
Review of the General Conditions of Entitlement

Statement and Consultation

STATEMENT AND CONSULTATION

Publication Date: 19 September 2017

About this document

This is a statement about changes that we are making to the General Conditions of Entitlement – the regulatory rules that all communications providers must follow to operate in the UK.

The aim of this review has been to produce a revised set of up to date conditions which reflect Ofcom's current priorities and concerns, and are simpler and clearer for industry to comply with. This should also make it easier for us to enforce the rules in the interests of citizens and consumers.

The revised conditions will come into force on **1 October 2018**.

In this document, we are also consulting on: (i) a further extension of our power to withdraw telephone numbers where they are used inconsistently with the Numbering Plan or otherwise misused; (ii) updating a 2003 direction which specifies which public bodies may request industry to make arrangements for the restoration of communications services in the event of disasters; and (iii) providing guidance about the procedures for terminating contracts.

We invite stakeholders to respond to this consultation by **14 November 2017**. We are aiming to publish a final statement on the further changes that we are proposing early next year.

Today, Ofcom is also separately consulting on providing guidance about the provision of calling line identification facilities.

Contents

Section

| | |
|--|-----|
| 1. Executive summary | 1 |
| 2. Introduction | 4 |
| 3. Common issues | 12 |
| 4. Network functioning | 25 |
| 5. Numbering conditions | 57 |
| 6. Directory information | 73 |
| 7. Contract requirements | 79 |
| 8. Information publication and transparency requirements | 97 |
| 9. Public pay telephones | 113 |
| 10. Billing requirements | 125 |
| 11. Complaints handling and access to ADR | 149 |
| 12. Measures to meet the needs of vulnerable consumers and end-users with disabilities | 180 |
| 13. Calling line identification | 201 |
| 14. Switching and number portability | 220 |
| 15. Mis-selling | 233 |
| 16. Codes of practice | 245 |
| 17. Summary of the main changes to the GCs and further consultation proposals | 250 |
| 18. Consequential changes | 257 |

Annex

| | |
|---|-----|
| A1. Responding to this consultation | 261 |
| A2. Ofcom's consultation principles | 263 |
| A3. Consultation coversheet | 264 |
| A4. Consultation questions | 265 |
| A5. Notification of Ofcom's decision to revoke existing conditions and set new conditions | 266 |
| A6. Notification of Ofcom's decision to modify the National Telephone Numbering Plan | 269 |
| A7. Notification of Ofcom's decision to modify the Premium Rate Services Condition under s120A of the Communications Act 2003 | 274 |

| | |
|--|-----|
| A8. Notification of Ofcom's decision to modify the Metering and Billing Direction under section 49A of the Communications Act 2003 | 280 |
| A9. Notification of a proposed revocation and the giving of a direction under s49A(3) of the Communications Act 2003 | 283 |
| A10. Ofcom's revised Guidance under Condition C1 | 287 |
| A11. Proposed extension of Ofcom's Guidance under Condition C1 to cover termination procedures | 290 |
| A12. Notification of proposed modifications to condition B1 of the revised GCs to further extend Ofcom's power to withdraw numbers | 298 |
| A13. List of respondents | 302 |
| A14. Glossary | 305 |

Published as separate Annexes:

- A14. Revised general conditions
- A15. Revised Metering and Billing direction (showing changes in mark-up)
- A16. Revised general conditions (showing changes in mark-up)
- A17. Transposition table

1. Executive summary

Introduction

- 1.1 We have carried out a review of the 'General Conditions of Entitlement' (the '**GCs**'), which are the regulatory conditions that apply to all providers of electronic communications networks and services that operate in the UK ('**communications providers**' or '**CPs**').
- 1.2 The GCs cover a wide range of issues which broadly fall into three main categories: (i) consumer protection; (ii) network functioning; (ii) numbering and other technical matters.
- 1.3 We consulted on proposed changes to the first category in December 2016; and on the other two categories in an earlier consultation in August 2016. We received more than 70 consultation responses overall, including from larger CPs, alternative network operators, trade associations, consumer organisations, charities, public bodies and individual respondents.
- 1.4 We are now setting out our final decisions and consulting on certain further consequential proposals.
- 1.5 All the revised GCs will come into force on **1 October 2018**. However, we encourage CPs to implement the changes sooner where possible, particularly in relation to the provisions intended to help vulnerable consumers.

Overview of the changes

Consumer protection

- 1.6 In relation to the GCs that mainly deal with consumer protection issues, our focus has been on ensuring these conditions continue to reflect our consumer protection priorities. In some cases, we have decided to extend the scope of existing GCs to ensure that consumers are adequately protected from harm following developments in technology and changes in consumer behaviour.
- 1.7 We have also approached this review as an opportunity to streamline and consolidate drafting that has built up over a decade or more, to make the GCs much more user-friendly and easier to understand and navigate.
- 1.8 These are the main changes that we have decided to make, to strengthen protection for consumers:
 - a) we are significantly strengthening the rules on complaints handling to ensure that CPs deal with complaints from consumers promptly and effectively;
 - b) we are introducing a new obligation requiring CPs to establish policies to ensure they take account of the needs of all vulnerable consumers;

- c) we are extending the current rules on the provision of calling line identification facilities, such as caller display, including new requirements to improve the accuracy and availability of the calling line identification data presented to call recipients;
- d) we are introducing a new requirement for the blocking of calls with invalid calling line identification data (a feature of many nuisance calls) to help prevent them from getting through to consumers;
- e) we are extending certain GCs, which currently apply only to call services, to other forms of electronic communications services. In particular, the provisions on billing and measures to meet the needs of end-users with disabilities.

Network functioning and numbering

- 1.9 Overall, the changes that we have decided to make to the network functioning and numbering conditions are aimed at removing certain elements of gold-plating (so that these GCs will not go further than is necessary under the current EU regulatory framework); removing redundant provisions and unused direction-making powers; and simplifying and clarifying those rules that we have decided to retain.
- 1.10 These are the main changes that we have decided to make to reduce and simplify regulation:
- a) we are de-regulating the provision of operator assistance services;
 - b) we are removing requirements related to the design of new public call boxes and the removal of boxes from the GCs;
 - c) we are removing certain requirements on VoIP providers about network availability and access to emergency calls;
 - d) we are removing certain direction-making powers that Ofcom has never used, such as Ofcom's power to make directions relating to technical standards; and
 - e) we are also shortening these conditions, and consolidating them where appropriate.
- 1.11 In a few instances, we have decided to strengthen regulation so as to further the interests of consumers. Specifically, we are strengthening Ofcom's power to withdraw number allocations to enable Ofcom to recycle unused numbers and bring them back into use.
- 1.12 In Section 17 of this document, we summarise the main changes that we have decided to make to each individual GC, noting how we have revised our consultation proposals in light of stakeholders' responses.

Further consultation and next steps

- 1.13 We are also consulting on:
- a) a further extension of our power to withdraw telephone numbers where they are used inconsistently with the Numbering Plan or otherwise misused (see paragraphs 5.66 - 5.74);

- b) updating a 2003 direction which specifies which public bodies may request industry to make arrangements for the restoration of communications services in the event of disasters (see paragraphs 4.115 - 4.121); and
- c) providing guidance about the procedures for terminating contracts (see paragraphs 7.61- 7.66).

1.14 We have summarised these proposals in Section 17, and we invite stakeholders to provide comments by **14 November 2017**.

1.15 We are aiming to publish a final statement on the further changes that we are proposing early next year.

2. Introduction

2.1 In February 2016, we published a statement setting out the initial conclusions of our Strategic Review of Digital Communications (the “**DCR Statement**”),¹ in which we announced that we had started work on a comprehensive review of the “General Conditions of Entitlement” (“**GCs**”, “**general conditions**” or “**conditions**”). As we said in the DCR Statement, our focus on gauging the right level of regulation has led us to initiate a review of the general conditions to make the rules clearer, reduce the cost of compliance, and remove any redundant rules.

Overview of the process

- 2.2 The GCs are the regulatory conditions that all providers of electronic communications networks and services (“**communications providers**” or “**CPs**”) must comply with, if they want to provide services in the UK. The GCs broadly fall into three main categories: (i) network functioning conditions; (ii) numbering and other technical conditions; and (iii) consumer protection conditions. We consulted on our proposed revised conditions in two separate parts to make the process more manageable:
- a) in August 2016, we published a consultation (the “**August 2016 consultation**”)² on our proposals in relation to the first part of the review, which focused mainly on the first two categories of conditions, that is the network functioning and numbering and/or technical conditions; and
 - b) in December 2016, we published a consultation (the “**December 2016 consultation**”)³ on our proposals in relation to the second part of the review, which focused on the remaining conditions, that is the conditions that mainly deal with consumer protection issues.
- 2.3 Non-confidential responses to the August and December 2016 consultations are available on our website.
- 2.4 In formulating our proposals for consultation and the decisions set out in this document, we have been mindful that Ofcom’s strategy in relation to certain policy areas includes other related policy projects which have been proceeding in parallel to this review of the GCs and which may result in further changes to the regulatory requirements on CPs in the

¹ Ofcom’s DCR Statement (paragraphs 1.67 and 8.23-8.26):

<http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/digital-comms-review/DCR-statement.pdf>

² Ofcom’s consultation of 20 December 2016, entitled “Review of the General Conditions of Entitlement. Consultation on the general conditions relating to consumer protection”; <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions-relating-to-consumer-protection>

³ Ofcom’s consultation of 2 August 2016, entitled “Review of the General Conditions of Entitlement. Consultation on the general conditions relating to network functioning, public payphones, directory information and numbering”; <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions>

short, medium or longer term. For instance, we committed in the DCR Statement to consulting on the introduction of automatic compensation for consumers and small businesses and published a consultation on 24 March 2017.⁴ We have also recently published a consultation document setting out proposals on consumer switching in relation to mobile services.⁵ While this document sets out our decisions in relation to all of the GCs, the main substantive thinking and any subsequent decisions on policy areas such as automatic compensation and switching will continue to take place within separate policy projects.

- 2.5 In this document, we set out our final policy decisions and the revised set of GCs that will implement them. All of the revised conditions will come into effect on **1 October 2018**.

Our approach to this review

- 2.6 The aim of this review has been to ensure that the General Conditions reflect our current policy priorities, and that they are fit for purpose in today's market. Our objectives included making the GCs clearer and more practical, making it easier for businesses to ensure compliance. We consider that this should also make it easier for us to enforce compliance in the interests of the general public and consumers.
- 2.7 In the August and December 2016 consultations, we set out proposals to put in place effective, clear, up-to-date requirements that will reflect our current policy priorities and provide an appropriate level of protection for consumers. In doing so, we have considered whether each of our proposals is proportionate to what we are seeking to achieve. The approach we followed in formulating our proposals for consultation and the decisions set out in this document is set out below.

Methodological approach to reviewing the network functioning, numbering and other technical conditions

- 2.8 For each condition falling within the categories of network functioning, numbering and other technical conditions, we have considered its policy purpose, whether that purpose is still relevant and whether the rationale for it is still valid. In particular, we have considered whether any changes in technology or consumer behaviour have taken place since the condition was first put in place which would justify a change in policy. We have also considered whether the requirements of the conditions are sufficiently clear or could be improved. We have also looked at whether the condition is a mandatory requirement under the European common regulatory framework for electronic communications ("**EU Framework**"); and, if so, whether the condition goes any further than is necessary to implement that requirement (see paragraph 2.5 of the August 2016 consultation).

⁴ Ofcom's consultation of 24 March 2017, entitled "Automatic Compensation. Protecting consumers from quality of service problems"; <https://www.ofcom.org.uk/consultations-and-statements/category-1/automatic-compensation>

⁵ Ofcom's consultation of 19 May 2017, entitled "Consumer switching. Proposals to reform switching of mobile communications services"; see <https://www.ofcom.org.uk/consultations-and-statements/category-2/consumer-switching-proposals-to-reform-switching-of-mobile-communications-services>

Methodological approach to reviewing the consumer protection conditions

- 2.9 We adopted a slightly different approach to reviewing the consumer protection conditions. As explained in our December 2016 consultation (paragraphs 2.10-2.15), we began our review of these conditions by asking ourselves what our main policy priorities for consumer protection were. We considered this in terms of identifying the current areas of greatest potential harm to consumers, in light of our recent enforcement activities, complaints data, and wider Ofcom strategy. We then considered whether a general condition is the right route to tackle the problem, including whether it is enforceable; actively considering opportunities for deregulation; and looking to simplify and improve the clarity of the rules.
- 2.10 To achieve these objectives, we have identified seven main policy areas for consumer protection. These policy areas are: (i) contract requirements, (ii) information publication and transparency requirements, (iii) billing requirements, (iv) complaints-handling and access to alternative dispute resolution, (v) measures to meet the needs of vulnerable consumers and end-users with disabilities, (vi) tackling nuisance calls and provision of calling line identification facilities, and (vii) switching and mis-selling. The current GCs include provisions relevant to each of these policy areas.
- 2.11 We have actively considered opportunities for deregulation, but we have come to the view that most of the consumer protection conditions are not good candidates for significant deregulation. In relation to each of these consumer protection policy areas, we have considered what changes might be needed to make sure the general conditions continue to reflect our current consumer protection policy priorities and whether any changes in technology or consumer behaviour have taken place since the conditions were put in place which would justify a change in policy. In some cases, we have considered extending the scope of existing conditions to keep pace with market developments. (e.g. adding data services into specific conditions that currently apply only to call services).
- 2.12 The GCs set out rules which are specific to the electronic communications sector. They are intended to focus on specific consumer protection issues that arise in this sector in a way which is targeted at those particular issues and should not duplicate conditions which are applicable by virtue of national legislation of general application. Where there may be considered to be a degree of overlap between the current GCs and other national legislation, such as general consumer law, we have identified the sector-specific issue that the relevant conditions are intended to address, noting that some of the GCs reflect the minimum requirements required by the current EU Framework.
- 2.13 As for the other conditions, we have also considered whether the requirements of the consumer protection conditions are sufficiently clear or could be improved. We have also looked at whether the condition is a mandatory requirement under the current EU framework and therefore needs to be maintained (whilst noting this framework is itself currently under review).
- 2.14 The revised text of the GCs that we proposed to put in place was annexed to the August and December 2016 consultations as a separate document, along with a marked-up version of the proposed revised conditions showing tracked changes from the current conditions.

- 2.15 We are now publishing, as a separate document, the revised GCs which will replace the current GCs from **1 October 2018** (Annex 14), along with a marked-up version of the new revised conditions showing tracked changes from the current conditions (including the changes that we have decided to make to our initial proposals; Annex 16).

The general authorisation regime

- 2.16 The GCs were first introduced in July 2003 in the exercise of our powers in sections 45 to 64 of the Communications Act 2003 (the “Act”). The GCs are currently the main regulatory regime for undertakings that provide electronic communications networks and services⁶ in the UK. The GCs apply to all CPs, or all CPs of a particular type (e.g. all CPs providing a “Publicly Available Telephone Service” or all CPs providing a “Public Electronic Communications Network”), as specified in each GC. CPs must comply with the GCs, insofar as they apply to them, and Ofcom has statutory powers to take enforcement action in cases of breach under sections 96A to 100 of the Act, including the imposition of financial penalties of up to ten per cent of a CP’s annual turnover (plus daily penalties of up to £20,000 per day for continuing infringements).
- 2.17 Since their introduction, we have from time to time reviewed and amended specific GCs in order to ensure that they remained effective and fit for purpose. In addition, further regulatory conditions have been added over time and many of the conditions have been amended following specific policy projects, some on several occasions.
- 2.18 While an unofficial consolidated version of the GCs is available for reference on our website,⁷ the only authoritative legal version of the GCs is the original legal notification of 9 July 2003 followed by each and every subsequent notification of modifications. Rather than further amending the existing GCs, we have decided to replace the current conditions with a comprehensive, new set of conditions, which will effectively consolidate all amendments made to date as well as those we are making in this review. That said, we expect the GCs to continue to be a living document and the conditions will continue to evolve and be amended in line with changes in the market and the needs of stakeholders and consumers.⁸

Reviewing the regulatory burdens deriving from the GCs

- 2.19 We are required under section 6 of the Act to keep the carrying out of our functions under review, with a view to securing that regulation by Ofcom does not involve the imposition or maintenance of unnecessary burdens. In light of that duty, we have carried out this

⁶ The terms “electronic communications network” and “electronic communications services” are defined in the Framework Directive (Art. 2), as interpreted in subsequent case-law.

⁷ The version available as at the date of this publication shows all changes up to the most recent amendments made on 28 May 2015:
https://www.ofcom.org.uk/data/assets/pdf_file/0026/86273/CONSOLIDATED_VERSION_OF_GENERAL_CONDITIONS_AS_AT_28_MAY_2015-1.pdf

⁸ We also note that the current EU Framework is under review.

review of the current GCs with a view to deregulating and simplifying, wherever possible, whilst maintaining the appropriate level of protection for consumers.

- 2.20 We have reviewed both the general structure of the GCs overall (including the definitions used) and each of the individual conditions. We have considered, in particular, whether each condition is still necessary, fit for purpose or could be improved upon. In going through this exercise, we have considered the regulatory burden which individual conditions impose on CPs and the benefits to consumers which they are intended to deliver.

The legal framework and our duties

Section 3 – general duties of Ofcom

- 2.21 When considering the appropriateness of our proposals and our final decisions, we have had regard to our duties under the Act.
- 2.22 In particular, section 3(1) of the Act sets out our principal duty in carrying out our functions under the Act, which is:
- a) to further the interests of citizens in relation to communications matters; and
 - b) to further the interests of consumers in the relevant markets, where appropriate by promoting competition.
- 2.23 We have also considered, among other things, the requirements in section 3(2) of the Act to secure the availability throughout the UK of a wide range of electronic communications services and we have had regard to the matters mentioned in section 3(4) of the Act that appeared to us to be relevant in relation to each specific GC.
- 2.24 In line with section 3(3) of the Act, we have had regard to the principles under which our regulatory activity should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, together with our regulatory principles. These principles include, in particular, a bias against intervention and a commitment to seek the least intrusive regulatory mechanisms to achieve our policy objectives.

Section 4 – duties for the purpose of fulfilling EU obligations

- 2.25 Section 4 of the Act requires us to act in accordance with the six European Community requirements for regulation. These should be read in light of the policy objectives and regulatory principles as set out in Article 8 of the Framework Directive. Those relevant to this review include promoting the interests of citizens by:
- a) ensuring all citizens have access to a universal service;
 - b) ensuring a high level of protection for consumers in their dealings with suppliers;
 - c) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using public electronic communications services; and
 - d) addressing the needs of specific social groups, in particular disabled users, elderly users and users with special needs.

Section 47 – test for setting or modifying conditions

- 2.26 Our powers to make general conditions are set out in sections 45 to 64 of the Act. Section 45 of the Act allows us to set various different types of conditions, namely general conditions, universal service conditions, access-related conditions, privileged supplier conditions and significant market power conditions. The general conditions are conditions which are of general application. We can impose them on all CPs or on all providers of networks or services of a particular description.⁹
- 2.27 The types of GCs which may be imposed on CPs are limited by the EU Framework. The Authorisation Directive, in particular, provides a maximum list of GCs which may be attached to a general authorisation (Annex 1, Part A). These EU provisions have been implemented in the UK through sections 51, 52, 57, 58 and 64 of the Act (section 45(3) of the Act), which set out the matters that we can regulate through the GCs.
- 2.28 The GCs are imposed primarily under the following legal bases:
- a) the GCs that mainly deal with **consumer protection** issues fall within condition 8 of Part A of the Annex to the Authorisation Directive. Ofcom is empowered set these conditions under section 51(a) of the Act, which gives us the power to set “conditions making such provisions as OFCOM consider appropriate for protecting the interests of the end-users of public electronic communications services”;
 - b) the **network functioning** conditions normally fall within condition 3 (interoperability and interconnection), condition 12 (terms of use during major disasters or national emergencies), condition 14 (access obligations), condition 15 (network integrity) or condition 18 (standards and specifications) of Part A of the Annex to the Authorisation Directive. Ofcom is empowered to set these GCs under section 51(b) (service interoperability and network access), section 51(e) (service availability in the event of a disaster); section 51(c) (proper and effective functioning of the networks) or section 51(g) (compliance with international standards) of the Act. Certain network functioning conditions, such as the requirement to ensure access to the emergency services, fall within condition 8 of Part A of the Annex to the Authorisation Directive and Ofcom is empowered to set these conditions under section 51(a) of the Act;
 - c) the **numbering conditions** normally fall within the conditions set out in Part C of the Annex to the Authorisation Directive and Ofcom is empowered to set these conditions under sections 57 and 58 of the Act. Certain numbering conditions, such as the requirement to allow end-users to call any number in the Numbering Plan, falls within condition 4 (number accessibility) of Part A of the Annex to the Authorisation Directive and Ofcom is empowered set these conditions under section 57 of the Act respectively;
 - d) the **“must-carry” condition** falls within condition 6 of Part A of the Annex to the Authorisation Directive. Ofcom is empowered to set this GC under section 64 of the Act.

⁹ We cannot impose general conditions on specific individual providers.

- 2.29 Under section 47 of the Act, we can set or modify a GC only where we are satisfied that the condition or modification is:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories which we regulate;
 - b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - c) proportionate to what the condition or modification is intended to achieve; and
 - d) in relation to what it is intended to achieve, transparent.
- 2.30 In the following sections, we have set out why we consider that the proposals and the policy decisions set out in this document meet these tests.
- 2.31 Given the comprehensive nature of our overall review of the GCs, we consider that the clearest way to implement the changes that we have decided to make is to revoke the current conditions and replace them by setting new conditions. We note that, pursuant to section 47(3) of the Act, the objective justification requirement in section 47(2)(a) applies only to the modification of existing conditions and not to the setting of new conditions. However, we acknowledge that, even though we have revoked and replaced the current GCs, we have in effect consolidated all amendments made to the GCs to date and further modified them. Therefore, for completeness, we have explained in the following sections why we consider our decisions for each condition to be objectively justifiable.

Impact assessment

- 2.32 The analysis presented in the August and December 2016 consultations constituted an impact assessment as defined in section 7 of the Act. This document also constitutes an impact assessment in respect of the further proposals that we are setting out for consultation (see paragraphs 5.66 - 5.74, 4.115 - 4.121 and 7.61- 7.66).
- 2.33 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making.

Equality impact assessment

- 2.34 Annex 7 to the August 2016 consultation and Annex 9 to the December 2016 consultation contained our Equality Impact Assessment (EIA) for the proposals set out in those consultation documents. Ofcom is required by statute to assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 2.35 Where we have identified any particular impact of our proposals for amending certain GCs in relation to people with disabilities and other equality groups (including age), we have

explained why we consider that our proposed changes would not be detrimental to these equality groups. Specifically, we do not envisage the impact of any outcome to be to the detriment of any particular group of society.

- 2.36 Nor have we seen the need to carry out separate EIAs in relation to the additional equality groups in Northern Ireland: religious belief, political opinion and dependents. This is because we anticipate that the changes that we have decided to make will not have a differential impact in Northern Ireland compared to consumers in general.

Other projects proposing changes to the GCs

- 2.37 As noted above (paragraph 2.4), Ofcom has recently consulted on further changes to the GCs. Specifically:

- a) on 19 May 2017, we published a consultation on consumer switching in relation to mobile services;¹⁰
- b) on 24 March 2017, we published a consultation on introducing automatic compensation;¹¹ and
- c) on 28 October 2016, we consulted on the outcome of the pilot scheme for charging for geographic numbers and we proposed certain changes to the current GC 17.¹²

- 2.38 These projects will continue to proceed separately to this review of the GCs and may result in further changes to the GCs.

¹⁰ Ofcom's consultation of 19 May 2017, entitled "Consumer switching. Proposals to reform switching of mobile communications services"; see <https://www.ofcom.org.uk/consultations-and-statements/category-2/consumer-switching-proposals-to-reform-switching-of-mobile-communications-services>

¹¹ Ofcom's consultation of 24 March 2017, entitled "Automatic Compensation. Protecting consumers from quality of service problems"; see <https://www.ofcom.org.uk/consultations-and-statements/category-1/automatic-compensation>

¹² Ofcom's consultation of 28 October 2016, entitled "Promoting efficient use of geographic telephone numbers Review of the pilot scheme to charge communications providers for certain geographic numbers, including proposals to modify General Condition 17"; see <https://www.ofcom.org.uk/consultations-and-statements/category-2/promoting-efficient-use-of-geographic-telephone-numbers>

3. Common issues

Introduction

- 3.1 One of the overriding aims of this review of the GCs was to produce a more coherent set of conditions which are easier to follow. In this section, we set out the changes that we proposed in the August and December 2016 consultations that apply across the GCs as a whole.

Consultation proposals

Definitions

- 3.2 The current GCs rely on a number of defined terms, some of which have different meanings depending on which condition they are used in. The definitions are currently set out in either: (i) a particular condition; (ii) the upfront general definitions section of the GCs; or (iii) other legislation, or another Ofcom document, for example the Act or the National Telephone Numbering Plan.
- 3.3 As the need to refer to multiple sources for definitions has the potential to be confusing and time-consuming for readers, we proposed to move all the definitions into a single ‘Definitions’ section at the end of the revised conditions, and to use a single definition for each defined term across the GCs. In accordance with our general aim of making it possible to understand the GCs without reference to other documents, we also proposed to copy definitions from the Act into the GCs, to make it possible to read the GCs without referring to the Act for definitions.
- 3.4 The current GCs define “Communications Provider” separately in each condition, in order to set the scope of application of the condition. For consistency with the Act, we proposed to use the definition of “Communications Provider” from the Act in the GCs, and to set the scope of each condition by describing the category of CPs to which the condition applies, and defining that category of providers as “Regulated Providers” for the purpose of individual conditions.

Recitals, guidance and codes of practice

- 3.5 We consider that the GCs should, wherever possible, be capable of being understood on their face, without reference to additional information contained in consultation documents, guidance or explanatory statements. We therefore proposed:
- a) to add a short recital to the beginning of each condition, setting out briefly what the purpose of the condition is;
 - b) where possible, to move all binding regulatory obligations into the main body of the conditions; and
 - c) where it is necessary to include further guidance or materials, to include a footnote directing the reader to such guidance.

Direction making powers

- 3.6 We proposed to remove direction-making powers that Ofcom has never used, and does not envisage using in the near future, unless there is a compelling reason to retain them. There is no practical benefit in maintaining powers which we do not envisage using.

Other presentational aspects

- 3.7 We proposed the following presentational changes to the make the GCs more user-friendly:
- a) update the formatting of the document to bring it into line with other Ofcom publications;
 - b) add sub-headings where appropriate, and put defined terms in bold;
 - c) add a table of contents at the beginning of the GCs; and
 - d) separate the conditions into three separate parts (Part A containing network functioning conditions, Part B containing numbering and technical conditions and Part C containing consumer protection conditions) and re-number the conditions accordingly.

Implementation period

- 3.8 In the December 2016 consultation (paragraph 3.25), we said that we thought a transitional period of 3 to 6 months would be sufficient to allow industry to make all the necessary changes to their processes and procedures to ensure compliance with the revised conditions.

Stakeholders' responses and Ofcom assessment

- 3.9 Eleven stakeholders¹³ responded specifically to the proposals that we set out in relation to common issues in the August 2016 consultation, and twenty-six stakeholders¹⁴ responded specifically to the proposals set out in the December 2016 consultation.

General comments

- 3.10 Many respondents¹⁵ specifically welcomed the overall intentions of the review. Two individual respondents (Henryk Matysiak and Leon Tarnowski) and TUV SUD BABT agreed with our approach to the review.

¹³ Three confidential respondents [redacted], BT, ITSPA, Nine Group, Virgin Media, Vodafone, SSE, the FCS, and the CFA.

¹⁴ A confidential respondent [redacted], four individual respondents (Gina Antczak, Henryk Matysiak, Leon Tarnowski and Trevor Williams), Action on Hearing Loss, BT, the CFC, Citizens Advice, the CCP and ACOD, the FCS, the ICO, Money Advice Trust, the NADP, Nine Group, Sky, SSE, TUV SUD BABT, TalkTalk, Telefonica, Three, UKCTA, Verastar, Verizon, Virgin Media and Vodafone.

¹⁵ Action on Hearing Loss, the CCP and ACOD, Sky, Mobile UK, SSE, TalkTalk, Three, Trevor Williams, Verizon, Verastar, Virgin Media, Citizens Advice and UKCTA.

- 3.11 The CCP and ACOD agreed that the GCs are not good candidates for de-regulation. (p.2, Dec. response).
- 3.12 Sky thought that in some cases the proposals “would increase regulatory uncertainty, complexity and costs” (§ 1.4, Dec. response, Part II). Sky was also concerned that we had failed to fulfil our duties under section 3(3) of the Act to satisfy the test under section 47(2) of the Act in respect of some of the proposals (§ 1.6, Dec. response, Part II), and that in their view, other than in respect of complaints handling, we did not present any evidence of consumer harm to justify the proposed changes (§ 1.7, Dec. response, Part II). In the following sections of this document, we have addressed Sky’s comments in relation to our specific proposals.
- 3.13 SSE, Vodafone and UKCTA thought that there should be a further consultation on the exact proposed wording of the final complete set of GCs. We do not agree with this comment since stakeholders have already had an opportunity to comment on the text of the GCs that we proposed to put in place to implement our policy proposals.
- 3.14 UKCTA thought there was potential for unintended consequences to result from unclear drafting. Where stakeholders have raised specific concerns about potential unintended consequences deriving from the revised wording of the GCs that we proposed for consultation, we have addressed those comments in the relevant sections below (for instance, see paragraph 10.49 below).

Definitions

- 3.15 In response to our consultations, a number of respondents agreed with our proposed approach to definitions.¹⁶
- 3.16 In response to the August 2016 consultation, a confidential respondent [X] the FCS, Nine Group and Vodafone all suggested that we should replicate definitions from the Act in the ‘Definitions’ section at the end of the revised GCs. We agreed with this suggestion, and proposed in the December 2016 consultation to follow that approach (paragraph 3.9).
- 3.17 A confidential respondent [X] suggested that:
- a) where the GCs rely on a definition transposed from a relevant European directive, this should be referenced in a footnote explaining the transposition, as the GCs should be interpreted in light of European legislation; and
 - b) Ofcom should convince Her Majesty’s Stationary Office to provide a consolidated version of the Act, as it is difficult to interpret the GCs without one.
- 3.18 We have not explained the transposition process for each of the definitions deriving from the EU Framework since this would significantly increase the length of the document setting out the GCs. However, in both the August and the December 2016 consultations we

¹⁶ Specifically, a confidential respondent [X], BT, ITSPA, Nine Group, SSE, the FCS, Nine Group, Virgin Media and Vodafone supported our proposals on definitions in response to the August 2016 consultation. The CCP and ACOD, the FCS, Nine Group, SSE, Three and Vodafone agreed with our proposed approach to definitions in response to the December 2016 consultation.

have specified whether any specific GC implements an EU requirement in the UK. As explained above (paragraph 3.16), we have replicated definitions from the Act in the 'Definitions' section at the end of the revised GCs. This should reduce the need to refer to the Act.

- 3.19 Virgin Media and Verizon made a general comment on the scope of the GCs:
- a) Virgin Media commented that by identifying the category of CPs to which a condition applies, we should not thereby change the scope of the existing GC (p.2, August response); and
 - b) Verizon welcomed the addition of the "Scope" section at the start of all the conditions. However, it thought that there is still a lack of clarity regarding who exactly is the focus of each condition.
- 3.20 We agree that it is important to provide clarity on the categories of CPs to which each GC applies and this is precisely the reason why we have specified this at the beginning of each GC, rather than separately defining the term "Communications Provider" for each individual GC (see paragraph 3.4). In revising the GCs, we have taken care not to unintentionally change the scope of the GCs.
- 3.21 The FCS commented that:
- a) "Public Electronic Communications Network", "Electronic Communications Network" and "Electronic Communications Service" are currently undefined, and that, combined with the advice on Ofcom's website about how to determine what kind of service a provider is offering, the area is currently unclear; and
 - b) "the mix of terms used for those who use or contract for services (customer/subscriber/user/end user/consumer) often leads to confusion".
- 3.22 We agree that the meaning of the terms "Public Electronic Communications Network", "Electronic Communications Network" and "Electronic Communications Service" should be clear on the face of the GCs. These terms come from the Act. As explained in our December 2016 consultation (paragraph 3.9), we have included definitions of these terms (copied from the definitions in the Act) in the new 'Definitions' section at the end of the revised conditions. For greater clarity, we have also specified the category of CPs to whom each condition applies (the "Regulated Providers") at the beginning of each condition.
- 3.23 For some conditions, it remains important to differentiate between different categories of customers. For example, in condition C5 (as re-numbered), we have replaced the word "Subscriber" with "End-User" in the provisions concerning text-relay and priority fault repair to clarify that these provisions apply to all users, even where they are not the subscriber.

Specific definitions

Electronic Communications Service

- 3.24 We received the following comments in relation to the extent to which a Pay TV service may fall within the definition of "Electronic Communication Service":

- a) BT said we should clearly state that the definition of “Public Electronic Communications Services” includes the transmission of Pay TV (§ 13, Dec. response);
- b) TalkTalk suggested that “Ofcom (...) expands on its view as to when and to what extent a pay-TV service would be considered to be an “electronic communication service” (§ 10, Dec. response) (see also paragraph 7.46 below);
- c) Sky said that “contorting the interpretation of “electronic communications services” to include all pay TV services would not be compatible with the definition in the Framework Directive or the relevant case law” (§ 2.4, Dec. response, Part I). It said that if we want to extend the scope of the GCs to other services, we should consult on this, and set out which services are caught and why (§ 2.22, Dec. response, Part I).

3.25 The term “electronic communications service” is defined in section 32(2) of the Act as:

“... a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.”

3.26 Article 2(c) of the Framework Directive contains a similar definition:

“‘electronic communications service’ means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks.”

3.27 As we noted in our consultation document of 29 July 2016 concerning cross-platform switching¹⁷, in the “UPC/Hilversum” case¹⁸ and the “UPC/Hungary” case¹⁹, the Court of Justice of the European Union considered the application of the Framework Directive’s definition of an electronic communications service to pay TV services. The effect of these judgements is that the provision of such services falls within the definition in so far as they include the conveyance of signals on an electronic communications network. In the “UPC/Hilversum” case, the court said that is so even if:

¹⁷ Ofcom’s consultation document entitled “Making switching easier and more reliable for consumers. Proposals to reform landline, broadband and pay TV switching between different platforms”, paragraph 2.28; see https://www.ofcom.org.uk/_data/assets/pdf_file/0030/58845/making-switching-easier.pdf

¹⁸ Case C-518/11 *UPC Nederland BV v Gemeente Hilversum*, Judgment of 7 November 2013.

¹⁹ Case C-475/12 *UPC v Hungary*, Judgment of 30 April 2014.

- a) those services are also provided with other services, such as content services, that fall outside the definition;
- b) the costs charged to consumers incorporate payments made in respect of programme content.²⁰

3.28 So far as the GCs are concerned, the definition of “Electronic Communications Service” which applies is that set out in section 32(2) of the Act, which remains unchanged. In practice, whether a particular service falls within the scope of that definition for the purpose of the 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.

Subscriber or End User

3.29 BT were concerned that our use of the term end-user “broadens CPs’ responsibilities and significantly expands the scope of the GCs” (§ 7, Dec. response). BT suggested that we should consider whether “Subscriber” would be a more appropriate term to use in certain places (e.g. in the conditions on billing, transparency and vulnerable consumers). In discussing the relevant GCs, we have taken this comment into account and revised our proposals, where we considered it necessary. In particular, we have revised the definition of “Subscriber” which will apply across the GCs as a whole to clarify that we are referring only to those subscribers who are the “End-Users” of a certain electronic communications service, which is in line with the definition of “Subscriber” that is currently set out in GC 12.6(e) and GC13.3(b) (see paragraphs 10.49 and 10.74).

Regulated Provider

3.30 SSE thought that in some cases the term “Regulated Provider” was defined too widely. It wanted to ensure that business-to-business CPs are not caught by, for example, the extension of the scope of certain conditions from telephony to broadband services. In particular, SSE referred to the revised condition concerning information publication and transparency requirements and the revised condition concerning the special measures for end-users with disabilities.²¹ Similarly, Verizon (§ 7) and UKCTA (§ 6) both thought that we should explicitly exclude business-to-business CPs from the scope of the consumer protection conditions.

3.31 Where this issue arose in relation to any specific GC, we have considered it carefully and revised our proposals to remove any ambiguity, where necessary. For instance, we have revised our proposals to clarify that any wholesale billing between CPs which does not have any impact on the billing of end-users will continue to fall outside the Metering and Billing Approval Scheme (see paragraphs 10.23-10.27).

²⁰ See, in particular, paragraphs 35 – 47 and 65 of the court’s judgment in the “UPC/Hilversum” case. See also paragraphs 37 – 39 in the “UPC/Hungary” case.

²¹ SSE’s response to questions 5-7 (paragraph a)) and questions 14-16.

Small Business Customers

- 3.32 A confidential respondent [§<] suggested that the definition of “Small Business” is placed in the ‘Definitions’ section, although it argued that its meaning is “impractical and unworkable” (p.5). This confidential respondent cited three examples of problems arising from the current definition of “Domestic and Small Business Customer”, including that it can cause confusion for CPs and can lead to anomalies such as where “a boutique firm of 9 telecommunications lawyers gets more protection from abusive practice by CPs than a charity with 11 volunteers”. This respondent proposed that the definition of “Domestic and Small Business Customer” should have been changed in the Act in order to “afford Ofcom the flexibility to impose remedies where objectively necessary to protect those that need it, without creating the issues that the current rigid definition creates”. It also suggested that we should seek that Parliament varies legislation on this basis. [§<].
- 3.33 The current GCs contain two definitions which broadly mirror the statutory definition of “domestic and small business customer” set out in section 52(6) of the Act: the definition of “Domestic and Small Business Customer” in GC 14.13(g) and the definition of “Small Business Customer” in GC 9.3(b)(v). In the December 2016 consultation, we proposed to retain these definitions and move them into the ‘Definitions’ section at the end of the revised GCs.²²
- 3.34 We consider that the statutory definition of “domestic and small business customer” which is set out in section 52(6) of the Act is clear. Furthermore, we do not think it would be appropriate to amend the definition of “Domestic and Small Business Customer” in the GCs in such a way as to leave it substantively different to the equivalent definition in the Act. We have therefore decided to maintain the current definition of “Domestic and Small Business Customer”. For clarity, we have also used the term “Domestic or Small Business Customer” where appropriate.
- 3.35 In the revised GCs, we are using the term “Small Business Customer” to refer to small businesses only, as opposed to small businesses and consumers (see, for example, condition C2.9). Therefore, we have amended the definition of “Small Business Customer” in order to cover only those customers which are small businesses. To add clarity, we have also defined more directly what a small business customer is, rather than defining it by exclusion (i.e. it is neither “X” nor “Y”). The revised definition of “Small Business Customer” states:

²² We also proposed to remove the definition of “Customer” in GC 23.11(b), which refers to the term “domestic and small business customer” as defined in section 52(6) of the Act. We proposed to refer to these customers as “Relevant Customers” at the beginning of the revised GC (paragraph 12.35 of the December 2016 consultation).

“**Small Business Customer**”, in relation to a **Communications Provider** which provides services to the public, means a **Customer** of that provider 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**”.

