by enhancing the ability of end-users to take
    informed decisions and penalise providers for not offering sufficiently attractive deals.
    This would consequently put downward pressure on prices, and upward pressure on
    service and quality, to the benefit of end-users.
- 11.4 There are two categories of end-users who will benefit from these notifications. First, there is a one-off benefit to those end-users who are currently out-of-contract, and would not have received an end-of-contract notification in the past. Second, there is the ongoing benefit of reminding end-users who have gone out-of-contract, even after they have received an end-of-contract notification. We consider that such end-users may benefit from an annual notification as follows:

- Some may re-contract onto a deal at a lower price, or better suited to their needs, in response to receiving the annual best tariff notification. For example:
  - i) They may originally have derived some benefit from going beyond their fixed commitment period, e.g. because they valued the flexibility. The annual best tariff notification would be useful as these end-users re-assess whether re-contracting has become a more beneficial option for them since (e.g. if there are improved deals on the market).
  - ii) They may not have been in a position to act in response to receiving an end-of-contract notification or forgot about it. The annual best tariff notification would ensure these end-users are reminded of information relevant to them when considering their options and whether they should act.
- We believe that regularly reminding out-of-contract end-users of their options will limit the ability for providers to raise prices to end-users who go out-of-contract. We discuss this further in Section 10 above.<sup>126</sup>
- 11.5 As for end-of-contract notifications, we recognise the potential that some of this benefit is offset if providers have an incentive to rebalance prices. For example, if end-user responses to the annual best tariff notification would provide an incentive for providers to raise in-contract prices. We also recognise that the scale of the benefits may vary across end-user groups.
- 11.6 Finally, and as we have described in Section 10 above, the extent of the benefit may vary depending on which of the provider best tariff options are included in the annual best tariff notification.

#### Impact on providers

- 11.7 The elements that make up the annual best tariff notification are also included in the endof-contract notification described in Section 4. As such, we do not anticipate that the introduction of annual best tariff notifications will result in significant implementation costs which are not already incurred as part of the introduction of end-of-contract notifications.
- 11.8 In contrast, we anticipate that providers will incur ongoing costs associated with annual best tariff notifications. These will include:
  - The cost of generating these messages (e.g. preparing templates for these messages, and completing them with personalised information).
  - The cost of sending the messages, which is a function of the method of communication. In particular, providers will need to incur the cost of printing and

<sup>126</sup> We recognise in Section 10 that providers may have an incentive to raise out-of-contract prices where consumers who continue to go out-of-contract are on average less price sensitive. If this were to apply, we consider that such an incentive will be defeated, at least in part, through increased transparency achieved by our proposed end-of-contract and annual best tariff notifications.

- postage for notifications sent via post, or instead incur a lower cost of sending an email or SMS.
- Increased customer service costs. However, these calls will also give providers the
  opportunity to retain customers, and potentially improve retention of customers they
  may otherwise lose.
- 11.9 We recognise that the additional detail we expect providers to include for consumers implies that the ongoing cost of sending annual best tariff notifications to consumers may be higher than that for businesses.

#### Impact of implementing the EECC before the transposition deadline

- 11.10 Similar to our assessment in Section 10, we do not consider that there are substantial additional impacts associated with the implementation of the EECC before 31 December 2020.
- 11.11 In July 2018 we consulted on the possibility of introducing a one-off out-of-contract notification, which is likely to have resulted in a decision requiring providers to send such notifications well in advance of the EECC transposition deadline. As such, there would be only a limited impact from introducing provisions in the annual best tariff notification which overlap with those in our proposed out-of-contract notification.
- 11.12 That said, there may be an impact from implementing early those proposals in the annual best tariff notification that are additional to our July 2018 proposals for out-of-contract notifications. We consider that there is a positive impact on large businesses of implementing these provisions early, as they would start receiving notifications, and realise the benefits we have identified, sooner. We also consider that there will be a benefit to consumers and small businesses from adding a provider best tariff to the notification, and from sending such a message on an annual basis.
- 11.13 We consider that the impact on providers of early implementation of provisions that were not part of our July 2018 proposals will be limited. For implementation costs of our annual best tariff provisions, we think a cost increase is likely to be limited to providers starting to incur costs earlier. While we recognise that there will be an increase in the overall ongoing cost, we note that this is predominantly driven by requiring providers to send annual best tariff notifications to large businesses earlier than they otherwise would. For consumers and small businesses such an incremental ongoing cost is relatively limited, as it would only relate to the distribution of those annual best tariff notifications which are beyond the one-off notifications foreseen in our July 2018 proposals.
- 11.14 Consistent with Section 3, we consider that the additional costs that might arise from an earlier implementation date could be offset, at least in part, against lower system set-up costs arising from realising all necessary systems changes at the same time.

#### **Consultation questions**

11.15 We welcome stakeholder comments on the following:

**Question 28**: Do you agree with the impacts from the introduction of annual best tariff notifications we identify in our assessment?

Please provide evidence to support your views.

## 12. Provisional conclusions

## Summary of proposed conditions and draft guidance relating to end-of-contract notifications

Providers must send an end-of-contract notification to all residential consumers and businesses before the end of their fixed commitment period		
Proposed content of the notification	Draft guidance	
The date on which the fixed commitment period for the contract will end		
The currently monthly subscription price for that contract and the monthly subscription price that will apply after the end of the fixed commitment period		
Details of the services that are provided under the contract, and any changes to those because the fixed commitment period is ending	Residential subscribers only: a comprehensive list of all services which form part of the contract, including all ancillary services, but excluding services billed by third parties. Plus, a list of any changes to those services that will take effect at the end of the fixed commitment period.  Business subscribers only: a message explaining that there may be multiple services as part of the contract and that they may change at the end of the fixed commitment period.	
Any applicable notice period (or, for mobile, a message that a notice period may apply)		
The customer may terminate that contract without paying an early termination charge after the fixed commitment period ends		
How to terminate the contract	See existing guidance on General Condition C1.3 on conditions and procedures for contract termination. In particular, providers should offer a range of communication options for end-users to terminate their contracts.	
Details of other contracts with the same provider and, for residential subscribers only, the dates on which the fixed commitment periods end for those other contracts	Residential subscribers only: a list of other contracts where there is a financial link to the core contract (i.e. the contract for which the notification is given), or where there is an interdependency between the core contract and the other contract.  Business subscribers only: a message that other contracts may be affected if they terminate the core contract, where relevant.	
Options available at the end of the fixed commitment period	Residential subscribers only: advice that they can stay on existing contract; switch to a new contract with same provider; switch to a new contract with a different provider; and, for mobile consumers on bundled handset and airtime contract only, the option to switch to a SIM-only deal. The advice should also inform subscribers on residential contracts that some providers may offer new customers better deals and that they may get a better deal if they bundle the services they have with that or any other provider.	
The provider's best tariffs	Residential subscribers only: details of between one and three tariffs based on similarity to the consumer's previous usage where relevant and otherwise based on service packages that are most similar to what the consumer currently receives. They should include: (i) the cheapest tariff the consumer is eligible for; (ii) the cheapest tariff the provider offers (to any customer); (iii) a SIM-only deal (for consumers on bundled mobile handset and airtime deals only). Tariffs should be for bundled services where consumers have	

	multiple services with the same provider. They may also include the cheapest upgrade tariff.
Proposed timing of the notification	Draft guidance
Notifications are to be sent in a timely manner, before the end of the fixed commitment period	Residential subscribers only: we expect providers to send notifications between 10 and 40 days before the end of the fixed commitment period. Where a subscriber is approaching the end of the fixed commitment period of more than one contract, the end-of-contract notifications should be aggregated into a single message, which is delivered within the timeline outlined above.
Proposed form of the notification	Draft guidance
Providers must send the notification by durable medium	
Notifications should be a standalone communication	
The notification should be sufficiently prominent to achieve its purpose	Information in the end-of-contract notification should have the following first: the date on which the fixed commitment period for that contract will end; the current monthly subscription price paid by the subscriber and the monthly subscription price that will come into effect once the fixed commitment period ends. The provider's best tariffs should come at the end of the notification.  For a notification sent via SMS the following information must appear in the SMS message: the date on which the fixed commitment period for that contract will end; the monthly subscription price currently paid by the subscriber; the monthly subscription price that will come into effect once the fixed commitment period ends; details of the options available at the end of the fixed commitment period; and a message that further information, including the provider's best tariffs, is available and where it is available.
Providers must send end-of-contract notifications in an accessible format for customers who have alternative format bills	
Proposed monitoring requirement	Draft guidance
A record of each notification, and the date on which it is sent, must be kept for at least 12 months	
Proposed implementation timeline	Draft guidance
Requirements to take effect six months after our final statement	