Recitals, guidance and codes of practice

- 3.36 ITSPA, Vodafone, the FCS, Nine Group, SSE and BT agreed with our proposal to include short recitals.
- 3.37 Both BT and CFC suggested that we should provide further guidance. Specifically:
- a) BT said that it would also welcome further guidance, with signposting via footnotes in the GCs; and
 - b) the CFC and the CCP and ACOD thought it would be useful to also produce a short summary guide for consumers who want to understand the requirements for regulated providers. The CFC suggested that it would be helpful if any supporting legislation/ other consumer guidance could be clearly hyperlinked in the guide so that consumers know where to look for requirements not covered in the GCs.
- 3.38 Where relevant, we have added reference to other GCs or related Ofcom guidance or directions in footnotes, which is in line with BT’s suggestion. We are considering CFC’s suggestion about the publication of a user-friendly consumer guidance, noting that replacing Ofcom’s current guidelines on the GCs²³ (which we will need to update) with a user-friendly consumer guidance might be a better approach.
- 3.39 Vodafone suggested that:
- a) “the core regulatory requirements should be contained in the central GC text, with surrounding requirements that are binding placed in an Annex to the GC”;
 - b) Annexes should be placed at the end of the GCs as a whole rather than following individual GCs (p.6); and
 - c) “Codes of Practice should be separate from the GCs, but stored with the GCs on the Ofcom website” (p.6).
- 3.40 We agree that it would be useful to include core regulatory requirements in the GCs, and we have therefore tried to do this wherever possible. We have generally tried to reduce the number of codes of practice and annexes. However, where we see good reasons for retaining them, we think it makes sense to include them in the GCs, after the GC to which they relate, to facilitate reference to them, particularly given that they rely on the definitions set out in the ‘Definitions’ section at the end of the revised conditions.
- 3.41 Verizon, Vodafone and UKCTA thought that the proposal to move much of the guidance into the GCs could make the conditions more onerous and less flexible. Where we have

²³ <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-authorisation-regime>

moved Ofcom's guidance into the GCs (e.g. Ofcom's Guidance on "material detriment" under GC9.6 in relation to price rises and notification of contract modifications), we have taken account of these comments by ensuring the GCs set out only those binding regulatory obligations which are necessary to achieve their purpose.

Direction making powers

- 3.42 A confidential respondent [redacted] said that it disagreed "that Direction making powers should not be referenced in the GCs" as there is no harm in retaining powers even if they are not used.
- 3.43 The CFOA also disagreed with the proposal to remove direction-making powers, as it considered that even if they have never been used, they offer flexibility and are quick to apply in urgent situations (p.1).
- 3.44 Although we understand the argument for keeping direction making powers as a regulatory backstop, we think that such concerns are outweighed by the overall aim of de-regulating and simplifying the GCs wherever possible. We consider that an important element of this is removing unnecessary regulation, including powers that we do not foresee using in the near future. We also note that the process for making directions for the purposes of regulatory conditions, which is set out at sections 49 to 49C of the Act, is similar to that for making new conditions or modifying existing ones. Consequently, we could re-introduce more detailed regulation at a later date if necessary. We have therefore decided to implement our proposals concerning our direction-making powers which we set out in the August 2016 consultation (paragraphs 3.14 – 3.16) and the December 2016 consultation (paragraphs 3.20 – 3.22).

Other presentational aspects

- 3.45 Nine Group, SSE, Three, TalkTalk and Vodafone welcomed the revised structure. ITSPA welcomed our proposal to combine GCs that address related issues (e.g. GCs 3 and 4).
- 3.46 In response to the August 2016 consultation, a confidential respondent [redacted] suggested we add a table of contents to the GCs. We agreed that would be helpful, and included it with our proposals in the December 2016 consultation. Three supported this proposal.

Impact assessment, including equality impact assessment

- 3.47 As set out in paragraphs 2.32-2.36, the analysis presented in the August and December 2016 consultations constituted an impact assessment as defined in section 7 of the Act. In addition, Annex 7 to the August 2016 consultation and Annex 9 to the December 2016 consultation contained an Equality Impact Assessment for the proposals set out in those consultations.
- 3.48 We address stakeholders' comments in relation the impact of any specific proposal where we discuss such proposal in the following sections on this document.

Other comments

- 3.49 BT said that the consultation process could have been improved if there had been engagement with stakeholders about the proposed changes before publication of the consultation (p.2). Although we did not have a call for inputs or hold a pre-consultation workshop with stakeholders, in formulating our proposals we have taken account of the comments provided by stakeholders on specific GCs including, for example, their responses to our consultations on our draft Annual Plan 2015/2016, our DCR consultation, Ofcom's proposed Annual Plan 2016/2017 and any supplementary submissions from stakeholders²⁴ (see paragraphs 2.21-2.27 of the August consultation and paragraph 2.5 of the December 2016).
- 3.50 A confidential respondent [redacted] said that it welcomes "the removal of Voice-over-Internet Protocol ("VoIP") specific references as these were always (...) at odds with the concept of a technologically neutral regulator" (p.5). For clarity, we note that we are removing a number of requirements for VoIP providers which we consider are no longer necessary, but we are also retaining two specific provisions that, in our view, remain important for consumer protection, or for clarifying what industry has to do to comply with the current regulatory framework (see paragraph 4.51).
- 3.51 A confidential respondent [redacted] suggested that the relevant pages of other related documents (for example, the PRS Condition and the Condition Binding Non-Providers) should be published in their own right on Ofcom's website. We have noted this comment and we are planning to make these documents more easily accessible from our website, so that stakeholders can access all relevant regulation from a single location.
- 3.52 Virgin Media suggested that where proposed changes to the GCs are also the subject of other, separate Ofcom reviews, unless changes are needed as a matter of urgency, all changes should be made at the same time rather than in a piecemeal manner. Since Virgin Media's concerns appeared related to our proposals in relation to switching and mis-selling (see paragraph 14.27), we have addressed this comment where we discuss these conditions (paragraphs 14.28).

Implementation period

- 3.53 We received a number of comments in relation to the proposed 3-6 month implementation period. In summary, of those who submitted responses about the implementation period:
- a) a few respondents supported our proposal²⁵;
 - b) SSE said that it supports an implementation period of "at least six months"; and

²⁴ For example, in addition to its main response to the August 2016 consultation, on 6 December 2016 BT provided supplementary comments relating to the second phase of our review of the GCs.

²⁵ Two individual respondents (Henryk Matysiak and Trevor Williams) and the NADP agreed with the proposed implementation period, and ICO said that the implementation period is for Ofcom to determine.

- c) a number of stakeholders commented that a longer implementation period would be necessary, both in relation to particular individual conditions and due to the cumulative nature of implementing so many changes to their systems and procedures at the same point. The majority of these respondents thought that the implementation period would need to be at least 12 months, but some respondents proposed an implementation period of up to 24 months. We discuss these comments below.

General comments for a longer implementation period

- 3.54 Those who argued for a longer implementation period provided the following general comments:
- a) a confidential respondent [X] said that a major residential provider would require more time;
 - b) Vodafone did not support the proposed implementation period. It said that some of the changes would require “significant capital spend and time to scope, design, build and test”. In particular, in relation to the changes to complaints handling, the billing requirements and the rights of vulnerable customers, Vodafone suggested that Ofcom should consult on and apply bespoke timeframes (p.7);
 - c) TUV SUD BABT said that some of the technical requirements may need the development of software or firmware which will require testing before deployment, and 3-6 months may not leave enough time for this;
 - d) BT said that “the implementation of a number of the changes proposed by the revised GCs within a six month period [will] be extremely challenging and divert systems release capacity from other areas...many of the proposed changes...will require significant modifications of complex systems” (§ 14, Dec. response). BT proposed a 12-month implementation period for all the changes other than those to the billing conditions, for which BT suggested that we should allow for a 24-month implementation period (§ 16, Dec. response). BT suggested that we should work with industry and consult separately on our proposals in relation to contract requirements, complaints handling, vulnerable consumers and CLI. BT also noted that should Ofcom make any further changes to the GCs after the end of the consultation period, there should be a brief consultation period for CPs to review and comment on the proposals;
 - e) Telefonica’s initial view was that a period of at least 9 – 12 months (with at least 12 – 18 months for the changes to the billing conditions) would be more appropriate than the 3 – 6 months that we suggested (§ 11 – 12);
 - f) Three said the proposed changes, if implemented in totality, will require wholesale changes to be made to their core systems and processes, and that, therefore, an 18-month implementation period would be necessary. Three also suggested that there should be a phased approach to implementation (§ 16 - 18);
 - g) Verastar said that it couldn’t agree to an implementation period until it had seen the final GCs, but that it thought that 12 months would be more appropriate;

- h) Virgin Media said that a “one size fits all” approach to implementation would not work for the GCs. It thought that at least six months would be needed to implement some of the proposals, while proposals that would require system changes would require an implementation period of 12 – 24 months;
- i) UKCTA said that the changes to the consumer protection regulations would require extensive system and operational changes and that a 24-month implementation period would be appropriate (§ 7).

3.55 Below, we give an overview of the main changes for which respondents considered that we should allow for a longer implementation period, and the period suggested by stakeholders.

Extending the Metering and Billing scheme to data services

3.56 BT (§ 16(a) and 188), Enigma, Sky (§ 1.2), TalkTalk (§ 2 and 68), TUV SUD BABT, UKCTA (§ 27), Virgin Media (p. 5) and Vodafone (p. 15) argued for a 24-month implementation period, noting that this would be in line with the current Direction. Telefonica (§ 12 and 92) said that “a minimum of 12-18 months is likely to be required for the inclusion of data within the Metering and Billing Scheme and any significant IT systems changes”.

Policies for vulnerable consumers

3.57 Several respondents (BT, Mobile UK, Money Advice Trust, Three and Telefonica) said that the proposed implementation period was too short (although Mobile UK noted that “if compliance with the requirements on vulnerability were to be a matter of just describing what each has currently in place, a 3 – 6 month compliance period would be reasonable” (§12)). Money Advice Trust suggested that, as an alternative to a 3-6 month implementation period, “providers could be required to report their progress and future plans for addressing vulnerability at regular intervals, as an adjunct to on-going monitoring”. Three (§ 122) suggested that a 18-month implementation period would be appropriate. BT considered that the timescale set out in the December 2016 consultation was too optimistic, and that Ofcom should agree a more realistic implementation period, through more discussion with all interested stakeholders.

Calling Line Identification

3.58 TalkTalk said that an implementation period of 3-6 months would “seem sensible”, unless we are expecting CPs to implement “Secure Telephone Identity Revisited” (“STIR”) (§ 31(c)). BT, Vodafone and Mobile UK all thought that the condition should not be implemented until there is industry agreement on the guidance. Telefonica thought that it was premature to mandate technical measures, as there is still ongoing work within the industry group. Vodafone and Verastar also thought that more could be done to enforce current rules rather than create new obligations for CPs. Virgin Media said the proposed requirement would take much longer than three to six months to implement given the likely system changes required.

Complaints Handling

- 3.59 BT considered that a six-month period for implementation is “unrealistic” (§ 84). Virgin Media (p. 10) said that “a minimum of twelve months (and more likely up to eighteen months) will be required for implementation” (p. 10). More generally, UKCTA suggested that a 24-month implementation timescale would be appropriate (§ 7). SSE noted our proposed 6-month implementation period and said it “agrees that this time would be needed to consider, test and implement the updated messaging in bills and other documents...”.

Ofcom’s assessment

- 3.60 We remain of the view that having a single implementation date when all the changes will come into force is a more practicable approach than a staggered approach to implementation. However, we have decided to allow for a longer implementation period of 12 months, particularly in light of the fact that all the changes will have to be implemented at the same time. Therefore, the revised GCs will enter into force on **1 October 2018**.
- 3.61 In relation to the extension of the Metering and Billing Scheme to data services, as set out in paragraph 10.38, we have revised the Metering and Billing Direction to allow CPs 6 months to apply for approval (from the date the new Direction will enter into force, which is also when the revised GCs will enter into force) and a further 24 months to obtain approval (from the date of the application).

Ofcom’s decision

- 3.62 Ofcom has decided to implement the proposals concerning common issues across the GCs which we set out in the August 2016 consultation (paragraphs 3.1 – 3.17), as revised in the December 2016 consultation (paragraphs 3.1 – 3.24), with the following changes:
- a) we have revised the definition of “Subscriber” which will apply across the GCs as a whole to clarify that we are referring only to those subscribers who are the “End-Users” of a certain electronic communications service;
 - b) we have decided to amend the definition of “Small Business Customer”, so that it captures small business customers only (as opposed to both small business customers and consumers); and
 - c) we are allowing for a longer implementation period of 12 months.

4. Network functioning

Introduction

- 4.1 The current GCs set out various rules that require CPs to negotiate with each other to provide network access and interconnection (GC 1), to comply with technical standards for interconnection (GC 2), to ensure the network is functioning at all times, including in the event of disaster (GC 3), to ensure their customers can always access the emergency services (GC 4) and to comply with government requirements in emergencies and disasters (GC 5).
- 4.2 In this section we set out the changes that we have decided to make to these conditions, which include re-numbering them as follows:
- a) the current GC 1 will be re-numbered as condition A1;
 - b) the current GC 2 will be re-numbered as condition A2;
 - c) the current GCs 3 and 4 will be combined and re-numbered as condition A3;
 - d) the current GC 5 will be re-numbered as condition A4.

General access and interconnection obligations

Consultation proposals

- 4.3 Condition A1 concerns network access and interconnection at the wholesale level and the treatment of the information obtained before, during or after negotiations for network access and interconnection. In the following paragraphs (4.4-4.6), we summarise the proposals that we set out in the August 2016 consultation (paragraphs 4.2-4.9) in relation to this condition.

The disclosure of confidential information to Ofcom as a carve-out

- 4.4 We proposed to remove the current GC 1.3, which, as a carve-out to a general prohibition on disclosure of certain confidential information, provides that CPs can share that information with Ofcom. We provisionally considered that this carve-out is unnecessary because Ofcom can use its statutory information gathering powers to require the provision of confidential information and CPs must comply with such requests for information.

The confidentiality requirements

- 4.5 The current GC 1.2 (condition A1.3, as re-numbered) requires CPs to treat any information obtained in confidence before, during or after negotiations for network access as confidential and to use such information solely for the purpose for which it was acquired. We proposed to simplify this provision by removing words that we considered

unnecessary²⁶. We also proposed to remove the provision in GC 22.15 which prohibits losing providers from seeking to retain the customer in specific situations (“reactive save”).²⁷

Heading and minor drafting changes

- 4.6 We also proposed to change the heading of this condition to “General network access and interconnection obligations”, together with some minor drafting changes.

Stakeholders’ responses and Ofcom assessment

- 4.7 BT, TalkTalk, Sky, Verastar, Virgin Media and Vodafone provided comments on our proposals.

The disclosure of confidential information to Ofcom as a carve-out

- 4.8 BT said that it supports the simplification and shortening of the current GC 1 (p.3), whereas both Virgin Media and Vodafone disagreed with the proposed removal of the carve-out set out in the current GC 1.3 for the following reasons:

- a) according to Virgin Media (p.3), if we were to remove the current GC 1.3, “instead of a CP being able to co-operate with Ofcom in order for it to carry out its functions, a CP would have to insist on a section 135 request being made before being able to provide such information”;
- b) Vodafone (p.7) suggested that we should not remove the current GC 1.3 because “what the deletion of [old] GC1.3 effectively does is to remove the ability of a CP to “whistle-blow” to Ofcom, should it encounter something in negotiations that it feels Ofcom should know about”.

- 4.9 In our view, in the absence of the current GC 1.3, CPs would still be allowed to inform Ofcom of any concerns they might have in relation to potential breaches of the GCs, including by lodging a formal complaint. If, upon receipt of any such information or complaint, we needed to obtain evidence of the specific information concerned by the alleged contravention to determine whether there is a case to answer, we will continue to have powers under section 135 of the Act to require such information from the relevant CPs. Therefore, we remain of the view that the carve-out which is currently set out in GC 1.3 is unnecessary and we have removed it.

²⁶26 We proposed to remove the words “in connection with and solely for the purpose of such negotiations or arrangements” (see paragraph 4.4 of the August 2016 consultation).

²⁷27 December 2016 consultation, paragraphs 11.26-11.32.

The confidentiality requirements

- 4.10 In relation to the current GC 1.2 (condition A1.3, as re-numbered), which requires CPs to treat any information obtained in confidence before, during or after negotiations for network access as confidential and to use such information solely for the purpose for which it was acquired, we received the following comments:
- a) in its response to the August 2016 consultation, Virgin Media (p. 2) quoted paragraphs 4.43 and 4.44 of our consultation document of 29 July 2016 entitled “Making switching easier and more reliable for consumers”²⁸ and said that “it would be appropriate at this stage for Ofcom to confirm that GC 1.2 does not prohibit reactive save”.
 - b) in response to our December 2016 consultation, other respondents asked us to clarify our position on GC 1.2 (see paragraph 14.18 below). In particular:
 - i) TalkTalk²⁹ said that it is unclear to what extent GC 1.2 applies to reactive save and asked Ofcom to clarify our position;
 - ii) Sky said that Ofcom’s statement that it intends not to make enforcement of GC 1.2 an administrative priority “provides no certainty for stakeholders (...) and fundamentally undermines Ofcom’s proposal in respect of GC22.15” (§ 5.3-5.4);
 - iii) Verastar asked Ofcom to confirm to all CPs whether, and if so how, it would enforce compliance with GC 1.2, should the specific prohibition of reactive save activity which is currently set out in GC 22.15 be removed;
 - iv) Vodafone (p.7) questioned “whether it would be better to put the clauses around confidentiality of information in negotiating interconnection into GC1.2, with this being applicable solely to Public Electronic Communications Networks”, since “GC1.3 would then solely focus on Network Access other than interconnection, and it would then be clear why it applies to a wider set of parties”.
- 4.11 In relation to stakeholder’s comments on our position on reactive save activity, we said in the December 2016 consultation (paragraph 11.32) that, as we noted in the Cross-platform switching consultation,³⁰ the current GC 1.2 has been found by the UK courts to be sufficiently broad as to apply to certain switching scenarios where customer information is passed on to the losing provider from the gaining provider. However, insofar as it does apply to reactive save activity generally, we do not plan to make the enforcement of condition A1.3 (as re-numbered) an administrative priority.³¹ This remains our position.³²

²⁸ https://www.ofcom.org.uk/data/assets/pdf_file/0030/58845/making-switching-easier.pdf

²⁹ TalkTalk’s response to the December 2016 consultation, § 33.

³⁰ https://www.ofcom.org.uk/data/assets/pdf_file/0030/58845/making-switching-easier.pdf, see paragraphs 4.38 to 4.44.

³¹ Unless, for example, a provider engages in unreasonable save activity, such as continuing to contact consumers who have asked not to be contacted. We also note in that context that other provisions of the GCs relating to provider’s processes and conduct, such as condition C1.3 (as re-numbered) would also be applicable.

³² See also paragraph 14.19 further below.

- 4.12 We understand Vodafone’s comment as suggesting that we should move the requirements for CPs to “respect at all times the confidentiality of information transmitted or stored” and not to pass such information on to any other party for whom such information could provide a competitive advantage to GC A1.2 (which is the current GC 1.3 and which applies to network providers only) from GC A1.3 (which is the current GC 1.2 and which applies, more generally, to any provider of electronic communications networks or services engaging in network access negotiations).
- 4.13 The current GC 1.2 was introduced in 2003 to implement the obligations contained in Art. 4(3) of the Access Directive, which requires Member States:
- a) to require “that undertakings which acquire information from another undertaking before, during or after the process of negotiating access or interconnection arrangements use that information solely for the purpose for which it was supplied”; and
 - b) to impose certain further confidentiality requirements on these undertakings, which are:
 - i) that these undertakings “respect at all times the confidentiality of information transmitted or stored”; and
 - ii) that the “received information shall not be passed on to any other party, in particular other departments, subsidiaries or partners, for whom such information could provide a competitive advantage”.
- 4.14 We do not agree with Vodafone’s suggestion for the following reasons:
- a) Vodafone’s suggestion would limit the scope of application of the confidentiality requirements to network providers only, whereas the provisions of the Access Directive from which the current GC 1.2 derives are intended to apply, more widely, to all CPs engaging in network access negotiations; and
 - b) the confidentiality requirements are strictly connected to the requirement to use the relevant information solely for the purpose for which it was supplied. Therefore, splitting these requirements into two separate provisions, as suggested by Vodafone, would make the rule less clear.
- 4.15 For these reasons, we have retained all the requirements for CPs engaging in network access negotiations which are currently set out in GC 1.2 in one single provision, which we have re-numbered as condition A1.3. This condition will continue to apply to all CPs.
- 4.16 BT (p.3) said that it supports the simplification and shortening of GC 1. We have not received any further comment on our proposal to simplify regulation by removing words that we considered unnecessary in GC 1.2 and we have decided to implement our proposal.

Heading and minor drafting changes

- 4.17 Stakeholders did not comment on these specific proposals in response to the August 2016 consultation.

Ofcom's decision

- 4.18 Ofcom has decided to implement the proposals concerning the obligations related to the negotiation of general access and interconnection which we set out in the August 2016 consultation (paragraphs 4.2-4.9). We have also replaced the words "any other Communications Provider" in condition A1.2 with the words "any other provider of a Public Electronic Communications Network", which is consistent with the current condition (GC 1.1). This is because interconnection is negotiated between network providers.
- 4.19 The revised text of the condition that will replace the current GC 1 can be seen at Annex 14 (see condition A1).

Legal tests

- 4.20 We consider that the changes that we have decided to make to GC 1 (condition A1, as re-numbered), and the condition itself, meet the test for setting or modifying conditions set out in section 47(2) of the Act. These changes are:
- a) **objectively justifiable** as we consider that the current GC 1.3 is not necessary since Ofcom may exercise its powers under section 135 of the Act, as and where appropriate, to require the provision of relevant information;
 - b) **not unduly discriminatory** as the changes that we have decided to make to the current GC 1 (re-numbered as condition A1) will apply equally to all CPs to which this condition applies;
 - c) **proportionate** as we think that those parts of the current GC 1 which we are proposing to retain are the minimum necessary to implement Art. 4(1) and (3) of the Access Directive; and
 - d) **transparent** as the purpose of the revised condition is clear and what CPs will need to do in order to comply with the new condition A1 is also clear.

Standardisation and specified interfaces

Consultation proposals

- 4.21 The current GC 2 (condition A2, as re-numbered) requires CPs to comply with, or take full account of, certain European and international technical standards and specifications to encourage interconnection and interoperability. In the following paragraphs (4.22-4.24), we summarise the proposals that we set out in the August 2016 consultation (paragraphs 4.10-4.24) in relation to this condition.

Ofcom's direction making-powers

- 4.22 We proposed to significantly simplify and shorten this condition by removing Ofcom's direction-making powers that are set out in the current GCs 2.3 and 2.4, which are as follows:

- a) in the absence of an appropriate European or other international technical standards or specifications, the current GC 2.3 gives Ofcom the power to issue directions for the purposes of service interoperability and interconnection requiring CPs to take full account of any other standard to be specified by Ofcom in its direction (e.g. national standards for interconnection);
- b) the current GC 2.4 gives Ofcom the power to issue a direction, from time to time, requiring CPs to ensure that any Network Interconnection Interface³³ provided by them which is specified in such direction is:
 - i) compliant with a specified standard which is already in existence as referred to in paragraphs 2.1, 2.2 or 2.3 of the current GC 2, and
 - ii) available, upon request, to other providers of public electronic communications networks.

4.23 We proposed to remove these direction-making powers for the following reasons:

- a) Ofcom has never made any such direction, which suggests that these direction-making powers have proved in practice to be unnecessary;
- b) we would normally expect CPs to have incentives to agree the appropriate standards to be used for interconnection without the need for specific intervention by Ofcom; and
- c) we could (re-)introduce more detailed regulation at a later date if problems arose during the transition to Internet Protocol based interconnection, or in any other area.

Drafting changes to simplify the condition

4.24 In the August 2016 consultation (paragraph 4.21), we said that if we were to retain these direction-making powers, we would retain them in a simplified form. We also proposed some minor drafting changes to simplify this condition and to change the heading of this condition to “Standards and specifications” (paragraph 4.22).

Stakeholders’ responses and Ofcom assessment

4.25 Five stakeholders responded specifically to our proposals on this condition: a confidential respondent [redacted], BT, the CFA, Virgin Media and Vodafone.

Ofcom’s direction making-powers

4.26 BT said that it supports the simplification and shortening of the current GC 2 (p.3), whereas a confidential respondent [redacted], the CFA and Vodafone disagreed with the proposed removal of Ofcom’s direction-making powers for the following reasons:

³³ In the current GC 2, a Network Interconnection Interface means the physical, electrical and other relevant characteristics and the network interworking and service management protocols of each interface at any physical location at which interconnection between different public electronic communications networks takes place (‘Network Interconnection Point’).

- a) the CFOA (p.1) recommended that Ofcom’s direction-making powers are maintained because, whilst removing them would provide some simplification of the GCs, their existence “does not add a great deal of complexity to the GCs”;
- b) Vodafone (pp. 7-8) suggested that we should “retain the powers to intervene and to recognise the standards produced by NICC Standards” and made these further comments:
 - i) “Arguably, the NICC Standards role of developing national profiles of international standards is now more important than ever, because standards such as those around IP allow a greater flexibility to meet individual market and regulatory circumstances”;
 - ii) if a new entrant were to demand usage of a particular European standard, “removing the ability for Ofcom to direct a standard means that it will have no ability to over-ride that European standard in favour of the NICC Standards profile developed specifically to support UK regulation and market conditions”;
- c) the confidential respondent [X] (p.6) argued that if measures were needed to be taken to address the issue of nuisance calls (citing ‘Caller Line Identification spoofing’ as an example), “then it can only be given legal force by a long winded international co-ordination effort and a standard from the relevant authority listed in GC 2, or could be given a more rapid effect through Ofcom acting unilaterally with a direction under the same GC2”.

4.27 In relation to the comment submitted by the confidential respondent [X], we note that we are extending regulation to improve the accuracy of the provision and display of the calling party’s telephone number to end-users (see Section 13). In addition, as we noted in the August 2016 consultation (paragraph 4.19), we could (re-)introduce more detailed regulation at a later date if necessary.

4.28 We are not persuaded by the other comments against removing Ofcom’s direction-making powers:

- a) the fact that the direction-making powers which are set out in the current GCs 2.3 and 2.4 do not “add a great deal of complexity to the GCs” is not a compelling reason for retaining such powers;
- b) the current GCs 2.1 and 2.2 implement the sixth Community requirement, which is a requirement for Ofcom to encourage such compliance with the European and other international standards referred to in section 4(10) of the Act as is necessary for facilitating service interoperability and securing freedom of choice for the customers of communications providers.³⁴ Given that NICC is a UK standardisation body,³⁵ Ofcom

³⁴ See section 4(9) of the Act.

³⁵ NICC is “a technical forum for the UK communications sector that develops interoperability standards for public communications networks and services in the UK”. See <http://www.niccstandards.org.uk/about/index.cfm>

may require CPs to comply with, or take account of, NICC's standards only in the absence of an appropriate European or other international standard;

- c) as we noted in the August 2016 consultation (paragraph 4.19) in relation to any relevant standards adopted by the Internet Engineering Task Force, we could re-introduce more detailed regulation at a later date if problems arose in this area, or in any other area. Similar considerations apply in relation to any relevant standards adopted by a national standardisation body. In particular, in the absence of an appropriate European or other international standard, we might require compliance with any specific NICC's standards that we consider necessary for interoperability in the future. We might consult in parallel on the re-introduction of a direction-making power and Ofcom's direction under that power, or amend the condition, so that it would require CPs to take account of certain standards without need for any direction.

Drafting changes to simplify the condition

- 4.29 Virgin Media (p.3) suggested that we should retain the word "relevant" in condition A2.2 because "the qualification of relevance adds clarity that the GC is not requiring all CPs to comply with standards or specifications listed in the Official Journal pursuant to Article 17 of the Framework Directive that have no relevance to their particular business". We agree with Virgin Media that CPs are only required to comply with those compulsory standards which are applicable to what they are actually doing. We think this is implied in the word "compulsory" used in condition A2.2 because the various documents through which the European Commission may make any standards and/or specifications compulsory³⁶ and the relevant standards should make it clear who must comply with them. However, for the sake of clarity, we have reinstated the word "relevant".
- 4.30 For consistency with the Framework Directive (Art. 17(2)), we have also decided to make these minor drafting changes (the words underlined are those that we have inserted, the words struck through are those that we have deleted, compared with the text that we proposed for consultation):

³⁶ If the European Commission intends to make any standards and/or specifications compulsory, it must publish a (consultation) notice in the Official Journal of the European Union, take appropriate implementing measures and make reference to such standards as compulsory standards in the Official Journal (see Article 17(4) of the Framework Directive).

A2.3 In addition, **Communications Providers** shall take full account of:

(a) any relevant ~~non-compulsory~~^{voluntary} standards and/or specifications ~~so~~ published in the Official Journal of the European Union; and

(b) in the absence of such standards and/or specifications referred to in **Condition A2.3(a)**, any relevant standards and/or specifications adopted by the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) and the European Telecommunications Standards Institute (ETSI).

Other comments

- 4.31 BT (p.3) suggested that “Ofcom may also wish to consider including NICC within the list of standards bodies”. As explained above (paragraph 4.28), Ofcom may require CPs to comply with, or take account of, NICC’s standards only in the absence of an appropriate European or other international standard. We cannot add NICC to the list of European and other international standardisation bodies in conditions A2.3 and A2.4 (as re-numbered) since NICC is a national standardisation body rather than an international one.

Ofcom’s decision

- 4.32 We have decided to implement the proposals concerning the technical standards and specifications which we set out in the August 2016 consultation (paragraphs 4.10-4.24), with a few minor drafting changes. Specifically, we have reinstated the word “relevant” in condition A2.2 (as re-numbered) and slightly amended condition A2.3.
- 4.33 The revised text of the condition that will replace the current GC 2 can be seen at Annex 14 (see condition A2).

Legal tests

- 4.34 We consider that the changes that we have decided to make to the current GC 2 (condition A2, as re-numbered) and the condition itself meet the test for setting or modifying conditions set out in section 47(2) of the Act. These changes are:
- a) **objectively justifiable** since we have not used the direction-making powers that we are removing and we could (re-)introduce more detailed regulation at a later date if problems arose;
 - b) **not unduly discriminatory** as the revised condition corresponding to the current GC 2 (condition A2) will apply equally to all CPs to which the current condition applies;
 - c) **proportionate** as those parts of the current condition which we are retaining are the minimum necessary to implement Art. 17 of the Framework Directive; and
 - d) **transparent** as the purpose of the revised condition is clear and what CPs will need to do in order to comply with the new condition A2 is also clear.

Proper and effective functioning of the network

Consultation proposals

4.35 The current GC 3 (condition A3, as re-numbered) requires CPs to comply with certain obligations to ensure their network is functioning at all times, including in the event of disaster. In the following paragraphs (4.36-4.41), we summarise the proposals that we set out in the August 2016 consultation (paragraphs 4.25-43) in relation to this condition.

Proper and effective functioning of the network

4.36 Currently, GC 3.1(a) requires CPs to take all necessary measures to ensure the proper and effective functioning of their network. We proposed to remove this requirement because s105A(4) of the Act imposes an equivalent requirement.

Restrictions on network access

4.37 Currently, GC 3.2 requires CPs to ensure that any restrictions it imposes on access to and use of a public communications network it provides on the grounds of ensuring compliance with GC 3.1 are proportionate, non-discriminatory and based on objective criteria. We proposed to remove GC 3.2 as we provisionally considered that any potential restriction to network access imposed on other CPs at the wholesale level could be addressed by Ofcom's powers deriving from the Access Directive. To the extent that GC 3.2 prevents network providers from using GC 3.1 as a basis for imposing undue restrictions to network access (and use) directly on end-users, we considered that the drafting changes to the current GC 3.1 introduced in 2011³⁷ make it clear that any potential restriction should be limited to the minimum necessary, and therefore should not give rise to disproportionate or discriminatory behaviour towards end-users.

Service availability in disasters

4.38 The current GC 3.1(b) and 3.1(c) (condition A3.2, as re-numbered) require CPs to ensure the fullest possible availability of their network and telephone services in the event of disaster, and uninterrupted access to emergency organisations. We proposed to retain these requirements, with some minor drafting changes, as they address important policy concerns.

Withdrawal of guidance on battery back-up

4.39 We noted in the August 2016 consultation that we had announced in the Digital Communications Review that we were withdrawing the guidance issued under GC 3 about

³⁷ Before the changes introduced in 2011, GC 3.1 required CPs to take "all reasonably practicable steps" to maintain their networks and services and access to emergency services. In 2011, we replaced the words "all reasonably practicable steps" with "all necessary measures" and we added the words "fullest possible" with reference to maintaining availability in the event of catastrophic network breakdown or in case of force majeure. See Ofcom's Statement "Changes to General Conditions and Universal Service Conditions" of 25 March 2011, paragraphs 5.1-5.24 (<http://stakeholders.ofcom.org.uk/binaries/consultations/gc-usc/statement/Statement.pdf>)

the use of battery back-up to protect against localised power outages. We announced in the DCR Statement (§ 8.14) that we will assess what operators are doing on a case-by-case basis provided the technical solution delivers an equivalent level of effective protection. This is taking place within the scope of Ofcom’s work on the future of voice telephony, i.e. the transition from the PSTN to all-IP networks.

Providers of VoIP call services

4.40 Currently, Annex 3 to GC 14 contains a number of provisions concerning service availability and access to emergency calls that apply to providers of VoIP call services. In the August 2016 consultation (paragraphs 4.38-4.40), we made the following proposals:

- a) we proposed to move some of these requirements into GC 3 (conditions A3.3 and A3.7, as re-numbered for consultation) without making any substantive changes to these provisions. Specifically, we proposed to continue to require VoIP providers whose customers can make calls to national/international numbers to inform them that access to emergency calls may cease if there is a power cut or power failure or a failure of the broadband connection (as currently set out in paragraph 11(a) of Annex 3 to GC 14). As we clarified in the December 2016 consultation (paragraph 8.16), we were not proposing to expand the scope of these requirements, which currently apply in respect of consumers and small businesses;
- b) we proposed to define “VoIP Call Service” as “a service that allows End-Users to make a voice call to a number included in a national or international telephone numbering plan using an internet connection where the VoIP Call Service is provided independently of the provision of the internet connection”; and
- c) we proposed to remove other requirements imposed on VoIP providers under Annex 3 to the GC 14³⁸ on the grounds that they now go beyond what is necessary to achieve the original policy objectives of providing additional information to VoIP customers in order to ensure that are aware of the specific characteristics of the services they buy.

Combination of GC 3 and GC 4

4.41 We proposed to combine the current GC 3 and GC 4 into a single condition entitled “Availability of services and access to emergency services”, so that the main requirements concerning access to emergency services will be set out in one place.

Stakeholders’ responses and Ofcom assessment

4.42 We received comments from a confidential respondent [redacted], BT, CCP and ACOD, ITSPA, Microsoft, Nine Group and Vodafone.

³⁸ Paragraphs 5-7, 10 and 11(b)-(d) of Annex 3 to GC 14.

Proper and effective functioning of the network

- 4.43 Vodafone agreed with our proposal to remove the current GC 3.1(a) on the basis that “duplication of material is undesirable so [old] GC3.1a and 3.2 should be removed” (p.9). However, Vodafone said that “it is unfortunate that CPs now need to know that what is effectively a GC is buried deep within the Communications Act” (and in an amendment to that), and suggested that Ofcom should keep its guidance³⁹ on compliance with section 105A(4) of the Act with the GCs “in order to minimise the number of locations that CPs need to be aware of” (p.9).
- 4.44 We have accepted Vodafone’s suggestion by referring to Ofcom’s “Guidance on security requirements in sections 105A to D of the Communications Act 2003” of 8 August 2014 in a footnote to condition A3 (as re-numbered).

Restrictions on network access

- 4.45 As mentioned above, Vodafone agreed with our proposal to remove also the current GC 3.2, on the basis that “duplication of material is undesirable”.

Service availability in disasters

- 4.46 BT suggested that:
- a) the phrase “to the greatest extent possible” in the new condition A3.2(b) (as proposed for consultation), should be removed or explained, as it is not in Article 23 of the USD (p.6) and it is incompatible with the principles set out in Articles 8(1) and 8(5) of the Framework Directive, which includes proportionality (p.7);
 - b) the test of what constitutes “all necessary measures” in the new condition A3.2, and “to the greatest extent possible” in the new condition A3.2(b) (as proposed for consultation) should be interpreted in the context of the technology employed at the network layer (p.8); and
 - c) “it is necessary to separate catastrophic failure of the underlying network from the provision of the OTT service”. BT sought guidance from Ofcom on what measures are required to comply with the requirements set out in the new condition A3.2.
- 4.47 Although the words “to the greatest extent possible” are not set out in Article 23 of the Universal Service Directive,⁴⁰ we do not agree with BT’s comment that these words are incompatible with our duty to apply “objective, transparent, non-discriminatory and proportionate” regulatory principles (Art. 8(5) of the Framework Directive). However, since we would ensure proportionality even in the absence of such words, we have removed

³⁹ Ofcom guidance on security requirements in sections 105A to D of the Communications Act 2003, 8 August 2014 (https://www.ofcom.org.uk/data/assets/pdf_file/0021/51474/ofcom-guidance.pdf).

⁴⁰ This provision requires Member States to “ensure that undertaking providing publicly available telephone services take all necessary measures to ensure uninterrupted access to emergency services”.

these words from condition A3.2(b) (as re-numbered) on the basis that they are unnecessary, and to remain strictly consistent with the wording of Art. 23 USD. We have recently carried out two investigations into compliance with this condition⁴¹. These cases provide guidance on the actions that we would normally expect CPs to take in order to ensure that end-users have access to emergency services.

- 4.48 In relation to the other comments provided by BT, as we said in May 2011,⁴² we have reservations as to whether any general guidance on the application of condition A3.2 is likely to be effective, noting especially the fast-changing nature of services and underlying technologies. However, as mentioned above, Ofcom's recent investigations into compliance with this condition provide industry with some guidance.

Providers of VoIP outbound call services

- 4.49 We received the following comments in relation to our proposal to retain certain requirements of the current Annex 3 to GC 14 and to incorporate them into the new condition A3:
- 4.50 Nine Group, ITSPA and the CCP and ACOD agreed with our proposal. In particular:
- a) the CCP and ACOD welcomed our proposals to retain the requirement on VoIP providers to inform customers who can make calls to national/international numbers that access to emergency calls may cease if there is a power cut or a power failure or a failure of their broadband connection (condition A3.3); and
 - b) ITSPA agreed with Ofcom's view that it is no longer necessary to require VoIP providers to inform customers that the voice calls service as a whole may cease in the event of a power cut/failure of the broadband connection. According to ITSPA, "there is now a general acceptance amongst customers of VoIP telephony as a tried and tested, innovative, secure and reliable service".
- 4.51 Vodafone said that "it finds it curious that Ofcom continues to regulate on a technology-centric basis, with specific requirements placed on VoIP call services" (p.9). BT made this general comment: "there should be more de-regulation of all voice services as opposed to more regulation of all voice services" (p.6). We clarify, in this respect, that we are reducing the regulation of VoIP call services. In the August 2016 consultation, we proposed to remove a number of requirements which we consider are no longer necessary (paragraphs 4.40 and 4.60-4.61) and to retain two specific provisions that, in our view, remain

⁴¹ Ofcom's own-initiative investigation into Three concerning its compliance with Section 105A(1) – (3) of the Communications Act 2003 and General Condition 3.1 (https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01190) and Ofcom's own-initiative investigation into KCOM Group concerning its compliance with Section 105A(1) – (3) of the Communications Act 2003 and General Condition 3.1 (https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01176).