## Summary of proposed conditions and draft guidance relating to annual best tariff notifications

Providers must send an annual best tariff notification to all residential consumers and businesses who are outside of their fixed commitment period

who are outside of their fixed commitment period		
Proposed content of the notification	Draft guidance	
A message that the contract is not currently subject to a fixed commitment period		
Any applicable notice period (or, for mobile, a message that a notice period may apply)		
The current monthly subscription price for that contract		
Details of the services that are provided under the contract	Residential subscribers only: a comprehensive list of all services which form part of the contract, including all ancillary services but excluding services billed by third parties.  Business subscribers only: a message explaining that there may be multiple services as part of the contract.	
Details of other contracts with the same provider and, for residential subscribers only, the dates on which the fixed commitment periods end for those other contracts	Residential subscribers only: a list of other contracts where there is a financial link to the core contract (i.e. the contract for which the annual best tariff notification is given), or where there is an interdependency between the core contract and the other contract.  Business subscribers only: a message that other contracts may be affected if they terminate the core contract, where relevant.	
Options available to the customer	Residential subscribers only: include advice that they can stay on existing contract; switch to a new contract with same provider; switch to a new contract with a different provider; or, for mobile consumers on bundled handset and airtime contract only, the option to switch to a SIM-only deal. The advice should also state that some providers may offer new customers better deals and that they may get a better deal if they bundle the services they have with that or any other provider.	
The provider's best tariffs	Residential subscribers only: details of between one and three tariffs based on similarity to the consumer's previous usage where relevant and otherwise based on service packages that are most similar to what the consumer currently receives. They should include: (i) the cheapest tariff the consumer is eligible for; (ii) the cheapest tariff the provider offers (to any customer); (iii) a SIM-only deal (for consumers on bundled mobile handset and airtime deals only). Tariffs should be for bundled services where consumers have multiple services with the same provider. They may also include the cheapest upgrade tariff.	
Proposed timing of the notification	Draft guidance	
Providers must send an annual best tariff notification within 12 months of condition coming into effect, or within 12 months of the		

subscriber receiving an end-of-contract notification, and at least once per year after that point	
If a subscriber has two or more contracts outside their fixed commitment periods at the time an annual best tariff notification is sent, those notifications should be combined	
Proposed form of the notification	Draft guidance
Providers must send the notification by durable medium	
Notifications should be a standalone communication (separate to service messages)	
The notification should be sufficiently prominent	Providers are to provide information in the annual best tariff notification with the following given first: the message that the fixed commitment period for a particular contract (or contracts) has ended; and the current monthly subscription price under that contract (or contracts). The provider's best tariffs should come at the end of the notification.  For a notification sent via SMS the following information must appear in the SMS message: a message that the fixed commitment period for a particular contract (or contracts) has ended; the current monthly subscription price paid by the subscriber under that contract (or contracts); details of the options available at the end of the fixed commitment period; and a message that further information, including the provider's best tariffs, is available and where it is available.
Providers must send annual best tariff notifications in an accessible format for customers who have alternative format bills	
Proposed monitoring requirement	Draft guidance
A record of each notification, and the date on which it is sent, must be kept for at least 12 months.	
Proposed implementation timeline	Draft guidance
These requirements to take effect 6 months after our final statement	

#### **Draft general condition**

- 12.1 Annex A6 contains a Notification of the draft general conditions that would be required to implement the proposals set out in this document. As noted above, we propose to include new general conditions in Condition C1, and to amend Condition C5 and the Definitions section of the General Conditions.
- 12.2 The draft general condition in Annex A6 is similar to the one we proposed in the July 2018 Consultation. In response to that, we received some drafting comments from stakeholders (i.e. suggestions as to how the policy should be reflected in the draft general condition, as opposed to comments about the policy itself).
- 12.3 Of the drafting comments that remain relevant to the revised condition, we have accepted a number of changes suggested by Sky and BT.

- 12.4 In terms of our overall approach, Vodafone considered that we had adopted a very prescriptive approach in the draft general condition, which it says is at odds with the recent simplification and streamlining of the General Conditions as a whole. uSwitch stated that we should consider adding an overarching principle to the draft general condition that notifications should seek to engage consumers in consideration of their options. uSwitch considered that this would better enable us to take enforcement action against providers not acting within the spirit of the rules.
- 12.5 In response to these comments, we have removed several of the previously proposed requirements from the revised draft general condition. We are also proposing to give guidance as to how certain requirements of the condition should be satisfied, which enables us both to remove some of the detail previously included within the condition itself, and to adopt a more discursive approach to the intended objective of the condition.

#### Meeting the test for setting general conditions

#### Overview

- 12.6 In Section 3, we outlined the test in section 47(2) of the Act, which must be met before we can set or modify general conditions. We are minded to consider that the draft general conditions are:
  - a) not unduly discriminatory, as they apply equally to all providers of public electronic communications services;
  - b) proportionate, for the reasons set out in the sub-section below; and
  - c) transparent, as the draft general conditions are set out in full in Annex A6 and explained in detail in this document. The proposed conditions would also increase transparency by setting out a clear framework for the content, structure, format and timing for end-of-contract and annual best tariff notifications.
- 12.7 As part of our assessment of whether the draft general conditions are proportionate, we also consider that they are objectively justifiable in that, for the reasons set out in this document, they seek to implement the relevant parts of the EECC and address the harms we identified in the July 2018 Consultation.

#### **Proportionality**

We are minded to consider that the draft general conditions are proportionate. We consider that they are an appropriate means of achieving the objectives set out in the relevant parts of the EECC, which form part of a full harmonisation suite of provisions. We have explained in sections 4 to 9 why each of the proposed elements of the draft general conditions are necessary to achieve those objectives, and to give them full effect.

<sup>&</sup>lt;sup>127</sup> The EECC itself has also been subject to an impact assessment and an assessment of proportionality by the European Commission.

- Taking our proposals in the round, our view is that we could not achieve the objectives of the relevant parts of the EECC with a less onerous approach.
- 12.9 In Sections 10 and 11 we consider the impact of our proposals on end-users and providers (including the impact of implementing the relevant parts of the EECC before the transposition deadline). In several instances, we have revised our proposals from those set out in the July 2018 Consultation in a way that would lessen the impact on providers. For example:
  - a) we are no longer proposing to require providers to include historical discounts in endof-contract notifications;
  - b) we are now proposing that providers only need to include details of financially linked or dependent contracts in their notifications for residential consumers (we had previously proposed that they should include details of all other services provided to the subscriber);
  - c) our revised proposals also mean that providers do not need to list third party services in notifications, unless they bill the customer for them;
  - d) we are no longer proposing to require providers to send end-of-contract notifications using the customer's preferred method of communication, which would allow more flexibility for providers to choose a lower cost option (e.g. email or SMS);
  - e) we are not proposing that annual best tariff notifications should include the date on which the fixed commitment period ended for the contract in question (we had previously proposed this in the July 2018 Consultation for out-of-contract notifications); and
  - f) we are proposing that providers should have much greater discretion around the content of the notifications for business customers.

#### Ofcom's general duties

12.10 We provisionally conclude that the setting of the draft general conditions will fulfil our duty to further the interests of citizens and consumers. In particular, the introduction of end-of-contract notifications and annual best tariff notifications will provide consumers with timely information that will assist them to engage in the market and to make an informed choice about their communications services. In generating our proposals, we have also had regard to the matters set out in sections 3 of the Act, including in particular to the interests of consumers in respect of choice, price, quality of service and value for money (section 3(5)); the desirability of promoting competition in relevant markets (section 3(4)(b)); the desirability of encouraging investment and innovation in relevant markets (section 3(4)(d)), and the needs of persons with disabilities, of the elderly and of those on low incomes (section 3(4)(i)). We have also had regard to the opinions of consumers in relevant markets (section 3(4)(k)), insofar as our proposals have been informed by research into consumers' expectations of the information they should receive.

12.11 We are also minded to consider that the introduction of the draft general conditions is in line with our obligation to ensure that our regulatory activities are proportionate and targeted only at cases in which action is needed (section 3(3) of the Act). As noted above, we have sought to minimise implementation costs for industry, where possible, with a view to ensuring that our proposed intervention is proportionate.

#### **Duties for the purpose of fulfilling EU obligations**

- 12.12 We also provisionally assess that, by introducing the draft general conditions, we would be acting in accordance with the six European Community requirements in section 4 of the Act. These include duties:
  - a) to promote competition in the provision of electronic communications services;
  - b) to secure that our activities contribute to the development of the European internal market, and
  - c) to promote the interests of all persons who are citizens of the European Union. 128
- 12.13 For the reasons set out in this document, our assessment is that introducing the draft general conditions would increase protection for subscribers by ensuring they are given timely information on contract termination and best tariffs, which will assist them in making informed choices and engaging in the market. This could benefit them in terms of lower prices and/or a service better suited to their needs, and a saving in time and effort for subscribers who currently need to remember or search for the information that is included in the notifications. We consider that this enhanced engagement will also penalise providers for not offering sufficiently attractive deals, thereby assisting the competitive process. Finally, by implementing the relevant parts of the EECC, we are also contributing to the development of the European internal market.

#### **Consultation questions**

12.14 We welcome stakeholder comments on the following:

**Question 29**: Do you have any comments on the draft general conditions, set out in Annex A6 to this document?

Please provide evidence to support your views.

<sup>&</sup>lt;sup>128</sup> Read in light of Article 8 of the Framework Directive. We have also had regard to the objectives in Article 3(2) of the EECC.