⁴² Ofcom's statement of 25 May 2011, entitled "Changes to General Conditions and Universal Service Conditions", paragraph 5.12.

important for consumer protection (condition A3.3), or for clarifying what industry has to do to comply with the current regulatory framework (condition A3.7, as proposed for consultation).⁴³

- 4.52 In relation to condition A3.3, we received comments from BT, Microsoft and Vodafone.
- 4.53 BT and Microsoft sought clarification that the new condition A3.3 would apply only to CPs providing services to consumers and small businesses, and that we are not proposing to expand the scope of these provisions. They made a similar comment in relation to the new condition A3.6(c) (see paragraph 4.91 below). As we clarified in the December 2016 consultation (paragraph 8.16), we were not proposing to expand the scope of these requirements, and have therefore revised the text of condition A3.3 to limit its scope of application to “Domestic and Small Businesses Customers”.
- 4.54 Vodafone said that “the requirement to inform customers of shortcomings in services should there be a domestic power cut should apply to any service that is reliant on a local electricity supply” (pp. 9/10). In relation to the drafting of that condition, Vodafone suggested that we should remove the words “who provide VoIP Call Services” after “Regulated Providers” on the basis that these words are unnecessary. Vodafone made a similar comment in relation to condition A3.7 (as re-numbered for consultation; see paragraph 4.92 below).
- 4.55 In relation to Vodafone’s comments above, we do not consider it necessary to extend condition A3.3 beyond VoIP services:
- a) in the case of a traditional telephone service, power is provided to the telephone over the copper that connects it to the telephone exchange, and this means that it is still possible to make an emergency call in the event of a local power-cut. We recognise that if a customer chooses to use cordless phone (also known as “DECT” phones), this will stop working if there is a power cut as they require a basestation with independent mains power to work. However, since end-users need to charge their handset on a regular basis via the basestation or a separate mains powered charger, we think it should be more apparent to end-users that they may stop working without electricity;
 - b) in contrast, with a VoIP service, there is typically no simple or inexpensive equipment choice that the customer can make which will result in protection against main power failure for extended periods. Also, it may be less obvious to the customer which equipment, such as their broadband router, may need to be protected, as it not as directly related to use of the telephone service;
 - c) in the case of fibre operators, we announced in the DCR Statement (§ 8.14) that we will assess what operators are doing on a case-by-case basis provided the technical solution delivers an equivalent level of effective protection. This is taking place within the scope of Ofcom’s work on the future of voice telephony, i.e. the transition from the PSTN to all-IP networks.

⁴³ See paragraphs 4.39 and 4.57-4.58 of the August 2016 consultation.

- 4.56 We have removed the words “who provide VoIP Call Services” because we agree with Vodafone’s comments that these words are redundant.
- 4.57 BT, Microsoft and Vodafone provided comments on the definition that we proposed for “VoIP Call Service”:
- a) BT argued that our proposed definition of “VoIP Call Service” conflicts with Article 26(2) USD because the USD refers only to national numbers whereas our proposed definition refers to a “national or international numbering plan” (p.5). In addition, BT quoted Recital 23 of the USD and said that it considers that “Ofcom should align its wording with the USD and take a technologically neutral approach by referring to “network-independent undertakings” rather than refer to specific protocols and services used in either fixed or mobile context” (pp. 5/6);
 - b) Microsoft did not think it was necessary to separately define “VoIP Call Service” because “the GCs do not delineate potential communications services according to underlying technology or network architecture” (p.3). Microsoft proposed that, if Ofcom does define “VoIP Call Service”, the definition should be amended as follows (the words underlined are those that Microsoft proposed to insert, the words struck through are those that Microsoft proposed to delete):

“‘VoIP Call Service’ means [~~a service~~] an Electronic Communications Service that allows End-Users to make a voice call to a number included in ~~a national or international telephone numbering plan~~ the National Numbering Plan using an internet connection where the VoIP Call Service is provided independently of the provision of the internet connection but shall exclude any Click to Call Service”;

- c) Vodafone suggested that we used the wrong terminology because “VoIP in the usual sense includes that provided over private IP networks as well as that on the public internet”, whereas Vodafone thought that by using the term “internet connection” (instead of referring to the use of “IP technology”), we intended to refer to the public internet only (p.9).
- 4.58 We think that referring to “VoIP Call Services” makes this condition clearer by specifying how this condition applies in relation to these services. Therefore, we have retained reference to “VoIP Call Services” in this condition and to define this term. However, we have revised our proposed definition of “VoIP Call Services” in line with BT’s and Microsoft’s comments by removing reference to the ability to make international calls, to remain strictly consistent with Art. 26(2) of the Universal Service Directive.
- 4.59 In light of Microsoft’s comment, we have also specified in the definition of “VoIP Call Services” that any “Click to Call Service” is excluded, which is consistent with the approach adopted in condition A3.1(c).
- 4.60 In relation to Vodafone’s comment on terminology, we note that we did intend to refer to the public internet only. Therefore, we do not consider it necessary to amend the definition of “VoIP Call Services” to clarify this point.
- 4.61 Microsoft said that the specification about the inclusion of VoIP Call Services in the proposed condition A3.1(a), which sets out the scope of application of condition A3.2, “is

ambiguous and could suggest that VoIP Call Service is a Publicly Available Telephone Service”. Microsoft suggested the following amendment to the words in brackets in condition A3.1(a) (p. 4/5): “(including a VoIP Call Services that is a Publicly Available Telephone Service)”⁴⁴. We note that a VoIP service will fall within the definition of a “Publicly Available Telephone Service” (“PATS”), if it allows end-users to receive calls from traditional fixed or mobile phones using numbers from the national telephone numbering plan, in addition to allowing them to make calls to these numbers. Therefore, we have removed the words in brackets in condition A3.1(a) (i.e. “(including VoIP Call Services)”), on the grounds that any VoIP service which is also a PATS will continue to fall within the scope of the revised condition. For clarity, we have also replaced the words “VoIP Call Service” with the words “VoIP Outbound Call Service” and specified in the revised definition that these services allow customers to make, “but not receive”, calls.

- 4.62 For consistency with the method of publication required in other conditions (conditions C2.12(b) and C3.12(b)), we have made some drafting changes to condition A3.3 (as proposed for consultation) to clarify that the requirement to inform customers “in a clear and readily accessible manner” means providing information “in plain English and in an easily accessible manner”.

Combination of GC 3 and GC 4

- 4.63 Nine Group and Vodafone agreed with our proposal to combine GCs 3 and 4. However, Vodafone suggested that “Ofcom would be better to place the proposed GC3.4 prior to the proposed GCs 3.2 and 3.3” because “GC3.2 and GC3.3 provide obligations around continued availability of access to the emergency services, yet it is only in GC3.4 that the requirement to actually provide access to 999/112 is stated” (p.11). We think that condition A3.3 should remain immediately after condition A3.2(b) because it sets out an information requirement which is strictly related to the CPs’ requirement to ensure uninterrupted access to emergency organisations.

Withdrawal of guidance on battery back-up.

- 4.64 We received the following comments on the issue of battery back-up:
- a) a confidential respondent [X] said that it is not aware of having been engaged in a conversation regarding alternatives to battery back-up where its fibre to the premises services are simultaneously used for voice services;
 - b) BT argued that “it is disproportionate and discriminatory to impose battery back-up for PSTN in the absence of an appropriate obligation for VoIP and voice services using other technologies” (p.7); and
 - c) Vodafone acknowledged that it would be inappropriate to have specific requirements in relation to battery back-up in the GCs. However, it commented that: “It is an

⁴⁴ The underlined words are those that Microsoft suggested to add.

obligation or it is not. We are either competing on a level playing field or we are guessing compliance standards. There is no room for bilateral guidance”.

- 4.65 We announced in the DCR Statement (§ 8.14) that we will assess what operators are doing on a case-by-case basis provided the technical solution delivers an equivalent level of effective protection. This is taking place within the scope of Ofcom’s work on the future of voice telephony, i.e. the transition from the PSTN to all-IP networks.

Ofcom’s decision

- 4.66 We have decided to implement the proposals concerning the proper and effective functioning of the network which we set out in the August 2016 consultation (paragraphs 4.25-4.43), with the following revisions:
- a) we have removed the words “(including VoIP Call Services)” in condition A3.1(a);
 - b) we have inserted a reference to Ofcom’s “Guidance on security requirements in sections 105A to D of the Communications Act 2003” of 8 August 2014 in a footnote to the revised condition;
 - c) we have removed the words “to the greatest extent possible” in condition A3.2(b);
 - d) we have removed the words “who provide VoIP Call Services” after “Regulated Providers” in condition A3.3 and replaced the words “in a clear and readily accessible manner” with the words “in plain English and in an easily accessible manner”; and
 - e) in the definition of “VoIP Outbound Call Service”, we have removed reference to the ability to make international calls and we have specified that any “Click to Call Service” is excluded.
- 4.67 The revised text of the condition that will combine and replace the current GCs 3 and 4 can be seen at Annex 14 (see condition A3).

Emergency call numbers

Consultation proposals

- 4.68 The current GC 4 (condition A3, as re-numbered) requires CPs to ensure that end-users can access the emergency services by calling emergency call numbers “112” and “999” free of charge, and, where technically feasible, make caller location information available to the emergency services. In the following paragraphs (4.69-4.75), we summarise the proposals that we set out in the August 2016 consultation (paragraphs 4.48 – 4.70) in relation to this condition.

Main proposal (retain this condition without any substantive change)

- 4.69 We proposed to retain this condition without any substantive change because we consider that it works effectively.

Extension of GC 4.1 to “eCalls”

4.70 Currently, GC 4.1 requires CPs to ensure that end-users can call emergency numbers free of charge. We proposed to make it clear in the revised condition that this obligation will also apply to access to emergency organisations by means of eCalls from 1 October 2017. We proposed to adopt the same definition of an “eCall” as that set out in Article 2(h) of the Commission Delegated Regulation (EU) 305/2013⁴⁵. In brief, these are calls generated by devices to be installed in new types of passenger cars and light commercial vehicles manufactured after 31 March 2018 which will automatically call the nearest emergency centre via a mobile wireless communications network in the event of an accident.

Providers of VoIP call services

4.71 Currently, GC 4 does not specify what location information VoIP providers are expected to provide to emergency organisations in order to comply with GC 4. This is covered by Annex 3 to GC 14 (paragraphs 12(a) and 12(b)). We proposed to retain the specifications in Annex 3 to GC 14, as we think they help industry understand how to comply with the regulatory framework, and move them into the main text of the revised condition.

4.72 We proposed to remove the requirement on VoIP providers who provide access to 999/112 to inform their customers that they do not offer location information to the emergency service operators (if this is the case) at the point of signature, in any guide to using the voice call service, in the contract and as part of the sales process (paragraph 12(d) of Annex 3 to GC 14). We considered this requirement is no longer necessary because we are concerned with VoIP providers whose customers can make calls to national/international numbers and these providers are obliged, to the extent technically feasible, to make accurate and reliable caller location information available.

4.73 We also proposed to remove the requirement on VoIP providers who provide access to 999 and/or 112 to inform their customers of any limitations on the location information that will be provided to the emergency services if the location information they have provided is not up-to-date (paragraph 12(c) of Annex 3 to GC 14), because we think that the obligation to recommend that customers update their location information if the VoIP service is accessed from several locations (paragraph 12(b) of Annex 3 to GC 14), which we are retaining, is sufficient to achieve the original objectives of ensuring customers are well informed and ensuring maximum availability of emergency service access.

⁴⁵ ‘eCall’ is defined in Article 2(h) as an in-vehicle emergency call to 112, made either automatically by means of the activation of in-vehicle sensors or manually, which carries a standardised minimum set of data and establishes an audio channel between the vehicle and the eCall public safety answering point (“PSAP”) via public mobile wireless communications networks.

Other drafting changes

- 4.74 GC 4.3(b) currently requires mobile providers to provide caller location information (“CLI”) including at least the cell identification of the cell from which the call is made, or, in exceptional circumstances, the zone code⁴⁶. We proposed to clarify in the condition that exceptional circumstances are circumstances where the cell identification is temporarily unavailable for technical reasons. We also invited comments from stakeholders on whether we should continue to allow mobile operators to provide the Zone Code rather than the Cell Identification in exceptional circumstances (paragraph 4.65(b) of the August 2016 consultation).
- 4.75 We also proposed some further drafting changes, including the following proposals:
- a) we proposed to remove the definition of “Communications Provider” and set out upfront, at the beginning of the revised condition, the persons to whom it shall apply (referring to them as “Regulated Providers”). For the avoidance of doubt, we specified that this drafting change would not modify the current scope of application of this condition. In particular, we said that organisations maintaining a private communications network that is not available to the public, such as a company using a private branch exchange (‘PBX’) solely to route calls to and from its employees, would continue to be excluded from its scope of application (paragraph 4.64 of the August 2016 consultation);
 - b) we proposed to refer to a “Mobile Service” rather than a “Mobile Network” and to adopt the definition of “Mobile Service” which is currently set out in GC 23.11(f) (paragraph 4.65(a) of the August 2016 consultation). In the December 2016 consultation (paragraph 12.34(b)), we proposed to have a single definition of mobile services in the GCs, which would be “Mobile Communications Service”; and
 - c) we proposed to simplify the definition of “Pay Telephone” which is set out in the current GC 4.4(f) and the definition of “Public Pay Telephone” which is currently set out in the Definitions section.

Stakeholders’ responses and Ofcom assessment

- 4.76 Eight stakeholders responded specifically to our proposals on this condition: a confidential respondent [X], BT, the CFA, the CCP and ACOD, Microsoft, Nine Group, Virgin Media and Vodafone.

Main proposal (retain this condition without any substantive changes)

- 4.77 In relation to our proposals to retain this condition without any substantive changes, we received comments from a confidential respondent [X], the CFA and BT.
- 4.78 A confidential respondent [X] disagreed with our view that GC 4 is functioning effectively presently because it argued that the increasing prevalence of nomadic VoIP services is

⁴⁶ A zone code is a code which identifies the geographic region in which a call was originated.

“incompatible with a regime which presumes that the majority of numbers are associated with a fixed abode” (p.7). This respondent suggested that “Ofcom could benefit the industry by sponsoring a work stream, either itself or through the OTA” on some of the issues related to the implementation of GC 4 and said that it would welcome Ofcom sharing with industry any underlying trends or issues that Ofcom’s own-initiative investigation has uncovered. We note that on 22 February 2017 we extended for a further 12-month period our own-initiative enforcement programme into compliance with this condition.⁴⁷ Therefore, we will continue to monitor and engage with CPs to ensure that end users can access emergency call numbers and that accurate caller location information is available to the emergency services.

- 4.79 The CFA commented that it “is supportive of the comments made by BT⁴⁸ in relation to GC 4 with regards to use of GPS location and other forms of access such as text, IM and social media.” Vodafone said, instead, that it welcomed Ofcom’s proposal in relation to “emergency service location” because the use of smartphones is “by no means universal, and initiatives to use GPS information are nascent, with support even in smartphones not yet comprehensive” (p. 10). The CFA provided also this comment: “We feel that the way in which many members of the public use the telecoms facilities available mean that there are considerable opportunities to introduce improvements to the emergency call system and that Ofcom is well placed, through the GCs, to drive positive change” (p.1).
- 4.80 As we said in the August 2016 consultation (paragraph 4.56), CPs are not prevented from going beyond the minimum requirements set out in this condition and providing alternative means of accessing emergency services. We have been engaging with recent initiatives in this area, and we will continue to support them.
- 4.81 BT suggested that we define ‘Emergency Calls’ to ensure that “there is no regulatory creep from what is intended under GC3 into calls provided in non-emergency situations”⁴⁹ (p.10). In addition, BT suggested that we amend the proposed GC 3.4 (condition A3.4, as re-numbered) so that it would refer to “dialling codes” (instead of “emergency call numbers”) and include “18000” (the emergency dialling code for text relay) along with “999” and “112”.⁵⁰ Also a confidential respondent [redacted] said that it is “unclear as to why access to 18000 (emergency services by a text-relay device) is in GC15 presently and not GC4”. We

⁴⁷ https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_996

⁴⁸ See BT’s comments at paragraph 4.46 of the August 2016 consultation, and Ofcom’s response at paragraph 4.50 of the August 2016 consultation.

⁴⁹ BT proposed the following definition: “*Emergency Call means: a communication by an End-User with an Emergency Organisation to request an immediate response from that Emergency Organisation. The communication may take the form of a voice call; a text call made via a Relay Service; a Mobile SMS Access; or an eCall made via a Mobile Service using an in-vehicle system*” (p.11).

⁵⁰ In BT’s view, that condition should read as follows: “*The Regulated Providers must ensure that all End-Users can make Emergency Calls to access Emergency Organisations by using the dialling codes “112” and “999” and “18000” or an emergency service address at no charge and, in the case of a Pay Telephone, without having to use coins or cards. From 1 April 2018, in the case of Regulated Providers providing Mobile Services, this obligation shall also apply to access to Emergency Organisations by using eCalls from an in-vehicle system.*”

do not consider it necessary to insert a definition of “Emergency Call” and we cannot avoid the risk of people calling “112” or “999” in situations which are not real emergencies. We recognise the importance of “18000”, which is the number that people with hearing or speech impairments may use to communicate with an emergency organisation through a relay assistant. We cannot add “18000” in the revised condition because, unlike “112” and “999”, this number has not been designated in the Numbering Plan as a number for “Access to emergency services”. However, we have inserted a footnote to condition A3.4 to refer to conditions C5.8 and C5.9 (“Relay service”) and Condition C5.10 (“Mobile SMS access to emergency organisations”).⁵¹

Extension of GC 4.1 to eCalls

- 4.82 We received the following comments on our proposals in relation to access to emergency services through eCalls:
- a) BT said that it is “very concerned that Ofcom has chosen to include eCalls within the new GC3”. BT recognised that eCalls will qualify as emergency calls but it said that it anticipates that “some development will be necessary to accommodate this change as well as the means to identify eCalls when they are received” (p.9). In BT’s view, if we are minded to include eCalls within the new GC3, “Ofcom could extend the implementation date significantly beyond October 2017 with minimal risk to end-users”. BT (p.9) suggested that we should add clarity on how eCalls can be provided by inserting the words “from an in-vehicle system” within condition A3.4 (as re-numbered);
 - b) Vodafone (p.10/11) suggested that the regulatory requirements for eCalls should be fully assessed before a condition is imposed on the initial call handler. Vodafone noted that call handling infrastructure is not yet in place and the commercial model and cost apportionment will need to be properly considered via a standalone process; and
 - c) Virgin Media questioned whether it would be more appropriate to make this change “once industry agreed methods of implementation have been discussed and agreed” (p.3).
- 4.83 The interoperable EU-wide eCall service is an important new service which is expected to reduce the number of fatalities and the severity of injuries caused by road accidents in the UK.⁵² In light of its life-saving nature, it is important that its implementation is not delayed. We note, in addition, that the deadline by which the infrastructure for the eCall system should be in place (i.e. 1 October 2017) is set out in Decision 585/2014/EU of the European Parliament and of the Council of 15 May 2014 (Art. 1), which is directly applicable in the UK. Therefore, Ofcom cannot extend this deadline. Although the revised GCs will not enter into force until 1 October 2018, as set out in the August 2016 consultation (paragraph

⁵¹ These conditions aim to ensure that people with hearing or speech impairments can contact “112” and “999” by sending a text message, or by dialling “18000” from terminal equipment which is compatible with text relay (including textphones, Braille readers, personal computers and mobile telephones).

⁵² In addition, it may also bring savings to society by improving incident management and by reducing road congestion and secondary accidents. See Recital 5 of Decision 585/2014/EU.

4.53), we consider that GC4 in its current form already covers calls to emergency organisations generated by eCall devices. Therefore, from 1 October 2017, which is the date mandated by EU law, CPs will be required to comply with their obligation to ensure that end-users can access emergency organisations by means of eCalls.

- 4.84 We are no longer inserting reference to “1 October 2017” in the revised condition (condition A3.4), since that date will have already passed when the revised condition comes into force.
- 4.85 We do not consider it necessary to insert the words “from an in-vehicle system” within condition A3.4, as suggested by BT. This is because we have defined “eCall” by reference to the definition set out in Article 2(h) of the Commission Delegated Regulation (EU) 305/2013, which already contains these words (see paragraph 4.70 above).

Providers of VoIP call services

- 4.86 Stakeholders expressed mixed views on our proposal to remove certain requirements on VoIP providers (i.e. those currently set out in paragraphs 12(c) and 12 (d) of Annex 3 to GC 14) and to retain the current obligation to recommend that customers update their location information if the VoIP service is accessed from several locations (which is currently set out in paragraph 12(b) of Annex 3 to GC 14).
- 4.87 We received some supportive comments from stakeholders. Specifically, the CCP and ACOD (p. 2) said that they welcome “the retention and consolidation of the requirement for VoIP providers to require their customers to register their location if the VoIP is used mainly at a fixed location; and for those providers to recommend that customers update location information if the service is to be used from several locations”. Nine Group said that it agreed with our proposal to rationalise and reduce the requirements under the current Annex 3 to GC 14 and to incorporate these into the new GC 3. Virgin Media (p. 3) said that it “agree with the proposals to remove certain requirements imposed on VOIP providers under Annex 3 to GC14 concerning access to emergency services”.
- 4.88 We also received comments from stakeholders that expressed concerns about the proposed retention of the current obligation for VoIP providers to recommend that customers update their location information if the VoIP service is accessed from several locations (GC 3.7, as proposed for consultation – re-numbered as condition A3.7). Specifically:
- a) BT disagreed with our proposal because it considers that “end-users are unlikely to make the necessary amendments” and, in any case, “it is unlikely that the necessary technology could be put in place to reasonably manage these updates”. BT proposed, instead, that “nomadic VoIP service providers use the VoIP flag to indicate it is a default location only” (pp. 8/9). According to BT, “this will prevent the CHA [Call Handling Agent] from relying upon information that is inaccurate or incorrect and instead will prompt the CHA to verbally request the caller’s location” (p. 9);
 - b) Nine Group said that they are concerned about the proposed requirement on providers of VoIP services to provide location information under the new condition A3.7 because “for a truly nomadic service which may be used in a similar way to a mobile service i.e.

at multiple locations on the same day or even on the move in a vehicle, this is not a practical option for CPs”. According to Nine Group, “there is currently a provision to incorporate a marker on the emergency services database which indicates that the number is associated with a nomadic VoIP service” and “there is a clear indication on the screen which prompts the call handler to ask for the current location of the caller”. Nine Group suggested that “the new GC3 should mandate use of this facility for all nomadic VoIP services and provide a clear link to the industry guidelines on how to use the facility”;

- c) Virgin Media suggested that GC 3.7(b) (as proposed) “should be deleted, or at least not moved from Annex 3 to GC 14, until further discussions have taken place on how this should best work in practice” and made the following comments:
- i) it said that “the GC is most likely to affect the provision of multi-line Business VOIP solutions, which is a developing service” and that “it is premature to hard code a General Condition which may impact the development of efficient policy and standards which are being discussed across industry”;
 - ii) it would welcome “an industry-working group-led approach, and/or a consultation to address these issues further, perhaps with an appropriate GC to follow”;
 - iii) it questioned “whether GC 3.7(b) is the appropriate means to achieve the desired aim to properly capture, record and update multiple locations”.

4.89 We recognise that the requirement to recommend VoIP customers to register and update their location information might not be practical in all circumstances. However, it may provide emergency organisations with a starting point for tracking down the location of callers who are unable to speak. Therefore, we consider this requirement should remain in place and, since it is limited to a recommendation only (i.e. CPs are not required to ensure that VoIP customers do update their location information), it does not impose any disproportionate burden on industry.

4.90 In relation to BT’s and Nine Group’s suggestion that we should mandate use of the “VoIP flag” (i.e. a flag that highlights to the emergency operator that the call is from a VoIP service), we note that industry already adopts this functionality and we would expect industry to continue to do so. Therefore, we do not consider it necessary to introduce a new regulatory requirement. We note that BT requires CPs interconnecting with it for access to emergency services to provide a “VoIP flag” or a “VoIP indicator” and we support this approach.

4.91 BT and Microsoft sought clarification that the new condition A3.7 (as proposed) would apply only to CPs providing services to consumers and small businesses, and that we were not proposing to expand the scope of these provisions (see also paragraph 4.52, in relation to condition A3.3). As we clarified in the December 2016 consultation (paragraph 8.16), we were not proposing to expand the scope of these requirements, and have therefore revised the text of condition A3.6(c) (as re-numbered) to limit its scope of application to consumers and small businesses.

4.92 In relation to the drafting of that condition, we received comments from Vodafone (p.10) and BT:

- a) BT suggested that we include the provisions of GC A3.7 as additional items within condition A3.6 (as re-numbered); and
- b) Vodafone suggested that the reference to “VoIP Call Services” at the beginning of GC 3.7 (as proposed) is redundant because condition A3.1(b) (as re-numbered) already provides that condition A3.6(c) applies to “any provider of a VoIP Call Service”. Vodafone made a similar comment in relation to GC 3.3 (as proposed; see paragraph 4.52 above).

4.93 We have incorporated GC 3.7 (as proposed) into condition A3.6, in line with BT’s suggestion (see condition A3.6(c)). In light of this change, we have retained the reference to the provision of “VoIP Outbound Call Services” in condition A3.6(c), as re-numbered, for clarity. In condition A3.6(c)(i), we have also replaced the word “require” with “recommend” for consistency with condition A3.6(c)(ii).

Other drafting changes

- 4.94 The CCP and ACOD welcomed the clarity in defining “exceptional circumstances” as those in which the cell identification is temporarily unavailable for technical reasons. To improve the clarity of this condition, we have also moved the words “and, where available, an indication of the radius of coverage of the cell” from the current definition of “Cell Identification” to condition A3.6(b).
- 4.95 Vodafone (p. 11) welcomed our clarification that private branch exchanges (“PBX”) would continue to be excluded from the scope of application of the condition A3.4 (as re-numbered).
- 4.96 BT asked Ofcom to clarify that “in respect of corporate products consisting of a VoIP overlay that interface with a PBX and provide 999/112 access over the PSTN, the modification to GC4 does not have the effect of requiring providers to provide 999/112 access over the VoIP overlay as well”, as stated in Ofcom’s statement of 5 December 2007, entitled “Regulation of VoIP services: Access to emergency services”. BT sought clarification as to whether that statement would remain in force following publication of the new version of the GCs (p.6). In relation to BT’s comment, we are not withdrawing Ofcom’s statement of 5 December 2007, which will remain in place.

Ofcom’s decision

- 4.97 We have decided to implement the proposals concerning access to the emergency services which we set out in the August 2016 consultation (paragraphs 4.44-4.71), with the following revisions:
 - a) we have inserted a footnote to condition A3.4 to refer to conditions C5.8 and C5.9 (“Relay service”) and Condition C5.10 (“Mobile SMS access to emergency organisations”);
 - b) we have incorporated the requirements for VoIP providers concerning the provision of Caller Location Information into condition A3.6 (see condition A3.6(c));

- c) as explained above (paragraph 4.66), in the definition of “VoIP Outbound Call Services”, we have removed reference to the ability to make international calls and we have specified that any “Click to Call Service” is excluded.

4.98 The revised text of the condition that will combine and replace the current GCs 3 and 4 can be seen at Annex 14 (see condition A3).

Legal tests

4.99 We consider that the changes that we have decided to make to the current GCs 3 – 4 (condition A3, as re-numbered) and the conditions themselves meet the test for setting or modifying conditions set out in section 47(2) of the Act. These changes are:

- a) **objectively justifiable** as we think that:
 - i) following the insertion into the Act of the obligation on network providers to take all appropriate steps to protect their network availability in 2011 (s.105A(4)), the inclusion of an equivalent provision in the general conditions (i.e. the current GC 3.1(a)) has become redundant;
 - ii) the current GC 3.2 could be removed because we consider that any potential restriction to network access imposed on other CPs at the wholesale level could be addressed by Ofcom’s powers deriving from the Access Directive, if necessary;
 - iii) certain specific requirements on VoIP providers about network availability and access to emergency calls which are currently set out in Annex 3 to GC 14 (paragraphs 5-7, 10 and 11(b)-(d)) are no longer needed as they are now going beyond what is necessary to achieve the original policy objectives;
 - iv) we think that it is no longer necessary to require VoIP providers who provide access to 112/999 to inform their customers that they do not offer location information to the emergency services operators (if this is the case) at the point of signature, in any guide to using the voice call service, in the contract and as part of the sales process because VoIP providers whose customers can make calls to national numbers are obliged, to the extent technically feasible, to make accurate and reliable caller location information available;
 - v) we think that it is no longer necessary to require VoIP providers who provide access to 112/999 to inform their customers of any limitations on the location information that will be provided to the emergency services if the location information they have provided is not up-to-date (paragraph 12(c) of Annex 3 to GC 14). We consider the original policy objectives that this obligation was imposed to achieve can continue to be achieved by retaining the less onerous obligation of recommending that customers update their location information if the VoIP service is to be accessed from several locations;
- b) **not unduly discriminatory** as the revised condition will apply equally to all CPs to which GCs 3 and 4 currently apply;

- c) **proportionate** as we think that the parts of the current GCs 3 and 4 that we have retained are the minimum necessary to implement Articles 23 and 26 of the Universal Service Directive; and
- d) **transparent** as the purpose of the changes that we have made is to increase clarity and, therefore, transparency.

Emergency planning

Consultation proposals

4.100 The current GC 5 (condition A4, as re-numbered) requires CPs to co-operate with central and local government departments and the authorities responsible for emergency operations to make arrangements for the provision or rapid restoration of the communications services which are needed in the event of disasters and major incidents. In the following paragraphs (4.101-4.103), we summarise the proposals that we set out in the August 2016 consultation (paragraphs 4.72-4.80) in relation to this condition.

Main proposal (retaining this condition)

4.101 We proposed to retain this condition, as it is an important backstop power that has encouraged industry to maintain emergency planning voluntarily.

Definition of “disaster”

4.102 We proposed some minor drafting changes to simplify this condition, such as incorporating the definition of “Disaster” into the condition where this term appears, and specifying upfront the categories of CPs to whom the condition applies.

The 2003 Direction

4.103 We also proposed to update Oftel’s direction of 30 July 2003⁵³, which specifies the central and local government departments which are relevant for the purposes of condition A4.2(b), by consulting on a revised direction in due course. We said that, pending revision of the direction, the direction will continue to apply in its current form.

Stakeholders’ responses and Ofcom assessment

4.104 Five stakeholders responded specifically to our proposals on emergency planning. Those stakeholders were: a confidential respondent [redacted], BT, the CCP and ACOD, the CFOA and Vodafone.

⁵³ On 30 July 2003, Oftel issued a direction which specifies a list of central and local government departments for the purposes of the current GC 5.1(b).

Main proposal (retaining this condition)

4.105 BT, the CCP and ACOD, the CFA and Vodafone all supported our proposal to retain this condition as it is a valuable backstop power. The CFA also noted that “GC 5 may be particularly useful in encouraging emergency planning or restoration efforts where remote areas which are less commercially attractive are concerned”. We have therefore decided to retain this condition.

Definition of “Disaster”

4.106 BT sought clarification on what exactly the obligation in this condition would entail where it relates to “any incident of contamination involving radioactive substances or other toxic materials incident” and the rationale for including it.

4.107 This condition was set under section 51(1)(e) of the Act, which allows Ofcom to impose “conditions for requiring the provision, availability and use, in the event of a disaster, of electronic communications networks, electronic communications services and associated facilities” through general conditions.⁵⁴ The Act (section 51(7)) specifies that:

- a) the term “disaster” “includes any major incident having a significant effect on the general public”; and
- b) “a major incident includes any incident of contamination involving radioactive substances or other toxic materials”.

4.108 Therefore, the definition of “Disaster” in the current GC 5.4(b), which we proposed to incorporate into the paragraph where this term appears (condition A4.2, as re-numbered) to simplify this condition, mirrors the definition set out in legislation. In response to BT’s requests for clarification, we note that:

- a) the risk of an incident of contamination involving radioactive substances or other toxic materials is still a valid concern. We note, in particular, that there are a number of operational nuclear reactors in the UK. Consequently, the rationale for including such provision remains valid;
- b) the wording of this condition makes it clear that in an incident of contamination involving radioactive substances or other toxic materials, as in any other disaster situation, CPs would be required to make arrangements for the provision or rapid restoration of such communications services as are practicable and as may reasonably be required. In the unfortunate event of a disaster, the exact nature of any such arrangements would depend on the specific circumstances of that event.

4.109 For these reasons, we have decided to retain reference to “any incident of contamination involving radioactive substances or other toxic materials incident” in condition A4.2 (as re-numbered).

⁵⁴ This enabling power derives from Condition 12 of Part A of the Annex to the Authorisation Directive.

The 2003 Emergency Planning Direction

- 4.110 A confidential respondent [X] disagreed with our proposal to remove those direction-making powers that we have never used unless we consider that there is a compelling reason to retain them and specified that its comments “can be read across into Ofcom’s proposal on GC 5”.
- 4.111 Condition A4.2 (as re-numbered) gives Ofcom the power to direct which department of central and local government may request CPs to consult them for the purpose of making “emergency planning arrangements”. In the August 2016 consultation, we noted that Oftel issued a direction on 30 July 2003 (which is still in force) and we proposed to consult on a revised direction in due course. In this document (paragraphs 4.115-4.121), we are setting out our proposals for updating that direction. For the avoidance of doubt, we did not propose to remove this direction-making power.

Ofcom’s decision

- 4.112 We have decided to implement the proposals concerning emergency planning which we set out in the August 2016 consultation (paragraphs 4.72-4.80). We have slightly revised the text of Condition A4.1, by specifying that the relevant networks are those “over which a Publicly Available Telephone Service is provided”, so that this condition will continue to apply to the same persons to whom it currently applies, in line with our consultation proposals.⁵⁵
- 4.113 The revised text of the condition that will replace the current GC 5 can be seen at Annex 14 (see condition A4).

Legal test

- 4.114 We consider that the changes that we have decided to make to the current GC 5 (Condition A4, as re-numbered), and the condition itself, meet the test for setting or modifying conditions set out in section 47(2) of the Act. These changes are:
- a) **objectively justifiable** as we think that the requirements concerning emergency arrangements in condition A4 are still necessary as an important backstop and so we are retaining them;
 - b) **not unduly discriminatory** since condition A4 will continue to apply equally to any CP who provides a Publicly Available Telephone Service or a Publicly Electronic

⁵⁵ The current condition applies to “a person who provides a Public Communications Network and/or provides Publicly Available Telephone Services”, where “Public Communications Network” means “an Electronic Communications Network used wholly or mainly for the provision of Public Electronic Communications Services which support the transfer of information between Network Termination Points”. In Annexes 9 and 10 to the August 2016 consultation, we omitted the definition of “Communications Provider” and we defined the scope of application of the revised condition as follows: “any Communications Provider who provides a Public Electronic Communications Network and/or Publicly Available Telephone Services”. In other words, we replaced “Public Communications Network” with “Public Electronic Communications Network”. We have revised our proposal so that this condition will apply to “any Communications Provider who provides a Publicly Available Telephone Services and/or a Public Electronic Communications Network over which a Publicly Available Telephone Service is provided”.

Communications Network over which a Publicly Available Telephone Service is provided;

- c) **proportionate** as retaining the current condition will not impose any additional burden on CPs; and
- d) **transparent** as the reasons for retaining this condition are explained above and its effects are clear to CPs on the face of this condition.

Consultation on updating the 2003 Oftel Direction

Introduction

- 4.115 Condition A4.2 (as re-numbered) requires CPs to make arrangements for the restoration of communications services in disaster situations, on the request of the emergency organisations, or any department of central or local government that Ofcom directs. The revised condition reads as follows:

“A4.2 Subject to **Condition A4.4, Regulated Providers** shall, on the request of and in consultation with:

- (a) the authorities responsible for **Emergency Organisations**; and
- (b) such departments of central and local government as **Ofcom** may from time to time direct for the purposes of this **Condition**,

make arrangements for the provision or rapid restoration of such communications services as are practicable and may reasonably be required in disasters (including in any major incident having a significant effect on the general public and in any incident of contamination involving radioactive substances or other toxic materials).”

- 4.116 The direction in force under the current GC 5.1(b) (the “**2003 Oftel Direction**”)⁵⁶ was issued in 2003 by Oftel, one of Ofcom’s predecessors. It is now out of date in that it refers to central and local government departments that no longer exist, but does not refer to departments that may be relevant now, but which were formed after the date the 2003 Oftel Direction came into force.
- 4.117 We are therefore now consulting on updating the 2003 Oftel Direction, and we propose that the revised direction would come into force on the same date as the revised GCs (i.e. **1 October 2018**).

Consultation proposal

- 4.118 We propose to update and simplify the 2003 Oftel Direction by replacing the current lists of central and local government departments and local government authorities with a

⁵⁶ The 2003 Direction is available here: http://webarchive.nationalarchives.gov.uk/20080715052813/http://www.ofcom.org.uk/static/archive/oftel/ind_info/licensing/determinations/2003/emergplan0803.pdf, p 8 – 19.

statement that all ministerial and non-ministerial government departments and all local authorities are covered. This would have the effect of allowing any government departments or local authorities to request CPs to consult them for the purpose of making arrangements for the provision of the services which are necessary in the event of disasters and emergencies.

4.119 We consider this approach would be consistent with the approach taken by Oftel in the 2003 Oftel Direction, and would also simplify and shorten the direction. It would also mean that at any given time, all government departments and local authorities would be captured, meaning that if a new government department or local authority is established after the date of the revised direction coming into force, that department or authority would automatically be covered by the revised direction.

4.120 The proposed revised direction would list the following public bodies:

- a) all ministerial and non-ministerial departments of UK Government;
- b) in relation to England:
 - i) Metropolitan districts;
 - ii) London boroughs;
 - iii) the City of London;
 - iv) the Greater London Authority;
 - v) Local Government Regulation;
 - vi) Unitary authorities;
 - vii) the Council of the Isles of Scilly;
 - viii) County councils; and
 - ix) District councils;
- c) in relation to Wales:
 - i) a county council; and
 - ii) a county borough council;
- d) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; and
- e) in relation to Northern Ireland, a local council.

Legal test

4.121 We consider that the changes we are proposing to make to the 2003 Oftel Direction meet the test for setting or modifying directions set out in section 49(2) of the Act. Our proposed changes are:

- a) **objectively justifiable**, in that it remains necessary to ensure that CPs respond to requests from government departments to make arrangements for communications services in the event of disasters;

- b) **not unduly discriminatory** in that all CPs affected by the direction will be under the same obligation;
- c) **proportionate** in that the revised condition (condition A4.4, as re-numbered) will continue to allow for the recovery of the costs and for an indemnity to be sought from the emergency organisations, or other government departments; and
- d) **transparent**, in that the revised direction, and its effect, have been set out in this consultation and will be set out in the forthcoming statement.

Consultation question

***Question 1:** Do you agree with our proposal for updating the direction issued by Oftel (one of Ofcom’s predecessors) in 2003 which specifies which public bodies may request industry to make arrangements for the restoration of communications services in the event of disasters? If not, please give reasons.*

Must carry obligations

- 4.122 The current GC 7 (condition A5, as renumbered) provides Ofcom with a power to direct that broadcasting network providers must carry certain public service broadcasting (“PSB”) television channels. This list of PSB channels is set out in the Act and is subject to revision by order of the Secretary of State.
- 4.123 As set out in the December 2016 consultation (paragraph 2.19), we have not proposed any substantive changes to this condition as part of this review. The only changes that we have decided to make to this conditions are as follows:
- a) adding a recital;
 - b) specifying at the beginning of this condition the categories of providers to which this condition applies (i.e. to “any person who provides an Appropriate Network”); and
 - c) defining the term “Appropriate Network” by replicating the definition which is set out in section 272(7) and (8) of the Act, and moving that definition to the ‘Definitions’ section at the end of the revised conditions.

Legal Test

- 4.124 We consider that the limited changes that we have decided to make to the current GC 5 (Condition A5, as re-numbered), and the condition itself, meet the test for setting or modifying conditions set out in section 47(2) of the Act. These changes are:
- a) **objectively justifiable**, since they are intended to clarify this condition by specifying the categories of providers to which it applies in its first paragraph, and by reference to the definitions set out in the ‘Definitions’ section at the end of the revised conditions;
 - b) **not unduly discriminatory** in that this condition will continue to apply to all broadcasting network providers, as defined in the condition (i.e. “any person who provides an Appropriate Network”);

- c) **proportionate** as the changes are the minimum necessary to align this condition with the other conditions; and
- d) **transparent**, in that the purpose of the changes is clear and the revised condition and the direction-making power which this condition gives to Ofcom remain clear.

5. Numbering conditions

Introduction

- 5.1 The GCs impose various obligations on CPs in relation to telephone numbers. Specifically, the current GC 17 sets out requirements on CPs in relation to the allocation, adoption and use of telephone numbers, and the current GC 20 imposes obligations on CPs in relation to access to telephone numbers and services. In this section, we set out the changes that we have decided to make to these conditions, which include re-numbering them as conditions B1 (current GC 17) and B4 (current GC 20). In addition, we set out further consultation proposals concerning our power to withdraw telephone numbers.