# 13. Review of price differentials and consumer vulnerability in the fixed broadband market

#### Introduction

- Differential pricing refers to the practice of charging different consumers (or groups of consumers) different prices for an equivalent or substantially similar service and is a common feature of many regulated and non-regulated markets. <sup>129</sup> <sup>130</sup> In some cases, these pricing practices may lead to better market outcomes. For example, reducing the price of a service or good for certain groups of consumers might encourage uptake from a wider set of people (such as reducing train fares for elderly people, or cinema prices for students). Such practices can also intensify competition by encouraging consumers to engage in the market, e.g. to shop around, to compare offers and to make savings by switching providers.
- However, in some situations, price differentials might represent a cause for concern. Circumstances in which price differentials are likely to be concerning include where vulnerable consumers, or people who are less able to access the best deals for whatever reason, are disproportionately likely to pay higher prices. Where price differentials are observed, it is therefore important to understand what consequences they have for consumers.
- 13.3 In the fixed broadband market, differential pricing tends to occur in relation to a consumer's contractual status with their provider (i.e. whether they are a new customer, have re-contracted or are out-of-contract). <sup>131</sup> Customers who are in their first contract with a provider tend to benefit from introductory discounts, whereas those who are not tend to pay higher prices.
- 13.4 The presence of price differentials is indicative of relatively high levels of retail competition and service innovation in the fixed broadband market which has led providers to compete on price to win new customers. In practice, this often means there are good deals available

<sup>&</sup>lt;sup>129</sup> Charging different prices for products where the cost of producing those products is the same (or alternatively charging the same price where the cost of producing the products is different) is known in economic terms as "price discrimination". It is not yet clear whether the supply and demand side conditions in communications markets are such that differences in price would constitute price discrimination.

<sup>&</sup>lt;sup>130</sup> In markets where the fixed costs of investment are significant, being able to charge different prices to different groups of customers based on their sensitivity to price can be important to firms' ability to recover their costs efficiently.
<sup>131</sup> Customers who are new to a provider often receive discounted prices for their services for the duration of the fixed commitment period of their contract. Once that initial fixed commitment period has ended, they can switch provider, recontract with that provider (for another fixed commitment period or continue to receive services from the provider outside of their fixed commitment period (sometimes on less favourable terms). In this section, we refer to the last of these as being 'out-of-contract.' Prices can differ depending on whether they are new customers (in an initial fixed commitment period), have re-contracted (for a subsequent fixed commitment period) or are out-of-contract (with no fixed commitment period).

- to many consumers, especially those people who are prepared to switch provider, but it may also mean that some consumers pay more than they might otherwise do.
- 13.5 The extent of discounting in the fixed broadband market means that many people could upgrade their broadband from standard to superfast at no extra cost (superfast broadband is a connection that can deliver speeds of 30 Mbit/s, whereas standard broadband is a legacy service with an advertised speed of less than 30Mbit/s). Some standard broadband customers who are out-of-contract could even save money by upgrading to superfast broadband and benefitting from an introductory discount. Consequently, there are potential upsides for consumers who take advantage of pricing practices which are designed to encourage take-up of higher speed services. However, some people may be disadvantaged by these practices, particularly if they live in areas where superfast broadband is unavailable, or if they find it harder to engage with the market.
- 13.6 We are concerned about these potential downsides. We are therefore launching a review to examine the extent to which price differentials in the fixed broadband market produce harmful effects for consumers, who is affected, and whether there are any additional targeted actions we should take to protect broadband customers. This review will have a particular focus on vulnerable people.
- 13.7 As set out in Sections 5 and 6, we are proposing that communications providers give prominent and timely information to their customers about the services they buy through end-of-contract notifications and annual best tariff notifications. This is to equip consumers with information at the right time, to help them decide if they need to shop around or re-contract with their current provider.
- 13.8 In addition, as set out in Section 2, we have a programme of work which aims to ensure that communications markets work effectively for consumers. This includes continuing to publish regular pricing reports which shine a light on pricing practices and help raise awareness of how these might affect consumers.
- 13.9 While we consider that our proposals for end-of-contract and annual best tariff notifications will make a significant difference in helping to address some of our concerns, we recognise that for some consumers the provision of more information alone may not be sufficient to help them get better deals. This may particularly be the case for vulnerable consumers.
- 13.10 Our review will therefore determine whether additional targeted action may be necessary and appropriate to protect broadband customers, especially those who are vulnerable. We have already taken targeted action elsewhere to protect vulnerable consumers from high price increases. We identified robust evidence that people aged 65 and over who were dependent on standalone landline phone services, experienced significant price increases

- and concluded competition was not sufficient to remedy the situation. We ensured there was a substantial one-off price cut and a price cap is in place. 132
- 13.11 Should we consider it appropriate to propose any remedies, we will be mindful of the need to ensure they are carefully targeted, proportionate, and avoid unintended consequences. In some cases, improving the outcomes for one group of consumers might come at the expense of another group of consumers, requiring careful balancing.<sup>133</sup>
- 13.12 We are aware that the practice of firms charging out-of-contract customers more than new customers across a number of different sectors, including broadband and mobile, has attracted widespread interest and debate in recent months. First, the Government's Consumer Green Paper highlighted the gap between the best and worst deals received by consumers and noted pricing policies that exploit inactive customers as a new challenge to regulators, requiring new solutions. More recently, Citizens Advice made a supercomplaint to the Competition and Markets Authority (CMA) about the high prices paid by inactive consumers.
- 13.13 We will continue to work closely with the CMA in relation to the Citizens Advice supercomplaint and with the Government in relation to delivering better outcomes for consumers more generally.
- In the sections below, we set out the proposed scope of our review of price differentials in the fixed broadband market. We then summarise our understanding of current pricing practices for fixed broadband services. We also describe our existing evidence about how price differentials may be affecting consumers, including those who are more vulnerable. We outline the issues we will be examining in our review and our approach to remedies. We intend to publish a consultation on our findings in Q2 of 2019/20.

#### Scope of our review

Our review will seek to establish the scale of any harm to consumers that arises from differential pricing practices, as well as the barriers to consumers getting better deals in the fixed broadband market. Such harm could include some consumers paying too much for the services they use or making poor choices. Our review will also seek to understand who is affected by these pricing practices. It will include:

<sup>&</sup>lt;sup>132</sup> Ofcom, October 2017, Review of the market for standalone landline telephone services. Available at: <a href="https://www.ofcom.org.uk/consultations-and-statements/category-1/review-of-landline-telephone-services">https://www.ofcom.org.uk/consultations-and-statements/category-1/review-of-landline-telephone-services</a>

<sup>&</sup>lt;sup>133</sup> Such offsetting price changes are sometimes referred to as a "waterbed effect". For example, in paragraph 10.14 we note that in the July 2018 we highlighted that providers may be willing to offer lower in-contract prices currently, in order to attract customers on which they can earn higher out-of-contract prices at some point in the future. In this case, limiting the number of customers who go out-of-contract as a result of our end-of-contract notifications may in turn reduce the incentive for providers to offer low in-contract prices.

<sup>&</sup>lt;sup>134</sup> BEIS (2018) Modernising consumer markets: Consumer Green Paper, page 13. Available at: <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment</a> data/file/699937/modernising
<a href="consumer-markets-green-paper.pdf">consumer-markets-green-paper.pdf</a>

- a detailed examination of the differences in prices by contract status along with the characteristics of consumers paying higher prices. We will explore the reasons why some consumers do not shop around to find a better deal and pay more than others; and
- an assessment of the pricing practices used by providers, what drives firms to price differently, and whether this leads to poor outcomes for certain customers.
- As part of our analysis to support our July 2018 end-of-contract and out-of-contract notification proposals, we examined the difference in prices paid among consumers who are in contract and out-of-contract across various communications services. We propose as part of this review to examine in further detail the extent of price differentials by contract status in the fixed broadband dual play market, in order to better understand the differences in prices paid by those who are new customers, those who re-contract with their existing provider for another fixed commitment period, and those who are out-of-contract. Our review is concerned with dual play broadband services, given that a decent reliable broadband is now considered by many people to be an essential service and because the practice of differential pricing is particularly prevalent in this sector.<sup>135</sup>
- 13.17 We will assess the scale of price differentials for both standard and superfast broadband customers. We will consider in particular the extent to which consumers who live in areas where superfast broadband is not yet available, or for whom there is more limited retail choice, are disproportionately affected by price differentials.
- 13.18 In addition, we will further investigate initial evidence that there is a lack of transparency in the prices available for customers looking to re-contract. This may result in some consumers who re-contract paying more than they need to.
- 13.19 Ofcom has specific duties under the Communications Act<sup>136</sup> to take account of particular groups of citizens and consumers who may be vulnerable to harm. We place a high level of importance on improving outcomes for vulnerable consumers in all markets we regulate. Our review will also therefore have a particular focus on outcomes for consumers who may be vulnerable.

#### **Current industry pricing practices**

13.20 In this section, we set out our initial evidence on the prevalence of price differentials in the fixed broadband market. In doing so we focus on the pricing of dual play landline and fixed broadband bundles.

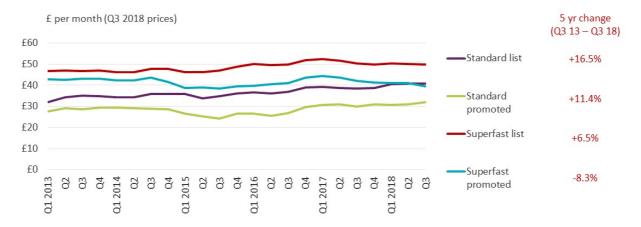
<sup>&</sup>lt;sup>135</sup> We recognise that triple play and quad play bundles also include broadband. Any price differentials for these bundles may in part reflect a difference in the other services that are part of the bundle, such as TV or mobile services, and are therefore outside the scope of this review.

<sup>&</sup>lt;sup>136</sup> Communications Act 2003. Available at: <a href="http://www.legislation.gov.uk/ukpga/2003/21/section/3">http://www.legislation.gov.uk/ukpga/2003/21/section/3</a>

#### Price differentials in the fixed broadband market

- 13.21 We have observed significant price differentials between promoted<sup>137</sup> and non-discounted list<sup>138</sup> prices in the fixed broadband market, as shown by data provided by Simplify Digital.<sup>139</sup> As is shown in Figure 3, this price differential can be seen for both standard and superfast broadband dual play bundles. These prices are based on those advertised by providers and do not necessarily represent what new and out-of-contract consumers actually pay. However, they do provide a useful indication of the trends in pricing over time, as well as the gap between the prices paid by new and out-of-contract consumers.
- 13.22 These data show that, in the five years to Q3 2018, average prices for standard dual play bundles offered by the UK's largest providers increased at a faster rate than those for similar superfast bundles. For standard dual play bundles, average list and promoted prices increased by 16.5% and 11.4% respectively in real terms during this period, while for superfast bundles the average list price increased by 6.5% and the average promoted price decreased by 8.3%. These data also show that the list price for dual play bundles with standard broadband was above the promoted price for superfast dual play bundles in Q3 2018. This is the first time this has occurred over the period for which data are available.

Figure 3: Price differentials between average advertised list and promoted dual play bundle prices, by broadband type: Q1 2013 to Q1 2018



Source: Simplify Digital

Notes: Dual play standard and superfast broadband tariffs for major providers – BT, EE, Plusnet, TalkTalk, Sky, Virgin Media and Vodafone; adjusted for CPI; the pricing data sourced from Simplify Digital's pricing dashboard is based on the average price of the provider in question's base tariffs and those tariffs plus one 'add-on' service. Therefore, the average prices shown will be higher than if they were calculated using only the base tariffs.

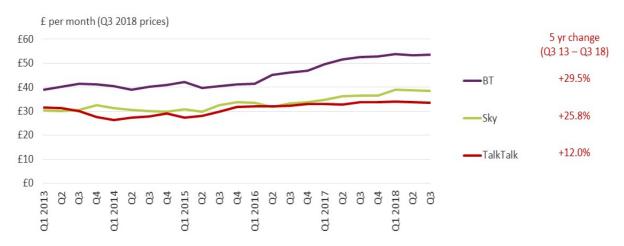
<sup>&</sup>lt;sup>137</sup> That is, the prices available to new customers for an initial fixed commitment period.

<sup>&</sup>lt;sup>138</sup> These are the prices that are likely to be paid by consumers who are outside their fixed commitment period (or out-of-contract).

<sup>&</sup>lt;sup>139</sup> Simplify Digital is a third party which provides pricing data to Ofcom.

13.23 The extent to which non-discounted list prices offered by the UK's leading providers for standard and superfast dual play bundles have changed over time is set out in Figure 4 and Figure 5. These data show that the average list prices for standard broadband dual play bundles among each of the leading providers have increased by at least 12% in real terms in the five years to Q3 2018, and by nearly 30% in the case of BT. <sup>140</sup> Average list prices for superfast broadband dual play bundles show a more mixed picture over the same period, with some prices decreasing in real terms.

Figure 4: Average list prices for dual play bundles with standard broadband, by broadband provider: Q1 2013 – Q3 2018



Source: Simplify Digital

Notes: Dual play standard broadband tariffs for top three standard broadband providers – BT, TalkTalk and Sky; adjusted for CPI; the pricing data sourced from Simplify Digital's pricing dashboard is based on the average price of the provider in question's base tariffs and those tariffs plus one 'add-on' service. Therefore, the average prices shown will be higher than if they were calculated using only the base tariffs.

 $<sup>^{140}</sup>$  BT decreased the non-discounted list price of its basic dual play bundle with standard broadband from £45.49 per month to £32.99 in November 2018.

Figure 5: Average list prices for dual play bundles with superfast broadband, by broadband provider: Q1 2013 – Q3 2018

Source: Simplify Digital

Notes: Dual play superfast broadband tariffs for top four providers – BT, TalkTalk, Sky and Virgin Media; adjusted for CPI; the pricing data sourced from Simplify Digital's pricing dashboard is based on the average price of the provider in question's base tariffs and those tariffs plus one 'add-on' service. Therefore, the average prices shown will be higher than if they were calculated using only the base tariffs.

13.24 Based on data provided by Simplify Digital, all major residential providers offered discounts of some description for new customers purchasing standard dual play bundles at the end of Q3 2018. BT had the highest average percentage price difference, and also had the most expensive average price (both list and promoted) for these services.

Figure 6: Average advertised list and promoted price of standard dual play bundles, by major broadband providers: end of Q3 2018

	List price	Promoted price	Price difference
ВТ	£56.27	£36.33	35.4%
EE	£41.53	£31.03	25.3%
Plusnet	£39.61	£31.15	21.4%
Sky	£38.48	£27.03	29.7%
TalkTalk	£33.63	£31.79	5.5%

Source: Simplify Digital

Notes: The pricing data sourced from Simplify Digital's pricing dashboard is based on the average price of the provider in question's base tariffs and those tariffs plus one 'add-on' service. Therefore, the average prices shown will be higher than if they were calculated using only the base tariffs.

13.25 Similar to standard broadband prices, there were also differences between the average list and promoted prices for superfast dual play bundles for all operators, with BT having the highest percentage price difference, at 30.5%, at the end of Q3 2018.

Figure 7: Average advertised list and promoted price of superfast dual play bundles, by broadband providers: end of Q3 2018

	List price	Promoted price	Price difference
ВТ	£55.14	£38.31	30.5%
EE	£47.81	£35.38	26.0%
Plusnet	£47.52	£43.00	9.5%
Sky	£48.36	£35.93	25.7%
TalkTalk	£42.63	£39.79	6.6%
Virgin Media	£60.08	£47.83	20.4%

Source: Simplify Digital

Notes: The pricing data sourced from Simplify Digital's pricing dashboard is based on the average price of the provider in question's base tariffs and those tariffs plus one add-on' service, therefore, the average prices shown will be higher than if they were calculated purely from the base tariffs.

- Ofcom's 2018 pricing report also indicated that a significant proportion of consumers may be paying higher out-of-contract prices, particularly where they are receiving standard broadband services. <sup>141</sup> Data obtained from providers for our 2018 pricing report showed that 46% of standard broadband customers, and 32% of superfast broadband customers, were outside their fixed commitment period as at Q3 2017. <sup>142</sup>
- 13.27 The price differentials between providers' average promoted and list prices shown above can be seen as a proxy for differentials between the prices paid by new- and out-of-contract consumers. In broad terms, we found that these differentials were reflected in industry data we collected from a number of providers at the end of 2017. Providers were asked to report average monthly spend for consumers who were in-contract and out-of-contract. 143, 144 For customers with fixed broadband dual play bundles, the out-of-contract

 $<sup>^{141}</sup>$  The pricing report data collected information on ADSL services and fibre and cable services.

<sup>&</sup>lt;sup>142</sup> Ofcom, Pricing trends for communication services in the UK, 2018, page 32. Available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0030/113898/pricing-report-2018.pdf

<sup>&</sup>lt;sup>143</sup> This data is also reported in Figure 1, Section 2.

<sup>144</sup> Ofcom requested average monthly spend data for customers who were in- and out-of-contract and used this to calculate a weighted average spend for each service. Further details on the methodology can be found in Annex 7 of the July 2018 Consultation. Available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0017/117161/Annexes-6-to-9.pdf

- average monthly spend was 19% more than the in-contract average monthly spend (i.e.  $\pm 41$  compared to  $\pm 35$ ). 145
- 13.28 We are in the process of obtaining more detailed data from providers about the prices that their customers pay for superfast and standard dual play services based on their contract status and length of tenure. Preliminary data obtained from the largest broadband providers suggests that out-of-contract consumers continued to pay significantly more than other consumers in Q3 2018, consistent with the data collected for 2017. In addition, this preliminary data also suggests that re-contracted consumers pay more than those who are in their first such period with a provider.
- 13.29 This preliminary data also suggests that, on average, standard broadband dual play bundle consumers who are out-of-contract pay more than consumers who are in their first contract for superfast broadband with the same provider. It also indicates that the longer a consumer has been out-of-contract for, the more likely they are to pay a higher price (with the exception of a relatively small number of consumers who are on legacy products and have been out-of-contract for more than five years). As part of our review, we intend to work with providers to confirm these findings and to obtain a better understanding of their impact on consumers.
- 13.30 Some providers have told us that part of the reason that they maintain significant price differentials for in- and out-of-contract customers is to incentivise consumers to upgrade from a standard broadband service to a superfast service once they reach the end of their fixed commitment periods. However, not all consumers are eligible to receive superfast broadband. These consumers could therefore be particularly disadvantaged by such pricing practices. They are likely to have a more limited choice of broadband provider and may therefore not be able to benefit from upgrading to a superior service or from the potential savings to be made as a new customer with a different provider.
- 13.31 In its super-complaint to the CMA, Citizens Advice argued that broadband providers often charge customers who were out of their fixed commitment period a "loyalty penalty". It also urged Ofcom to monitor consumer detriment and take further action if necessary.
- 13.32 There are a number of conceptual and methodological challenges in measuring the overall consumer detriment that could arise from the observed price differentials. We will use our review to develop a more robust methodology to analyse the extent of consumer harm arising from the observed price differentials for broadband services. In addition, we will also gather data from broadband providers to develop a better estimate of the scale of any consumer harm and in particular to establish if any consumer groups are more affected than others.