Allocation, adoption and use of telephone numbers

Consultation proposals

Deletion of references to ‘the Effective Date’

- 5.2 Currently, GCs 17.20, 17.21 and 17.31(a) impose obligations on CPs in relation to the period prior to 1 July 2015. As this date has now passed, these paragraphs have become redundant, and we therefore proposed to remove them. For the same reason, we proposed to remove the reference to “on or after the Effective Date” in the current GC 17.22.

Removal of direction making power

- 5.3 Ofcom currently has the power to direct that CPs use an appropriate application form when applying for telephone numbers. However, since December 2014, applications for numbers have been made via an online portal accessible via the Ofcom website. We therefore proposed to simplify the current GC 17.9 by removing the direction making power and instead requiring CPs to apply for numbers using the online number management system. We also proposed to make the application form available on the Ofcom website, in the event that the online system is unavailable

Removal of reference to allocation of numbers for a limited period

- 5.4 Currently, GCs 17.11 and 17.12 set out Ofcom’s powers to allocate numbers for a limited period. However, these paragraphs do not impose any obligations on CPs, and Ofcom’s powers to allocate numbers for a limited period derive from the Act, rather than from the GCs. We therefore proposed to delete these paragraphs, as we considered them duplicative and unnecessary.

Withdrawal of a number allocation

- 5.5 Currently, Ofcom has the power to withdraw a number allocation from a CP where those numbers have not been adopted within six months of allocation. However, Ofcom does not have a power to withdraw telephone numbers where they have been adopted but never

assigned to a subscriber, or where they have been adopted and assigned to a subscriber, but then returned to the provider and remain dormant.

- 5.6 In order to secure the best and most efficient use of numbers, and to allow Ofcom to withdraw telephone numbers in circumstances where numbers are not assigned to subscribers in the preceding 12 months (as envisaged by section 61(2)(d) of the Act), we proposed to amend GC 17.19 to add that Ofcom may withdraw telephone numbers when a CP is unable to demonstrate either that numbers are currently assigned to a subscriber, or that numbers have been assigned to a subscriber within the previous 12 months, where the withdrawal would be made to secure what appears to Ofcom to be the best and most efficient use of the numbers. We noted that any exercise of this power would be subject to the safeguards in section 61(5) of the Act, i.e. the power could only be exercised in a manner that does not unduly discriminate against CPs, particular users of the allocated number or a particular description of CPs or users.

Stakeholders' responses and Ofcom assessment

- 5.7 Eight stakeholders responded specifically to our proposals relating to the allocation, adoption and use of telephone numbers. Those stakeholders were two confidential respondents [X], BT, FCS, Nine Group, SSE, Virgin Media and Vodafone.

Deletion of references to 'the Effective Date'

- 5.8 Vodafone and two confidential respondents [X] agreed specifically with this proposal. Virgin Media and Nine Group supported the proposal in general.
- 5.9 A confidential respondent [X] agreed that removal of historic effective dates was sensible "providing Ofcom maintains an archive of the GCs on its website in perpetuity as there is still potential for disputes arising from compliance with them at the material time". [X].
- 5.10 Since there were no objections to this proposal, we have decided to proceed with it for the reasons set out in the August 2016 consultation.
- 5.11 In response to a confidential respondent's request that we maintain an archive of the GCs on our website, we have maintained a consolidated version of the GCs on our website, which includes reference to amendments made to the GCs. We have published a summary of how the current GCs read across to the new set of conditions (see the Transposition Table at Annex 17). Going forward, we intend to keep an archive of former GCs available on our website for reference as requested.

Removal of direction making power

- 5.12 Virgin Media and Nine Group supported the proposal.
- 5.13 A confidential respondent [X] provided the following comment: "We agree with Ofcom that no change is required to GC 17.9 regarding the application form..[.as] the Digital Economy Bill..[.] will afford Ofcom with greater power in upfront and ongoing information request..[.] which is the appropriate time to review the construction of this particular GC".

- 5.14 Vodafone agreed that “although the primary mechanism for requesting numbers is now the online number management system, the backstop of paper forms should be retained”.
- 5.15 Since there were no objections to this proposal, we have decided to proceed with it for the reasons set out in the August 2016 consultation.

Removal of reference to allocation of numbers for a limited period

- 5.16 Vodafone, Virgin Media and Nine Group supported this proposal. We have decided to implement it for the reasons set out in the August 2016 consultation.

Withdrawal of a number allocation

- 5.17 Nine Group welcomed the proposal to strengthen our ability to withdraw number allocations to ensure the most efficient use of numbers and prevent ‘stockpiling’ by CPs. Vodafone also agreed that numbers should be withdrawn in the circumstances set out in the consultation. A confidential respondent [§<] broadly agreed with our proposal to give Ofcom a power (“Ofcom may withdraw”), rather than a duty, to withdraw numbers which have not been assigned to any subscriber within the preceding 12 months. Virgin Media agreed with the principle of number withdrawal and supported the aim to secure the best and most efficient use of numbers, but had some concerns over its application (see below).
- 5.18 Several respondents commented that there were circumstances where 12 months would be an insufficient timescale to put numbers into use and that we needed to consider the use of the power on a case-by-case basis.
- 5.19 BT stated that “certain product demand profiles require spare number resource to be available for extended periods of time – often well in excess of 12 months. This is common with large business customers where ranges of contiguous numbers may be required to fulfil the future expected demands of clients” (p.10). BT also considered that “the proposal (...) will pose a timing issue for CPs that sub-allocate numbers to other providers. Delays can be created by the third party, for example, delays in activating number ranges in their routing tables. The net effect will be that CPs do not have sufficient time between allocation and activation” (p.10).
- 5.20 A confidential respondent [§<] commented that “it was not unheard of for a quantum of numbers to be applied for to support a large project with a 3 year roll out, and the numbers to be made live in phases over that period”. It added that “industry cannot afford to be in a position where Ofcom treats the 12 month rule as an absolute as this would create unwarranted levels of harm” (p.12). The respondent noted that in paragraph 7.20 of the August 2016 consultation, we stated that we “recognise that ..[.].CPs may find themselves in the situation of holding unused numbers for longer than 12 months, but with the intention of using them imminently”. It suggested that Ofcom’s approach should be to accept a CP’s intention to use the numbers “in a reasonable timescale” rather than “imminently”.
- 5.21 Similarly, Virgin Media said that “CPs may find themselves in situations of holding unused numbers for longer than 12 months, but with the intention of using them imminently”. In its view, withdrawal of numbers in this situation would create the “risk that a CP has an

allocation of numbers withdrawn, only then to have to apply for a new allocation of the same number type shortly afterwards” (p.6). Given the risks of inefficiency created by withdrawing numbers where there is a genuine intention to adopt and/or assign to subscribers imminently, Virgin Media argued that “if a CP can demonstrate an intention to use the number within a period of 18 months from allocation (in the case of a series of telephone numbers connected with a large project) or last assignment, we [Virgin Media] believe this would largely eliminate the risk of withdrawal followed immediately by an application for a new allocation”.

- 5.22 We remain of the view that 12 months are a reasonable period for allowing CPs to assign allocated numbers to subscribers. We emphasise that Ofcom would use this power on a case-by-case basis, in a proportionate manner taking into account all relevant information on current and future assignment of the allocated numbers to subscribers. We understand that the scenarios set out in consultation responses might justify a longer timescale for number assignment and we recognise the inefficiency of withdrawing allocations if a request for a replacement block of numbers would be justified in the short-term. We also note BT’s concerns on the practical implications of sub-allocation and the impact of third-party delays on timely number assignment.
- 5.23 As we said in the August 2016 consultation (paragraphs 7.20-7.21), we will exercise our discretion in a manner that does not give rise to undue discrimination and ensures proportionality. For instance, we do not intend to withdraw numbers which have not been used for longer than 12 months where the allocatee can demonstrate to Ofcom’s reasonable satisfaction that it has taken concrete steps to use such numbers within a reasonable period.
- 5.24 Virgin Media also considered that the timescale of six months from allocation for the adoption of numbers in the current GC 17.19(b) (re-numbered as condition B1.18(a) with no changes proposed) was too short. It said that where numbers are obtained for a particular large project (e.g. for network expansion) “the time required before adopting numbers to a significant extent is likely to be at least 12 months and could be perhaps as long as 18 months, depending on the complexity of the project” (p.6). In such circumstances, withdrawal of numbers not adopted within a six-month period would “delay the particular project and lead to an application for further numbers, increasing inefficiency”. As such, Virgin Media argued that a longer period of time for adoption of allocated numbers (than the current six months) would be more appropriate.
- 5.25 We remain of the opinion that the timescale of six months for the adoption of allocated numbers is a reasonable period (noting that no change to this timescale was proposed). As with the number withdrawal power, we will continue to exercise our discretion in this respect in a manner that does not give rise to undue discrimination and ensures proportionality.
- 5.26 BT argued that the proposal for number withdrawal presented practical difficulties, given the implication in the August 2016 consultation that allocated number blocks containing “working numbers” might be split at the individual number level (where unused numbers are returned while those that are assigned to subscribers are retained by the CP). As numbers are typically allocated and configured in large blocks of between one thousand

and one million numbers, BT argued that “withdrawal of part ranges will result in these blocks... having to be split, placing additional pressures, which in some cases might be unsustainable, on scarce network numbering databuild and decode resources”. BT therefore recommended that “assessments of resource utilisation take into account physical network build considerations and the rate at which resource is consumed when determining whether or not it should be withdrawn”.

- 5.27 For clarification, the proposal is not to withdraw numbers in units smaller than can be supported by CPs. In most cases, withdrawal would be at the block size at which the numbers were originally allocated. However, if the standard block size for allocation of the number type had changed since the numbers were allocated (e.g. geographic numbers in Conservation Areas, which are allocated in units of 1,000-numbers, whereas previously they were allocated in units of 10,000 numbers) withdrawal may be made at that level.
- 5.28 Virgin Media and FCS sought clarifications on the examples of inefficient use of numbers that we gave in paragraph 7.15 of the August 2016 consultation.⁵⁷ Specifically:
- Virgin Media said that it did not fully understand how our proposed changes to the current GC 17.19 were intended to address the harm that a service provider may cause where non-geographic numbers are set-up to earn revenue from misdialled numbers. Virgin Media queried whether the harm could be addressed more directly “through a Service Provider specific provision” (p.6);
- FCS also noted that the examples of inefficient use of numbers in paragraph 7.15 of the August 2016 consultation “seem to be more serious in that the implication is that the use is bordering on fraudulent rather than just poor management”. The FCS suggested that we consider a link to the AIT (Artificial Inflation of Traffic) process (p.2).
- 5.29 In relation to Virgin Media’s comment, we clarify that the example of consumer harm that we gave in the August 2016 consultation would not necessarily derive from a service provider’s behaviour, since CPs’ actions might also cause harm. In relation to FCS’ comment, we note that our new power to withdraw number allocations is not restricted to any particular type of behaviour involving numbers that are not assigned to subscribers, or that use of this power does not preclude other appropriate regulatory action in response to that behaviour. We also do not think that a link to the AIT (Artificial Inflation of Traffic) process would be appropriate, since this is a contractual process agreed between operators.
- 5.30 Finally, Vodafone suggested that we go further than our proposals for withdrawing numbers, in that the current GC 17.19 (re-numbered as condition B1.18) “should make explicit provision for numbers to be withdrawn where the CP is not in compliance with... the National Telephone Numbering Plan”. Vodafone further suggested that “a CP

⁵⁷Paragraph 7.15 of the August consultation included the following example of inefficient use of numbers: “non-geographic numbers being adopted and used for the sole purpose of earning revenue, for instance as a result of members of the public misdialling (e.g. a number is brought into use that is one digit different to the number used for registering votes on a popular TV programme) or numbers being advertised for the public to call for a particular service, which is not provided, yet the call is charged.”

knowingly facilitating contravention of the Persistent Mis-use regulations might be a suitable criteria for withdrawal – however this would need to be carefully worded to capture only those CPs that are complicit in the generation of such calls, rather than inadvertently forcing CPs to police the behaviour of their customers”.

- 5.31 We believe that Vodafone’s suggestions for increasing our powers for number withdrawal have merit and, in light of these comments, we are proposing a further extension of our powers to withdraw number allocations (see paragraphs 5.66 - 5.75).

Other comments

- 5.32 SSE commented that the matters dealt with by GCs 17 and 20 are not relevant to all CPs. For example, CPs providing leased line services have no involvement in originating or terminating telephone calls but do fall within the existing definition of providing ‘an Electronic Communications Network or an Electronic Communications Service’. SSE therefore suggested that we “define a narrower set of CPs, who are formally subject to these GCs by reference to engaging in or supporting Numbering activities”. We do not agree with this comment since any CP may start using numbers at any time and, when it does so, it must comply with condition B1, as re-numbered.
- 5.33 Virgin Media suggested that the 3-week maximum period for Ofcom to determine applications for telephone numbers referred to in the current GC 17.10 (re-numbered as condition B1.11) should be reduced, as the online number management system reduces the burden of processing these applications and speeds up the process considerably and, in its experience, Ofcom now normally responds to an application within a matter of days (p.5). Although we deal with applications as soon as possible and generally more quickly than the 3-week period set out in this condition, we think that such period is an appropriate backstop, noting that it derives from the EU Framework (Art. 5(3) of the Authorisation Directive).
- 5.34 Vodafone noted that the wording of the current GC 17.2 (condition B1.3, as re-numbered) on general prohibitions on adoption and use had not been changed. It commented that the condition may place CPs in breach of the GCs where numbers are used as test numbers or to identify network elements and as Mobile Station Roaming Numbers (because GC 17.2 requires that numbers in Part A of the National Telephone Numbering Plan (the “**Numbering Plan**”)⁵⁸ be allocated to a person). Vodafone asked us to consider the wording of the condition or signal that we would forbear from a literal reading in these circumstances.
- 5.35 In light of Vodafone’s comment, we clarify that the reference to a “Telephone Number that has been Allocated to a person” in condition B1.3 (as re-numbered) means a telephone number that Ofcom has allocated to a certain person, who may be a body corporate. In

⁵⁸ The Numbering Plan is published by Ofcom pursuant to section 56(1) of the Act and amended from time to time. It sets out the numbers that Ofcom has determined are available for allocation and restrictions and requirements on the adoption and other uses of the numbers. It also sets out other numbers that are administered by Ofcom but are not available for allocation, together with any applicable requirements. The Numbering Plan is available here: https://www.ofcom.org.uk/_data/assets/pdf_file/0013/102613/national-numbering-plan-june-2017.pdf

other words, this condition is intended to ensure that CPs only use numbers that Ofcom has allocated to a CP (or other recipient) and that they do not unilaterally start using any numbers from Part A of the Numbering Plan that have not been allocated. This condition does not impose any requirements about the persons to whom CPs may in turn assign the numbers allocated by Ofcom.

- 5.36 Vodafone also commented that the current GC 17.4 (condition B1.5, as renumbered) requires compliance with the Numbering Plan and that paragraph B3.1.2 of the Numbering Plan requires CPs to provide local dialling for geographic numbers (i.e. the ability to call local numbers without dialling the area code). While remaining supportive of the local dialling provision, Vodafone stressed that the signalling systems used by enterprise customers (i.e. SIP) do not readily support local dialling. Vodafone requested that either the text be revised, or Ofcom forbear on enforcement for unsuitable signalling systems. We note Vodafone's comment and we are aware of the issue that newer networks might not support local dialling. We will consider this issue as part of our next review of geographic number management.
- 5.37 Vodafone requested clarification of whether the Numbering Plan would form part of the GCs (in keeping with our aim of moving all regulatory obligations into the main body of the conditions) or be kept separate to ensure it can be amended without the need to amend the GCs. Vodafone said that it favours keeping the Numbering Plan separate, but to increase user-friendliness by including a hyperlink within condition B1 (as re-numbered) to the latest version of the Numbering Plan. We are keeping the Numbering Plan separate from the GCs, in line with the provisions of the Act.⁵⁹ However, in light of Vodafone's comment, we have added a hyperlink to the Numbering Plan where the words "National Telephone Numbering Plan" firstly appear in the revised condition.
- 5.38 The FCS (response to Q24) suggested that a "Charging Year" should include 29 February when it occurs. We note that, for the purposes of condition B1 (as re-numbered) "Charging Year" means the 12-month period beginning on 1 April and ending on 31 March, excluding 29 February in any leap year.⁶⁰ As explained when we introduced charging for geographic numbers (and the definition of "Charging Year"), since the daily charge is £0.1/365 per number (i.e. 10 pence per number per year) for each day on which a CP holds the allocation of that number, it does not apply on 29 February in a leap year.⁶¹ This ensures that the charge per number always sums to 10p if the number is held for a full year.

⁵⁹ Section 56 of the Act sets out Ofcom's duty to publish, review and revise the Numbering Plan, and the procedures for performing this duty.

⁶⁰ Currently, this term is defined in GC 17.33(i).

⁶¹ See paragraphs 3.13 (and footnote 19) and 3.125 of Ofcom's statement of 18 July 2012, entitled "Promoting efficient use of geographic telephone numbers" (https://www.ofcom.org.uk/data/assets/pdf_file/0028/54964/numbers-statement.pdf).

Ofcom's decision

- 5.39 We have decided to implement the proposals concerning the allocation, adoption and use of numbers which we set out in the August 2016 consultation (paragraphs 7.4-7.27).
- 5.40 The revised conditions set out in Annexes 12 and 13 of the December 2016 consultation contained certain proposed changes that reflected the proposals sets out in Ofcom's consultation of 28 October 2016 on promoting efficient use of geographic telephone numbers.⁶² Specifically, these changes concerned condition B1.16(b) (as re-numbered), the Annex to condition B1 (as re-numbered) and the definitions of "Affiliated Company", "BT Average Utilisation Rate", "Ported Number", "Public Payphone Number", "WLR" and "WLR Number". As mentioned above (paragraphs 2.37-2.38), that project will continue to proceed separately to this review of the GCs. Since that project is still on-going, we have not made such changes as part of this review.
- 5.41 However, in line with our objective of using a single definition across the GCs as a whole, where possible, we have decided to implement our proposal of adopting a single definition of "Wholesale Line Rental" ('WLR'), rather than keeping a definition that applies in relation to charging for geographic numbers (GC 17.33(z)) and another definition that applies in relation to switching (GC 22.30(uu)). We have also replaced the terms "Ported Number", "WLR Number" and "Public Payphone Number" with the terms "Ported Specified Geographic Number", "WLR Specified Geographic Number" and "Public Payphone Specified Geographic Numbers" to clarify that these definitions relate to the regulation of the "Specified Geographic Numbers" only (i.e. any geographic number which starts with any of the geographic area codes set out in the Annex to Condition B1).
- 5.42 In light of Vodafone's comments, we are also consulting on a further extension of our power to withdraw telephone numbers where they are used inconsistently with the Numbering Plan or otherwise misused (see paragraphs 5.66-5.75 below).
- 5.43 The revised text of the condition that will replace the current GC 17 can be seen at Annex 14 (see condition B1).

Access to numbers and services

Consultation proposals

Main proposal (retain this condition)

- 5.44 We explained in our consultation that the purpose of this condition is to ensure that all end-users can access all numbers, and the services hosted on those numbers, subject to certain technical and economic safeguards. We believe that this objective remains important, and therefore we proposed to retain this condition, subject to certain minor

⁶² See footnote 12.

amendments to the drafting (for example, replacing references to the “European Community” with references to the “European Union”).

Removal of GC 20.4

5.45 The current GC 20.4 requires voice call providers to handle all calls to and from the ‘European Telephone Numbering Space’ (“**ETNS**”) at similar rates to calls to and from other parts of the European Community. Although the ETNS is referred to in the Universal Service Directive, it is no longer operative. Therefore, this condition serves no purpose at present and, as we explained in the consultation, we considered that it could be removed without giving rise to any regulatory gap.

Scope

5.46 We proposed to amend the requirement on CPs to ensure any user can access the 116000 hotline for missing children to clarify that the obligation applies only to CPs who provide telephone call services.

Stakeholders’ responses and Ofcom assessment

5.47 Five stakeholders responded specifically to our proposals on access to numbers and services: a confidential respondent [§<], SSE, The Number, Virgin Media and Vodafone.

Main proposal (retain this condition)

5.48 Virgin Media supported the proposed changes to GC 20. However, Vodafone questioned the changes that were made to this condition in 2011. Specifically, Vodafone considered that those changes “resulted in a gold-plated implementation of the revised 2009 Universal Service Directive” since that condition “was intended to ensure there was no blanket restriction on calling non-geographic numbers across the EU” and it is now being used to provide “a national any-to-any obligation via the backdoor” (p.16-18).

5.49 Vodafone also considered the wording of condition B4.2(a)(as re-numbered) to be unsatisfactory as it places an obligation on UK CPs (with UK numbers) to ensure that end-users in any part of the EU are able to access and use the non-geographic numbers which they adopt. In Vodafone’s view, this is unreasonable since a UK CP cannot be held responsible for the actions of non-UK originating operators. Vodafone suggested that a more reasonable obligation would be to “mandate that the CP ensures that it does not preclude access from any end-user in the EU” (p.18).

5.50 We do not agree with the suggestion that the current GC 20 amounts to ‘gold-plating’ of the Universal Service Directive or with Vodafone’s characterisation of the changes that were made to these provisions. Article 28 of the Universal Service Directive, from which this provision is derived, was materially amended in 2009. The previous version of the wording had referred to “non-geographic numbers” in “other member states”. In the revised version of this Article in 2009, new wording was added referring to ensuring that end-users can access “all numbers provided in the Community ... including those in the national numbering plans of Member States”. The title of the Article was also amended from “Non-geographic numbers” to “Access to numbers and services”, reflecting the

change in scope of the provision. This was explained in our consultation and statement when these changes were implemented into domestic regulations in 2011⁶³, where we also noted that the extension in the scope of the provision and its reference to access within ‘the Community’ therefore included the UK as an EU member state. We also do not consider it necessary to change the wording of condition B4.2(a) as suggested by Vodafone. Where a UK CP has taken all appropriate actions to ensure that numbers it has adopted are available to all end users but access is prevented by a third party, this is a factor that would be taken into account in any consideration of whether to take enforcement action. However, as explained in paragraph 13.68 below, we have amended condition B4.2 to make this requirement expressly subject to the new obligation in Condition C6.6 to prevent calls with invalid or non-diallable CLI from being connected.

Circumstances where CPs may be exempted from providing access to numbers

- 5.51 The current GC 20.1 exempts CPs from the obligation to provide access to telephone numbers where this is not “technically and economically feasible”. We received the following comments on debt management:
- a) a confidential respondent [X] proposed “including a clear requirement that any blocking of access to an existing service is notified and agreed with the provider of that service before any action is taken, allowing any potential dispute to be resolved before any changes are made” (p.6) since it is concerned that “an originating CP could cite ‘bad debt’ by a few of its subscribers as a justification for blocking access to a number for all subscribers on grounds of ‘economic feasibility’”. The same respondent urged Ofcom “to adopt (and adapt as necessary) the approach currently proposed for the Telecoms Framework Review, new Article 91, which amalgamates condition 8.1(b) and 20.1(a)”;
 - b) SSE suggested that we clarify that there is an exemption from the obligations set out in GC B4.2 (as re-numbered) where facilities have been made inaccessible for debt management purposes (p.3).
- 5.52 As we set out in 2011⁶⁴, a number of considerations, including proportionality and pragmatism, should form part of our interpretation of what is “technically and economically feasible” under the current GC 20, and the nature of which would be considered on a case-by-case basis. Currently, there is no evidence of any significant issues around number blocking. This suggests that the “technically and economically feasible” proviso, which implements the minimum EU requirements,⁶⁵ remains appropriate.

⁶³ See paragraphs 11.7 to 11.9 of the consultation *Changes to General Conditions and Universal Service Conditions - Implementing the revised EU Framework*, of 24 February 2011 and paragraph and paragraphs 11.12 to 11.20 of the statement of 25 May 2011 following that consultation.

⁶⁴ Ofcom’s statement of 25 May 2011, entitled “Changes to General Conditions and Universal Service Conditions” (paragraph 11.15). See https://www.ofcom.org.uk/data/assets/pdf_file/0027/37746/statement.pdf

⁶⁵ Art. 28(1) of the Universal Service Directive.

- 5.53 We also note that, although we have decided to remove the exemption for “debt management” reasons which is currently set out in GC 8.1 in relation to access to directory enquiry services (paragraphs 6.4 and 6.11), there is no evidence of any significant issues around number blocking and we have no evidence that the provision of directory enquiry services poses any greater credit risk than that of other non-geographic services.⁶⁶ This suggests that the “technically and economically feasible” proviso in condition B4.2, which implements the minimum EU requirements, remains appropriate. In the unlikely event that any significant issues around number blocking were to arise, we would consider opening an investigation and we would take enforcement action where necessary (see also paragraph 6.11).
- 5.54 In relation to the suggestion that we should adopt the approach proposed in Art 91 of the new European Electronic Communications Code proposed by the European Commission⁶⁷, we note that Art. 91, in its draft form, mirrors Art. 28 of the Universal Service Directive (USD) with only a few minor amendments. Since Art. 28 USD has been implemented in the UK through the current GC 20 (condition B4, as re-numbered), the GCs are already in line with the approach proposed by the European Commission.

Circumstances where CPs must block access to certain numbers or services

- 5.55 The current GC 20.3 requires CPs to block access to certain telephone numbers and/or public electronic communications services (PECS) and withhold associated revenue, where requested to do so by or on behalf of Ofcom on the basis of fraud or misuse. We did not propose to make any substantive change to this provision.
- 5.56 Vodafone suggested that we should go further and “allow CPs to block access to/from numbers where they have reasonable suspicion that they are being used for fraudulent purposes or in a manner likely to cause nuisance to end-users.”
- 5.57 The justification for this provision was set out in our consultation of 24 February 2011 on “Implementing the revised EU Framework” and the corresponding statement of 25 May 2011.⁶⁸ As we explained there, the obligations in the current GC 20.1 and GC 20.3 (renumbered conditions GC B4.2 and B4.4) were not intended to restrict CPs’ ability to block access to numbers on a case-by-case basis where justified by reason of fraud or misuse. The GCs set out a series of regulatory rules which CPs must comply with. We do not consider it to be necessary or appropriate to add a provision to this condition setting

⁶⁶ See paragraph 6.12 of the August 2016 consultation.

⁶⁷ See the European Commission’s proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=comnat:COM_2016_0590_FIN).

⁶⁸ See, in particular, paragraphs 11.21 to 11.27 of Ofcom’s statement of 25 May 2011, entitled “Changes to General Conditions and Universal Service Conditions – Implementing the revised EU Framework” https://www.ofcom.org.uk/_data/assets/pdf_file/0027/37746/statement.pdf

out what would in effect be a restatement of a discretion for CPs to take action of their own volition rather than a regulatory rule with which they must comply.

- 5.58 We note that, since we published our consultation proposals, Ofcom has reviewed its Enforcement guidelines. As a result, our current Enforcement guidelines for regulatory investigations explains the process that Ofcom will usually follow when it issues a direction under the current GC 20.3 (condition B4.4, as re-numbered) requiring CPs to block access to telephone numbers and/or PECS on the basis of fraud or misuse.⁶⁹

Removal of GC 20.4

- 5.59 We received no comments on our proposal to remove the current GC 20.4, which requires voice call providers to handle all calls to and from the ETNS at similar rates to calls to and from other parts of the European Community. We have therefore decided to proceed with this proposal.

Scope

- 5.60 We received no comments on our proposal to amend the requirement on CPs to ensure any user can access the 116000 hotline for missing children to clarify that the obligation applies only to CPs who provide telephone call services.

Other comments

- 5.61 Two respondents queried why the logic for regulating access to the 116000 hotline for missing children does not apply to “other equally worthy numbers: e.g. 101, 105, 111, ChildLine and the Samaritans” (Vodafone) and “other services such as those using 116111 and 116123” (a confidential respondent [X]). In response to these comments, we note that the particular arrangements relating to the 116000 hotline for missing children in GC B4.5 reflect and implement the specific obligation relating to that number set out in Article 27a(4) of the Universal Services Directive, that Member States should “make every effort” to ensure access to that service, in addition to the general measures applicable to other numbers in the 116 range. Since we received no comments on our proposal to alter the scope of that obligation so that it applies only to CPs who provide telephone call services, we are proceeding with that proposal for the reasons given in the August 2016 consultation.

Ofcom’s decision

- 5.62 We have decided to implement the proposals concerning access to numbers and services which we set out in the August 2016 consultation (paragraphs 7.29-7.35) and we have amended condition B4.2 to make this requirement expressly subject to the new obligation

⁶⁹ See Section 8 of Ofcom’s Enforcement guidelines for regulatory investigations, which we published on 28 June 2017 (https://www.ofcom.org.uk/data/assets/pdf_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf).

in condition C6.6 to prevent calls with invalid or non-diallable CLI from being connected (see paragraphs 5.50 and 13.68).

- 5.63 The revised text of the condition that will replace the current GC 20 can be seen at Annex 14 (see condition B4).

Legal test

- 5.64 We consider that the changes that we have decided to make to the current GCs 17 and 20 (conditions B1 and B4, as re-numbered), and the conditions themselves, meet the test for setting or modifying conditions set out in section 47(2) of the Act. These changes are:
- a) **objectively justifiable**, as they will ensure that Ofcom's powers to withdraw telephone numbers are consistent with its duty to secure best use of telephone numbers and to encourage efficiency for that purpose, and they will otherwise ensure that these conditions are clear and concise;
 - b) **not unduly discriminatory**, in that all CPs that provide an electronic communications network or service will be subject to these changes;
 - c) **proportionate**, as these changes are the minimum necessary to achieve the objective outlined above. In particular, we think that the new power of withdrawal allows CPs a reasonable period of time within which to assign or recycle numbers;
 - d) **transparent**, as these changes are explained in this document and set out in full in Annex 14. The changes themselves seek to increase transparency by removing redundant provisions from the current GCs 17 and 20 and simplify their drafting.
- 5.65 In addition, we consider that we are fulfilling our general duty in relation to our telephone numbering functions, as set out in section 63 of the Act, by **securing the best use of telephone numbers and encouraging efficiency and innovation** for that purpose. In particular, the new power of withdrawal will enable Ofcom to recycle dormant numbers and bring them back into use, thereby making better and more efficient use of numbers. The other changes that we have decided to make will ensure that numbering policy is reflected in a clear and concise manner in condition B.1, encouraging efficiency in relation to numbering administration and management.

Consultation on Ofcom's further powers to withdraw numbers

Ofcom's proposals

- 5.66 As mentioned above (paragraph 5.30), Vodafone suggested that we should consider a further extension of our power to withdraw numbers where they are used inconsistently with the Numbering Plan or otherwise misused.
- 5.67 Current GC 17.4 requires CPs to comply with all applicable restrictions and requirements as set out in the Numbering Plan, as well as any restrictions and requirements set out in a notification issued by Ofcom to that CP recording the allocation of the specific numbers to it. Furthermore, current GC 17 sets out additional requirements on CPs in connection with the adoption or otherwise use of telephone numbers, including securing that numbers are

adopted or otherwise used effectively and efficiently (GC 17.5); not unduly discriminating against another CP or its customers (GC 17.6); and taking all reasonably practicable steps to secure that the CP's customers, in using numbers, comply (where applicable) with the provisions of GC 17, the Numbering Plan and the "Non-provider Numbering Condition" (GC 17.7).

- 5.68 Misuse of electronic communications networks and services involves using a network or service in ways which cause or are likely to cause someone else, especially consumers, to suffer harm. Misuse is persistent where it is repeated enough for it to be clear that it represents a pattern of behaviour or practice, or recklessness about whether others suffer the relevant kinds of harm.⁷⁰
- 5.69 Where Ofcom is made aware of instances of apparent misuse of electronic communications networks or services in relation to particular telephone numbers, Ofcom often, as a first step in addressing that apparent misuse, contacts the CP to whom we have allocated the numbers. This contact is not only a means for us to attempt to identify the end-user, but also, in appropriate cases, to enlist the help of the CP(s) involved to address the apparent misuse of the numbers. Responsible CPs have generally been responsive to our requests and their assistance helps to rectify the misuse being carried out by problematic end-users. However, our experience suggests that some CPs can be more reluctant to help and may take little or no responsibility for how their allocated numbers are used. In these cases, the relevant CP may be aware of, or even complicit in, the misuse being perpetrated by its end-user customers.
- 5.70 While Ofcom has powers under sections 128 to 130 of the Act to take enforcement action against those who persistently misuse electronic communications networks and services, we are often unable to withdraw the numbers that have been misused. Similarly, Ofcom has the power to take enforcement action in respect of a contravention of GC 17, pursuant to sections 96A and 96C of the Act. However, we do not have the power to withdraw numbers from CPs that are not using them in accordance with the Numbering Plan and GC 17 (unless there have been serious and repeated contraventions of the numbering conditions and the taking of other steps is likely to prove ineffective for securing future compliance).⁷¹ This is because the current GC 17.19 enables Ofcom to withdraw those numbers that a CP has not adopted (and which have therefore not been misused), but does not permit Ofcom to withdraw numbers which have been adopted and subsequently used in contravention of the numbering conditions or to engage in persistent misuse of a network or service.
- 5.71 Our powers to withdraw telephone numbers are set out in section 61 of the Act. This includes at section 61(2)(d) the withdrawal of numbers for the purpose of securing what appears to Ofcom to be the best and most efficient use of the numbers, in circumstances specified in the numbering conditions. To avoid the harm to consumers that might arise in

⁷⁰ See Ofcom's statement of 20 December 2016 entitled "Persistent Misuse: a statement of Ofcom's general policy on the exercise of its enforcement powers" (paragraphs 1.1 and 1.4);

https://www.ofcom.org.uk/data/assets/pdf_file/0024/96135/Persistent-Misuse-Policy-Statement.pdf

⁷¹ Section 61(3) of the Act.

the circumstances identified by Vodafone (e.g., nuisance calls where the CP allocated the numbers knowingly facilitates persistent misuse; contraventions of the numbering conditions), we consider that it would be appropriate, in reliance on section 61(2)(d) of the Act, to amend the current GC 17.19 (condition B1.18, as re-numbered) to introduce additional grounds on which Ofcom may withdraw numbers. Namely:

- a) where the CP has used a significant proportion of a number allocation, or has used an allocation to a significant extent, inconsistently with condition B1, or to engage in fraud or misuse; or
- b) where the CP has been advised by Ofcom in writing that a significant proportion of an allocation of numbers, or that an allocation of numbers has been used to a significant extent, to cause harm or a nuisance, and the CP has failed to take adequate steps to prevent such harm or nuisance.

5.72 Any exercise of this proposed power of withdrawal would be subject to the safeguards in section 61(5) of the Act. Namely, the power would be exercisable only in a manner that does not discriminate unduly against particular CPs, against particular users of the allocated numbers or against a particular description of such CPs or users. In addition, section 3(3) of the Act requires Ofcom to have regard, in all cases, to principles of best regulatory practice, including proportionality, consistency and targeting activities only at cases in which action is needed.

5.73 We propose to implement this policy proposal by adding the following paragraphs (i.e. paragraphs (d) and (e)) to condition B1.18 (as re-numbered):

“B1.18 Ofcom may withdraw an **Allocation of Telephone Numbers** from a **Communications Provider** where:

[(a)- (c)]

(d) the **Communications Provider** has used a significant proportion of those **Telephone Numbers**, or has used such **Allocation** to a significant extent, inconsistently with this **Condition**, or to engage in fraud or misuse; or

(e) **Ofcom** has advised the **Communications Provider** in writing that a significant proportion of those **Telephone Numbers**, or that such **Allocation** has been used to a significant extent, to cause harm or a nuisance, and the **Communications Provider** has failed to take adequate steps to prevent such harm or nuisance.”

Legal test

5.74 We consider that the further changes that we are proposing to make to condition B1 meet the test for setting or modifying conditions set out in section 47(2) of the Act. These changes are:

- a) **objectively justifiable**, as they will ensure that Ofcom’s powers to withdraw telephone numbers are consistent with its duty to secure the best and most efficient use of telephone numbers;

- b) **not unduly discriminatory**, in that all CPs that have been allocated telephone numbers will be subject to these changes;
- c) **proportionate**, as these changes are the minimum necessary to achieve the objectives outlined above;
- d) **transparent**, as these changes are explained in this document and set out in full in Annex 14.

5.75 In addition, we consider that we are fulfilling our general duty in relation to our telephone numbering functions, as set out in section 63 of the Act, by **securing the best use of telephone numbers** and **encouraging efficiency and innovation** for that purpose. In particular, the new power of withdrawal will enable Ofcom ensure that numbers are not used inconsistently with the Numbering Plan or otherwise misused, thereby making better and more efficient use of numbers.

Consultation question

Question 2: *Do you agree with the proposed extension of Ofcom's power to withdraw numbers where they are used inconsistently with the Numbering Plan or otherwise misused? If not, please explain why you do not agree giving reasons.*

6. Directory information

Introduction

6.1 The GCs currently require CPs to make operator assistance services, directory enquiry services and printed directories available to end-users (GC 8). In addition, they require all CPs which have been allocated telephone numbers or authorised to use the numbers allocated to another CP to ensure that details of those numbers which are issued to end-users are made available to other organisations which wish to compile directories or directory enquiry services (GC 19). In this section, we set out the changes that we have decided to make to these conditions, which include combining them into condition B2, as re-numbered.

Consultation proposals

6.2 In the following paragraphs (6.3 - 6.6), we summarise the proposals that we set out in the August 2016 consultation in relation to the provision of operator assistance services, printed directories and directory enquiry services to end-users.

Operator assistance services

6.3 In general, any service which requires the assistance of an operator to connect the call or avail oneself of the service could be considered an operator assistance service (e.g. reverse charge calls and alarm calls). We proposed to remove the current requirement on CPs to ensure end-users can access operator assistance services, on the basis that:

- a) the EU Framework no longer requires the provision of operator assistance services;
- b) we would expect CPs to continue to offer a range of operator assistance services on a commercial basis in the absence of regulation; and
- c) we did not consider that there is any compelling case for sustaining this general obligation as we had not identified any specific operator assistance service which we consider to be essential for consumers.

Directory enquiry services

6.4 We also proposed to remove the requirement on CPs to ensure that end-users can access a comprehensive directory enquiry service, on the basis that:

- a) since the voice directory enquiry market was liberalised in 2002, a number of companies have entered the market for the provision of directory enquiry services; and
- b) the obligation to ensure access to a directory enquiry service could be subsumed within the broader obligation (in what is currently GC 20.1(a), as revised in 2011) to ensure that end-users in any part of the EU are able to access and use all non-geographic numbers which the CP adopts.

Printed directories

6.5 We proposed to retain the requirement to provide printed directories to each subscriber who requests one. Although we noted the annual delivery of local directories provided by BT and KCOM free of charge, we considered that Ofcom’s ability to enforce compliance with the current requirement is an important backstop since it would encourage industry to continue to provide such services without need for intervention even if the commercial incentives to do so were to fall in future. We also proposed to retain the obligation to provide subscribers with printed directories on request, rather than moving to electronic directories, to meet the needs of consumers who do not have online access.

Charges

6.6 We made the following proposals in relation to charges:

- a) we proposed to retain the requirement for CPs to charge no more than a “reasonable fee” for providing subscribers with printed directories on the basis that consumers who still depend on printed directories might find charges for printed directories to be too high;
- b) we proposed to retain the requirement for CPs to charge subscribers no more than a “reasonable fee” for the inclusion of their directory information in a directory or directory enquiry facility, which is necessary to give effect to the EU Framework;⁷²
- c) in relation to directory enquiry services, we said that the need for and the appropriateness of the current obligation on CPs to ensure that there is at least one service which is ‘reasonably’ priced is unclear and we proposed to remove this requirement.

Stakeholders’ responses and Ofcom assessment

6.7 Eight stakeholders responded specifically to our proposals on directory information: two confidential respondents [X], BT, the CCP and ACOD, the FCS, Nine Group, Virgin Media and Vodafone.

Operator assistance services

6.8 BT and Vodafone supported our proposal to remove the requirement to provide operator assistance services. We received no further comments from stakeholders in relation to this proposal and we have decided to implement it.