<sup>&</sup>lt;sup>145</sup> Ofcom, Helping consumers to engage in communications markets, Table 4, Annex 6, page 15. Available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0017/117161/Annexes-6-to-9.pdf

#### **Engagement issues and outcomes for vulnerable consumers**

- 13.33 It is clear that differential pricing practices are prevalent in the fixed broadband dual play market, and that consumers who are out-of-contract on standard broadband services may be disproportionately affected, especially if they are ineligible to upgrade to a superior service. As part of our review, we will gather evidence to understand the impact of those price differentials, including which consumers are paying higher prices and the reasons for this.
- 13.34 We are particularly interested in understanding whether vulnerable consumers are likely to be disproportionately impacted by price differentials. There is a risk that vulnerable consumers could be more likely to be out-of-contract (and therefore paying higher prices) than other consumers due to difficulties in accessing, assessing and acting on provider offers. This will be explored as part of the review.
- 13.35 We set out our initial evidence in relation to barriers to engagement and consumer vulnerability below.

#### Introduction to consumer vulnerability

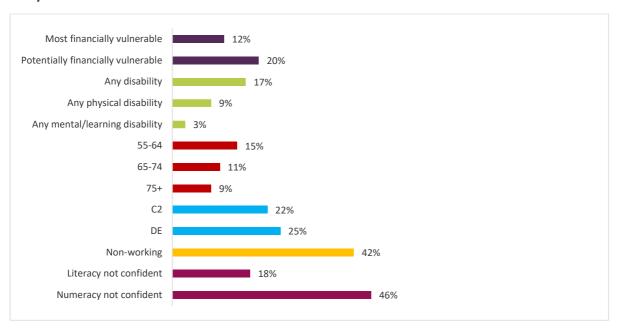
- 13.36 Consumer vulnerability can be challenging to define precisely, as it is dependent on an individual consumer's circumstances. It can occur because of someone's characteristics (for example, age or disability), a life event (for example bereavement or illness), financial circumstances, or a combination of these. Additionally, some consumers may be vulnerable throughout their life, while others may face a confluence of circumstances that make them vulnerable for a defined period.
- 13.37 While someone's characteristics or circumstances can act as a useful indicator of vulnerability, it is important not to assume a consumer is vulnerable purely because of their characteristics or circumstances. For example, being physically disabled or elderly does not automatically mean that someone is vulnerable. Instead, the characteristics which we discuss below are those which we consider makes someone more likely to be vulnerable (and particularly so when two or more characteristics apply to an individual consumer).
- 13.38 In our view, therefore, it is preferable not to define vulnerability in a limited way, but instead to approach it broadly to capture all consumers who may be living in vulnerable circumstances, and to acknowledge that these consumers are unlikely to experience vulnerability in the same way. This is in line with the approach taken by other regulators.<sup>146</sup>
- 13.39 While not an exhaustive list of the ways in which a consumer may be vulnerable, Condition C5 in Ofcom's General Conditions lists characteristics which we expect providers to take

<sup>&</sup>lt;sup>146</sup> See for example, <a href="https://www.fca.org.uk/publication/corporate/approach-to-consumers.pdf">https://www.fca.org.uk/publication/corporate/approach-to-consumers.pdf</a> and <a href="https://www.ofgem.gov.uk/sites/default/files/docs/2013/07/consumer-vulnerability-strategy">https://www.ofgem.gov.uk/sites/default/files/docs/2013/07/consumer-vulnerability-strategy</a> 0.pdf

into account when giving consideration to vulnerable consumers. These are "age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances, such as bereavement". 147 This approach to identifying vulnerable consumers is an important part of our work to understand the impact of the price differentials on different groups of consumers in the fixed broadband market.

13.40 As set out in Figure 8, there are a significant minority of consumers in the fixed broadband market with characteristics that make them more likely to be vulnerable.

Figure 8: Proportion of fixed broadband consumers with characteristics that make them more likely to be vulnerable



Source: Ofcom Tech Tracker 2018

Base: All broadband consumers (N=3730)

QZ3, limitations to daily activities or work respondent can do, SF, age of respondent, SG, socio-economic group.

Note: Level of financial vulnerability is calculated using a combination of measures including household income, total number of adults, number of adults who are working and number of children in the household. Als Not all respondents agreed to answer the disability and some/all of the questions feeding into the financial vulnerability question, so the proportions of financially vulnerable and with a disability may actually be greater than shown. Numeracy and literacy data taken from Ofcom's 2018 Consumer Engagement Research.

<sup>&</sup>lt;sup>147</sup> https://www.ofcom.org.uk/ data/assets/pdf file/0021/112692/Consolidated-General-Conditions.pdf, page 43

<sup>&</sup>lt;sup>148</sup> To define a consumer's financial vulnerability, analysis combines household income, working status and the size of the household (including the number of children) and creates three distinct groups based on potential financial vulnerability. These groups are referred to as the 'most financially vulnerable', those who are 'potentially financially vulnerable' and those 'least likely to be financially vulnerable'.

- Our consideration of how vulnerable consumers engage with the fixed broadband market will be informed by Ofcom's forthcoming report on Inclusion in Communications (due in early 2019) and the earlier Access and Inclusion Reports.<sup>149</sup>
- In addition, we are already working with communication providers to understand what data they hold on vulnerable consumers and to evaluate the impact of price differentials on those consumers. While the data we have obtained so far is not generally sufficient to make robust observations about the extent to which vulnerable consumers may be more likely to pay more for their dual play broadband service, preliminary data obtained from providers does suggest that people over 65 are more likely to be on standard broadband than people who are under 65. This could mean that people who are over 65 are at greater risk of paying more than they need to, especially if they are out-of-contract on a standard broadband service.

#### Introductory evidence on engagement issues for vulnerable consumers

- 13.43 The communications market is complex, and providers compete on several different aspects. This means that consumers have a large number of services to choose from. While this may benefit many consumers who are well equipped to engage with the market, it means that those who are less able to shop around may not secure the best value deals or deals which are most suitable for their needs.
- 13.44 Our existing research provides some insight into the extent to which price differentials may disproportionately affect vulnerable consumers, based on their contract status.

## Older broadband customers are less likely to have ever changed broadband provider, or considered deals/offers from other providers

- 13.45 Consumers who shop around and are willing to change provider are often able to access the better deals in the market. However, doing so usually requires active involvement and a degree of confidence and understanding of the market to navigate the different offers available. This may be challenging for some consumers, particularly those who are less confident or who have limited numeracy or literacy skills.
- Our research suggests that older broadband consumers are significantly less likely than average to have ever changed their broadband provider (55% of broadband customers aged 65+ vs. 65%)<sup>150</sup>. This age group is also significantly less likely than average to have considered deals from other providers (17% vs. 28%).<sup>151</sup>

<sup>&</sup>lt;sup>149</sup> Ofcom, Access and Inclusion. Available at: <a href="https://www.ofcom.org.uk/research-and-data/multi-sector-research/accessibility-research/access-and-inclusion">https://www.ofcom.org.uk/research-and-data/multi-sector-research/access-and-inclusion</a>

 $<sup>^{\</sup>rm 150}$  Ofcom Switching Tracker: 30th August to 30th September 2018. Available at:

https://www.ofcom.org.uk/ data/assets/pdf file/0014/125024/switching-tracker-2018-data-tables.pdf. See Q28.

<sup>&</sup>lt;sup>151</sup> Ofcom Switching Tracker 2018. Activities asked about were: discussed deals/offers with another provider, looked at deals/offers from another provider and talked with friends and family for recommendations about providers. See Q23, Q27.

## Lower levels of confidence comparing costs and discussing deals with existing providers are noted among older broadband customers

- Older broadband customers are less confident in their ability to compare the costs of communications services (71% confident vs. 85% average). The same was true for broadband customers in socio-economic group DE (79% confident) and those with a disability (74% confident). 152
- 13.48 Those aged 65+ with broadband are also less confident speaking to their current provider about deals (75%) vs. the average (88%), as are broadband customers with a disability (78%) and those in socio-economic group DE (83%). 153

## Older, financially vulnerable dual play customers<sup>154</sup> are more likely to lack awareness about their contract status<sup>155</sup>

- 13.49 To help consumers engage with their providers and compare offers available to them, it is important to understand the extent to which consumers are aware of their contract status. Lack of awareness can lead to uncertainty in relation to knowing when to engage with the market, which may have an impact on finding better deals.
- 13.50 Half of older (65+) dual play customers are either out of contract (25%) or do not know their contract status (24%), significantly higher than average (38% combined). 156
- 13.51 Dual play customers in the 'most financially vulnerable' segment are also less certain of their contract status i.e. 19% unsure if their contract had ended vs. 12% of those in the least financially vulnerable segment.

<sup>&</sup>lt;sup>152</sup> While analysis has been run on broadband customers, respondents were asked about their confidence in relation to mobile, landline, TV and broadband services combined, as such this only provides an indication of confidence in the broadband market specifically. Ofcom Switching Tracker 2018, bespoke analysis.

<sup>&</sup>lt;sup>153</sup> While analysis has been run on broadband customers, respondents were asked about their confidence in relation to mobile, landline, TV and broadband services combined, as such this only provides an indication of confidence in the broadband market specifically. Ofcom Switching Tracker 2018, bespoke analysis.

<sup>&</sup>lt;sup>154</sup> Ofcom's consumer engagement study focussed on understanding the experiences of dual play and triple play customers separately, hence this analysis is not among all broadband customers.