6.9 BT added that “100” and “155” telephone numbers need to remain defined and available as currently within the Numbering Plan “to enable any operator to provide an Operator Assistance service(s) at any point in time” (p.5). We clarify that in our August 2016

⁷² Art. 25(1) of the Universal Service Directive.

consultation we did not propose to modify the designation in the Numbering Plan of ‘100’ and ‘155’ for “operator assistance” and “international assistance operator” respectively.

Directory enquiry services

- 6.10 We received the following comments on our proposals concerning access to directory enquiry services:
- a) Vodafone said that “there is no need for regulatory intervention to ensure that callers are provided access to competitive directory enquiry services” (p.13) and therefore agreed with Ofcom’s proposal to remove GC 8.1(b);⁷³
 - b) the FCS said that they agree with the principles set out by Ofcom for revising the current GCs 8 and 19, but they are “surprised that Ofcom continues to take the view, set out in paragraph 6.12 [of the August 2016 consultation], that DQ services pose no greater credit risk than other non-geographic services” and suggested that we monitor whether high priced DQ services cause consumer harm, separately from the review of the general conditions;
 - c) as mentioned above (paragraphs 5.51), we received a couple of further comments on debt management.
- 6.11 As set out in paragraphs 5.52 and 5.53 above, there is no evidence of any significant issues around number blocking and we have no evidence that the provision of directory enquiry services poses any greater credit risk than that of other non-geographic services. This suggests that the “technically and economically feasible” proviso in condition B4.2, which implements the minimum EU requirements, remains appropriate. Therefore, we have decided to implement our proposals.

Printed directories

6.12 Stakeholders expressed mixed views on the proposed retention of the requirement to provide printed directories to each subscriber who requests one:

- a) BT suggested that the current GC 8.4 should be modified as follows to ensure that subscribers are provided with the most up to date version of the Phone Book:

“Regulated Providers must ensure that any Directories they produce and/or supply are updated and provided at least once a year” (p.12).

- b) the CCP and ACOD strongly supported our proposal for the reasons that we set out in the August 2016 consultation (particularly the fact that about 14% of adults in the UK

⁷³ Vodafone said that it agreed with Ofcom’s proposal on a different logical basis: “It should be a commercial matter whether an originating CP provides access to directory enquiry services, but market realities will mean that it is a commercial imperative. The NGCS charging structure means that originating CPs cannot unduly favour any directory enquiry service that they provide in-house by retail price manipulation, and generic competition law together with GC17 would ensure that an originating CP did not unduly favour its own services by refusing access to a directory enquiry services that was being provided on fair & reasonable terms” (p.13).

do not have access to the internet) and noted that “there is also a segment of internet users that have access but are not confident online” (p.4);

- c) Virgin Media (p.5), Vodafone (p.13-14) and two confidential respondents [redacted] disagreed with our proposals to retain the requirement to provide printed directories, on the basis that printed directories are wasteful, bad for the environment, and unnecessary given access to the internet and directory enquiry facilities.

6.13 We remain of the view that it is appropriate to retain this requirement to meet the needs of consumers who do not have online access or, as suggested by the CCP and ACOD, are not confident with using on-line directories. Since this requirement is “on request” only, it is proportionate to meet that need. We also note that this condition is in line with the provision of the EU Framework from which it is derived (Art. 5(1)(a) USD).⁷⁴

6.14 We do not agree with BT’s suggested amendment to the current GC 8.4 (now condition B2.4) since that amendment would have the effect of requiring CPs to provide subscribers with printed directories at least once a year, whereas the requirement is “on request” only.

Charges

6.15 Stakeholders did not comment on this specific point in response to the August 2016 consultation. A confidential respondent [redacted] said, more generally, that “the proposals regarding GC8 and GC19 are all sensible”.

6.16 We remain of the view that it is appropriate to remove the “reasonable fee” threshold which is currently set out in GC 8.4 to the extent that it applies to directory enquiry services. However, Ofcom is concerned about the rising costs of calling certain telephone service numbers, including directory enquiries numbers, which begin with 118. In May 2017, we launched a review of the cost of calling some telephone services to ensure people are protected from high prices and unfair practices.⁷⁵ We will aim to ensure that prices of directory enquiry services are transparent and fair to consumers.

Ofcom’s decision

6.17 Ofcom has decided to implement all the proposals concerning the provision of operator assistance services, printed directories and directory enquiry services to end-users which we set out in the August 2016 consultation (paragraphs 6.1-6.26).

⁷⁴ We note that the current the EU Framework is currently under review.

⁷⁵ See <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/telephone-review-value-callers>

Provision of directory information to the providers of directory information services and/or directories

Consultation proposals

- 6.18 In the August 2016 consultation (paragraphs 6.27-6.34), we proposed to retain the obligation (which is currently set out in GC 19) on all CPs which have been allocated telephone numbers or authorised to use the numbers allocated to another CP to ensure that details of those numbers which are issued to end-users are made available to other organisations which wish to compile directories or directory enquiry services. Although we noted that the current industry arrangements for the provision of subscriber data to the providers of directory information services and directories⁷⁶ seem to be effective, we considered that we should retain appropriate backstop powers to ensure the continued delivery of directories and directory enquiry services in the event that industry commercial incentives change in the future. We proposed to set out such powers in a much shorter and simplified form.
- 6.19 We also proposed to combine the current GCs 8 and 19, because they both concern the provision of directory information.

Stakeholders' responses and Ofcom assessment

- 6.20 We received two comments on our proposal to retain the obligation which is currently set out in GC 19 in a shorter and simplified form:
- a) a confidential respondent [X] said that it supports our proposal;
 - b) Vodafone (p.14) sought clarification of the intention behind the word “objective” in the draft of the revised obligation that we proposed in the August 2016 consultation (paragraph 6.30)⁷⁷ and added that “if “non-discriminatory” is the intention, then that should be stated”.
- 6.21 In relation to Vodafone’s question, we note that the text of the revised condition directly reflects the requirements set out in the Universal Service Directive (Art. 25(2)), which Ofcom is obliged to implement.⁷⁸ For clarity, these requirements include also that any

⁷⁶ Currently, CPs provide their subscribers’ data to BT under a standard agreement. BT aggregates all the data received to produce an up-to-date database known as the ‘Operator Services Information System’ (‘OSIS’) and supplies access to this database to providers of directory information services and/or directories on terms set out in its licence arrangements. In addition, alternative (largely business-focussed) directory information compilers separately compile databases of business contact numbers for commercial resale.

⁷⁷ The text of the revised condition that we proposed for consultation was as follows: “*In order to facilitate the provision of publicly available Directories and Directory Enquiry Facilities, Regulated Providers must meet all reasonable request to make Directory Information available in an agreed format on terms which are fair, objective, cost-oriented and non-discriminatory*”.

⁷⁸ Art. 25(2) USD reads as follows: “*Member States shall ensure that all undertakings which assign telephone numbers to subscribers meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services and directories, the relevant information in an agreed format on terms which are fair, objective, cost oriented and non-discriminatory*”.

agreed term for making the relevant information available must be “non-discriminatory” and we have retained this requirement in the revised condition.

- 6.22 All respondents who provided comments in relation to directory information supported our proposals to combine GCs 8 and 19.

Ofcom’s decision

- 6.23 Ofcom has decided to implement the proposals concerning the provision of directory information to the providers of directory information services and/or directories which we set out in the August 2016 consultation (paragraphs 6.27-6.34). For clarity, in condition B2.2 we have replaced the words “in an agreed format” with the words “in a format which is agreed between the Regulated Provider and the person requesting the information” (in line with the current GC 19.3).
- 6.24 The revised text of the condition that will combine and replace the current GCs 8 and 19 can be seen at Annex 14 (see condition B2).

Legal test

- 6.25 We consider that the changes that we have decided to make to GCs 8 and 19 (condition B2, as re-numbered) and the condition itself meet the test for setting or modifying conditions set out in section 47(2) of the Act. These changes are:
- a) **objectively justifiable** as we consider that:
 - i) the regulatory obligations which we are removing (i.e. the current GC 8.1, and GC 8.4 to the extent that it applies to directory enquiry services) are no longer appropriate or relevant; and
 - ii) the regulatory obligations for ensuring continued access to a single comprehensive directory can be simplified in light of current market conditions;
 - b) **not unduly discriminatory** since the condition combining GCs 8 and 19 (condition B2) will apply equally to all CPs to which GCs 8 and 19 currently apply;
 - c) **proportionate** as we are essentially retaining the minimum necessary regulatory measures to meet the Universal Service Directive requirements; and
 - d) **transparent** as the purpose of the changes that we have decided to make to the current GCs 8 and 19 is clear and what CPs will need to do in order to comply with the new condition B2 is also clear.

7. Contract requirements

Introduction

- 7.1 The GCs (currently GC 9) require CPs to include certain minimum specified terms when entering into a contract for communications services with consumers and other end-users. The objective of this is to protect consumers by ensuring that contracts include minimum terms and information. In this section we set out the changes that we have decided to make to this condition, which include re-numbering it as condition C1.

Consultation proposals

Retain this condition

- 7.2 We consider that consumers continue to need protection from harm in relation to contracts they enter into for communications services, and that the protections afforded to consumers by the current condition remain fit-for-purpose. Further, the current condition reflects the minimum requirements of the EU Framework. Therefore, in the December 2016 consultation we did not propose any significant policy changes to this area, but we did propose some changes to make the condition clearer and easier to understand.⁷⁹

Withdraw guidance on “material detriment”

- 7.3 The current condition provides that CPs must give subscribers a minimum of one month’s notice of any modification likely to be of material detriment to the subscriber, and inform them of their right to terminate the contract without notice if the modification is not accepted. We published guidance on how we were likely to apply this condition in January 2014.⁸⁰ In particular, this guidance sets out what we are likely to regard as a price increase meeting the “material detriment” requirement. In the December 2016 consultation, we proposed to withdraw this guidance, and instead to clarify the drafting of this condition by specifying how the obligation applies to price rises in the condition itself, in order to make the requirements of the condition clearer and easier to apply.
- 7.4 Although the current guidance applies to consumers and small businesses, we also proposed that the new wording in the condition would apply to all subscribers, for consistency with the obligations in the Universal Service Directive. However, we noted that we would take into account the fact that larger businesses may have stronger bargaining power and may be able to negotiate better terms with CPs, and therefore may be less likely to suffer material detriment.

⁷⁹ We also note that the EU Framework is under review.

⁸⁰ Ofcom’s Guidance on “material detriment” under GC9.6 in relation to price rises and notification of contract modifications: https://www.ofcom.org.uk/_data/assets/pdf_file/0027/29682/guidance.pdf

Minimum information

- 7.5 We proposed to amend the list of the minimum information that must be included in contracts, currently in GC 9.2, to make the list more consistent with the list of information that CPs are required to publish (currently in GC 10.2). Our view was that this would make the conditions clearer and easier to read. Specifically, in addition to the existing requirements, the revised condition would require CPs to specify: the services provided and the content of each tariff element, including details of any standard discounts applied, any special and targeted tariff schemes and any additional charges.

Legacy contracts

- 7.6 The current condition specifies that it applies to contracts concluded after 25 May 2011. The condition further requires that contracts concluded before 26 May 2011 shall comply with the minimum requirements of GC 9.2 as it applied prior to 26 May 2011. In the December 2016 consultation, we proposed to simplify the condition by removing requirements for contracts concluded before May 2011 on the basis that they are no longer necessary, since it is unlikely that large numbers of consumer contracts concluded before 26 May 2011 are still in existence.

Automatically renewable contracts

- 7.7 The current condition requires that, aside from a minimum period of initial commitment, termination procedures must not disincentivise end users from changing their CP. It cites automatically renewable contracts as one example of conduct which may act as a disincentive to switching. This example currently relates to fixed voice and broadband services only. For clarification, we proposed in the December 2016 consultation to amend the provision so that it would relate, more generally, to all public electronic communications services.

Definitions

- 7.8 Among other minor changes to the definitions, we proposed to replace the word “Users” with the word “Subscribers” in GC 9.5 and to remove the definition of “User” which is currently set out in GC 9.7(c). This is because we are aiming to use consistent terminology across the GCs as a whole, where possible, and we think that the specific definition of “User” in this condition is unnecessary as it can be substituted by the existing definition “Subscriber” without materially affecting the condition.

Stakeholders' responses and Ofcom assessment

- 7.9 This is one of the policy areas that generated most debate. We received comments from the following stakeholders: two individual respondents,⁸¹ a confidential respondent [X], BT, Citizens Advice, the CCP and ACOD, Nine Group, FCS, Sky, SSE, the SCOTSS Telefonica, TalkTalk, Three, TUV SUD BABT, Verastar, Verizon, Virgin Media and Vodafone.
- 7.10 In summary, while some stakeholders⁸² broadly agreed with our proposals, a significant number of respondents raised specific concerns about the proposed incorporation of Ofcom's Guidance on "material detriment" into the GCs and the proposed extension to larger businesses. We discuss their comments below.

Retain this condition

- 7.11 In addition to those respondents who expressed general agreement with our proposals⁸³, we received the following comments:
- a) the CCP and ACOD said that they are "glad to see no significant changes in this area" (p. 2); and
 - b) Three said that they "welcome the proposal to create a single condition that would contain all the main information and transparency requirements" (§ 31). However, they added that "Three strongly encourages Ofcom to implement a full prohibition on any mid-contract price rises to the monthly recurring charge, where customers are not provided with the right to cancel their contract" (§ 36). This is because, in Three's view, "any mid-contract change in the price of a service is unjust for consumers" (§ 33).

Withdraw guidance on "material detriment"

- 7.12 Respondents expressed mixed views on this proposal. Some agreed with our proposal to incorporate the current guidance into the GCs and withdraw our guidance. Specifically:
- a) a confidential respondent [X] welcomed the inclusion of the guidance on material detriment in the GCs;
 - b) the CCP and ACOD said they "welcome the additional clarity in respect of material detriment" and added that "embedding this additional information in the GCs rather than in a guidance document – whilst not altering the approach – gives it greater weight" (p. 2);
 - c) FCS said that it agrees with our proposals, "including greater clarity on the "material detriment" situation as it arises" (response to Q3);
 - d) SSE said that they "do not object to the withdrawal of Ofcom's guidance" (response to Q3);

⁸¹ Leon Tarnowski and Trevor Williams.

⁸² Nine Group, Leon Tarnowski, The SCOTSS, Trevor Williams, TUV SUD BABT (responses to Q3).

⁸³ See footnote 82.

- e) Nine Group said that it supports the incorporation of the current guidance into the condition, but suggested that condition C1.7 “is expanded to make clear that it is contractualisation of provider discretion which inevitably lead to material detriment when prices are increased”. It added that “this can be avoided by incorporating an unambiguous and specific ability to increase prices etc.”;
 - f) Verastar said that they “welcome the inclusion of material detriment in the general condition itself and increased clarity of Ofcom’s interpretation of the terms” (response to Q3).
- 7.13 As mentioned above, Three argued that we should introduce a “full prohibition on any mid-contract price rises to the monthly recurring charges, where customers are not provided with the right to cancel their contract” (§ 36).
- 7.14 We note Three’s comments, however, we consulted on this policy prior to introducing the guidance in 2014 and as we note below, we are not proposing changes to this policy. We consider the approach set out in the guidance is appropriate and proportionate in view of the obligations in the Universal Service Directive.
- 7.15 On the other hand, a significant number of stakeholders disagreed with Ofcom’s proposals and raised a number of concerns, in particular in relation to:
- a) the proposed extension to larger businesses; and
 - b) the proposal to incorporate the material determinant guidance into the condition, in particular in relation to potentially increasing the scope of the condition with respect to price increases linked to inflation (RPI), affecting non-core services or falling outside a fixed-term contract.
- 7.16 UKCTA (p. 4) said that “there is general concern about the proposals on material detriment” and “there is a radically different threshold of material detriment when compared to the current guidance”.

Extension to larger businesses

- 7.17 Some respondents disagreed with the proposed extension to larger businesses. Specifically:
- a) a confidential respondent [redacted] argued that if we wish to extend the current Guidance to also protect larger businesses, we “must consult on it properly by reference to evidence”, and consider the effectiveness of the current condition;
 - b) BT (§ 20) argued that “this extension of scope had the potential to distort competition in the market and damage investment in networks”, noting that “some of BT’s standard terms and conditions give BT the unilateral right to amend; however, they also give customers the right to end the contract without penalty if the change is to the customer’s material detriment in the same way as C1.6”;
 - c) SSE said that they “do not think Ofcom has made the case for this expansion in scope and consider that new GC 1.7 should be restricted to those contractual price changes affecting Consumers and Small Business Customers” (response to Q3);

- d) Sky (§ 3.14) said that “if Ofcom intends to extend the scope of GC9.6/9.7 and the Guidance to large businesses it should consult fully on this specific proposal in order to give stakeholders the opportunity to assess Ofcom’s evidence of harm and related cost-benefit analysis justifying such a regulatory extension” (p. 9). In addition, it said that “Sky is concerned about Ofcom’s inconsistent interpretation of the proposed definition of “Subscriber” in order to achieve its objective” (§ 3.15-3.16). According to Sky, “if (...) Ofcom is now interpreting the definition of ‘Subscriber’ to include any person or corporate body that subscribes to public electronic communications services it is unclear to Sky how this would differ from the definition of ‘Customer’ in the Revised GCs” (§ 3.16). Sky suggested that we must conduct a case-by-case assessment of every use of the term “Subscriber” to ensure we do not inadvertently extend the scope of regulation to a new category of end users (§ 3.17);
- e) Telefonica (§ 52) said that it “accepts that GC 9.6 applies to businesses of all sizes. However, in its view, it does not follow that GC 9.7 must also apply to both small and larger business customers since “the whole purpose of the Guidance (which is to be replaced by GC 9.7) was to identify the nature of material detriment in the case of “consumer and small business subscribers”. Telefonica added that it is “unaware of failings in the larger “business 2 business” telecommunications services market which required to be addressed in the manner that Ofcom has proposed”;
- f) Verizon argued that “large B2B providers should not be covered by these consumer protection Conditions, for the simple reason that large businesses are not in need of contractual protection” (§ 9);
- g) Virgin Media said that “it is very difficult to see how a large business would suffer material detriment as a result of contractually permitted price rises” and noted that “the majority of such contracts are tendered fixed price contracts which do not permit price increases during the initial term” (p. 3);
- h) Vodafone (p. 9) argued that “extending this rule to businesses of more than 10 employees would [then] reduce flexibility but for little gain”, adding that “there is little harm to address here as large organisations have negotiating buying power, in house legal support and experience in contractual negotiation”.
- i) Verastar said that “it would be helpful if Ofcom could distinguish between large businesses, small businesses and domestic consumers and confirm: 1) which GCs apply to each of the above categories; 2) what should be included in contracts for each category; and 3) the level of service to be provided to each category post contract signature in terms of termination processes, service obligations and fault repair obligations” (response to Q4).

7.18 We have considered stakeholders’ comments on this proposal, and we agree with the concerns they have raised. In particular, as we noted in the December 2016 consultation, we agree that large businesses generally have greater bargaining power than small businesses and consumers, and are therefore less likely to need the kind of protection afforded by this condition. We have therefore decided to limit the scope of condition C1.7 to consumers and small business customers (i.e. retain the same scope as the existing

Guidance). For the avoidance of doubt, we note that condition C1.6 does still apply to large businesses.

Increases linked to a published price index (“tiered pricing”)

- 7.19 BT (§ 38-39), Telefonica (§ 30-36) and Vodafone expressed concerns that the revised condition, which refers to “any increase to the sum that the Subscriber must pay to the Regulated Provider at monthly or other regular interval under the contract” (emphasis added), would no longer exempt the price rises described in Examples 2 and 3 of the current guidance. In particular:
- a) BT said that “if the intended effect of the revised GCs is to preserve the status quo on this issue, Ofcom should continue to exempt the type of price rises described in Example 3 of the current Ofcom’s “Guidance on “material detriment” under GC9.6”, from the material detriment provisions described in C1.6 and C1.7” (§ 39);
 - b) TalkTalk said that “the guidance sets out a number of [other] policy positions by Ofcom which the wording of the new clause 9.7 does not clearly reflect”. In particular, TalkTalk asked: “is Ofcom’s interpretation that pre-agreed %-increases to core subscription price would fall outside the application of clause 9.7?”
 - c) Telefonica said that “Ofcom must make clear that tiered pricing of the kind set out in examples 2 and 3 of the Guidance does not give rise to a material detriment” (§ 36); and
 - d) Vodafone said that “the definition of “material detriment” to mean “any increase” implies that even the most trivial increase is now considered material” (p. 9).
- 7.20 As stated in the December 2016 consultation, it was our intention that the revised condition would reflect our existing policy as currently set out in guidance and we were not proposing any changes to our existing policy towards tiered pricing. In light of stakeholders’ comments, we have added a paragraph to condition C1 to more explicitly specify when tiered pricing is permitted:

“C1.9 The application of contract terms with the following effects does not fall within **Condition C1.7**:

- (a) the effect of binding the **Subscriber** to pay a different **Core Subscription Price** at different times during their **Fixed Commitment Period**, where those terms were sufficiently prominent and transparent that the **Subscriber** can be said, at the time they agreed the **Core Subscription Price**, to have agreed to the different amounts they would have to pay at different times; and
- (b) increases in the **Core Subscription Price** which are limited to the **Regulated Provider** passing on to the Subscriber an amount equal to any increase in the rate of Value Added Tax or any other directly and specifically applicable taxation charge or regulatory levy imposed by mandatory provisions laid down by Government or regulatory authorities, payment of which is compulsory.”

7.21 The new paragraph C1.9 reflects the policy set out in our current guidance and allows for tiered price rises where the relevant price terms are sufficiently prominent and transparent.

Core subscription price

7.22 In the proposed condition, we used the following expression to describe the price that, if increased, may give rise to concerns: “the sum that the Subscriber must pay to the Regulated Provider at monthly or other regular intervals under the contract”. BT (§ 34-35), Sky (§ 3.7-3.10), TalkTalk (§ 6), Telefonica (§ 37-44) and Vodafone (p. 9-10) disagreed with our proposal and consider that we should continue to refer to the “core subscription price”, as defined in the Guidance. Specifically:

- a) Sky considers that we had unintentionally extended the scope of the condition since the wording that we proposed “is a much broader concept” than the concept of “core subscription price”. In Sky’s view, our proposed wording “could include the price a customer pays on a monthly or regular basis for an optional service or feature they have chosen to add to their ‘core subscription’ either for a fixed period of time or on an ongoing monthly rolling basis (for example, a monthly charge for a voicemail service)” (§ 3.8);
- b) TalkTalk said the proposed condition suggested that “any price increase of any charge would result in material detriment” and argued that we should reword the new condition so that it applies only to increases to the agreed core subscription price (§ 6);
- c) Telefonica said that it is “concerned that GC 9.7 extends to include price increases relating to increases in sums which are payable by a customer outside of the core subscription price, including payment for extra services that customers may choose to take during the course of their contract and/or that the Regulated Provider do not themselves provide or set prices for e.g. directory enquiry services such as 118 118, roaming charges, and premium numbers” (§ 42);
- d) Vodafone said that “assessing material detriment for non-core service price increases currently require assessing the propensity of a customer to use a particular service and

whether the price rise would increase their overall bill to a level that would constitute material detriment” (p. 9). According to Vodafone, the wording that we proposed for condition C1.6(b) would create uncertainty. For instance, “if a regulated provider is to increase international calls to ‘location x’, it cannot know which customers will call ‘location x’ when the price rise comes into force” (p. 9-10);

- e) Three suggested that “changes to prices that are non-core (i.e. not included in a monthly recurring charge) should not be included in this definition [the definition of material detriment], given that it does not constitute a customer’s minimum commitment when signing up to a new contract” (§ 38).

7.23 We note stakeholders’ comments and, in order to provide additional clarity, we have amended condition C1 to include a definition of Core Subscription Price:

“**Core Subscription Price**” means the sum (however expressed in the contract) that the **Subscriber** is bound to pay to a **Communications Provider** at regular intervals for services and/or facilities the **Communications Provider** is bound to provide in return for that sum. It does not include sums payable for additional services or facilities (or the additional use of services or facilities) that the **Subscriber** is only liable to pay for if the additional service or facility is used.

7.24 In addition, to more specifically reflect existing policy as set out in the current guidance, we have added a further paragraph that provides greater specificity on what we would consider to be an increase in the Core Subscription Price:

“C1.8 For the purposes of **Condition C1.7**, an increase in the **Core Subscription Price** includes:

- (a) any modification of any contractual term or condition providing for the **Subscriber** to pay the **Regulated Provider** which results in an increase to the **Core Subscription Price**;
- (b) the exercise at the discretion of the **Regulated Provider** of any contractual term or condition which would have the effect of increasing the **Core Subscription Price**;
- (c) any reduction in the extent of the services the **Regulated Provider** is bound to provide in return for the **Core Subscription Price**; and/or
- (d) any failure by a **Regulated Provider** to pass on to the **Subscriber** an amount equal to any reduction in the rate of Value Added Tax or any other directly and specifically applicable taxation charge or regulatory levy imposed by mandatory provisions laid down by Government or regulatory authorities, payment of which is compulsory.”

Fixed term

7.25 Telefonica (§ 45-50) said that, unlike the current Guidance, the proposed condition would not be expressly limited to price increases during the fixed term and argued that there it is not necessary to extend the current policy position since “when the fixed term ceases, the Consumer and Small Business Customer may choose to terminate their contract without penalty in any event” (§ 49).

- 7.26 To add greater clarity on this point, we have added a definition of Fixed Commitment Period:

“Fixed Commitment Period” means 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.”

- 7.27 We have also added additional wording to condition C1.7 to make it clear that only increases in the Core Subscription Price payable at any point during the Fixed Commitment Period are caught by the condition.

BT’s, Telefonica’s and Vodafone’s proposed wording for condition C1.7

- 7.28 Telefonica (§ 65) said that its primary concern was that Ofcom should not change the status quo and noted that “the Guidance is working well”. In addition, Telefonica argued that “if Ofcom wishes to adopt the current proposed GC 9.7 and, thereby, change its current policy, Ofcom should undertake an appropriate impact assessment” (§ 63).

- 7.29 If we were minded to withdraw the current Guidance, Telefonica (§ 68-69), BT (§ 36-37) and Vodafone (p. 10/11) proposed the following revised wording for condition C1.7:

“In relation to changes to contractual prices:

a) the exercise at the discretion of the Regulated Provider of any contractual term or condition which would have the effect of increasing the Core Subscription Price that a Consumer or Small Business Customer must pay to the Regulated Provider at monthly or other regular intervals during the fixed term of their contract with the Regulated Provider shall be deemed as likely to be of material detriment to a Consumer or Small Business Customer for the purposes of paragraph C1.6(a).

b) Price increases which are applied pursuant to price models (for example Core Subscription Price + RPI or % change at pre agreed dates) communicated to Consumers and Small Business Customers on a prominent and transparent basis prior to entry into their contract and clearly agreed with Consumers and Small Business Customers as part of their contract do not constitute a modification for the purposes of paragraph C1.6 and so are not capable of meeting C1.6’s material detriment requirement”.

- 7.30 In their view, we should also define the “core subscription price” as follows:

“Core Subscription Price means the price for the services that are included in the package that the Regulated Provider agrees to provide the Subscriber in consideration for a regular (normally monthly) payment. This differs from the non-subscription price(s) which are charged by Regulated Providers for services that fall outside of the relevant inclusive package or core subscription, and which are billed incrementally when such services are used by the customer, for example, for mobile customers they typically (though not necessarily) include charges: incurred when they exceed their monthly inclusive allowance of services, and for premium rate services, NGCs, directory enquiries, making calls and sending texts internationally and roaming services.”

- 7.31 We consider that the drafting changes that we have outlined above in relation to C1.7, C1.8 and C1.9 reflect the policy set out in our current guidance. While we have not used the specific wording proposed by BT, Telefonica and Vodafone, we consider that their comments are substantively reflected in the revised condition C1.

Other comments on the proposed withdrawal of the Guidance

- 7.32 Virgin Media said that “since the Guidance addresses wider issues ancillary to price rises (such as approach to bundling and the form and content of Notifications)”, it considers that its withdrawal would be “counter-productive, as it serves as a useful benchmark in connection with general obligations under GC 9.6” (p. 3). Likewise, TalkTalk noted that “the new clause offers no guidance at all on the content of price increase communications” (§ 7).
- 7.33 UKCTA (p. 4) said that “there is general concern about the proposals on material detriment” and “there is a radically different threshold of material detriment when compared to the current guidance”.
- 7.34 We note stakeholders’ comments on the aspects of the guidance that are not incorporated into the condition, specifically guidance on the application of the condition to bundles and the content and form of communications concerning a price increase. In response to these comments, we have decided to retain guidance on these issues, which is shown in Annex 10. As we discuss in more detail below (paragraphs 7.61-7.65), we are also proposing to extend the guidance to cover termination procedures under C1.3.

Minimum information

- 7.35 We received the following comments from stakeholders:
- a) a confidential respondent [§<] said that our proposals are sensible. Also StepChange agreed with our proposal (p. 3);
 - b) the CCP and ACOD (p. 2) suggested that, in relation to minimum service quality levels, “contracts should (...) make very clear the options open to users if the provided service falls below the contracted level and either offer a straightforward right of exit (without early termination charge) or proportionate billing”. They also argued that, for this reason, broadband provision should be on an “at least” basis, e.g. “at least 15 MB at the point of entry to the property”;

- c) Citizens Advice (p. 3/4) said that without explicit minimum standards it is hard for consumers to exercise their right to receive a refund for services which are delivered without “due care and skill” under the Consumer Rights Act 2015 and suggested that Ofcom should look into service standards across telecoms markets as we did in relation to the broadband speeds code. In addition, Citizens Advice said that “as with service standards, telecoms contracts need to be far more transparent when it comes to exit fees” and “they should specify the contexts in which consumers may be allowed to exit without penalty” (p. 4). Citizens Advice suggested that “Ofcom should review the way exit fees are determined to ensure they truly reflect the cost to the provider of cancelling the contract” (p. 4);
- d) Three said that it “asks that Ofcom clarify whether discounts and special tariffs for vulnerable customers are captured by under this change” (§ 41);
- e) Vodafone made the following comments:
 - i) it said that it “supports amending the list of minimum information that must be included in contracts, currently in GC 9.2, to mirror the list required within GC 10.2” and it noted that “these extra elements are already provided by Vodafone within its customer contracts” (p. 11);
 - ii) it also said that “Vodafone believes that many of the requirements in GC 10 are already required under existing national consumer protection law” and “Ofcom need not include these elements within the General Conditions”, adding that “to do so would needlessly entrench European legislation, at a time when the UK is expected to leave the EU” (p. 11).

7.36 In relation to stakeholder comments that quality of service levels should be clear, the proposed condition continues to require that the minimum service quality levels offered must be included in contracts for the provision of PECS offered to consumers or other end users by CPs (condition C1.2(d)). In relation to comments that it is important that customers are made aware of their rights in the event that the services they receive are below the level contracted for, the proposed condition requires that such contracts must also include the conditions for termination of services (condition C1.2(k)) and any applicable compensation and/or refund arrangements which apply if contractual quality of service levels are not met (condition C1.2(k)). The requirement to include the minimum service quality offered, the conditions for the termination of services and the contract, and any applicable compensation and/or refund arrangements are further subject to the requirement that such terms be set out in a “clear comprehensive and easily accessible form”.

7.37 We agree with stakeholder comments that charges for exiting contracts should be transparent (as required by the proposed condition C1.2(k)(iii)) and that CPs should specify contexts in which customers should be able to exit without penalty. Ofcom has recently opened a monitoring and enforcement programme into early termination charges. One of our objectives under that programme is to ensure that CPs are taking appropriate steps to

make consumers aware of any applicable early termination charges when they are signing up to a minimum contract period.⁸⁴

- 7.38 In relation to Three's comment that it should be made clear whether discounts and special tariffs for vulnerable customers are captured by the revised condition, the proposed condition (condition C1.2(i)) specifically requires the terms of contracts offered by Regulated Providers when offering to provide a connection to a Public Electronic Communications Network or PECS to include details of any discounts of special tariff schemes.

Legacy contracts

- 7.39 We received the following comments on this issue:

- a) BT (§ 176), Nine Group, TUV SUD BABT and Vodafone (p. 11) said that they agree with Ofcom's proposal;
- b) a confidential respondent [§<] suggested that we insert the following words in the condition:

“Contracts must include the following information on issue, or where issued before this condition was in effect, be re-issued containing the following information.”;

- c) Three said that it would like us to provide clarity and guidance on how Three should treat the customers who joined before 26 May 2011. Three added that, in its view, it would be disproportionate to require Three to provide these customers with updated terms “as these long tenure customers are very aware of the terms of their contracts, and have been a party to that contract for over 6 years, long after the expiry of their minimum term” (§ 39);
- d) Virgin Media said that “the administrative burden of bringing these contracts within scope would far outweigh any benefit” and suggested that “GC9.2 should remain as currently drafted in this regard” (p. 4).

- 7.40 Taking into consideration stakeholders' comments, we continue to consider that it is unnecessary to make specific provision in relation to contracts concluded before 26 May 2011. We note stakeholders' comments on proportionality and the administrative burden of this, but we consider that it is unlikely that large numbers of contracts concluded before this date still exist and any such contracts are extremely unlikely to still be within a fixed commitment period. Customers that are party to contracts concluded before 26 May 2011 could therefore enter into a new contract which would be subject to the requirements of the revised condition should they want to benefit from its protections.

- 7.41 Further, we do not consider that the revised condition will require CPs to re-issue contracts issued after 26 May 2011 but before the date that the new condition comes into effect on

⁸⁴ https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01199

the basis that we are not making any significant policy changes in relation to the requirements to offer contracts with minimum contract terms. The requirements in respect of the minimum terms that must be offered are substantively the same under the revised condition and the current GC. Therefore, any contract concluded after 26 May 2011 but before the date on which the new condition will come into effect should include the same minimum terms and provide the same level of protection to customers as contracts concluded after the new condition will come into effect.

Automatically renewable contracts

7.42 Respondents agreed with our proposals in relation to automatically renewable contracts. Specifically, we received the following comments:

- a) a confidential respondent [redacted] said that “extending the auto-renewing contract provision to all Public Electronic Communications Services (...) may even assist competition in the mobile market”. In addition, this respondent suggested that GC9.3(a)(i) and 9.3(a)(ii) can be merged;
- b) also FCS (response to Q4) suggested that we do not split condition C1.3 into paragraphs (a) and (b). To do so, FCS suggested this revised wording:

“Regulated Providers who are providing Public Electronic Communications services to Consumers and/or Small Business Customers must not, at the end of the Initial Commitment Period renew those contracts for a further Initial Commitment Period unless that Commitment Period has first obtained the customer’s expressed consent”.

- c) Vodafone said it “supports amending the prohibition on automatically renewable contracts to cover all Public Electronic Communications Services, as it is already widely accepted within the UK industry that such contracts act as disincentive to switching and would not be permissible” (p. 12).

7.43 We agree with stakeholders’ comments that paragraphs C1.3(a) and (b) can be consolidated. We have therefore decided to insert the new wording set out below into paragraph C1.3:

“(...) a **Regulated Provider** who is providing **Public Electronic Communications Services to Domestic and Small Business Customers** must not, at the end of any **Fixed Commitment Period**, renew those **Domestic or Small Business Customers’** contracts for a further **Fixed Commitment Period** unless that **Regulated Provider** has first obtained **Express Consent** from each **Customer** concerned.”

7.44 As a consequence of consolidating paragraphs C1.3(a) and (b), we have decided to use the term “Domestic and Small Business Customers” in place of “Consumers and/or Small Business Customers”. The definition of “Domestic and Small Businesses Customers” includes both these subsets of customers. Therefore, it is substantively the same, but only requires readers to refer to one definition rather than two definitions. As discussed at paragraph 7.65 below we are proposing to extend guidance in respect of condition C1 to

contract termination procedures. The proposed extended guidance incorporates our previous guidance on automatically renewal contracts.⁸⁵

Definitions

7.45 We received these comments on definitions:

- a) a confidential respondent [X] said that it is unclear why we used the term “Customer” in the proposed definition of “Initial Commitment Period” (paragraph 4.30 of the December 2016 consultation) when “Subscriber” would appear to be an acceptable substitute; and
- b) Three is concerned that replacing the word “User” with “Subscriber” “could pose significant challenges to consistently implementing the General Conditions, particularly where the legislative intent of the regulation requires the provider to differentiate between the ‘user’ and the ‘Subscriber’” (§ 40).

7.46 We agree that “Subscriber” could be used instead of “Customer” in the definition of “Initial Commitment Period” (which we have renamed “Fixed Commitment Period”) and have amended the drafting accordingly.

7.47 We do not agree that using “Subscriber” instead of “User” in this condition poses any implementation challenges or that the intention is unclear. The proposed conditions contained in Annex 12 to the December 2016 consultation contain the following definition of “Subscriber”:

“**Subscriber**” means any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services”.

7.48 As explained in paragraph 3.29, we have now revised the definition of “Subscriber” which will apply across the GCs as a whole to clarify that we are referring only to those subscribers who are the “End-Users” of a certain electronic communications service.

7.49 In other conditions, for example condition C5 (Measures to meet the needs of vulnerable consumers and end-users with disabilities), we use “End-User” where we intend the condition to apply to all users of a service, irrespective of whether they are the person who entered into the contract with the CP. As this condition relates to contract requirements, the provisions are intended to provide protection to the person who is a party to the contract. “Subscriber” is therefore the correct term.

Other comments

7.50 We also received some further comments from the CCP and ACOD, BT, TalkTalk and StepChange.

7.51 The CCP and ACOD (p. 2) believes that “providers should be encouraged to make all terms and conditions as short, clear and accessible as possible and to present them in a way that

⁸⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/53763/guidance_on_compliance.pdf

it meaningful and useful to consumers”. We agree with this comment. The existing and proposed condition requires minimum terms to be set out in a “clear comprehensive and easily accessible form”. We regularly engage with CPs where we identify opportunities for their terms and conditions to be made clearer to consumers and we will continue to do so.

- 7.52 BT noted “the ongoing work being undertaken at European Union level in respect of the European Electronic Communications Code and the Consumer Law acquis REFIT” and it said that “alignment and, where appropriate, coherence with consumer law changes generally would be sensible” (§ 177). Our amended condition has, where relevant, been drafted to take account of current EU requirements and UK consumer law. Where changes to those requirements are confirmed and enacted in future we will take account of those requirements as necessary by consulting on any further amendments to the condition that might be required.
- 7.53 TalkTalk suggested that “it would be useful if Ofcom would offer some guidance as to what is meant by “maintenance services” in clause 9.2(f)” (§ 9). We note that this is the same term that is used in the current condition and we do not consider it necessary to provide further guidance on its interpretation.
- 7.54 In addition, TalkTalk suggested that “Ofcom makes it explicit that GC 9.6 applies to pay-TV services and, in general, expands on its view as to when and to what extent a pay-TV service would be considered to be an “electronic communication service” (§ 10). As we set out in paragraphs 3.25 - 3.28, the term “electronic communications service” is defined in section 32(2) of the Act and Article 2(c) of the Framework Directive contains a similar definition, which has been interpreted in subsequent case-law. We do not consider it necessary to provide further guidance on the interpretation of this term in this condition.
- 7.55 StepChange suggested that “Ofcom could additionally amend GC 9.2 further by requiring CPs to include in contracts company policy on non-payment of bills (as specified in GC 13) as adequate information on debt collection procedures also allows customers to better understand their rights” (p. 3). Since we are retaining the current requirement for CPs to publish details of the measures they may take to effect payment or disconnection, including by placing a copy of such information on its website (condition C3.12, as re-numbered), we do not consider it necessary to impose any further information requirement.