 $<sup>^{\</sup>rm 155}$  Ofcom, Consumer engagement with communication services, July 2018. Available at:

 $<sup>\</sup>frac{https://www.ofcom.org.uk/research-and-data/multi-sector-research/general-communications/consumer-engagement-with-communication-services$ 

<sup>&</sup>lt;sup>156</sup> Analysis among dual play customers: 22% said they were out of contract and 16% said they were unsure of their contract status. Ofcom, 2018. Critical Research: Consumer engagement quantitative research, slide 6.

## Older dual play customers and those less confident in their numeracy and literacy skills face challenges when looking into broadband deals<sup>157</sup>

- 13.52 When people start looking for better broadband deals, some consumers may face more challenges with understanding potential savings, available options and the language and terminology used.
- Older dual play consumers (55+)<sup>158</sup> are more likely to respond negatively to questions around ease of engaging in the market. For example, they are more likely than other age groups to say they struggle to understand the options in the market (41% vs. 27%) and, the language and terminology used (56% vs. 48%). This age group is also more likely to say they find it difficult to understand whether they would achieve any savings by changing deal or provider (51% vs. 41% under 55s).<sup>159</sup>

#### **Preliminary assessment**

- 13.54 Overall, our initial evidence presented here suggests that some consumers, especially those who are elderly or in a lower socio-economic group, could be more vulnerable to suffer harm from pricing practices that differentiate between consumers based on contract status.
- 13.55 The next stage of our analysis will be to gather and use industry data to assess the high-level impacts of price differentials and how this may affect outcomes for vulnerable consumers.

#### Evidence on price differentials for vulnerable consumers

- As part of our review, we aim to build a robust understanding of the impact of price differentials in the fixed broadband market on vulnerable consumers. We are therefore working with providers to understand the data they hold on vulnerable consumers and the extent to which we can measure the prices they pay by comparison to other consumers. The results of this analysis will be reported in our consultation document.
- 13.57 We are also looking further at the differences between the prices paid by those who are new customers; have re-contracted; and those who are out-of-contract.
- 13.58 One point of note arising from our preliminary analysis is that there is limited consistency in the way providers collect data on consumers with vulnerable characteristics. For example, there is considerable variation in the definitions used, with different providers recording different categorisations of vulnerability. This makes it difficult to look at outcomes for vulnerable consumers across the market as a whole, and how these compare

<sup>&</sup>lt;sup>157</sup> Ofcom, 2018. Consumer engagement quantitative research. January to April 2018. Available at: <a href="https://www.ofcom.org.uk/">https://www.ofcom.org.uk/</a> data/assets/pdf file/0023/113459/Engagement-Quantitative-Data-Tables,-2018.pdf See Q41, section a-f.

<sup>&</sup>lt;sup>158</sup> Significant differences were noted between consumers aged 55+ and those under 55, hence the focus on this age group as opposed to those aged 65+.

<sup>&</sup>lt;sup>159</sup> Ofcom, 2018. Critical Research: Consumer engagement quantitative research. See Q41B, Q41F.

- to other consumers. To address this, we propose using a range of tools to build a more robust understanding of the contract status and average spend of different groups of consumers, including consumer research.
- As part of this review, we will therefore also consider whether any updates should be made to the reporting requirements placed on providers in relation to their vulnerable consumers, for example by standardising definitions of potentially vulnerable consumer groups. This should help to make comparisons across providers easier, and also help us to understand the extent to which there is overlap between different vulnerable groups (for example customers who are both older and have a disability).

#### **Next steps**

13.60 This section outlines the additional evidence we are proposing to gather in order to understand the impact of price differentials in the fixed broadband market. We also set out our approach to remedies. Finally, we provide some further details on the timing of our review.

#### **Evidence gathering**

- Our initial analysis set out above shows that some consumers pay higher prices than others receiving an equivalent, or substantially similar, fixed broadband product or bundle. Additionally, there may be some consumers paying more for less, for example because their out-of-contract standard broadband price is higher than the superfast deals available to new customers. Consumers who live in areas where superfast broadband is not available, or who find it harder to access the best deals, may be particularly adversely affected by this practice. Further, consumer research highlights some engagement barriers for some vulnerable consumers which could mean they are disproportionately likely to be amongst those paying higher prices.
- 13.62 In our review, we will examine the prices paid by new customers, those who have recontracted and those who are out-of-contract. We also to intend to look at the extent to which price differentials between standard and superfast broadband may adversely affect certain groups of consumers. Our aim is to develop a robust understanding of the difference in prices paid by different groups of consumers. We also want to understand the demand and supply-side factors that contribute to the prevalence of differential pricing practices that we observe.
- 13.63 We will gather evidence on price differentials based on contract status and length of tenure to quantify the size of the differential. We will also collect data to understand the proportion of consumers paying higher prices and the characteristics of those consumers, including whether provider data identifies them as having a vulnerable characteristic.
- 13.64 We will also explore the reasons behind current market outcomes including the drivers for providers' pricing practices, such as the costs of providing services and the effect of any rebalancing between prices for new customers and out-of-contract prices. Should we

conclude that price differentials have a particularly negative impact on consumers, or where the impact is particularly felt by vulnerable consumers, we will consider how those concerns can be remedied.

#### **Remedies**

- 13.65 Where we find that price differentials are leading to poor outcomes for consumers in the fixed broadband market, and particularly where those consumers are vulnerable, we will identify appropriate remedies.
- 13.66 These may include measures to promote consumer engagement, such as additional requirements on providers to give consumers information about their services, or greater use of technology to help consumers shop around, such as promoting data sharing with third-party intermediaries to help consumers choose appropriate services. Further measures relating to provider practices, such as further guidance on collecting data on vulnerable consumers, as well as requirements relating to the price of services, may also be considered.
- 13.67 It is best practice to monitor and evaluate the effectiveness of consumer-facing remedies (e.g. see the UKCN report discussed in Section 9). Therefore, we propose to test any remedies prior to consultation. Should we decide to impose any remedies, we will monitor their effectiveness and amend them if necessary in light of monitoring.
- 13.68 We will balance any need to address concerns relating to some consumers paying more than they should with the risk of unintended consequences. Our aim is to ensure that, overall, consumers get the best deal.
- 13.69 Where we identify appropriate remedies and we have the powers to implement them, we expect to consult on them in Q2 of 2019/20. If we think that further powers would be appropriate to protect consumers, we will seek them.

#### **Milestones**

13.70 We plan to publish a detailed consultation in Q2 of 2019/20, with a statement setting out our final decision by Q4 of 2019/20.

## A1. Responding to this consultation

#### How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on February 1<sup>st</sup> 2019.
- A1.2 You can download a response form from <a href="https://www.ofcom.org.uk/consultations-and-statements/category-2/helping-consumers-get-better-deals">https://www.ofcom.org.uk/consultations-and-statements/category-2/helping-consumers-get-better-deals</a> You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to <a href="mailto:lmproving.Engagement@ofcom.org.uk">lmproving.Engagement@ofcom.org.uk</a>, as an attachment in Microsoft Word format, together with the cover sheet (<a href="https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet">https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet</a>). This email address is for this consultation only, and will not be valid after February 1st.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:

Oliver Rawlings Ofcom Riverside House 2A Southwark Bridge Road London SE1 9HA

- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
  - Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
  - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex A4. It would also help if you

- could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.10 If you want to discuss the issues and questions raised in this consultation, please contact Oliver Rawlings on 0207 981 3172, or by email to <a href="mailto:improving.engagement@ofcom.org.uk">improving.engagement@ofcom.org.uk</a>.

#### **Confidentiality**

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

#### **Next steps**

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

#### Ofcom's consultation processes

- A1.17 Of com aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex A2.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at <a href="mailto:consult@ofcom.org.uk">consult@ofcom.org.uk</a>. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Email: corporationsecretary@ofcom.org.uk

## A2. Ofcom's consultation principles

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

#### Before the consultation

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

#### **During the consultation**

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

#### After the consultation

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

## A3. Consultation cover sheet

#### **BASIC DETAILS**

Consultation title:				
To (Ofcom contact):				
Name of respondent: Representing (self or organisation/s):				
CONFIDENTIALITY				
Please tick below what part	of your response yo	ou consider is confidential, giving your reasons why		
Nothing				
Name/contact details/job ti	tle			
Whole response				
Organisation				
Part of the response				
If there is no separate anne.	x, which parts?			
still publish a reference to t	he contents of your	r your organisation not to be published, can Ofcom response (including, for any confidential parts, a ecific information or enable you to be identified)?		
that Ofcom can publish. How publish all responses, include	wever, in supplying ding those which are y response by email	h this cover sheet is a formal consultation response this response, I understand that Ofcom may need to marked as confidential, in order to meet legal , Ofcom can disregard any standard e-mail text about		
· · · · ·	•	your response is non-confidential (in whole or in response only once the consultation has ended,		
Name	Signed	(if hard copy)		

## A4. Consultation questions

A4.1 This Annex lists the questions that we are consulting on.

**Question 1**: Do you agree with the way we propose to implement the requirement to provide end-of-contract notifications in terms of the services they should cover?

**Question 2**: Do you agree with the way we plan to implement the requirement to send end-of-contract notifications and annual best tariff notifications to residential consumers and businesses?

**Question 3:** Do you agree that end-of-contract notifications should be sent to end-users before the expiry of a fixed commitment period, if the contract will be automatically prolonged after that point?