Ofcom’s decision

- 7.56 We have decided to implement the following changes in relation to contract requirements, as set out in the December 2016 (paragraphs 4.23-4.27 consultation):
- a) retain the information requirements concerning the information to be provided in contracts (which are currently set out in GC 9);
 - b) amend the list of the minimum information that must be included in contracts, (currently in GC 9.2) to make the list more consistent with the list of information that CPs are required to publish (currently in GC 10.2);

- c) remove the wording that specifies that contracts concluded before 26 May 2011 shall comply with the minimum requirements of GC 9.2 as it applied prior to 26 May 2011.
- 7.57 We have decided to implement the changes we proposed in relation to contractual modifications set out in the December 2016 consultation (paragraphs 4.16-4.22) with the following revisions:
- a) limit the scope of condition C1.7 to consumers and small business customers (the same scope as the existing guidance);
 - b) amend condition C1 to include a definition of Core Subscription Price (for the purposes of C1.7) and a further paragraph (C1.8)) to provide greater specificity on what we would consider to be an increase in the Core Subscription Price.
 - c) amend condition C1 to include a definition of Fixed Commitment Period and insert additional wording in condition C1.7 to make it clear that only increases in the Core Subscription Price payable during the Fixed Commitment Period are caught by the condition; and
 - d) retain guidance on the application of condition C1 in relation to bundles and the content and form of communications concerning a price increase.
- 7.58 We have further decided to implement changes in relation to definitions and drafting as set out in the December 2016 consultation (paragraphs 4.28-4.32) with the following changes:
- a) amend the definition of “Initial Commitment Period” (now named “Fixed Commitment Period”);
 - b) streamline the drafting of the provisions in relation to automatically renewable contracts (C1.3(a) and (b) in Annex 12 to the December 2016 consultation);
 - c) include a definition of Core Subscription Price for the purposes of condition C1.7
- 7.59 The revised text of the condition that will replace the current GC 9 can be seen at Annex 14 (see condition C1).

Legal Test

- 7.60 We consider that the changes we have decided to make to GC 9 (condition C1, as re-numbered) and the condition itself, meet the test for setting or modifying conditions set out in section 47(2) of the Act. These changes are:
- a) **objectively justifiable** as we think that the right to a contract containing minimum terms and conditions remains important to protect the interests of consumers and other end-users. We think that our proposal to specify Ofcom’s approach to price rises in the condition itself and retain guidance on the content and form of communications concerning a price increase will result in clearer obligations in relation to mid contract price rises. The additional drafting changes that we have decided to make in relation to minimum contract terms will also clarify existing requirements;

- b) **not unduly discriminatory** since the changes to this condition will ensure that the same regulatory measures apply in respect of all providers of electronic communications services which are made available to the public;
- c) **proportionate** as our view is that none of these changes will introduce any additional regulatory burden on industry and a contract containing minimum terms and conditions remains important to provide transparency and protect the interests of consumers and other end-users; and
- d) **transparent** as the reasons for the changes that we have decided to make to this condition are explained above and the effects of these changes will be clear to communication providers on the face of the revised condition itself.

Consultation on extending Ofcom's Guidance under condition C1 to cover termination procedures

Introduction

7.61 As mentioned above (paragraph 7.34), we have decided to retain guidance in relation to some aspects of condition C1 (bundles and the content and form of communications concerning a price increase), which is shown at Annex 10.

Ofcom's proposals

- 7.62 We are proposing to extend the guidance under condition C1 to also include termination procedures.
- 7.63 Condition C1.3 provides that CPs must ensure that conditions or procedures for contract termination do not act as disincentives for end-users changing their CP.
- 7.64 We are proposing to publish guidance to assist CPs by outlining Ofcom's likely approach to investigating whether certain conditions or procedures for contract termination comply with condition C1.3.
- 7.65 The proposed guidance covers some examples of what we consider to be good practice in relation to a number of specific procedures, as identified through our monitoring and enforcement work. The proposed guidance also incorporates our previous guidance on automatically renewal contracts.⁸⁶ We do not propose to make any substantive changes to previous guidance on automatically renewal contracts.
- 7.66 The proposed guidance is shown at Annex 11. Following consultation, we propose to consolidate the guidance on termination procedures and the guidance in relation to bundles and the content and form of communications concerning a price increase (at Annex 10) into a single set of guidance under condition C1.

⁸⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/53763/guidance_on_compliance.pdf

Consultation question

Question 3: *Do you have any comments on the proposed extension of Ofcom's Guidance under condition C1 to cover contract termination procedures? If you do not agree with the proposed extension, please explain why.*

8. Information publication and transparency requirements

Introduction

- 8.1 The GCs currently contain various information publication and transparency requirements set out in several separate conditions. These consist of general information publication requirements (GC 10), publication requirements relating to quality of service information (GC 21) and transparency requirements relating to unbundled tariff numbers (GC 14), premium rate services (Annex 1 to GC 14), non-geographic numbers and personal numbers (Annex 2 to GC 14), and specific information that must be displayed on or around public pay telephones (GC 6.2).
- 8.2 In this section, we present the changes that we have decided to make to these conditions, which include combining the various information publication and transparency requirements across the GCs into a single condition (condition C2, as re-numbered).

Consultation proposals

General publication requirements

- 8.3 In the December 2016 consultation (Section 5), we proposed to retain the general publication requirements which are currently set out in GC 10, and combine them with the price transparency requirements, currently in GC 14 and its annexes (which also require information to be published), into a new condition. In order to update regulation in light of recent market developments, we also proposed to extend the scope of the condition from all providers of Publicly Available Telephone Services (i.e. providers of voice calls only) to all providers of Public Electronic Communications Services. This is because we consider that the need for transparency and for consumers to have equal access to information to ensure they can make informed choices applies across all such services.

Transparency obligations in relation to calls to Unbundled Tariff Numbers, Number Translation Service and Personal Numbers

- 8.4 Currently, GC 14 (GC 14.7-14.12), together with Annex 2 to GC 14, imposes certain price transparency requirements in relation to calls to Number Translation Services, other Unbundled Tariff Numbers and Personal Numbers. We proposed that this condition (and related Annex) would no longer refer to calls to Number Translation Services (“**NTS Calls**”). The term NTS Calls is out of date as this definition was removed from the Numbering Plan

following the introduction of the Unbundled Tariff that changed the structure of pricing for non-geographic calls.⁸⁷

- 8.5 In addition, there are currently two overlapping regimes for price transparency:
- a) the requirements in the current GC 14 (GC 14.7-14.12) require CPs to provide consumers with certain information in respect of Unbundled Tariff Numbers (certain types of Non-Geographic Numbers); and
 - b) GC 14.2(b) and Annex 2 to GC 14 require CPs to provide residential and small business customers with specific information in respect of certain Non-Geographic Numbers and calls to Personal Numbers.
- 8.6 We proposed to simplify regulation by removing the overlap and creating a single set of requirements for price transparency in respect of Unbundled Tariff Numbers and Personal Numbers.
- 8.7 In addition, we proposed to retain the existing requirements that apply to CPs in relation to consumers. In relation to small business customers, we proposed to replace the existing detailed requirements with a general obligation to ensure price transparency and to notify small business customers where the tariff structures and prices applied to their contracts differ from those that CPs are required to comply with in relation to consumers. We proposed to implement this change by adding a new paragraph to the proposed condition, requiring that where a CP applies different tariffs for small business customers (compared to those applied to consumers), the CP must ensure that its pricing for small business customers is transparent and inform such customers of any differences in treatment that apply.

Premium rate services

- 8.8 Currently, GC 14.2(a) and (c) require CPs to establish, maintain and comply with a code of practice for the provision of information relating to Premium Rate Services (“PRS”)⁸⁸ for their domestic and small business customers which must conform with the guidelines set out in Annex 1 to GC 14. We proposed to retain these obligations on the basis that we consider that CPs continue to play a critical role in providing information and advice relating to PRS to their customers. However, to ensure that regulation is targeted at cases that give rise to the greatest potential harm to customers, we proposed to limit the information requirements in relation to PRS to “Controlled PRS” only, which are a subset of PRS in relation to which Ofcom has backstop powers under the PRS Condition.⁸⁹ These services include, for example, Chatline Services and Sexual Entertainment Services.

⁸⁷ An unbundled structure reflects the two services provided through non-geographic numbers. An unbundled tariff separates the retail price of a non-geographic call into these two elements. The primary service element and the ‘access’ service provided by the CP: <https://www.ofcom.org.uk/consultations-and-statements/category-2/simplifying-non-geo-no>

⁸⁸ Premium rate services are a form of micro-payment for paid for content, data services and value added services that are subsequently charged to a user’s telephone bill. The full definition of premium rate service is set out in section 151(1) of the Act.

⁸⁹ https://www.ofcom.org.uk/_data/assets/pdf_file/0031/82678/ngcs_revised_date_statement.pdf

8.9 We further proposed to change the way that the requirements in relation to PRS are implemented by replacing the requirement for CPs to have codes of practice that ensure specified information is provided to their domestic and small business customers (which is currently set out in GC 14.2(a) and Annex 1 to GC 14), with direct obligations to make the information available to these customers. We proposed to include these obligations in the main body of the proposed condition that would consolidate all the main information publication and transparency requirements. In addition, we proposed to simplify regulation, where possible (e.g. by removing duplication and historical terminology). We proposed to implement this proposal by making the following changes to the current obligations:

- a) removing the requirement for the “Originating Communication Provider that is responsible for the retail billing of PRS Calls to the end-user” to publish the usage charges required to be published under the current GC 10.2(d)(ii) for PRS calls on its website (currently in paragraph 3.1 of Annex 1 to GC 14), since this is already required by GC 10.2(d)(ii), which we proposed to retain in the proposed new consolidated information and transparency condition; and
- b) update, clarify and simplify the existing obligations in relation to PRS calls (currently set out in paragraphs 3.2 and 3.3(i) to (x) of Annex 1 to GC 14). We proposed to do this by:
 - i) removing the term “Originating Communications Provider” as CPs falling within this definition will also fall within the definition of Regulated Provider that we proposed to introduce for the purposes of the new condition;
 - ii) adding information that customers would find helpful to the list of information required to be provided and removing information which we consider is no longer helpful or is now redundant due to the services (for example the Wireless Application Protocol, “**WAP**”) no longer existing;
 - iii) updating the reference to “PhonepayPlus” to “Phone-paid Services Authority”.

Processes and procedures

8.10 We proposed to retain the requirements for CPs to ensure that helpdesk staff and customer advice agencies are aware of price transparency information (currently in paragraph 14.12 of GC 14, paragraph 4.1 of Annex 1 to GC 14 and paragraph 5.1 of Annex 2 to GC 14) as these remain necessary to ensure that customers have access to the information required to be provided under this condition. To simplify regulation, we further proposed to replace the requirements which are currently set out in Annexes 1 and 2 to GC 14 (i.e. in guidelines) with a direct obligation in the proposed new condition that would consolidate all the main information publication and transparency requirements.

Method of publication

8.11 The current GC 10.3 sets out how information must be published and provides that CPs must send a copy of the information (or relevant parts of it) to any end-user who reasonably requests a copy and publish the information on their website. Where the CP does not have a website, the current condition requires that a copy must be placed at

every major office of the CP so that it can be viewed by members of the public free of charge during office hours. In the December 2016 consultation, we proposed to amend this requirement so that where a CP does not have a website, they must publish the information required by the condition in such a manner as directed by Ofcom. We proposed this change on the basis that we expect the vast majority of CPs to have a website. Where a CP does not have a website, while it is still important that the information is published, we do not consider that publication at a major office will necessarily be helpful to customers. We therefore proposed a direction making power that would allow us to consider what would be most helpful to customers and provide the flexibility for us to change our approach over time if appropriate.

- 8.12 The existing requirements in relation to price transparency (GC 14 and Annexes 1 and 2 to GC 14) provide that, where price transparency information is required to be sent to customers, it must be sent free of charge. We proposed to expand the requirement to provide the information free of charge from price transparency information to price transparency and the information covered by the general publication requirements. We noted that this would ensure a consistent approach across the proposed new consolidated condition and make it easier to apply. We said that we expected that the majority of customers will obtain the information via CPs' websites, but considered that there are sound policy justifications for ensuring that customers without internet access are not precluded from accessing information that they need.

Quality of service information

- 8.13 The GCs currently contain a separate condition relating to the publication of information related to Quality of Service ("QoS") (GC 21). The condition enables Ofcom to require CPs to publish comparable, adequate and up to date information on the quality of their services. This condition is currently implemented by giving Ofcom a power to make directions about the publication of QoS information including the QoS parameters to be measured, the content and form of the information and how it is to be validated and the manner and timing of publication. Currently, there are no such directions in force and we have no current proposals to use this direction-making power.
- 8.14 In the December 2016 consultation, we provisionally proposed to remove the current QoS condition from the GCs. This was on the basis that the provisions of the Digital Economy Bill (as at the date of the December 2016 consultation) which are aimed at improving the availability of comparative information on quality and prices, serve a wider purpose than that met by the current QoS GC and that the additional power under GC 21 to make directions relating to QoS would, as a result, no longer be necessary.

Public pay telephones

- 8.15 In the August 2016 consultation, we proposed to remove some of the requirements in relation to public pay telephones in the current GC 6. The requirements that we proposed to retain, as set out in Annexes 9 and 10 to the August 2016 consultation, relate to the

information that must be provided to users by providers of public pay telephones.⁹⁰ We proposed that if, having considered stakeholder responses to the August 2016 consultation, we decided to maintain a condition on public pay telephones which only contains information requirements, we would incorporate those requirements into the proposed condition that would consolidate all the main information publication and transparency requirements.

Simplifying and clarifying regulation

- 8.16 In the December 2016 consultation, we proposed a number of other drafting changes to remove duplication (for example paragraph 3.1 of Annex 1 to GC 14 imposes the same requirement as paragraph 10.2(d)(ii) of GC 10) and clarify the current drafting. We also proposed to amend the drafting of the requirement that CPs must provide specified information in relation to PRS (paragraph 3.3 of Annex 1 to GC 14) from “provide” to “provide on request” to give additional clarity on when the obligation applies.

Basic Code of Practice regarding the provision of public electronic communications services

- 8.17 The current GC 14.1 requires all CPs to produce a basic Code of Practice which as a minimum provides the information required to be published under paragraph GC 10.2. Our proposals in relation to this requirement are discussed in paragraph 16.6.

Definitions

- 8.18 Among other minor changes to the definitions, we proposed to remove the definition of “Communications Provider” currently set out in paragraphs 10.4(a) and 14.13(b) and set out upfront, at the beginning of the new condition, that the new condition applies to all providers of public electronic communications services (referring to them as “Regulated Providers”).
- 8.19 We further proposed to remove the definition of “Consumer” currently set out in paragraph 14.13(d) and replace it with the following definition that would apply across all the general conditions:

“**Consumer**” means “any natural person who uses or requests a **Public Electronic Communications Service** for purposes which are outside his or her trade, business or profession”;

- 8.20 We proposed to insert a definition of “Controlled Premium Rate Service” to have the meaning given to it in the in the PRS Condition.
- 8.21 The term “Telephone Ombudsman Schemes” is currently used in the condition without being defined. We proposed to replace this term with the term “Alternative Dispute Resolution Schemes” and define “Alternative Dispute Resolution Schemes” as meaning “any dispute procedures approved by Ofcom under section 54 of the Act for the resolution

⁹⁰ https://www.ofcom.org.uk/_data/assets/pdf_file/0028/79390/gc_review_annex_9_condoc.pdf

of disputes in relation to any Complaint between the Regulated Provider and its Domestic and Small Business Customers”.

Stakeholders’ responses and Ofcom assessment

8.22 The following stakeholders responded specifically to our proposals on this condition: three individual respondents,⁹¹ two confidential respondents [§<], BT, the CCP and ACOD, FCS, ICO, NADP, Nine Group, PSA, TUV SUD BABT, SEE, StepChange, TalkTalk, Three, Verastar, Virgin Media and Vodafone.

General publication requirements

8.23 Those stakeholders that commented on our proposal to consolidate existing transparency requirements into a single condition⁹² agreed with this approach. Stakeholders also agreed that ensuring that customers have access to transparent information remains important and necessary.⁹³

8.24 In respect of the proposal to extend the scope of the current condition from the providers of Publicly Available Telephone Services (“PATS”) to all providers of Public Electronic Communications Services (“PECS”), we received the following comments:

- i) StepChange (p. 3) supported broadening the scope of the information transparency requirements to PECS on the basis that it is vital that customers are provided with adequate information and are able to check their rights;
- ii) Vodafone (p. 12) supported the change on the basis that telephony services are increasingly bundled with other services and therefore expanding the scope of the condition is logical and will enable purchasers to make better informed choices. In its view, the proposal also brings the condition in line with Art. 21 of the Universal Service Directive;
- iii) BT commented that in its view extending the obligation to publish information to all end-users (including large business) was disproportionate (§ 41);
- iv) SEE (p. 2) considered that the scope of the new condition is too wide. They commented that the majority of the new condition applies to telephony matters while there are CPs that provide only connectivity products to business customers. They further said that “the definition of Regulated Provider includes all providers of PECs while GC10.4 to GC 10.10 and GC10.12-13 onwards are only relevant to CPs providing telephony services to consumers”.
- v) TalkTalk (p. 3) said that it “welcomed the clarification that providers do not have to publish bespoke tariffs and terms and conditions.” BT (§ 42) noted that exemption but said that “not all large customers have bespoke contracts”. Three (§54-56)

⁹¹ Gina Antczak, Leon Tarnowski and Trevor Williams.

⁹² Gina Antczak, BT, Nine Group, Leon Tarnowski, Three, Vodafone and Trevor Williams.

⁹³ Gina Antczak, BT, the Consumer Panel and ACOD, Three and Vodafone.

commented that the clarification that CPs are not required to publish bespoke tariffs is ambiguous and that “bespoke” should be defined. Three further commented that it is unclear under the new condition (C2.2 and C2.3) what information needs to be provided and what tariffs would and would not need to be made available.

- 8.25 We consider that the term “bespoke” is sufficiently clear without the need to specifically define it in the GCs. It is not intended to have any special meaning in the GC when compared to its ordinary meaning. In other words, it covers terms or tariffs that are not standard across customers and instead are tailored to the needs or preferences of a specific customer. Therefore, the new condition (C2.2) will require CPs to ensure that all standardised tariffs that are not bespoke to a particular customer are published. Condition C2.3 lists the particular information that is required to be published in relation to standard terms and tariffs.
- 8.26 While the new condition has been extended from all providers of Publicly Available Telephone Services to all providers of Public Electronic Communications Services, the type of customers to which the obligation applies has not been extended. The existing requirement (GC10.2) and the new condition both require CPs to publish all standardised tariffs and terms irrespective of whether those tariffs apply to consumers, small business or large business customers.

Transparency obligations in relation to calls to Unbundled Tariff Numbers, Number Translation Service and Personal Numbers

- 8.27 Some stakeholders⁹⁴ agreed with our proposal to simplify regulation by removing overlap and creating a single set of requirements for price transparency in respect of Unbundled Tariff Numbers and Personal Numbers. Nine Group (p. 3) noted, in particular, that a requirement for simple publication of information rather than a prescribed code of practice is helpful. Three (p. 12) commented that while the regulator has a role in ensuring CPs provide transparency, the GCs “must enable operators to innovate and differentiate”.
- 8.28 Virgin Media (p. 10) and Three (§57-61) expressed concerns that the proposed condition now requires CPs to give the same prominence to Personal Numbers as to geographic numbers, mobile numbers and the costs of call packages and in advertising. Specifically:
- a) Virgin Media said that “the effect of this proposal is to overemphasise the importance of Personal Numbers in a way that could create rather than reduce confusion over call pricing for consumers”; and
 - b) Three said that it did not believe these changes were proportionate and noted that these obligations were last changed two years ago and there has been no change in the number of complaints on this matter since the changes were made. In its view, this proposal will make adverts (the content of which is already subject to the Advertising

⁹⁴ A confidential respondent [§<], FCS, Nine Group, PSA, Three and three individual respondents (Gina Antczak, Leon Tarnowski and Trevor Williams).

Standards Authority Code of Practice) unnecessarily long and increased small print will cause confusion. Three argued that this is already a heavily regulated area and Ofcom's proposed changes are therefore unnecessary.

- 8.29 We disagree with comments that the changes proposed in the December 2016 consultation overemphasise the importance of Personal Numbers or will increase the content of adverts and small print. The requirements in the new condition that relate to how tariffs for Personal Numbers are published in price lists and websites and how tariffs for Personal Numbers are advertised and promoted (C2.6 and C2.7) consist of the requirements currently set out in paragraphs 3 and 4 of Annex 2 to GC 14. We do not consider that moving the requirements currently set out in Annex 2 to the main body of the GCs introduce any substantive change since CPs are already required to establish, maintain and comply with a code of practice that conforms with those requirements (GC 14.2(b) and (c) of the current GCs). In addition, Ofcom have committed to undertaking a review of the personal numbering range. We will look again at whether any changes to the GCs in relation to Personal Numbers are necessary following the conclusion of this review.
- 8.30 SSE (p. 2) commented that the information required to be published in advertising material by proposed condition C2.5(b) would be better placed in published price lists. According to SSE, advertising material is not the best place for this level of detail. In its view, comparison sites, for example, offer very little space to provide this. SSE added that 'upfront' information is already required to be provided by proposed condition C2.5(a). However, we consider that the requirement to display maximum charges applying to calls to Personal Numbers remains necessary to ensure price transparency and to protect customers.
- 8.31 TUV SUD BABT, FCS, a confidential respondent [redacted] and two individual respondents⁹⁵ agreed with our proposal to replace the existing detailed transparency requirements that apply to small business customers with a general obligation to ensure price transparency and to notify small business customers where the tariff structures and prices applied to their contracts differ from those that CPs are required to comply with in relation to consumers. Several stakeholders, however, expressed concerns:
- a) BT (§181) commented that the proposed condition (C2.8) "appears to suggest that CPs should carry out a comparison of its Consumer offering with its Small Business offering and identify the differences in terms of cost, a process that is complex as the products are not always comparable, onerous, and not proportionate to the intention of the requirement". They further said that if all information is required to be published, then customers can do their own comparison;
 - b) the CCP and ACOD (p. 3) said that care needed to be taken to ensure "micro businesses are properly informed of prices/tariffs" and that there could be "unintended consequences of less clarity if providers only have to inform small businesses of the differences in tariffs compared to consumers – rather than clearly stating what those differences mean to them specifically";

⁹⁵ Leon Tarnowski and Trevor Williams.

- c) TalkTalk (§11) commented that the proposal does not appear to be justified on the available evidence: “Ofcom does not present any evidence as to why business customers would need to be informed if their NTS retail rates differ from those offered to residential customers.” TalkTalk further said this issue was last consulted on three years ago and it does not consider circumstances to have changed;
- d) Three (§62-63) said that the rationale for the proposal was not clear and “there is currently no detriment to the customer as a consequence of the customer not having this information.” Three also requested clarity on whether the requirement is limited to requirements that relate to Unbundled Tariff Numbers, and Personal Numbers only or is broader;
- e) Verastar (p. 2) disagreed with the proposal stating that “there is no corresponding obligation to notify residential customers where their terms and conditions differ from those of business customers”. Verastar added that “there is no such general notification obligation at law nor (...) does any other regulator oblige suppliers to do this”;
- f) Virgin Media (p. 4) said that “when Ofcom introduced the new tariff arrangements for number translation services in 2015, Ofcom expressly excluded business customers” and it is “unclear what has changed”. It further said that the proposal classifies consumer and small business packages as equivalent and will create an incentive for small businesses to purchase consumer packages that may not be suitable for them;
- g) Vodafone (p.13/14) said that a requirement to inform small business customers where the tariff that applies to them is different to that applied to consumers will add to the amount of information that is required to be provided to these customers. In its view, it will require information about consumer tariffs that are not relevant and do not apply to be provided in addition to information about tariffs that do apply. Vodafone suggested that the same requirements that apply to consumers should simply be extended to apply to small business customers.

8.32 The proposed new condition was intended to simplify regulation by replacing the existing detailed requirements that ensure transparency for small business customers with a less prescriptive general obligation to ensure price transparency. While we consider that it should be clear to small business customers that the terms of business tariffs may differ to consumer tariffs, it was not our intention to require CPs to provide small business customers with a detailed comparison of their contract and consumer contracts. This requirement was intended to ensure that small business customers were made aware of the potential for their tariffs to be different to consumer tariffs, enabling them to seek further information if necessary. We have revised the wording of proposed condition C2.8 (now C2.9) to ensure that this is clear:

“Where a **Regulated Provider** applies different tariffs for **Small Business Customers** to those it applies to **Consumers**, it must ensure that its pricing for **Small Business Customers** is transparent and inform such **Small Business Customers** where the tariff is a business tariff.”

- 8.33 We have also made drafting changes to the detailed transparency requirements in conditions C2.4 to C2.8 to make clear that they only apply to information that relates to tariffs made available to consumers and not tariffs for business customers.
- 8.34 In addition, we have made the following clarificatory drafting changes:
- a) split proposed condition C2.6 that contained specific requirements in relation to Unbundled Tariff Numbers and Personal Numbers into two separate conditions: condition C2.5 that contains requirements in respect of Unbundled Tariff Numbers and condition C2.7 that contains requirements in respect of Personal Numbers; and
 - b) removed proposed conditions C2.4(a) and C2.5(a), that required CPs to publish their access charges and usage charges in a way that “ensures they are readily accessible to consumers”. We consider that this is required by the general requirement in condition C2.12(b) for all information that is required to be published to be set out “in an easily accessible and reasonably prominent manner”. Including specific requirements in proposed conditions C2.4(a) and C2.5(a) is therefore unnecessary.

Premium rate services

- 8.35 Several stakeholders (the CCP and ACOD, FCS, Nine Group, PSA and Vodafone) agreed with our proposal to change the way that the requirements in relation to PRS are implemented by replacing the requirement for CPs to have codes of practice that ensure specified information is provided with direct obligations to make the information available.
- 8.36 A confidential respondent [redacted] and the PSA (p. 2) agreed with our proposal to more narrowly target the obligations in relation to PRS services and to limit the information requirements in relation to PRS to “Controlled PRS” only.
- 8.37 Another confidential respondent [redacted] commented that the proposed condition refers to premium rate calls. They said that the majority of premium rate transactions now occur by SMS instead of calls and increasingly premium rate transactions will occur via Direct Carrier Billing⁹⁶ rather than via either calls or SMS. Accordingly, in their view, the information publication requirements should cover the full spectrum of PRS transactions. They further said that CPs should be required to explain the different types of premium rate transactions via publications and through trained staff.

⁹⁶ An online payment method that allows subscribers to make purchases by placing the cost of purchases for digital good on their mobile phone bill.

- 8.38 FCS (p. 2) commented that there is a small overlap where a number can be a Non-Geographic Number and a Controlled PRS and suggested considering any implications of this overlap.
- 8.39 In response to FCS' comment, we do not consider that there are any implications of the overlap in cases where a number is both a Non-Geographic Number and a Controlled PRS. In cases where a Non-Geographic Number is also a Controlled PRS, while two sets of obligations may apply, these are not inconsistent. The additional obligations for Controlled PRS will continue to apply due to the greater potential for consumer harm of these services.
- 8.40 In response to comments made by a confidential respondent [REDACTED] that the majority of premium rate transactions now occur via SMS, we note that the current PRS Condition does not specify that its application to CPRS is limited to services that are accessed via calls only. In addition, we have never limited our application of the relevant obligations in the GCs or PRS Condition in this way. For clarity, we have therefore removed the word "calls" where it appears after "CPRS" in the new condition.
- 8.41 In response to comments made by a confidential respondent [REDACTED] that information publication requirements should cover the full spectrum of PRS transactions and that CPs should be required to explain the different types of premium rate transactions, we consider that proposed conditions C2.9 and C2.10 (now C2.10 and C2.11) address this issue through requiring the provision of information in relation to CPRS mechanisms (C2.10(a)), how CPRS work (C2.11(a)) and where other relevant sources of information can be found (C2.11(c) and (d)).

Processes and procedures

- 8.42 The CCP and ACOD agreed with our proposal to require CPs to ensure that helpdesk staff and customer advice agencies are aware of price transparency information. Some stakeholders raised concerns in relation to the drafting of the requirement:
- a) a confidential respondent [REDACTED] said that a CP can only discharge its obligations if its customer facing staff are aware of those obligations, therefore a specific requirement is unnecessary. In its view, if such a requirement is retained there is an argument that it should apply universally to all relevant obligations under the GCs rather than being limited to the requirements of this particular GC;
 - b) Three (p. 15) said that while it was "appropriate and sensible" for operators to have procedures requiring agents to be aware of the existence and content of the condition, it goes beyond what is necessary for them to support customer queries. It further said that the wording of the proposed condition should be clarified;
 - c) SEE (p. 2) said that in substituting a requirement to make reference to a code of practice with a requirement to make reference to the condition, the obligation has inadvertently become more burdensome. In addition, SEE said that information about 'information publication and transparency requirements' in sales and marketing literature is not particularly helpful to customers, and further that the provision is

redundant as the proposed GC requires information to be made available, following which customers or other interested parties can access it themselves.

- 8.43 We remain of the view that in order to prevent consumer harm it is necessary for CPs to have procedures and processes in place to ensure that helpdesk staff and customer advice agencies are aware of price transparency information. While, due to other obligations in the new condition, customers can access published information for themselves, we consider that the ability to obtain this information in different forms and to be able to ask questions of helpdesk staff is also important. In light of stakeholders' comments, we have revised the wording of this condition to ensure that it is clear and that it reflects our intention that it is the obligation in the condition that helpdesk staff and customer advice agencies need to be aware of. We do not consider that the burden on CPs has substantially changed as a result of replacing the existing requirement for CPs to have codes of practice that ensure that specified information is made available, with direct obligations to make the same information available.

Method of publication

- 8.44 A confidential respondent [X] agreed that the existing requirement is not likely to be the most helpful for customers. They suggested that it would be helpful if the proposed requirement also required information to be made available for viewing, during normal office hours, at the premises of a CP or agent of the CP, where contracts offered by that CP can be entered into.
- 8.45 We accept that some customers may find it helpful if the information required by this condition was available at premises of a CP or agent of the CP, where contracts offered by that CP can be entered into. However, we would expect that such information and copies of relevant contracts would be available at such locations in any event as copies of relevant contracts on site would be necessary for customers to be able to enter into those contracts on the premises. In addition, in the December 2016 consultation we proposed that CPs must send a copy of the information (or relevant parts of it) to any End-User who reasonably requests a copy and publish the information on their website. We expect the vast majority of CPs to have a website and the requirement to send a copy of the information to any End-User that requests it should ensure that customers that cannot access information online can obtain it. We therefore do not currently consider that it is necessary to impose further specific requirements.

Quality of service information

- 8.46 BT, Nine Group, Vodafone and two individual respondents⁹⁷ agreed with our proposal to remove the existing quality of service condition (GC 21). However, stakeholders also expressed concern that removing the condition on the basis that the Digital Economy Bill would provide adequate substitute powers was premature:

⁹⁷ Trevor Williams and Leon Tarnowski.

- a) the CCP and ACOD (p. 3) urged caution given that the Digital Economy Bill had not yet been enacted when the CCP and ACOD submitted its response; and
- b) a confidential respondent [X] said that while the proposal was sensible in isolation, wider discussion is needed on the interaction between the provisions of the Digital Economy Bill, article 11 and 22 of the Universal Service Directive (that also confer powers on Ofcom in relation to quality of service) and the various SMP conditions also in force.

8.47 In the December 2016 consultation, we set out the powers provided in the then Digital Economy Bill that related to the availability of comparative information on quality and prices. The Digital Economy Act 2017 received royal assent on 27 April 2017. There were no significant changes to the relevant powers. Sections 83 and 86 of the Digital Economy Act 2017 inserted new sections 134D, 137A and 137B into the Act (i.e. the Communication Act 2003):

- a) new section 134D gives Ofcom an express power to carry out and publish comparative overviews. It also amends section 393(6) of the Act to provide that nothing in section 393 (general restrictions on the disclosure of information) limits the matters that may be published as part of such a comparative overview;
- b) new sections 137A and 137B set out the scope of Ofcom’s powers to require CPs to collect, generate or retain information for the purpose of publication, either by the CP, or by Ofcom.

8.48 These changes significantly strengthen Ofcom’s power to require information from CPs.

8.49 As noted by a confidential respondent [X], there are other provisions that relate to QoS in addition those in the Digital Economy Act 2017. We will consider the interaction with other relevant provisions (such as SMP conditions) when exercising the new powers.

8.50 As stated in the December 2016 consultation, the powers provided by the Digital Economy Act 2017 are aimed at improving the availability of comparative information on quality and prices and serve a wider purpose than that met by the current QoS GC. Therefore, the additional power under GC 21 is no longer necessary.

Public pay telephones

8.51 Having received no specific comments on this proposal, we have decided to incorporate the remaining information requirements relating to public pay telephones into the new condition that will consolidate all the main information publication and transparency requirements.

Simplifying and clarifying regulation

8.52 A confidential respondent [X] agreed with our proposals to clarify the drafting of the condition and remove duplication. We received no other specific comments on these proposals.

Basic Code of Practice regarding the provision of public electronic communications services

8.53 We discuss these proposals in paragraphs 16.6-16.8 .

Definitions

8.54 The PSA (p. 2) agreed with our updates to the definitions in the provisions that relate to PRS. We have also added a definition of “Phone-paid Services Authority” to the ‘Definitions’ section at the end of the revised conditions for additional clarity. As set out above, SEE commented that the definition of “Regulated Provider” was too broad. We received no other specific comments on these proposals.

8.55 In condition C2.3(f) we have replaced “minimum contractual period” with the defined term “Fixed Commitment Period” as the original wording and new defined term have substantively the same meaning. Therefore, using the defined term ensures consistency.

8.56 In condition C2.10, we have replaced “Consumers and Small Business Customers” with “Domestic and Small Business Customers”. This is on the basis that the term “Domestic and Small Businesses Customers” includes customers who are consumers and customers who are small businesses.

Ofcom’s decision

8.57 We have decided to implement the proposals concerning information publication and transparency which we set out in the December 2016 consultation (paragraphs 5.7-5.44) with the following revisions:

- a) we have revised the wording of the condition to ensure it is clear that the specific transparency requirements (in conditions C2.4 to C2.8) only apply to consumers, that it is clear which of these requirements relate to Unbundled Tariff Numbers and Personal Numbers and that there is no unnecessary duplication;
- b) we have revised the wording of this condition (see condition C2.9) to make it clear that while CPs are required to make small business customers aware that their tariff may be different to consumer tariffs (so as to enable small business customers to seek further information if necessary) it does not require CPs to provide small business customers with a detailed comparison of their contract and consumer contracts;
- c) we have replaced “Consumers and Small Business Customers” with “Domestic and Small Business Customers” in condition C2.10;
- d) we have removed the word “calls” where it appears after “CPRS” (“Controlled Premium Rate Service”) in the new condition to reflect that the obligations apply to services that may also be accessed via SMS (see condition C2.11);
- e) we have revised the wording of this condition to ensure that it is clear and that it reflects our intention that it is the requirements in the condition that helpdesk staff and customer advice agencies need to be aware of (see condition C2.13); and

- f) we have incorporated the remaining information requirements relating to public pay telephones into the new condition that will consolidate all the main information publication and transparency requirements (see condition C2.15).

8.58 The revised text of the condition that will combine the current GC 10 and elements of GCs 6 and 14 can be seen at Annex 14 (see condition C2).

Legal test

8.59 We consider that the changes that we have decided to make to the current GCs 6, 10 and 14 (condition C2, as re-numbered), and the condition itself, meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our changes are:

- a) **objectively justifiable** as we think that:
 - i) the ability for customers to be able to access up to date information about services and prices remains important to protect the interests of customers and promote choice;
 - ii) limiting the information requirements in relation to PRS to “Controlled PRS” only ensures that regulation is targeted at cases that give rise to the greatest potential harm to consumers and small business customers;
 - iii) the drafting changes that we have decided to make to clarify the current requirements (including in particular those relating to PRS) will ensure that the new condition is more accessible and easier to apply;
 - iv) extending the general publication requirements (currently in GC 10) from Publicly Available Telephone Services to Public Electronic Communications Services serves to update regulation in light of market developments, in addition to being in line with the provision of the EU Framework from which this condition is derived;
 - v) replacing the requirement for CPs to have certain codes of practice that ensure specified information is made available with direct obligations to make the same information available, together with removing the overlap that currently exists in relation to price transparency, will make the obligations clearer and easier to apply;
 - vi) replacing the existing detailed price transparency requirements that apply in relation to small business customers with a general obligation for CPs to ensure price transparency and to notify small business customers where their tariff is a business tariff will remove duplication, make the obligations clearer and will also result in a less prescriptive regime in relation to small business customers;
 - vii) amending the requirements in relation to the method of publication where a CP does not have a website ensures that in such cases information is still published in a way that will be helpful to customers. Expanding the requirement to provide information free of charge, on reasonable request, where it is required to be published under the general publication requirements will ensure that customers have access to information where they cannot access a website. This will also ensure a consistent approach across the new condition and make it easier to apply;

viii) removing the direction making power in relation to quality of service information (currently in GC 21) will remove unnecessary duplication as the Digital Economy Act 2017 now provides sufficient powers for our purposes;

- b) **not unduly discriminatory** since the changes to the information publication and transparency requirements will ensure that the same regulatory measures apply in respect of all providers of electronic communications services which are made available to the public;
- c) **proportionate** as none of the changes introduce any disproportionate regulatory burden on industry and the need for customers to be able to access information to make informed choices remains important to promote choice; and
- d) **transparent** as the reasons for the changes that we have decided to make to these provisions are explained above and the effects of the changes will be clear to CPs on the face of the revised condition itself.

9. Public pay telephones

Introduction

- 9.1 The current GC 6 contains rules to ensure all end-users, including people with disabilities, can access and use public pay telephones, and to ensure that information about the use of public pay telephones, such as the price of a call, its location and number, are clearly displayed. These are general obligations that apply to any provider of public pay telephones.
- 9.2 In addition to this GC, BT and KCOM are subject to condition 3 (“Provision of call box services”) of the specific universal service conditions imposed on them as the undertakings designated as universal service providers within their respective areas.⁹⁸ This universal service condition requires BT and KCOM to ensure that they meet the reasonable needs of end-users in the provision of public call boxes (i.e. public pay telephones on public land and to which the public has access at all times) and to charge uniform prices throughout the UK for their call box services. It also allows Ofcom to make a direction from time to time regarding the details of the regulation of call box services, including the procedure for removal and installation of public call boxes. In 2003, Oftel exercised this direction-making power by specifying the procedure for removing public call boxes and for considering requests for new public call boxes⁹⁹. In March 2006, Ofcom amended Oftel’s direction¹⁰⁰ and issued Guidance on the procedure for the removal of public call boxes¹⁰¹ and the procedure for considering a request for the provision of a new public call box in order to meet the reasonable needs of a local community¹⁰².
- 9.3 For clarity, condition 3 of the specific universal service conditions imposed on BT and KCOM (as well as all the other universal service conditions) does not fall within the scope of the review of the GCs. Therefore, it will continue to apply to BT and KCOM without any modification.

Consultation proposals

- 9.4 In the following paragraphs (9.5-9.10), we summarise the proposals that we set out in the August 2016 consultation (paragraphs 5.1-5.26) in relation to the provision of public pay telephones.

⁹⁸ <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-authorisation-regime/universal-service-obligation>

⁹⁹ See Oftel’s Statement of 22 July 2003, entitled “Public payphones: implementation of universal service obligations”:

http://webarchive.nationalarchives.gov.uk/20040104233440/http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/payp0703.pdf

¹⁰⁰ <http://stakeholders.ofcom.org.uk/binaries/consultations/uso/statement/callboxdirection.pdf>

¹⁰¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/uso/statement/removals.pdf>

¹⁰² <http://stakeholders.ofcom.org.uk/binaries/consultations/uso/statement/requestcallbox.pdf>

Operator assistance and directory enquiry services

- 9.5 We proposed to remove the requirement for the providers of public pay telephones to ensure that any end-user can access operator assistance services for the same reasons as we proposed to remove the requirement in the current GC 8.1(b) which applies, more generally, to all providers of voice call services (see paragraphs 6.3-6.4 above).

Information to be displayed

- 9.6 We proposed to remove the requirement to display the means by which charges must be paid, which is currently set out in GC 6.2(b), on the grounds that providers of public pay telephones would have a sufficient incentive to display this information even in the absence of regulation. In relation to the current requirement to display location information and the number on which the phone can receive calls, we invited comments from stakeholders (particularly from helplines and breakdown services) on whether there is a sufficient incentive for this information to be provided in the absence of regulation. We proposed to retain the requirement to display the minimum charge payable for connection of a call and that calls to 112 and 999 are free of charge.

Design of call boxes

- 9.7 The current GCs set out certain requirements for providers of public call boxes (i.e. public pay telephones which are permanently accessible on public land) as to the minimum percentage of public call boxes which must be accessible to end-users using wheelchairs and which must incorporate additional amplification facilities (GC 6.3(a)). This condition also requires the providers of public call boxes to consult Ofcom from time to time on the design of public call boxes (GC 6.3(b)). Although the policy goal of the accessibility requirements remains important, we proposed to remove these requirements since we considered that the market would deliver this outcome in the absence of this condition. In summary, we noted that the current model of public call boxes used by BT meets these accessibility requirements and the low number of new public call boxes being installed suggests that it is likely to become uneconomic to change the design currently being used. We also noted that the requirements under the Equality Act 2010 would apply to the provision of new services.

Textphone facilities

- 9.8 The current GCs require providers of public call boxes to consult with Ofcom from time to time to ensure the adequate provision of public call boxes incorporating textphone facilities in order to allow users with disabilities to access text relay services. It also provides Ofcom with a power to direct providers of public call boxes to provide public call boxes incorporating textphone facilities as Ofcom considers appropriate in terms of numbers and location (GC 6.3(c)). We proposed to remove these requirements because there is no evidence of demand for new public textphones and there is evidence that the use of textphone from public call boxes is extremely low. In addition, we considered that it is extremely unlikely that Ofcom would make a direction in relation to public call boxes

incorporating textphone facilities now that text relay has been available on smartphones via the NGT Lite app since October 2014.

Removal of public call boxes

9.9 The current GCs require providers of public call boxes to give notice of any proposed removal of a public call box and sets requirements including information that must be displayed on or around the public call boxes and the minimum amount of notice that must be given before the provider is entitled to cease to provide services from a public call box (GC 6.3(d)). We proposed to remove this requirement since the removal of public call boxes by BT and KCOM is also regulated by condition 3 of the specific universal service conditions imposed on BT and KCOM as the undertakings designated as universal service providers within their respective areas (see paragraphs 9.2-9.3 above). Given that the overwhelming majority of public call boxes are operated by BT and KCOM, we did not consider it necessary to duplicate these provisions in the GCs.

Definitions

9.10 We proposed to remove some definitions that would no longer be necessary (“Communication Provider”, “Hull” and “Public Call Box”) and to specify at the beginning of the revised condition the categories of providers to which it applies.

Stakeholders’ responses and Ofcom assessment

9.11 Ten stakeholders responded specifically to our proposals on this condition: two confidential respondents [redacted], BT, CARP, the CCP and ACOD, the CFA, Ofcom Advisory Committee for England, the NADP, the RAC and Vodafone.

Operator assistance and directory enquiry services

Operator assistance services

9.12 In general, while BT agreed with our proposal to remove the requirement for the providers of public pay telephones to ensure that any end-user can access operator assistance services (which is currently set out in GC 6.1(a)), other respondents (Ofcom Advisory Committee for England, Vodafone and two confidential respondents) expressed concerns about it. Specifically:

- a) BT (p. 3) agreed with the proposal to remove the requirement for access to an operator assistance service, noting that the term “operator assistance” has never been defined in regulation and as such, the services offered to end users could have been changed or withdrawn at any time. BT (p. 4) further noted that users of public pay phones would still have the option of making reverse charge calls using commercially available services like “0800Reverse” and “0800mumdad”;
- b) Ofcom Advisory Committee for England disagreed with our proposal to remove the specific requirement in GC 6.1(a) relating to operator assistance services because it is

concerned that CPs might stop providing reverse charge calls, whilst these services are still needed in rural locations;

- c) Vodafone (p. 12) commented that overall, it agrees with Ofcom's conclusions on operator assistance but noted that the requirement for operator assistance services may be more important to users of payphones due to limited alternatives. According to Vodafone, while there is a commercial incentive to continue to provide such services (and therefore no reason to retain the requirement) it would be wrong for originating CPs to recover the cost via surcharges to third parties on calls generated from payphones;
- d) a confidential respondent [redacted] disagreed with the requirement in GC 6.1(a) relating to operator assistance services because they said that some service providers have already blocked access to 100 and 118 numbers.

9.13 We note stakeholders' comments that in the absence of specific regulation operator assistance services may be withdrawn. In our view, there is a commercial incentive to provide such services and they would therefore continue to be provided in the absence of regulation. As a result, the requirement to provide access to operator assistance services is no longer necessary. In relation to reverse charges call, there is again a commercial incentive to provide such services and several providers currently do so. Another general condition (condition B4.2(b), as re-numbered) means that end-users can access all telephone numbers from public pay telephones so a specific provision requiring access to reverse charges call services from public pay telephones is not necessary.

Directory enquiry services

9.14 In relation to our proposal to remove the requirement for the providers of public pay telephones to ensure that any end-user can access directory enquiry services (which is currently set out in GC 6.1(b)), a confidential respondent [redacted] said that it disagrees with our proposal because it is concerned that relying on the current GC 20.1(b) will offer communications providers operating public call boxes a means by which they can prohibit calls to some or all directory enquiry services without substantive justification. We received no further comment on this proposal.

9.15 In our view, the current GC 20.1(b) (condition B4.2(b)) should ensure directory enquiry services can be accessed through public pay telephones. We have received no specific evidence that CPs operating public call boxes are prohibiting calls to directory enquiry services. We will however keep this under observation and reserve the right to intervene if there is evidence that access to such service is being denied.

Information to be displayed

9.16 We received mixed responses to our proposals to remove the requirements to display (i) methods of payment and (ii) location information and the number on which the public telephone can receive calls. While BT agreed with our proposals, many other respondents thought it was still important that this information is displayed in public call boxes.

Methods of payment and call prices

- 9.17 BT agreed with the proposal to remove the requirement to display how charges must be paid on or around public call boxes. BT noted that there are many forms of payment which may be used in public pay telephones (e.g. credit or debit cards or pre-paid cards) and the provider of the payphone may not control the pricing for calls paid for by means other than cash.
- 9.18 The CCP and ACOD agreed that the minimum price for a call must still be displayed in each call box (p. 2).
- 9.19 Two stakeholders suggested that we should impose additional requirements. Specifically:
- a) CARP commented that as well as displaying the minimum charge payable for connection of a call, a comparison between the cost of a call to a landline and the cost of a call to a mobile phone should also be displayed;
 - b) a confidential respondent [X] commented that the requirement for public call boxes to display minimum charges should be retained, and public call boxes should also display call prices and update this information whenever changes come into effect.
- 9.20 Having considered stakeholders' comments, we remain of the view that providers of public pay telephones would continue to publish the means by which charges must be paid without the need for regulation and we have therefore decided to implement our proposal to remove this requirement from the GCs.
- 9.21 In relation to call prices, we do not consider it necessary to go beyond the current requirement to display the minimum charge payable for connection of a call and require CPs to display "a comparison between the cost of a call to a landline and the cost of a call to a mobile phone", as suggested by CARP. Consumers are generally aware that calls to different numbers are charged at different rates. In addition to calls to mobile numbers, calls to other services such as directory enquiry services also differ. We do not consider there is evidence that specific measures in relation to mobile numbers are required.

Telephone number and location of public pay telephones

- 9.22 BT (p. 4) suggested that we should remove the requirement to publish the telephone number of public pay telephones and the provision of information relating to whether or not the payphone can receive an incoming call because this "would enable payphone providers to inhibit non-chargeable incoming calls by withholding the calling line identity from the called party, while still enabling emergency organisations to contact a caller in an emergency situation by using the network calling line identity still available on 999 and 112." This is on the basis that in respect of non-chargeable incoming calls "the only option is to recover the cost via the charges made to paying callers and therefore increasing the price that they must pay."
- 9.23 A confidential respondent [X] was of the view that we should retain the requirement to display the location of a public pay telephone as this information is vital to anyone who is in an emergency situation, lost, or reporting a fault with a telephone.

- 9.24 The CFOA (p. 2) said that “it would seem sensible to maintain the ability for the user to receive an incoming call and to know where they are.”
- 9.25 The RAC (p. 2) said they would prefer to retain the requirement to display the location of pay telephones as it is beneficial for members who contact the RAC in the event of a breakdown. They noted, however, that the impact of the changes would be minimal as the percentage of “call-seconds” to their roadside assistance call centres from public payphones is very low.
- 9.26 The ACS noted that: “it is also important that payphones in remote rural areas can receive incoming calls, for example in the case where Police, Coastguard or Mountain Rescue teams need to be able to get back in touch with the member of the public who has called them out. Clearly displaying the location of the payphone would also be important in the context of contacting Emergency Services.”
- 9.27 While the current requirement to display location information is not essential to enable the emergency services to locate the public pay telephone (due to the requirement in condition A3.5 that CPs must make available caller location information for calls to the emergency call numbers “112” and “999”), we agree with comments from the RAC and ACS that this information may be necessary for users of public pay telephones in situations that do not require assistance from the emergency services; for example, breakdowns, minor accidents and those calling helplines. Therefore, we have decided to retain this requirement.
- 9.28 We are of the view that it is important to retain the requirement to publish the number of public pay telephones. We disagree with BT’s comment that it should be removed due to the cost of non-chargeable incoming raising the price for other users. This is because, as noted by the CCP and ACOD¹⁰³, public pay telephones allow people in circumstances that may make them vulnerable to make calls to organisations such as helplines in cases where privacy may be important. In these circumstances, it may be helpful for such organisations to be able to call back the person who has called them. For instance, in cases where the call to the helpline or organisation is not free of charge. We consider that any increase in charges caused by the need to recover non-chargeable incoming calls would normally be justified in order to ensure protection for vulnerable users. Therefore, we have decided to retain this requirement.

Other comments

- 9.29 We also received these further comments:
- a) ACS and the CCP and ACOD suggested that there should be a requirement to display how a reverse charges call can be made; and
 - b) CARP commented that in order to comply with the Equality Act 2010, information in payphones should be displayed in type large enough to be read easily by a partially-

¹⁰³ The CCP and ACOD noted that “for some people in vulnerable circumstances call boxes also allow them to make calls to organisations such as helplines without recording a call history on a personal device” (p.3).

sighted person and the background to the text must be white with good contrast between the background and the text.

- 9.30 We have considered the suggestion that the means by which a reserve charge call could be made be added to the list of information that is required to be displayed. We note that some providers of these services already advertise their services in public pay telephones, but there is no evidence to suggest that it is necessary for this to be required. In addition, there are a range of reverse charge call services available that vary in price. Requiring providers of public pay telephones to publish the best value service may lead to unintended consequences as prices may change over time and the service publicised may therefore result in the end-users using higher priced services. This requirement could also result in discrimination as determining which specific service to publicise would be a matter for the providers of public pay telephones.
- 9.31 While we note CARP's comments in relation to what is necessary for compliance with the Equality Act 2010, we consider that displaying information in a form that is accessible to most users is a necessary part of the requirement to display information. The Equality Act 2010 does not require all information to be published in a way that is accessible to all, it requires reasonable adjustments to be made where appropriate. If it would be reasonable to provide information in a particular form at particular pay phone we would expect CPs to comply with the Equality Act 2010 and make appropriate adjustments.

Design of call boxes

- 9.32 We received mixed comments in relation to our proposal to remove the accessibility requirements which are currently set out in GC 6.3(a) and (b). In summary, BT and Vodafone supported our proposal, while the CCP and ACOD, and NADP, disagreed with it.
- 9.33 Specifically, BT and Vodafone provided the following reasons in support of our proposal:
- a) BT (p. 4) recognised that the traditional red kiosks are not accessible to wheelchair users but that many of these have been listed by English Heritage and cannot now be removed. BT also said that "newer kiosks are accessible and will continue to be so. Therefore, removal of this requirement will help to preserve the legacy red telephone boxes in heritage sites without negative impact to regulatory obligations."; and
 - b) Vodafone considered the provisions of the Equality Act 2010 to offer sufficient protection.
- 9.34 The stakeholders that expressed concerns in respect of the proposals to remove the specific accessibility requirements provided the following comments:
- a) the CCP and ACOD (pp.3/4) "believe that PCBs [public call boxes] should be accessible to users with disabilities and consider the obligations protecting wheelchair users and people who are hard of hearing should therefore be retained" since "Ofcom does not have the powers to enforce the Equality Act 2010.";
 - b) in addition, the CCP and ACOD said that "public call boxes are still a vital part of the communications consumer landscape and will be until there is affordable, ubiquitous

mobile coverage; they must remain accessible to all consumers except where a suitable alternative is proven to exist” (p.4). They noted, in particular, that “for some people in vulnerable circumstances call boxes also allow them to make calls to organisations such as helplines without recording a call history on a personal device” (p.3); and

- c) the NADP (p. 1) disagreed with our proposal for the following reasons:
- i) public call boxes are required by any person who struggles to make calls using smartphones;
 - ii) the advances in technology since the GCs were last revised mean that the provision of accessible public call boxes would be less of a financial and technical burden on providers than it used to be;
 - iii) the practical strength of the Equality Act 2010 is overstated. It is reliant on cases being legally considered on an individual basis and few deafened people have the awareness or finances to pursue such cases. Further, enforcement of the Equality Act 2010 is “reactive rather than proactive, which would not be much help for someone in an emergency situation”.

9.35 While we agree that it is important that public call boxes are accessible to people with disabilities and while the policy goal of the accessibility requirements currently in GC 6.3(a) clearly remains important, we are not persuaded that it remains necessary to include these provisions in sector-specific regulation.

9.36 There is no evidence that the specific percentages of public call boxes required to be accessible are not currently being met. The number of new public call boxes being installed is low and we note BT’s comment that new boxes are accessible and will continue to be so.

9.37 As stated by the CCP and ACOD, the enforcement of the Equality Act 2010 is not within Ofcom’s statutory remit. As noted by the NADP, the Equality Act 2010 grants individuals rights, which they may enforce directly in the courts in response to alleged non-compliance. While this is the case, as noted in the August 2016 consultation (paragraph 5.10), CPs providing services to the public are required to comply with the provisions of the Equality Act 2010. The Equality Act 2010 imposes a duty on service providers (which would include CPs that provide public call boxes) to make reasonable adjustments to allow people with disabilities to use the services offered by the provider. This duty to make reasonable adjustments specifically requires that where a physical feature puts a person with disabilities at a substantial disadvantage in relation to their ability to access relevant services in comparison with persons who are not disabled, the service provider must take such steps as are reasonable to avoid the disadvantage. The Equality Act 2010 further provides that the duty to make reasonable adjustments includes the requirement to take such steps as are reasonable to provide auxiliary aids where, but for the provision of the auxiliary aid, a person with disabilities would be put at a substantial disadvantage in relation to a relevant service in comparison with persons who are not disabled.

9.38 Therefore, while the enforcement of the Equality Act 2010 is not within Ofcom’s statutory remit, the provisions of the Equality Act 2010 clearly apply to the design of public call boxes. Since the implementation of the Equality Act 2010, CPs that provide public call

boxes have installed boxes that are accessible. As noted above, BT's newer design of kiosk is accessible and there are no plans to change this.

- 9.39 In the event that in the future there is evidence that public call box designs are not remaining accessible and further protection was necessary to ensure appropriate access for end-users with disabilities, Ofcom could introduce appropriate measures through an amendment to the GCs at that stage. We have therefore decided to implement our proposal to remove the specific requirements in relation to the design of public call boxes.

Textphone facilities

- 9.40 Vodafone (p.13) agreed with our proposal to remove the requirement (currently in GC6.3(c)), that requires providers of public call boxes to consult Ofcom from time to time to ensure adequate provision of textphone facilities, and provides Ofcom with the power to direct such facilities to be provided as they deem appropriate.
- 9.41 A confidential respondent [redacted] commented that it is important to continue to require that a number of public call boxes provide additional amplification facilities, in order to avoid "socially excluding those with hearing difficulties from being able to make a call".
- 9.42 The NADP (p. 1) disagreed with our proposals and commented that:
- a) in an emergency situation (including a personal emergency) deafened people may be reliant on public call boxes to make calls, particularly if they do not have a mobile phone with them, or if they are unable to get sufficient reception on their mobile phone. The NADP also noted that the majority of serious car accidents take place in rural locations, where mobile phone signal strength and broadband coverage tend to be poor;
 - b) although situations where deafened people require a public call box are of low incidence, it is Ofcom's role to ensure that "a base level of service is available in such situations";
 - c) text relay calls made from public textphones are not all hoax calls; and
 - d) "older people are more likely to be deafened but are less likely to own a smart phone".
 - e) Ofcom should enforce compliance with the current GC 15 in relation to relay services. The NADP argued that if text relay services were faster, then they may become more widely used, and public call boxes should have the functionality to meet potential future demand.
- 9.43 We note the NDAP's comments that textphone facilities in textphones remain important for deafened people, particularly if they do have a mobile phone with them, do not own a smart phone, or in areas of poor mobile coverage. However, as set out in the August 2016 consultation there is no evidence of demand for new public textphones and there is

evidence that the use of existing public textphones is extremely low.¹⁰⁴ We are therefore of the view that provision of textphone facilities is currently adequate. Since October 2014, text relay has been available on smartphones via the NGT Lite app. Take-up of mobile telephony in the UK is high, and 46% of hearing impaired adults, 41% of all disabled adults and 66% of non-disabled adults currently have a smartphone¹⁰⁵. Given this, the need for public textphone facilities is unlikely to increase.

9.44 To date, Ofcom has not found it necessary to make a direction in relation to public call boxes incorporating textphones. As a direction was not considered necessary before the NGT Lite app made text relay available on smartphones, it is extremely unlikely that it would become so now. We therefore consider that the requirement in the current GC 6.3(c) to consult Ofcom on the number and location of public call boxes providing textphone facilities and the power for Ofcom to direct CPs to provide public call boxes including textphone are no longer necessary. The evidence on the use of textphone facilities in public call boxes shows that use of these facilities is minimal and supports the view that there are sufficient facilities to meet current demand.

9.45 In relation to the NADP's comment that relay services would be more widely used if they were faster, we note that relay services must comply with the technical specifications in the current GC 15 (condition C5, as re-numbered) and be approved by Ofcom. We have not seen evidence that the requirements of this condition are not being complied with or that speed is a disincentive to the use of text relay.

Removal of public call boxes

9.46 The CCP and ACOD commented that:

- a) they are not opposed to the removal of the requirement in the current GC 6.3(d) to give advance notice of the intention to remove certain PCBs "where they are duplicated in Condition 3 of the Universal Service Provisions" (p.2); and
- b) "public call boxes are still a vital part of the communications consumer landscape and will be until there is affordable, ubiquitous mobile coverage; they must remain accessible to all consumers except where a suitable alternative is proven to exist" (p.4). They noted, in particular, that "for some people in vulnerable circumstances call boxes also allow them to make calls to organisations such as helplines without recording a call history on a personal device" (p.3);

9.47 A confidential respondent [X] disagreed with the proposals to remove the requirement to give notice of any proposed removal of a public call box in the current GC 6.3(d) because

¹⁰⁴ BT told us that in the period from January to May 2016, over 80% of public textphones operated by it have not been used to make any text relay calls. Of the text relay calls that were made from BT public textphones during this period, nearly all were made using the text relay emergency number 18000, but with no conversation associated with the calls. We understand that BT receives a high volume of silent voice calls to 999 from payphones, so it is likely that the text relay emergency number is subject to the same type of misuse.

¹⁰⁵ Ofcom's "Disabled consumers' use of communications services. A Consumer Experience report", 1 October 2015, page 78 (http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/1515282/Disabled_consumers_use_of_communications_services.pdf).

mobile phones and VoIP are not a reliable form of communication in emergency situations (due to network coverage issues, battery power etc.) whereas most public payphones still work in power failures and natural disasters. As noted above (paragraph 9.2), the requirements in the GCs that relate to the removal of public call boxes overlap with the requirements of condition 3 of the specific universal service conditions imposed on BT and KCOM. A direction and guidance made under these conditions sets out the procedures for the installation and removal of public call boxes. These conditions, the relevant direction and guidance will remain in force and continue to have effect until such time as they are modified or revoked. They will not be affected by the review of the GCs. The requirements in the GCs in relation to the procedures that must be followed to cease providing services from a public call box duplicate these requirements and are therefore unnecessary. On this basis, we have decided to implement our proposal to remove them.

Definitions

9.48 Stakeholders did not comment on these specific proposals in response to the August 2016 consultation.

Ofcom's decision

9.49 We have decided to implement the following proposals concerning public pay telephones which we set out in the August 2016 consultation:

- a) remove the requirements in the current GC 6.1 relating to operator assistance and directory enquiry facilities for public pay telephones;
- b) remove the requirement to display the means by which charges must be paid in the current GC 6.2(b); and
- c) remove the current GC 6.3, which relates to the design of public call boxes, textphone facilities and the removal of public call boxes.

9.50 In the August 2016 consultation, we sought specific input on whether it remains necessary to include in the revised condition a requirement to display the location of each public pay telephones and the number on which they can receive calls. We have decided to retain these requirements.

9.51 In the August 2016 consultation we proposed that if, having considered stakeholders' responses to the August 2016 consultation, we decided to maintain a condition on public pay telephones which only contains information requirements, we would incorporate those requirements into the proposed condition that would consolidate all the main information publication and transparency requirements. As set out in paragraph 8.51, we have decided to implement this proposal. Therefore, the remaining information requirement will be set out in condition C2.15 (as re-numbered).

Legal test

9.52 We consider that the changes we have decided to make to the current GC 6 (now included in condition C2) and condition C2.15 itself meet the test for setting or modifying conditions set out in section 47(2) of the Act. These changes are:

- a) **objectively justifiable**, as we think that the requirements that we have decided to remove from this condition are no longer necessary, and the requirements we have decided to retain are still necessary;
- b) **not unduly discriminatory**, since these changes will apply equally to all providers of public pay telephones;
- c) **proportionate** as the changes to this condition will not impose any additional burden on CPs; and
- d) **transparent** as the reasons for retaining certain requirements are explained above and their effects are already clear to CPs on the face of this GC.

10. Billing requirements

Introduction

10.1 The current GCs set out rules on the accuracy of bills (GC 11), the provision of itemised bills (GC 12) and procedures for debt collection and disconnection (GC 13). These requirements are in place for consumer protection: they ensure that consumers are not overcharged or unfairly disconnected from their network. In this section, we set out the changes that we have decided to make to these conditions, which include combining them into condition C3, as re-numbered.

Accurate billing

Consultation proposals

Definition of “Bill” and other clarifications

10.2 We proposed certain changes to the obligation preventing CPs from “rendering any bill” to an end-user unless such bill is accurate (GC 11.1) to clarify that:

- a) consumers should never be overcharged, even if the correct amount appears in their bill or statement;
- b) CPs must comply with the condition in respect of all ways they make billing and charging information available to customers, including, for example, where pay-as-you-go (“PAYG”) customers proactively check their bill; and
- c) the condition is intended to ensure that customers are charged the correct amount for services provided to them, that the bills they receive accurately record those charges, and that they receive all the services they are charged for (paragraphs 6.9-6.11 of the December 2016 consultation).

Removal of direction making power (records type)

10.3 We proposed to remove the direction-making power in the current GC 11.2 that allows Ofcom to specify which records should be retained by CPs in order to demonstrate that they have not overcharged their customers because Ofcom has never considered it necessary to make such a direction.

Removal of direction making power (retention period)

10.4 We also proposed to remove the direction-making power in the current GC 11.2 that allows Ofcom to specify how long CPs must retain records demonstrating that they have not overcharged their customers, and instead to specify a minimum retention period in the condition itself. We proposed that this period should be 12 months. As a consequence of this change, we proposed to remove the current 15-month maximum limit on record retention. We considered that these proposals would make any future monitoring and enforcement programme more effective, as the current absence of a clear minimum

requirement that would apply across industry could lead to a lack of suitable evidence being available for billing investigations.

Extension of the metering and billing approval scheme to data services

- 10.5 Providers of voice call services whose annual revenue is greater than £40m are currently required to obtain approval of their metering and billing system. In light of the number of complaints, and the growth in the use and importance of data services such as broadband, we proposed that the requirement on CPs providing voice call services to obtain approval of their metering and billing systems should be extended to providers of data services. As a consequence of this change, we proposed to increase the current turnover threshold triggering the requirement for approval from £40m to £55m, in order to continue to ensure protection for the majority of end-users without imposing a disproportionate burden on smaller CPs.
- 10.6 For clarity, we proposed to specify upfront Ofcom’s power to issue a direction (the Metering and Billing Direction¹⁰⁶) setting out the process, standards and other requirements that CPs must comply with to obtain approval of their metering and billing systems¹⁰⁷; and to specify that the condition applies to wholesale providers as well as retail providers.¹⁰⁸

Metering and billing direction

- 10.7 We proposed a number of consequential changes to the Metering and Billing Direction, to reflect our proposed changes to the condition. These changes are set out in further detail in paragraphs 10.85-10.87.

Stakeholders’ responses and Ofcom assessment

- 10.8 A number of stakeholders provided comments on our proposals on this condition: a confidential respondent [X], the CCP and ACOD, Enigma, TUV SUV BABT, FCS, Nine Group, Sky, Telefonica, TalkTalk, Three, Verizon, Virgin Media and Vodafone. We discuss their comments below.

Definition of “Bill” and other clarifications

- 10.9 The CCP and ACOD welcomed the clarification in the wording of the revised condition to specify that while “billing” must be correct and accurate, consumers must also be “charged” accurately (p. 4). Other respondents suggested some changes. In particular, BT, Three, Virgin Media and Vodafone are concerned that the proposed changes might result in finding CPs in breach of the revised condition on the basis of information made available

¹⁰⁶ The current version of the Metering and Billing Direction is available at <https://www.ofcom.org.uk/consultations-and-statements/category-2/metering-billing-2014>. The changes that we have decided to make to the Metering and Billing Direction as part of this review of the GCs are set out in paragraphs 10.88-10.99, and the revised direction is set out in Annex 15.

¹⁰⁷ Paragraph 6.23(a) of the December 2016 consultation.

¹⁰⁸ Paragraph 6.20(a) of the December 2016 consultation.

to the customers before the end of a billing cycle. Specifically, we received these comments:

- a) BT considers that the definition of “Bill” should explicitly exclude “the data available to customers in near real-time during the incomplete bill cycle, which allows customers to monitor their usage either online or via an Interactive Voice Response (IVR) for mobile Pay as you go”. BT argued that we should exclude this “unbilled” information since it “may not contain all available data and may exclude, for example, discounts, credits due and promotions which are normally applied at the end of the bill cycle when the Subscriber’s bill is produced” (§ 72);
- b) Three (§ 68-69) argued that the proposed change to the current GC 11.1 “will prove particularly challenging to effectively implement” because customers are credited when an overcharge is identified on their account so that they do not suffer detriment. According to Three, implementing the changes as we proposed will mean that “by default providers could be in near constant breach of the amended GC”;
- c) Virgin Media (p. 6) said that “there may be situations were, due to circumstances outside the CP’s control, providing accurate ‘real-time’ information may not be possible (for instance with certain roaming services)”;
- d) Vodafone (p. 14) said that it “tentatively supports” the proposed changes. However, Vodafone pointed out that “services that offer the proactive checking of a bill may contain a time lag” and “where this is technically inevitable (such as for roaming data services), Ofcom should accept that such bill information is accurate as long as this caveat is clearly explained to the customer”.

10.10 In light of these comments, we have decided to omit the words “including current balance information” and refer to the debits and credits “applied to and End-User’s account” (rather than those “to be applied” to that account) in the definition of “Bill”. This is to clarify that an end-user is overcharged if the amount charged to them at the end of any billing cycle exceeds their actual usage. We also note that if a CP were to make deductions against the prepaid balance amount of a pre-paid customer in excess of the services that the customer has actually used, this would amount to charging a sum exceeding the true extent of the service actually provided. Therefore, even in the absence of the omitted words, the revised condition would prohibit such behaviour.

10.11 We also received these further comments:

- a) Vodafone (p. 15) said that “it would be helpful for Ofcom to specify that [the] level of materiality that applies to GC 11.2 will also apply to GC 11.1 (either within the GC itself or as a matter of administrative practice by Ofcom)”, noting that “CPs to which GC 11.2 applies have a degree of tolerance in respect of the required accuracy that their metering and billing systems must meet in order to be certified by BABT”. We do not agree with this comment. Any time a customer is overcharged amounts to a breach of this condition. We note, however, that in order to ensure that our intervention is targeted at cases where action is needed, we normally open a formal investigation into compliance with the GCs where we have concerns about significant harm to consumers;

- b) BT (§ 70-73) proposed that we replace the word “End-User” with “Subscriber” within the definition of “Bill” since “CPs are only responsible for the provision of bills to their Subscribers and the bill should only be provided to the person or business with whom the contract is made” (§ 71). Although we agree that billing information is normally provided or made available to subscribers only (including both pre-paid and post-pay customers), there might be cases where a CP continues to charge its former customers.¹⁰⁹ The use of the word “End-User” in the definition of “Bill” will continue to ensure that these former customers are protected. Therefore, we consider it appropriate to retain that word;
- c) the FCS suggested that we say “about the charges” rather than “of the charges” in the definition of “Bill” (FCS response to Q10). We have accepted this drafting suggestion.

Removal of direction making power (record type)

10.12 BT agreed with the proposed changes in relation to record retention (§ 46 and 185). We received no further comments on this proposal.

Removal of direction making power (retention period)

10.13 BT (§ 46 and 185), Nine Group (response to Q8) and Vodafone (p. 15) agreed with our proposal.

10.14 Three (§ 73) sought clarification as to whether Ofcom’s intention is “to amend the provision in relation to how the information is held and accessed (ie do the Records need to be held, so as to be easily accessible at all times?)”. In response to this comment, we note that we do not intend to amend the current position in relation to how the necessary records should be retained. CPs must continue to ensure that these records are easily and readily accessible.

Extension of the metering and billing approval scheme to data services

10.15 This is one of the proposals that generated the most debate among respondents.

Inclusion of data services

10.16 The CCP and ACOD strongly support the proposed extension to cover also data services (p. 4).

10.17 Sky (§ 1.1), Verizon (§ 1) and Vodafone¹¹⁰ (p. 15) consider that the metering and billing scheme should not be extended to fixed broadband services since these services are

¹⁰⁹ For instance, in March 2017, Ofcom found Plusnet Plc. in breach of GC 11.1 for having billed customers for services they had ceased subscribing to (https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01178).

¹¹⁰ Vodafone (p. 15) said that “the expansion of TMBS [Total Metering and Billing Scheme] approval is proportionate for mobile services, but should remain a voluntary option for fixed line data services” since “the sale of data services over fixed broadband is often more simple than in mobile, particularly as “unlimited data’ offerings are now common place in fixed broadband”.

normally charged through a flat fee. We do not agree with this comment as “flat fee” packages may have usage limits, which means that an additional sum is charged if the customer exceeds such limit. In addition, where data services are provided on a truly “unlimited” basis, the consumer may wish to know the total amount of data used to help them understand their typical data consumption and to enable comparisons with other tariffs and providers.

- 10.18 Verizon considers that there is no need to protect large business customers (§ 19) since, in its view, these customers typically consume vast amounts of data and they do not need to know how many megabytes of data they have used (§ 15 and 19). Also Virgin Media (p. 6) expressed concerns about the extension to data services in relation to large business customers. In the December 2016 consultation (footnote 48), we noted that “in 2016 around 40% of billing complaints were about data services”. Verizon requested “the breakdown of the figure split out by complaints about mobile vs fixed data, and domestic and small business consumer vs large business consumer”, since in its view there are few complaints from large business customers (§ 16).
- 10.19 As we set out in the December 2016 consultation (paragraph 6.21), the majority of CPs, Approval Bodies and business stakeholders responding to the review of the Metering and Billing Direction that we carried out in 2013/2014 supported retaining services for large businesses as mandatory under the Direction. The business stakeholders argued that businesses needed the protection given by the Direction as they could not be sure that bills reflected usage and tariffs and they usually relied on CPs to identify errors. We remain of the view that also large businesses should be protected against the risk of being overcharged. Even when they use large amounts of data, we think large businesses should still be able to rely on bills that accurately reflect their usage and tariffs.
- 10.20 Other respondents agreed with the proposed extension of the scheme to data services, but suggested some changes in relation to how we proposed to implement such proposals, providing comments on: (i) the definition of “Publicly Available Internet Access Services”; (ii) the extent to which the revised condition will apply to wholesale providers; and (iii) the proposed turnover threshold of £55m.

Definition of “Publicly Available Internet Access Services”

- 10.21 We received a number of comments on how we proposed to implement the extension to data services. In summary, BT, TalkTalk and UKCTA suggested that we should exclude business-to-business private circuits, while TUV SUV BABT argued that we should include them. More specifically, we received these comments:
- a) BT said that, whilst in principle it agrees that internet access services should be included in the Direction, we should amend the definition of “Publicly Available Internet Access Services” so that it refers to “direct access to the internet” rather than “access to the internet” (§ 66-67). In BT’s view, this would make clear that “the relevant services in scope are consumer broadband services that directly connect the customer to the internet, rather than other data services, such as virtual private networks (...)”, and it would be consistent with the approach followed in the Ofcom Business Broadband Speed Code of Practice (§ 67);

- b) TalkTalk (§ 13) said that “the proposed extension of the metering and billing requirements to include data services appears sensible given market developments (although much more so in the consumer market as opposed to the business market)”. TalkTalk (§ 15) also sought clarifications as to what types of data products would be expected to fall within the definition of “Publicly Available Internet Access Services”, arguing that “the definition appears to be too wide and would also seemingly include also more complex business data products such as, e.g., multi-site connectivity using uncontended circuits (provided Internet access is included)”;
- c) UKCTA (p. 5) asked us to specify which data services would be included and added that, for example, it would not be appropriate to include more complex business data products such as “multi-site connectivity using uncontended circuits”. In its view, large business data products do not require the same level of regulatory protection as the consumer market;
- d) TUV SUV BABT “supports the view of MABABF¹¹¹ that data services should be included as they are now a significant cause of billing errors and customer complaints”. However, TUV SUV BABT said that ““Public Internet Access” does not address peer-to-peer data services as used by businesses, e.g. transferring data between operational sites” (response to Q10).

10.22 In light of the comments provided by BT, TUV SUV BABT, UKCTA and TalkTalk, we have revised our initial proposals by specifying in the definition of “Publicly Available Internet Access Services” that these services do not include “connectivity services that directly link to a private network”. This is to exclude business services such as those which are normally provided to companies that need dedicated private networks to connect offices and data centres in various locations (i.e. “multi-site connectivity services”). The charge for these services is generally based on the nature of the circuits provided (i.e. dedicated communications channels), rather than actual consumption. Therefore, we consider that business customers do not need protection in relation to these services.

Wholesale providers

10.23 BT said that it “fully support Ofcom’s desire to give users of broadband services the same level of protection in relation to the billing of their services as voice customers” (§ 45). However, BT is concerned that the proposed addition of the terms “(including any wholesale provider)” in paragraph C3.1(b) would unintentionally extend the revised condition to “all wholesale billing activity, irrespective of whether it has any impact on how a CP bills an End-User” (§ 50). In BT’s view, wholesale billing should fall within this condition only “where it involves metering and billing that directly impacts on End-Users” (§ 54) and the current Metering and Billing Direction already follows this approach by excluding invoices between CPs and wholesalers (§ 54)¹¹².

¹¹¹ “MABABF” is the Metering & Billing Approval Bodies’ Forum (<http://mababf.org/>).

¹¹² In its response (footnotes 11 and 12), BT referred to paragraph 3.1 of the current Metering and Billing Direction and paragraph 1 of Annex C to that direction.

- 10.24 To clarify how the revised condition applies to wholesale providers, BT (§ 61) suggested the following changes to condition C4.1(b) (the words added by BT are underlined):

“paragraphs C4.4 to C4.12 apply to any provider of Publicly Available Telephone Services and/or Publicly Available Internet Access services (including any wholesale provider) only if they bill an End-User, except that paragraphs C4.4 to C4.6:

- i) only apply to a wholesale provider if they provide metering information that is then used by a retailer to onward bill End-Users;
- ii) do not apply to any such provider if its Relevant Turnover in its most recent complete financial year is less than £55 million”.

- 10.25 In light of BT’s comment, we confirm that our policy concerns in this area relate to the billing of end-users (i.e. at retail level) and the provision of information at wholesale level which is to be used for billing end-users. We have amended condition C3.1(b) to make this clearer. Namely, we have specified that the relevant paragraphs of this condition apply in respect of:

“(i) the billing of **End-Users**; and
(ii) the provision of information to be used by another **Communications Provider** for billing **End-Users**”.

- 10.26 Therefore, any wholesale billing between CPs which does not have any impact on the billing of end-users will continue to fall outside the Metering and Billing Approval Scheme.
- 10.27 TalkTalk (§ 15) and UKCTA (p. 5) said that we should clarify whether and, if so, what wholesale data products would be covered by the definition of “Publicly Available Internet Access Services”. Except for any “connectivity services that directly link to a private network” (see paragraph 10.22 above), the provision of information relating to any other wholesale data product will be subject to the Metering and Billing Approval Scheme, to the extent that such information is to be used for billing end-users.
- 10.28 For greater clarity, we have also amended the definition of “Relevant Turnover” to specify that turnover which is attributable to wholesale provision of services should be included in any calculation of turnover for the purpose of the GCs.

Turnover threshold

- 10.29 A confidential respondent [X] said that the inclusion of data services within the Metering and Billing Approval scheme is “logical”, but suggested that we should adopt a lower turnover threshold because: (i) “there has been deflation in telecommunications” due to a cost reduction (e.g. lower termination rates) and (ii) regulating approximately thirty CPs would not be enough to cover a “significant majority”. This confidential respondent characterised the current turnover threshold as “a taxation on success rather than any real, tangible, end user benefit”.
- 10.30 We retain the view that exempting those CPs whose relevant turnover falls below £55m will continue to ensure protection for the majority of end-users without imposing a

disproportionate burden on smaller CPs. We also note that smaller CPs, like all relevant CPs, will continue to be subject to the overall obligation to charge and bill customers correctly. Therefore, we have decided to increase the current turnover threshold from £40m to £55m.

The Metering and Billing Direction

10.31 Three (§ 74) said that the proposed changes to the current GC 11.4 suggest that it will be possible for Ofcom to make additional changes to required Metering and Billing Systems “on an ad hoc basis” and that this would create uncertainty. We note that any change that we may wish to make to the Billing and Metering Direction will continue to be subject to the substantive and procedural requirements set out in sections 49-49C of the Act. Therefore, the paragraph that we have decided to add in the revised condition (i.e. condition C3.4) will not introduce any substantive change to the current regime. The main purpose of this paragraph is to set out more clearly the requirement for CPs to comply with Ofcom’s direction-making power, since this power currently appears in a definition (“Approval”) rather than the main body of the GCs.

10.32 BT provided these comments:

BT said that the proposal to change the Direction to include data as mandatory is a significant change and “it would have been helpful to have been provided with greater context and evidence” (§ 63);

as mentioned above (paragraph 10.15), BT suggested an amended definition of “Publicly Available Internet Access Services”. BT also said that we should use that term across all relevant documents, rather than using the term “data”, since “data” “is much wider in scope and includes all data transmission services offered in the corporate market that are clearly out of the scope of the Billing Direction” (§ 68);

furthermore, BT noted that significant resources will be required from the Approval Bodies (§ 65 and 69); and that the current Direction explicitly excludes VoIP services from the scope of the mandatory approval (§ 68).

10.33 In light of BT’s comments, we note that we based our proposals on the most recent complaints data, which show a significant increase in the complaints related to the billing of data services. We discussed our concerns in the December 2016 consultation.¹¹³ We agree with BT that we should use the term “Publicly Available Internet Access Services” across all relevant documents and, for this reason, we have amended the Metering and Billing Direction accordingly (as proposed in the December 2016 consultation; paragraph 14.17(a)). We have had further engagement with the current Approval Bodies and we have taken their comments into account. In relation to VoIP services, we note that to the extent that a VoIP service is a “Publicly Available Telephone Service” (in practice, if it allows end-users to make calls to, and received calls from, traditional fixed or mobile phones), the current Direction already applies to these services.