**Question 4**: Do you agree with our proposal not to specify in a prescriptive way the words and language used in end-of-contract notifications?

**Question 5:** Do you agree with our implementation proposal for the end-of-contract notification to include the date on which the fixed commitment period will end?

**Question 6:** Do you agree with our implementation proposal for the end-of-contract notification to include details of the services which the provider currently provides to the end-user under the relevant contract?

**Question 7:** Do you agree with our implementation proposal that the end-of-contract notification must include information regarding notice periods?

**Question 8:** Do you agree with our implementation proposal that the end-of-contract notification must include information regarding early termination charges?

**Question 9:** Do you agree with our implementation proposal that the end-of-contract notification must include information regarding other contracts which the provider currently provides to the end-user?

**Question 10:** Do you agree with our implementation proposal that the end-of-contract notification must include information regarding how to terminate the contract?

**Question 11:** Do you agree with our implementation proposal that best tariff advice should include the monthly price currently paid, and any changes after the end of the fixed commitment period?

**Question 12:** Do you agree with our implementation proposal that best tariff advice should include changes to the service provided because the fixed commitment period is ending?

**Question 13:** Do you agree with our implementation proposal that best tariff advice should include the date on which the fixed commitment period ends for financially linked

or otherwise dependent contracts taken with the same provider, for subscribers on residential contracts?

**Question 14:** Do you agree with our implementation proposal that best tariff advice should include the options available to the subscriber after the fixed commitment period has ended?

**Question 15:** Do you agree with our implementation proposal that best tariff advice should include the provider's best tariff and with our draft guidance for subscribers on residential contracts that:

- a. providers should give residential consumers at least one and up to three best tariffs;
- b. the tariffs should be based on similarity to the consumer's previous usage where relevant, and otherwise based on service packages that are most similar to what the consumer currently receives;
- c. one tariff should be the cheapest tariff available to the consumer receiving the advice;
- d. one tariff should be the cheapest tariff available to any consumer (if not the same as in (c));
- e. one tariff can be the cheapest upgrade tariff;
- f. one tariff should be a SIM-only tariff where the consumer has a bundled handset and airtime contract; and
- g. tariffs should be for a bundle of services where the consumer receives them under a single contract with the provider or has financially linked or interdependent contracts with the same provider and where the fixed commitment period(s) is about to end or has already ended.

**Question 16**: Do you agree with our proposed implementation on the timing of the end-of-contract notification?

**Question 17**: Do you agree with our proposed implementation regarding the form of the end-of-contract notification?

**Question 18:** Do you agree with our proposals to ensure accessibility of the end-of-contract notification?

**Question 19:** Do you agree with our implementation proposal for annual best tariff notifications to be sent only to end-users who are outside of their fixed commitment period?

**Question 20:** Do you agree with our proposed implementation of the requirement to send annual best tariff notifications by specifying that providers must inform end-users of:

- a. the fact that they are not within a fixed commitment period for the relevant contract or contracts;
- b. the services which the provider currently provides under that contract or contracts;
- c. any applicable notice period(s);
- d. details of other contracts the end-user has with the provider;
- e. the monthly subscription price(s); and
- f. the options available.

**Question 21:** Do you agree with our proposed implementation of the requirement to send annual best tariff notifications by specifying that providers must inform end-users of the provider's best tariffs and with our draft guidance for subscribers on residential contracts that:

- a. providers should give residential consumers at least one and up to three best tariffs;
- b. the tariffs should be based on similarity to the consumer's previous usage where relevant, and otherwise based on service packages that are most similar to what the consumer currently receives;
- c. one tariff should be the cheapest tariff available to the consumer receiving the advice;
- d. one tariff should be the cheapest tariff available to any consumer (if not the same as in (c));
- e. one tariff can be the cheapest upgrade tariff;
- f. one tariff should be a SIM-only tariff where the consumer has a bundled handset and airtime contract; and
- g. tariffs should be for a bundle of services where the consumer receives them under a single contract with the provider or has financially linked or interdependent contracts with the same provider and where the fixed commitment period(s) has ended.

**Question 22**: Do you agree with our proposed implementation on the timing of the annual best tariff notification?

**Question 23:** Do you agree with our proposal to implement the annual best tariff requirements by specifying that providers should combine the best tariff information in a single notification for those end-users who have two or more contracts outside of their fixed commitment period?

**Question 24**: Do you agree with our implementation proposals regarding the form of the annual best tariff notification?

**Question 25:** Do you agree with our implementation proposals for the timescale within which providers must comply with the end-of-contract and annual best tariff notification requirements?

**Question 26**: Do you agree with the way we plan to monitor the effectiveness and impact of end-of-contract and annual best tariff notifications?

**Question 27**: Do you agree with the impacts from the introduction of end-of-contract notifications we identify in our assessment?

**Question 28**: Do you agree with the impacts from the introduction of annual best tariff notifications we identify in our assessment?

**Question 29**: Do you have any comments on the draft general conditions, set out in Annex A6 to this document?

Please provide evidence in support of your views.

### A5. Glossary and abbreviations

Act: The Communications Act 2003

Billing system: A software tool that manages the billing of a customer's services.

**Bundle:** A combination of more than one service (e.g. broadband and landline, or pay TV and broadband) which is provided by a single communications provider.

**Communications provider (or provider):** A person who provides an electronic communications network or provides an electronic communications service, as defined in the Communications Act 2003. The terms 'communications provider' and 'provider' are used interchangeably throughout this document.

**Dual play:** Landline and broadband services provided by a single communications provider.

**Early termination charge:** A charge that may be payable by a consumer for the termination of a contract before the end of any fixed commitment period (or subsequent fixed commitment period).

**End-of-contract:** The end of a customers' fixed commitment period.

**End-user:** A user not providing public electronic communications networks or publicly available electronic communications services.

**European Electronic Communications Code (EECC):** A new EU Directive, which updates and replaces the four Directives that currently make up the EU regulatory framework for electronic communications. It was proposed by the European Commission as part of a wider connectivity package in September 2016, and has been subject to the EU legislative process since then. Political agreement was reached in June 2018 and, following finalization of the text, the EECC was formally approved by the EU Parliament on 14 November and by the EU Council on 4 December 2018.

General Condition ('GC'): A general condition imposed by Ofcom under section 45(2)(a) of the Act.

**In-contract** refers to customers who are within the fixed commitment period for any service provided by the communications provider.

**Mbit/s:** Megabits per second (1 Megabit = 1 million bits). A measure of bandwidth in a digital system.

**Fixed commitment period:** as a period beginning on the date that contract terms agreed by a Communications Provider and a Subscriber take effect and ending on a date specified in that contract, and during which the Subscriber is required to pay for services and facilities provided under the contract and the Communications Provider is bound to provide them and in respect of which the Subscriber may be required to pay a charge to terminate the contract.

**Mobile:** A mobile telephony subscription, i.e. a service including the provision of a SIM, which enables a customer to make and receive mobile voice calls and SMS, and/or use data services through a mobile handset.

**Out-of-contract** refers to customers who are outside of the fixed commitment period but are still paying for a service (e.g. broadband, mobile, landline) provided by the provider (e.g. via a rolling monthly contract).

**Pay TV:** A subscription-based television service, usually charged at a monthly fee, offering multichannel television channels beyond those available free-to-air. It can be delivered through cable, satellite, digital terrestrial and/or the internet (IPTV).

**Public electronic communications service (PECS):** Any electronic communications service that is provided so as to be available for use by members of the public.

Quad play: Landline, broadband, pay TV and mobile provided by a single communications provider.

**Residential contract:** Those services predominantly targeted towards residential customers (rather than businesses).

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

**Small business customer:** A customer who carries on an undertaking for which no more than ten individuals work (whether as employees or volunteers or otherwise), but who is not himself a communications provider.

**SMEs:** Small and medium sized enterprises are businesses with 249 or fewer employees.

**Standalone:** Where customers take only a single service from a communications provider and not a bundled service. E.g. standalone mobile refers to where a customer only takes a mobile service from their communications provider.

**Standard broadband:** Broadband services that deliver download speeds of less than 30Mbit/s, typically over a copper telephone line.

**Subscriber:** Any end-user that is party to a contract with a provider of public electronic communications services for the supply of such services.

**Superfast broadband:** Broadband services that deliver download speeds of 30Mbit/s or higher, typically over fibre-to-the cabinet connection or coaxial cable (on Virgin Media's network).

**Triple play:** landline, broadband and pay TV services provided by a single communications provider.

**Upgrade / Downgrade:** Where customers change the service(s) received from their communications provider, or the terms on which they do so, but do not switch to another provider.

**User:** A natural or legal person using or requesting a publicly available electronic communications service.

# A6. Notification of proposed new general condition and modifications to the General Conditions under section 48A(3) of the Act

## Proposal to set a new general condition and to modify the General Conditions

#### **Background**

- 1. Ofcom proposes:
  - (a) to set new general conditions;
  - (b) to modify the General Conditions, and
  - (c) to add new definitions to those set out in the Definitions section of the General Conditions.
- 2. The draft new general conditions and the draft modifications to Condition C1 of the General Conditions are set out in Schedule 1 to this Notification. The draft modifications to Condition C5 of the General Conditions are set out in Schedule 2 to this Notification. The new definitions to be added to those set out in the Definitions section of the General Conditions are set out in Schedule 3 to this Notification.
- 3. Ofcom's reasons for making these proposals, and the effect of the proposals, are set out in the accompanying consultation document.
- 4. Ofcom considers that the proposals comply with the requirements of sections 45 to 49C of the Act, insofar as they are applicable.
- 5. Of com considers that the proposals are not of EU significance pursuant to section 150A(2) of the Act.
- 6. In making these proposals, Ofcom has considered and acted in accordance with its general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
- 7. Representations may be made to Ofcom about the proposals until 5pm on 1 February 2019.
- 8. If implemented, the new general conditions, the modifications and the new definitions shall enter into force on a date to be specified in Ofcom's final statement in relation to these proposals. 160

 $<sup>^{160}</sup>$  Date proposed to be 6 months after publication of Ofcom's final statement.

- 9. A copy of this Notification is being sent to the Secretary of State in accordance with section 48C(1) of the Act.
- 10. In this Notification:
  - (a) "Act" means the Communications Act 2003;
  - (b) "General Conditions of Entitlement" and "General Conditions" means the general conditions set under section 45 of the Act, effective from 1 October 2018, as amended or replaced from time to time, and
  - (c) "Ofcom" means the Office of Communications.
- 11. 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.
- 12. For the purposes of interpreting this Notification:
  - (a) headings and titles shall be disregarded, and
  - (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
- 13. The Schedules to this Notification shall form part of this Notification.

Signed by

#### Selina Chadha

**Director of Consumer Policy** 

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

14 December 2018

#### **SCHEDULE 1**

Ofcom proposes that the following new provisions shall be inserted into General Condition C1 in Part C ('Consumer protection conditions') of the General Conditions.

1. In Condition C1 of the General Conditions, the following modifications marked in bold and highlighted in yellow shall be made to the preamble:

#### **C1 Contract requirements**

This condition aims to protect consumers and end-users by ensuring that contracts for a connection to a public electronic communications network or for public electronic communications services include minimum terms and information. It also sets out requirements about contract duration, end-of-contract notifications, annual best tariff notifications, facilitating changes of communications provider and end-users' rights to terminate a contract, which are designed to ensure that end-users are treated fairly and able to switch to a different provider in appropriate cases.

- 2. In Condition C1, the following modifications marked in bold and highlighted in yellow shall be made to Condition C1.1:
- "C1.1 The provisions of this condition apply as follows:
  - (a) This Condition applies Conditions C2 to C9 apply to all providers of Public Electronic Communications Networks and/or Public Electronic Communications Services, and
  - (b) Conditions C10 to C21 apply to all providers of Public Electronic Communications Services,

each of whom and each person to whom a provision applies is a 'Regulated Provider' for the purposes of this Condition that provision."

3. The following provisions shall be inserted into Condition C1 after Condition 1.9:

#### "End-of-Contract Notification

- C1.10 Regulated Providers must send an End-of-Contract Notification to a Subscriber, in the maner and form specified by these Conditions, if each of the following requirements are met:
  - (a) the **Subscriber** has a contract with the **Regulated Provider** for **Public Electronic Communications Services**, other than machine-to-machine transmission services;
  - (b) the contract has a Fixed Commitment Period; and
  - (c) the terms of the contract provide (or governing law provides) for the contract to be automatically prolonged after the expiry of the **Fixed Commitment Period**.

- C1.11 An **End-of-Contract Notification** shall include the following information in respect of a **Subscriber's** contract, in a clear and comprehensive form:
  - (a) the date on which the **Fixed Commitment Period** for that contract ends;
  - (b) details of the services provided by the **Regulated Provider** to the **Subscriber** under that contract;
  - (c) the notice period (if any) which applies to the Subscriber under that contract (where the contract is for a Mobile Communications Service, the Regulated Provider may instead include a message that a notice period may apply);
  - (d) a message that the **Subscriber** may terminate that contract without paying an **Early Termination Charge** after the **Fixed Commitment Period** ends;
  - (e) details of other contracts for **Public Electronic Communications Services** between the **Regulated Provider** and the **Subscriber**;
  - (f) how the **Subscriber** may terminate that contract;
  - (g) the current Core Subscription Price payable by the Subscriber under that contract;
  - (h) the Core Subscription Price that will be payable by the Subscriber for the services referred to in (b) after the Fixed Commitment Period for that contract ends;
  - (i) details of any changes to the services referred to in (b) that will come into effect because the **Fixed Commitment Period** for that contract is ending;
  - (j) subject to **Condition** C1.12, the dates on which the **Fixed Commitment Periods** end for the other contracts referred to in (e);
  - (k) details of the options available to the **Subscriber** at the end of the **Fixed Commitment**Period for that contract, and
  - (I) the **Regulated Provider's** best tariffs.
- C1.12 **Regulated Providers** are only required to comply with **Condition** C1.11(j) where the contract in relation to which the **End-of-Contract Notification** is being given is on standard terms intended primarily for **Consumers**.
- C1.13 **Regulated Providers** must send an **End-of-Contract Notification** in a timely manner, before the end of the **Subscriber's Fixed Commitment Period**.
- C1.14 **Regulated Providers** must send an **End-of-Contract Notification** via a **Durable Medium** that is separate and distinct from any other communication, and otherwise in a prominent manner.

C1.15 **Regulated Providers** must retain a record of each **End-of-Contract Notification** it sends to a **Subscriber**, and the date on which it was sent, for a period of at least 12 months.

#### **Annual Best Tariff Notification**

- C1.16 **Regulated Providers** must send an **Annual Best Tariff Notification** to a **Subscriber**, in the manner and form specified by these **Conditions**, if each of the following requirements are met:
  - (a) the **Subscriber** has a contract with the **Regulated Provider** for **Public Electronic Communications Services**, other than machine-to-machine transmission services, and
  - (b) the contract is not subject to a **Fixed Commitment Period**.
- C1.17 An **Annual Best Tariff Notification** shall include the following information in respect of a **Subscriber's** contract, in a clear and comprehensive form:
  - (a) a message that the contract is not currently subject to a **Fixed Commitment Period**;
  - (b) the notice period (if any) which applies to the Subscriber under that contract (where the contract is for a Mobile Communications Service, the Regulated Provider may instead include a message that a notice period may apply);
  - (c) details of the services provided by the **Regulated Provider** to the **Subscriber** under that contract;
  - (d) the current Core Subscription Price payable by the Subscriber under that contract;
  - (e) details of other contracts for **Public Electronic Communications Services** between the **Regulated Provider** and the **Subscriber**;
  - (f) subject to **Condition** C1.18, the dates on which the **Fixed Commitment Periods** end for the other contracts referred to in (e);
  - (g) details of the options available to the Subscriber, and
  - (h) the Regulated Provider's best tariffs.
- C1.18 **Regulated Providers** are only required to comply with **Condition** C1.17(f) where the contract in relation to which the **Annual Best Tariff Notification** is being given is on standard terms intended primarily for **Consumers**.
- C1.19 **Regulated Providers** must send **Annual Best Tariff Notifications** in relation to a **Subscriber's** contract as follows:
  - (a) if the contract meets the requirements of **Condition** C1.16 at the date of entry into force of this **Condition**, the first **Annual Best Tariff Notification** for that contract must be sent

- within 12 months of that date (provided that the requirements of Condition C1.16 are still met on the date on which the **Annual Best Tariff Notification** is sent);
- (b) otherwise, the first Annual Best Tariff Notification must be sent within 12 months of the date on which the Regulated Provider has sent the Subscriber an End-of-Contract Notification in relation to that contract;
- (c) **Annual Best Tariff Notifications** should then be sent at least once in every subsequent 12 month period; and
- (d) where the Subscriber has two or more contracts that meet the requirements of Condition C1.16 at the date that an Annual Best Tariff Notification is being sent, the Annual Best Tariff Notifications for those contracts should be combined into a single communication.
- C1.20 Regulated Providers must send an Annual Best Tariff Notification via a Durable Medium that is separate and distinct from any other communication (subject to Condition C1.19(d)), and otherwise in a prominent manner.
- C1.21 **Regulated Providers** must retain a record of each **Annual Best Tariff Notification** it sends to a **Subscriber**, and the date on which it was sent, for a period of at least 12 months.

#### **SCHEDULE 2**

1. In Condition C5 of the General Conditions, the following modifications marked in bold and highlighted in yellow shall be made to Condition C5.13:

#### C5 Measures to meet the need of vulnerable consumers and endusers with disabilities

- C5.13 **Regulated Providers** must make available, free of charge, and in a format reasonably acceptable to any **Subscriber** who is blind or whose vision is impaired, upon their request:
  - (a) any contract (or any subsequent variation) with that Subscriber for the provision of Public Electronic Communications Services, including any publicly available terms or conditions referred to in that contract or variation;
  - (b) any End-of-Contract Notification;
  - (c) any Annual Best Tariff Notification, and
  - (d) any **Bill** rendered or made available in respect of those services.

An acceptable format would, for these purposes, consist of print large enough for such **Subscriber** to read, Braille or an electronic format appropriate to the reasonable needs of the **Subscriber**.

#### **SCHEDULE 3**

1. In the 'Definitions' section of the General Conditions, the following new definitions shall be inserted in the appropriate alphabetical place:

"Annual Best Tariff Notification' means a communication sent by Regulated Providers to their Subscribers that comprises the information described in Condition C1.17;"

"'End-of-Contract Notification' means a communication sent by Regulated Providers to their Subscribers that comprises the information described in Condition C1.11;"