¹¹³ See § 6.17 of the December 2016 consultation.

10.34 We have also received some further comments on the specific changes that we propose to make to the Direction itself, which we set out in paragraphs 14.14-14.20 of the December 2016 consultation. We discuss these comments at the end of this section, in paragraphs 10.84-10.99 below.

Costs

10.35 We received the following comments on the likely costs of our proposals:

- a) Enigma said that “there would be an increase in SP resource and audit time, but this would not be major as many of the existing voice focused processes could be extended. There would also be benefits in terms of control, efficiency and customer service.”;
- b) TUV SUV BABT said that some additional work will be required by CPs to extend their Metering and Billing Approval to cover data services, but “this should not be a significant cost”;
- c) Virgin Media believes that our proposals to extend the regulatory requirements for billing to fixed and mobile voice call and data services will place a “significant additional cost and operational burden on CPs” (p. 7). Virgin Media suggested that the likely costs cannot be quantified until we clarify whether there is an expectation of itemised billing for data and our proposals are subject to a formal impact assessment (p. 5 and 7). However, it said that its initial view is that [3<].

10.36 We retain the view that the extension of the Metering and Billing scheme to cover also data services will not impose any disproportionate burden on industry. We provide further clarifications on the itemisation of data services in paragraph 10.51.

Implementation period

10.37 We also received the following comments on the implementation period:

- a) BT (§ 16(a) and 188), Enigma, Sky¹¹⁴ (§ 1.2), TalkTalk¹¹⁵ (§ 2 and 68), TUV SUD BABT, UKCTA (§ 27), Virgin Media¹¹⁶ (p. 5) and Vodafone¹¹⁷ (p. 15) argued for a 24-month implementation period, noting that this would be in line with the current Direction;

¹¹⁴ Sky said that a 24-month period is required “not just for internal systems adjustments but also to cater for the availability of external accreditors which has been challenging in the past” (§ 1.2).

¹¹⁵ TalkTalk added that “a much longer implementation period is not just justified by the internal work that the provider needs to carry out but also by the availability of external accreditor availability (which has proven to be a potential bottleneck in the past)”.

¹¹⁶ Virgin Media suggested that “two years (...) is a more realistic and achievable timeline for implementation, given the complexity of expanding accreditation to data services and the need to engage an external accreditor” (p. 5).

¹¹⁷ Vodafone (p. 15) said that “the proposed extension of GC 11.2 to data services as well as voice services necessitates considerable engineering work, time and investment on the part of CPs” and suggested that “the period allowed for compliance should be extended to 24 months in accordance with the accreditation timeframe mandated within the Metering and Billing Directive (2014)”.

- b) Telefonica (§ 12 and 92) said that “a minimum of 12-18 months is likely to be required for the inclusion of data within the Metering and Billing Scheme and any significant IT systems changes”.

10.38 In light of these comments, including stakeholders’ comments on costs, we have decided to allow for a longer implementation period of 12 months. As set out in paragraph 10.92 below, we have also revised the Direction to clarify that CPs will have 6 months to apply for approval (from the date the new Direction enters into force) and 24 months to obtain approval (from the date of the application).

Other comments

10.39 We received these further comments from stakeholders:

- a) BT agreed with our proposal to combine the current conditions concerning billing requirements into a single condition (§ 46). Three, instead, said that “these are very distinct conditions which cannot be combined” (§ 75). Vodafone suggested that this condition may fit better within the amended GC 23 since it is “rightfully expended to demand that the end-user is not over charged”. Since all these conditions relate to the provision of billing information or the payment of bills, we retain the view that combining them together will help industry and consumers to navigate through the various GCs;
- c) BT said that we should further engage with industry before finalising the revised condition and Direction (§ 64). In reaching our final decisions in this policy area, we have considered stakeholders’ responses and we have had further discussions with the current Approval Bodies. In our view, this process has allowed stakeholders to provide meaningful comments, which we have carefully considered;
- d) TalkTalk (§ 14) said that “it is important that Ofcom ensures that mobile virtual network operators are able to obtain the necessary data billing information from relevant mobile networks in a timely and complete manner in order to be able to comply with the metering and billing requirements”. We agree with this comment and we note that we have added reference to “wholesale providers” of voice/data services in condition C3.1(b) to clarify that the condition applies to them to the extent that they provide information to be used for billing end-users;
- e) Verizon (§ 17) said that the proposed extension of the metering and billing scheme to cover also data services would increase its costs due to: (i) “an increased cost of engaging with the approval body”; (ii) “an increased cost of resource to carry out control processes and support audits of the systems”; and (iii) “a very significant cost to carry out system modifications which would cover both capital budget and the cost of development time”. We recognise that extending the Metering and Billing scheme to cover also data services may result in some additional costs. However, we retain the view that we are not imposing any disproportionate burden on industry, noting that smaller CPs will continue to be exempted from this requirement.

Ofcom's decision

- 10.40 We have decided to implement the proposals concerning accurate billing which we set out in the December 2016 consultation (paragraphs 6.9-6.27), with the following revisions:
- a) we have decided to omit the words “including current balance information” and refer to the debits and credits “applied to and End-User’s account” (rather than those “to be applied” to that account) in the definition of “Bill”. We have also replaced the expression “information (...) of charges” with the expression “information (...) about charges”; and
 - b) we have revised condition C3.1(b) to specify that the metering and billing approval scheme will continue to apply also to wholesale providers, but only to the extent that they provide information to be used for billing end-users. We have also amended the definition of “Relevant Turnover” to specify that turnover which is attributable to wholesale provision of services should be included in any calculation of turnover for the purpose of the GCs.
- 10.41 The revised text of the condition that will replace the current GC 11 can be seen at Annex 14 (see condition C3).

Access to billing information

Consultation proposals

Extension to data services

- 10.42 CPs are currently required to ensure that users of voice call services can monitor their expenditure, in particular through the provision of itemised bills. In light of the growth in data services, the increase in complaints about billing services and the increased availability and take-up of inclusive tariff packages where consumers have an allowance of calls and/or data in exchange for a fixed fee, we proposed that the condition should apply to all providers of voice call and data services (rather than binding only providers of voice call services).

Access to adequate billing information for free

- 10.43 CPs are currently entitled to charge a reasonable fee for the provision of itemised bills. We proposed to amend this so that:
- a) CPs would be required to provide access to “adequate billing information”, rather than itemised bills, in order to allow industry to tailor billing information to the specific needs of users of voice and data services; and
 - b) CPs would be required to provide access to adequate billing information at no extra charge (other than for printed bills), on the basis that access to billing information is an important element of consumer protection.

Removal of Ofcom's direction making power

10.44 We proposed to remove Ofcom's power in the current GC 12.3 to direct the minimum level of itemisation, as we have never considered it necessary to exercise this power.

Removal of pre-paid services exemption

10.45 We proposed to remove the exemption relating to pre-paid services (GC 12.5), as our proposals to require CPs to provide access to adequate billing information on request at no extra charge would make the exemption redundant.

Non-itemisation of calls which are free of charge

10.46 Currently, CPs are required to ensure that calls which are made from a subscriber's telephone which are free of charge, including calls to helplines, are not identified in the subscriber's itemised bill. To keep pace with technological developments, and ensure that vulnerable parties (whether or not the subscriber) can continue to make these calls in confidence, we proposed to extend the regulation:

- a) from calls only to calls and text messages; and
- b) from itemised bills to any itemisation made available to the subscriber, including records showing consumption data.

Stakeholders' responses and Ofcom assessment

Extension to data services

10.47 In addition to the general comments provided in response to question 8 (of the December 2016 consultation), which were mainly supportive of our proposals, we received more specific comments on this condition from a confidential respondent [§<], the CCP and ACOD, BT, Nine, Three, Sky, Virgin Media and Vodafone.

10.48 The CCP and ACOD strongly support the proposed extension to cover also data services (p. 4).

10.49 BT said that it "fully support Ofcom's desire to give users of broadband services the same level of protection in relation to the billing of their services as voice customers" (§ 45). However, BT is concerned that the proposed changes to the definition of "Subscriber" (which is currently set out in GC 12.6(e)) would unintentionally extend this condition to wholesale providers since the proposed definition would no longer refer to "End-Users" (§ 56). BT made the same comment in relation to the current GC 13, which we discuss below. As set out in paragraph 3.29 above, we have reinstated the word "End-User" in the definition of "Subscriber". Therefore, the rules concerning "Access to billing information" in condition C3 will continue to apply only in respect of the provision of services to end-users (see also paragraph 10.74 below).

Access to adequate billing information for free

10.50 Virgin Media, Nine and Sky sought some clarifications about the precise level of itemisation that CPs would be required to provide, especially in relation to data services. Specifically:

- a) Virgin Media said that they “agree that total volume of data consumed over a period of time is likely to be of interest to consumers, to verify whether they have exceeded a data allowance, but further itemisation is disproportionate and unlikely to be wanted by customers” (p. 5);
- b) Nine said that “it would be helpful to provide some high level guidance on the minimum requirements for the content of itemised billing” (Nine’s response to Q10);
- c) Sky (§ 1.4) sought clarifications on what we mean by “adequate” asking for example, whether CPs would be required to supply itemised individual data sessions to customers on the bill or whether a summary of a day’s data consumption would be enough.

10.51 We have carefully considered these concerns about the precise level of itemisation that would be required under the revised condition, especially in relation to data services. As set out in the December 2016 consultation (paragraph 6.33), we would expect industry to tailor billing information to the specific needs of end-users of voice and data services. Since this requirement will continue to be “on request” only, we consider that the information to be provided to achieve the policy aim of this condition without imposing any disproportionate burden on industry will be best assessed on a case-by-case basis. We also note that the aim of the condition is:

“to allow the **Subscriber** to:

(a) verify and control the charges incurred by the **Subscriber**; and

(b) adequately monitor the **Subscriber**’s usage and expenditure and thereby exercise a reasonable degree of control over their **Bills**.”

10.52 These words help clarify the aim of providing an itemised bill on request, and should also assist CPs in deciding what level of itemisation is appropriate in any circumstances. However, to address CPs’ concerns about the risk of being requested an excessive level of detail, we clarify that, for example, we would not expect CPs to provide “itemised individual data sessions”, as suggested by Sky.

10.53 Vodafone (p. 16) suggested that the changes that we proposed should be limited to basic itemised billing for domestic and small business customers, excluding corporate customers, since these corporate customers request more advanced analysis and breakdown of their bills and they are happy to pay for these advanced services. As explained above, we consider that the information to be provided by CPs will be best assessed on a case-by-case basis, in light of individual requests. We think that corporate customers should be entitled to request access to adequate billing information in order to check their bills and expenditure. However, we recognise that some corporate customers might be interested in receiving additional services for a fee, and we note that the revised condition will allow for this flexibility.

10.54 BT said that the wording of the revised condition is inconsistent with condition 6 of the universal service obligations imposed on BT and “it would be appropriate for consistency to reinstate the previous wording” (§ 81). We recognise that the revised GC will no longer mirror the wording used in the specific universal service obligations imposed on BT and

KCOM¹¹⁸, and it will have a broader scope as it will cover also data services. However, we note that in relation to the provision of voice call services, the revised GC will be more aligned with the universal service obligations as they will both require CPs to provide billing information for free (unless the subscriber requests a printed bill, for which the revised GC will allow CPs to charge a “reasonable fee”). In relation to the provision of data services, only the revised GC will apply since the universal service obligations do not cover these services.

- 10.55 A confidential respondent [X] said that we should go further and “require CPs to break down third-party services (the superset of charges that include Payforit) to the level of merchant and product/service”, noting that “payforit” billing codes are typically 8-digit codes associated with price points and aggregators rather than merchants. We agree that it is important that consumers are provided with clear and meaningful information on their bills so they are able to monitor and control their expenditure. In order to achieve this, we have worked closely with network operators over recent years to ensure that bills include clear identifiers of third party services consumed, such as premium rate short codes for the relevant individual service(s). There are also clear requirements (conditions C2.10-C2.11) with regards to the role of CPs, who bill consumers, to ensure that customers are provided with clear information and advice with regards to these services, including contact details of the third party providers so that consumers can obtain further information about services provided on the PRS numbers found on their bills. In our view, these requirements provide consumers with adequate protection. Therefore, we do not consider it necessary to require CPs to change billing systems to include the very detailed information suggested by the confidential respondent.

Removal of Ofcom’s direction making power

- 10.56 We received no specific comment in relation to this proposal.

Removal of pre-paid services exemption

- 10.57 Three strongly disagreed with our proposal on the grounds that it would place an additional burden on mobile providers to provide itemised billing for pay-as-you-go customers without evidence of actual consumer detriment (§ 70-71). In particular, Three said that they “have not seen any evidence of such a requirement being requested by consumers using pay as you go services”. We note that the current exemption relating to pre-paid services which is set out in GC 12.5 applies only if “the Subscriber has an alternative means, free of charge, of adequately monitoring the Subscriber’s usage and expenditure”. In practice, this is not substantially different from having access to adequate

¹¹⁸ Condition 6 of the universal service conditions imposed on BT and Condition 5 of the universal service conditions imposed on KCOM:

http://webarchive.nationalarchives.gov.uk/20040104233440/http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/uso0703.pdf

billing information. Therefore, by removing the exemption for pre-paid services, we are not introducing any substantive change.

Non-itemisation of calls and SMS which are free of charge

- 10.58 We received comments from the CCP and ACOD, BT, Three, Virgin Media and Vodafone on our proposal.
- 10.59 The CCP and ACOD support the retention of the current rule that prohibits the itemisation of free calls on bills and agree with the proposed extension to text messages (p. 5).
- 10.60 BT suggested that we limit the rule to calls/SMS to confidential helplines (using the dedicated 080880 number range)¹¹⁹ and Three proposed that we allow the itemisation of non-sensitive free calls on request by individual customers.¹²⁰ Similarly, Virgin Media (p. 6) noted that there have been “some instances of customers calling for information on calls made to commercial organisations that a CP is not able to provide under GC12.4, including a request for call records in relation to a contractual dispute”. Virgin Media added that it would “welcome consideration as to whether there is any process to allow access to records which relate to commercial services that, prior to July 2015, would have been itemised as charged calls from mobiles (although those same commercial services would have been free from fixed lines)”.
- 10.61 We do not agree with these proposals since this may lead to uncertainty and complexity in compliance and enforcement. We note, in particular, that some helplines do not use the dedicated 080880 Helpline Freephone number range (e.g. Childline uses 0800 1111) and a type of call that many callers may regard as “non-sensitive”, may be “sensitive” if disclosed in circumstances where that caller is vulnerable (e.g. a free call to a bank may be sensitive for a vulnerable person in a relationship where an abusive spouse exercises a significant degree of financial control).
- 10.62 In BT’s view, we should make a distinction between “information made available to a Subscriber in the form of their bill, which customers can access themselves, and information available for staff, including customer service agents (...)” (§ 79). To do so, BT suggested that we refer to the subscriber’s itemised bills or any other records “that the Subscriber can access directly from the Regulated Provider” rather than those “that Regulated Providers make available to the Subscriber” (§ 80). We do not agree with this proposal since the policy aim of this condition is to protect the confidential nature of certain calls and texts also where the bill payer contacts the CP’s customer service. For clarity, CPs’ staff are not prevented from having access to such information, as long as they do not disclose it to the subscriber.

¹¹⁹ In BT’s view, “there may be instances where customers want to know on which date and at what time they have called a certain free number” (§ 78).

¹²⁰ Three said that, for example, “calls made by recipients of in work benefit to the DWP and/or Jobcentre Plus are made on zero rated numbers” and “the recipients of such benefits are required to prove that they have made calls to these numbers, in order to demonstrate that they are actively seeking work” (§ 72).

10.63 Both BT and Three sought further clarifications on the terminology used in this condition. Specifically:

- a) Three said that we must provide a definition of what is intended by a “Short Message” (§ 72). In light of this comment, we have replaced the references to a “Short Message” with “SMS” (i.e. a “Short Message Service”) in this condition, noting that “SMS” is defined in the GCs as:

“a text message delivered to a **Subscriber’s** handset or, if **SMS** is superseded or withdrawn, an equivalent text communication sent directly to the **Subscriber’s** handset”;

- b) BT said that it would be helpful if we could provide a clearer definition of calls that are “free to caller”, specifically for calls made within a bundle or within the customer’s allowance (§ 77). To remove any potential ambiguity, we have referred to these calls/SMS as:

“calls and **SMS** to the emergency call numbers “999” and “112”, or any of the numbers which are designated as “free to caller” in the **National Telephone Numbering Plan**”.

10.64 It might be said that, in light of these changes, the words “including calls and SMS to helplines” could be omitted. However, we have decided to maintain the reference to “helplines”, as it assists in illustrating the aim of this condition. For clarity, we have referred to “calls and SMS to helplines on such numbers” (i.e. 112, 999 or the “free to caller” numbers). Currently, there are three categories of numbers which are designated as “free to caller” in the Numbering Plan: (i) the numbers starting with “080” (except “0800” plus 6 digits); (ii) the numbers consisting of “0800” plus 6 digits; (iii) and the “116XXX” numbers (i.e. 116 000, 116 006, 116 111, 116 117 and 116 123).

10.65 Vodafone (p. 16) supports our proposals, but it said that “expanding the remit to SMS will require technical scoping and build time, so a period of 12 months for implementation will be required”.¹²¹ As explained above (paragraph 3.60), we have decided to allow for a longer implementation period of 12 months.

Ofcom’s decision

10.66 We have decided to implement the proposals concerning accurate billing which we set out in the December 2016 consultation (paragraphs 6.28-6.42), with the following revisions:

- a) we have reinstated the word “End-User” in the definition of “Subscriber”. Therefore, the rules concerning “Access to billing information” in condition C3 will continue to apply only in respect of the provision of services to end-users;

¹²¹ Vodafone (p. 16) said that providing customers with a means of monitoring their expenditure at no charge “will require engineering resources and time to develop, test and deploy suitable functionality in its billing systems and apps – particularly as it must deal with voice and data services and the non itemisation of zero-rated SMS” and asked for a 12-month implementation period.

- b) we have replaced the references to a “Short Message” with “SMS” (i.e. a “Short Message Service”) in this condition; and
- c) we have referred to free calls/SMS which CPs must ensure that are not itemised in bills as “calls and SMS to the emergency call numbers “999” and “112”, or any of the numbers which are designated as “free to caller” in the Numbering Plan”.

10.67 The revised text of the condition that will replace the current GC 12 can be seen at Annex 14 (see condition C3).

Debt collection and disconnection policies

Consultation proposals

10.68 GC 13 currently requires providers of fixed-line voice call services to comply with specific requirements prior to taking any measures for debt collection and/or disconnection due to non-payment of a telephone bill. Given the growth in the importance and use of mobile and data services, and the number of complaints Ofcom receives about mobile providers’ debt management and disconnection policies, we proposed to extend the scope of the current requirements on the debt collection and disconnection policies from fixed telephony providers only to all providers of fixed and mobile telephony and data services.

Stakeholders’ responses and Ofcom assessment

10.69 In addition to the general comments provided in response to question 8 of the December 2016 consultation, which were mainly supportive of our proposals, we received more specific comments on this condition from a confidential respondent [X], the CCP and ACOD, BT, the Money Advice Trust, StepChange, Telefonica.

10.70 Telefonica said that we have not disclosed any complaints data, any substantive detail as to the Citizens Advice Data, and any assessment of consumer harm (including scale) (§ 89). According to Telefonica, we have not demonstrated that our proposals are objectively justifiable, and that our approach is not transparent or sound policy making (§ 90).

10.71 We disagree with Telefonica’s comment. In the December 2016 consultations (paragraphs 6.45-6.53), we openly explained why we consider that also mobile users need protection from unfair debt collection and disconnection practices. In particular, we explained that Ofcom receives a significantly high number of complaints about mobile providers’ debt management and disconnection policies than fixed providers (paragraph 6.49), and described the main categories of such complaints. In our view, we provided an adequate level of detail to show that our proposal was objectively justifiable. However, in response to Telefonica’s request, we note that between April 2016 and March 2017 we received 732 complaints from mobile customers in relation to debt collection and disconnection practices.

10.72 The CCP and ACOD strongly support the proposed extension to cover also mobile and data services (p. 4). They also suggested that the CPs’ debt collection policies should “take the form of a more specific Code of Practice, that is easily accessible to all and not buried

within Terms and Conditions or hidden in the small print” and “linked to advice and support for consumers in vulnerable situations” (p. 5).

- 10.73 A confidential respondent [X] said that it has no issue with the extension of this condition to cover also mobile services “as the substance of the requirement thereafter is not changing”.
- 10.74 BT said that it “fully support[s] Ofcom’s desire to give users of broadband services the same level of protection in relation to the billing of their services as voice customers” (§ 45). However, BT is concerned that the proposed changes to the definition of “Subscriber” (which is currently set out in GC 13.3(b)) would unintentionally extend this condition to wholesale providers since the proposed definition would no longer refer to “End-Users” (§ 56). As set out above, BT made the same comment in relation to the current GC 12. As set out in paragraph 3.29 above, we have reinstated the word “End-User” in the definition of “Subscriber”. Therefore, the rules concerning “Debt collection and disconnection” in condition C3 will continue to apply only in respect of the provision of services to end-users (see also paragraph 10.49 above).
- 10.75 The Money Advice Trust, StepChange and Citizens Advice suggested that we should go further. Specifically:
- a) the Money Advice Trust suggested that we should go further by requiring CPs to comply with these additional requirements:
 - i) CPs should be required to make consumers aware of how they can obtain consumer advice, including free, independent debt advice, from appropriate sources. This respondent noted that in other sectors (e.g. finance and energy) companies are required to send information in a prescribed format to consumers at specific points and said that the introduction of a similar requirement is unlikely to impose significant costs on CPs since they could combine this additional information with existing communications to customers in arrears;
 - ii) set out what measures they will take to ensure that debt repayments are affordable and realistic as part of their published policies.
 - b) StepChange (p. 4/5) suggested that we should go further by requiring CPs to take the following steps:
 - i) to sign-post or refer individuals in arrears to free and independent debt advice; and
 - ii) to treat customers in arrears with appropriate forbearance and allow reasonable time and opportunity to repay the debt. In particular, StepChange suggested that CPs should offer a “breathing space” where interest, fees and enforcement actions are frozen; proactively find out about the person’s circumstances; and accept offers for affordable payment arrangements using an accepted objective standard such as the Common Financial Statement or Standard Financial Statement. According to this charity, these changes would bring the communications sector more in line with good practice requirements for firms in the consumer credit sector.
 - c) Citizens Advice (p. 5/6) said that it strongly supports our decision and suggested that, in order for the revised condition to be effective, we should develop guidance in this area

in order to help companies improve their practice. In its view, CPs should also be required to perform appropriate due diligence on any debt collection companies “in similar way as they are expected to do so for third party retailers who sell their products”. Finally, Citizens Advice noted that it has produced a programme in five points that it is asking all network providers to sign-up (the “**mobile phone debt collection charter**”)¹²² and that “the companies have been willing to engage in this programme”.

10.76 We do not consider it necessary to introduce the further requirements suggested by Money Advice Trust, StepChange and Citizens Advice since we consider that it is more proportionate to retain a high-level obligation on CPs to ensure that their customers are not unfairly disconnected from their network rather than taking a more prescriptive approach. We also note that the Digital Economy Act 2017 (Section 102) has introduced a requirement for providers of mobile services to offer customers entering into a contract the option of placing a limit on their bill and has given Ofcom enforcement powers. This new requirement, which reflects one of the commitment that Citizens Advice is asking network providers to sign-up to, should further contribute to ensuring that mobile customers are not unfairly disconnected.

10.77 For consistency with condition C2.12, which sets out the method of publication for standard terms and conditions such as any compensation and/or refund policies and any available dispute resolution mechanisms, we have revised condition C3.12 accordingly. The revised condition will read as follows:

“C3.12 **Regulated Providers** shall publish details of the measures they may take to effect payment or disconnection in accordance with **Condition** ~~paragraph C3.11 above~~ by:

(a) sending a copy of such information or any appropriate parts of it to any **Subscriber** who ~~reasonably may request~~ such a copy, free of charge; and

(b) placing a copy of such information in plain English, in an easily accessible and reasonably prominent manner on their any relevant website or, where there is no such website, in such manner and form as directed by Ofcom operated or controlled by the Regulated Provider.”

10.78 We would expect that the number of customers who request information about their CPs’ policies for debt collection and disconnection is relatively small, and that CPs already provide such information for free. Therefore, we consider that requiring CPs to provide this information on request and free of charge should not create any additional or disproportionate burden on industry.

Ofcom’s decisions

10.79 Ofcom has decided to implement the proposals concerning the obligations related to the debt collection and disconnection practices which we set out in the December 2016

¹²² https://www.citizensadvice.org.uk/about-us/campaigns/current_campaigns/dialling-down-debt/

consultation (paragraphs 6.43-6.56), except that we have reinstated the word “End-User” in the definition of “Subscriber”. Therefore, the rules concerning “Debt collection and disconnection” in condition C3 will continue to apply only in respect of the provision of services to end-users.

- 10.80 The revised text of the condition that will replace the current GCs 11, 12 and 13 can be seen at Annex 14 (see condition C3).

Other comments

- 10.81 In the December 2016 consultation (question 10), we asked stakeholders whether there are any other modifications to the billing conditions that they considered would be appropriate. The NADP believes that we should provide more guidance to CPs to ensure consistency and transparency of rebate calculations for Next Generation Text Relay (“NGTS”) services to allow deaf consumers to compare offerings from different CPs (NADP’s response to Q10). Furthermore, NADP said that “the fact that PAYG mobile customers for at least one CP are unable to access NGTS directly due to billing complications is unacceptable”.
- 10.82 In response to these comments, we recognise that there were initial implementation issues faced by some mobile CPs providing full access to the NGTS services. These issues now should have been addressed and all consumers should be able to access NGTS. With regard to the consistency of the special tariff scheme for NGTS, we will continue to require that users of the service should not be charged more than if the call had been made without use of the relay service. As the range of tariff packages that consumers may choose will vary between CPs and the relevant tariff scheme may vary accordingly, we do not believe that it is appropriate to provide additional guidance beyond this requirement.

Legal test

- 10.83 We consider that the changes that we have decided to make to the current GCs 11, 12 and 13 (condition C3, as re-numbered) and the condition itself, meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:
- a) **objectively justifiable** as we think that:
- i) complaints data and the growth in the take up and importance of data services justify the extension of the requirements for billing accuracy, billing transparency and the fair treatment of customers in case of non-payment of bills to data services. In addition, complaints data suggests that mobile users need protection from unfair debt collection/disconnection practices;
 - ii) requiring providers to retain the necessary records to demonstrate that they have not overcharged their customers for at least 12 months (and removing the current maximum limit of 15 months) will make any future monitoring programme and enforcement action more effective and provide industry with more certainty;
 - iii) it remains important that end-users can control how much they spend on electronic communication services. Requiring providers of voice calls and data services to provide to each of their subscribers, on request and at no extra charge,

“access to adequate billing information” will allow end-users to control their expenditure and provide industry with an appropriate level of flexibility;

- iv) we no longer need the power to direct the minimum level of itemisation to be provided and we could reinsert it in future if necessary;
- b) **not unduly discriminatory** since the proposed changes to GCs 11, 12 and 13 will ensure that the same regulatory measures apply in respect of the provisions of any voice call and data services which are made available to the public;
- c) **proportionate** as none of these changes will introduce any disproportionate regulatory burden on industry. In this respect, we note in particular that smaller providers will continue to remain exempted from the mandatory Billing and Metering Scheme, and all providers will retain some flexibility as to: the appropriate records to be retained to demonstrate that they have not overcharged end-users, the appropriate information to be provided to ensure that end-users have access to adequate billing information and fair debt collection/disconnection policies; and
- d) **transparent** as the reasons for the changes that we have decided to make to GCs 11, 12 and 13 are explained above and the effects of these changes will be clear to CPs on the face of the revised condition itself.

Metering and billing direction

10.84 As set out above, the new condition C3 will require providers of voice call services and/or data services, except those whose relevant turnover is less than £55 million, to have their metering and billing system approved by a third-party assessor (an “**Approval Body**”), appointed by Ofcom, against a prescribed standard set out in the Metering and Billing Direction¹²³. Consequently, in the December 2016 consultation (paragraphs 14.14-14.20) we proposed to make the changes set out below to the Metering and Billing Direction.

Consultation proposals

Omit the definition of “Mandatory Services”

10.85 We proposed to replace the definition of “Mandatory Services” with a definition of “Regulated Services”, defined as “Publicly Available Telephone Services and or/Publicly Available Internet Access Services” in order to implement the extension of the mandatory metering and billing scheme to data services.

Insert new £55m turnover threshold

10.86 We proposed to amend the direction to reflect the proposed £55m turnover threshold triggering the requirement to obtain approval.

¹²³ The current version of the Metering and Billing direction is set out in Annex 2 to Ofcom’s statement of 31 July 2014, entitled “Review of the Metering and Billing Direction”: https://www.ofcom.org.uk/data/assets/pdf_file/0032/58838/statement.pdf

Drafting changes

10.87 We proposed various other minor drafting changes for clarity, and to remove unnecessary historical references to the 2008 version of the direction.

Stakeholders' comments and Ofcom assessment

10.88 We received a number of comments on the Direction, particularly on the time for implementing the changes.

Definition of Mandatory Services

10.89 We received the following comments from two of the current Approval Bodies:

- a) TUV SUD BABT commented that "Annex B section 2.1.1 and Annex C section 2.1 of the 2014 Metering & Billing Direction states "when relevant turnover from the sum of mandatory services exceeds £40,000,000", the new wording would mean that a number of CPs who currently are required to hold approval for their wholesale TMBS would argue they no longer meet the financial threshold";
- b) similarly, Enigma commented that "the term 'regulated services' seems to be potentially ambiguous".

10.90 We understand these comments to mean that our proposed deletion of the term "Mandatory Services", which is currently defined to include "retail PATS and wholesale PATS that are subject to the requirements of the Direction" would mean that, on the proposed new wording, the turnover threshold would no longer include revenue obtained through the provision of PATS at wholesale level and, consequently, a number of wholesale providers would no longer be caught.

10.91 In light of these comments, we have amended paragraphs 3.1, Annex 2 paragraph 2.1.1 and Annex 3 paragraph 2.1 of the Direction so that rather than replicating the scope of the Direction in the Direction itself, the Direction refers back to the scope section of condition (C3.1(b)) which sets out the CPs to which the Metering and Billing Scheme applies. As explained in paragraph 10.25, we have re-drafted this paragraph of condition C3 so that it will read as follows:

"(b) **Conditions** C3.4 to C3.6 apply to any provider of **Publicly Available Telephone Services** and/or **Publicly Available Internet Access Services** (including any wholesale provider) in respect of:

- (i) the billing of **End-Users**; and
- (ii) the provision of information to be used by another provider for billing **End-Users**, except that **Conditions** C3.4 to C3.6 do not apply to any such provider if its **Relevant Turnover** in its most recent complete financial year is less than £55 million;"

10.92 In addition, we have amended the definition of "Relevant Turnover" to clarify that turnover which is attributable to wholesale provision of services should be included in any calculation of turnover for the purpose of the GCs (see paragraph 10.28). Together, these

changes make it clear that providers whose turnover (whether from wholesale or retail services) exceeded £55 million in their last financial year will fall within the scope of application of the direction.

Other comments

- 10.93 TUV SUV BAPT said that “it would be beneficial to extend the requirement from the Metering and Billing Direction to require a CP to identify where two pieces of information purporting to be the public tariff, terms and conditions have differing information, which takes precedence” (response to Q7). We note that another GC (condition C2, as renumbered) requires CPs to publish clear and up to date information on the applicable prices and tariffs. Therefore, we do not consider it necessary to replicate this provision in the Metering and Billing Direction.
- 10.94 Both TUV SUD BAPT (p.4.) and Enigma said that we should specify in the Direction that CPs will have 24 months for obtaining approval in relation to data services, including where they will seek an extension of their existing approvals. We have accepted these comments and revised the Direction accordingly by amending section 3.3.1 of the Direction, to allow CPs 6 months to apply for approval (from the date the new Direction enters into force) and 24 months to obtain approval (from the date of the application). We have also clarified in the Direction that where CPs request an extension of their approval to a new product or service, they have 3 months from the date the turnover from the new product or service reaches £2,000,000 to apply for an extension, and then 24 months from the date of that application to obtain the extension.
- 10.95 Enigma suggested that we clarify that the billing accuracy for wholesale providers should be considered having regard to the consequential impact on end-users (as “their measured percentage error rates can be very small, but the frequency and impact of errors on individual end user bills can be significant”) and that this would encourage better coordination between wholesalers and resellers.
- 10.96 The purpose of the Metering and Billing Approval Scheme is to provide certain standards to ensure that CPs have the appropriate processes and controls in place to produce accurate bills for their customers, and to provide certainty to consumers that the billing systems of any CP who has obtained approval meets these standards. We think that the Metering and Billing Scheme, in its current state, provides adequate consumer protection and we do not currently consider that it would be necessary or proportionate to require CPs to measure the impact of billing errors on end-users as well as their percentage error rates.
- 10.97 We have discussed stakeholders’ comments on costs and the implementation period above (paragraph 10.35-10.38).
- 10.98 The revised Direction that will replace the current direction from 1 October 2018 can be seen at Annex 15.
- 10.99 As set out in paragraph 10.83, we consider that the extension of the Metering and Billing Scheme to data services and the increase of the turnover threshold from £40m to £55m are objectively justifiable, proportionate, not unduly discriminatory and transparent. Given that the changes to the Ofcom Metering and Billing Direction are consequential

amendments to implement these changes, we consider these further amendments to be objectively justifiable, proportionate, not unduly discriminatory and transparent for the same reasons.

11. Complaints handling and access to ADR

Introduction

11.1 The current GCs (GC 14.4, 14.5 and Annex 4 to GC 14) contain rules on complaints handling and access to alternative dispute resolution (“**ADR**”) which require CPs to have procedures for handling complaints that conform to a code of practice annexed to GC 14 (Annex 4) (the “**Current Ofcom Code**”) and to be a member of a recognised ADR scheme. These rules apply to CPs which provide public electronic communications services to domestic and small business customers where these customers make a complaint to the CP about those services. In this section, we set out the changes that we have decided to make to this condition, which include re-numbering it as condition C4.

Consultation proposals

Summary

11.2 In the December 2016 consultation (Section 7), we explained that our experience of monitoring and enforcing the current rules, together with research we and others have conducted,¹²⁴ has revealed two main concerns:

- a) deficiencies in the scope and clarity of the current rules; and
- b) very low awareness amongst customers of their CP’s complaints handling procedures and their rights when complaining, in particular when they can take their complaint to ADR.

11.3 To address these concerns, we proposed to increase the minimum standards with which CPs’ complaints handling procedures would need to comply by putting in place a new condition for complaints handling and access to ADR (condition C4, as re-numbered), together with a revised Ofcom Code (“**Revised Ofcom Code**”), which would have the effect of introducing the following changes:

- a) the types of complaint that CPs would be required to handle in accordance with the procedures set out in the Revised Ofcom Code would be expressly extended to include complaints about general customer service;
- b) CPs would be required to accept complaints lodged by, at least, all of the following means: phone; letter; and either email or a webpage form;
- c) after having received a complaint, CPs would have a responsibility to proactively inform the customer about the process according to which the complaint would be handled and the timeline for that process;

- d) CPs would have a responsibility to proactively provide the following information to customers if they are not happy with the CP's offer:
 - i) what the latest date is by when they can come back to the CP to let the CP know they remain unhappy; and
 - ii) that the CP can consider the complaint resolved if they do not tell the CP they remain unhappy by the latest date;
- e) CPs would have a responsibility to try to resolve a complaint to the customer's satisfaction until it has been either resolved or closed. At the same time, CPs would only be able to regard a complaint as closed or resolved where it meets the circumstances set out in the Revised Ofcom Code (as proposed for consultation);
- f) CPs would have a responsibility to keep specific types of records for each complaint for a minimum period of 12 months, on the basis of which CPs would also be required to produce certain aggregated types of records of their complaints on a monthly basis;
- g) CPs would have a responsibility to provide the information about access to ADR currently provided on all paper bills, in all bill formats excluding bills sent in a text;
- h) CPs would have a responsibility to train staff who handle complaints, specifically on:
 - i) how to identify a complaint; and
 - ii) what is in the CP's Customer Complaints Code and where it can be found on the CP's website;
- i) CPs would have a responsibility to monitor compliance with all obligations introduced in the new Condition and in the Revised Ofcom Code.

11.4 Below, we explain the specific proposals that we set out in the December 2016 consultation in more detail.

Scope of the Revised Ofcom Code

11.5 While we explained that in order to secure effective protection for customers, the scope of application of the Current Ofcom Code is intentionally broad and includes, for example, complaints about the complaints-handling procedure itself¹²⁵, we proposed to extend the scope of complaints that CPs should handle according to the procedures set out in the revised Ofcom Code, to include complaints about general customer service. To effect this, we proposed to amend the definition of "Complaint" used in the current condition so that it would also include "an expression of dissatisfaction made by a Relevant Customer to a Regulated Provider related to...the level of customer service experienced by the Relevant Customer".

¹²⁵ The scope of the Current Ofcom Code is not limited to complaints relating to contractual conditions or to the performance of the contract that the customer has with its CP.

- 11.6 We also proposed that the revised condition and the Revised Ofcom Code should continue to apply to those CPs which provide public electronic communications services to domestic and small business customers.

Improving transparency through the Customer Complaints Code

- 11.7 Under the Current Ofcom Code, CPs are required to have complaints handling procedures that are transparent. CPs must have a written code for handling complaints (“**Customer Complaints Code**”) that complies with certain criteria set out in the Current Ofcom Code.¹²⁶ These criteria seek to secure minimum standards of transparency. We proposed to maintain the requirement for CPs to have a Customer Complaints Code and that it should comply with certain criteria securing minimum standards of transparency. We also proposed to maintain the same criteria set out in the Current Ofcom Code but with clarifications to make them easier to understand.

Improving transparency by providing information about process and timelines

- 11.8 We proposed to require CPs to proactively provide relevant information to the customer, instead of it being the responsibility of the customer to look for that information, as is currently the case. We propose to require this:
- a) first, after the CP has received the complaint;
 - b) secondly, when the CP tells the customer of the outcome of having investigated the complaint, we proposed that the CP should also provide the following additional information, including where requested, in writing:
 - i) that unless the customer says otherwise, the CP may conclude that the complaint has been resolved;
 - ii) the latest date by when the customer must come back to the CP if they are not satisfied;
 - iii) where the customer can find a copy of the CP’s Customer Complaints Code on their website.
 - c) thirdly, we proposed to extend the obligation to provide certain information on ADR in every paper bill, to all bill formats except where the bill is provided by text. We proposed to require CPs to provide the same information but with clarifications to make it easier to understand. In addition, we proposed that CPs also include a reference to their Customer Complaints Code and, where possible, provide its web address.

¹²⁶ See paragraph 1 of the Current Ofcom Code.

Improving accessibility for customers with disabilities and those who are vulnerable

11.9 Under the Current Ofcom Code, CPs' complaints handling procedures "must be sufficiently accessible to enable consumers with disabilities to lodge and progress a Complaint".¹²⁷ We proposed to extend this obligation to include vulnerable customers, which we proposed to describe as "Relevant Customers [Domestic and Small Business Customers] who may be vulnerable due to circumstances, including but not limited to, age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement or divorce".

Improving accessibility by increasing minimum means by which a complaint can be made

11.10 Under the Current Ofcom Code, CPs must accept at least two of three prescribed means of making a complaint. The three means are: (i) a 'free to call' number or a number charged at the equivalent of a geographic call rate; (ii) a UK postal address; or (iii) an email address or internet web page form. We proposed that CPs should accept at least all three of these means of making a complaint. We also proposed that CPs should continue to ensure that the means by which a CP accepts complaints should not unduly deter customers from making a complaint, as well as ensuring that these means are well publicised and readily available.

Improving accessibility through the Customer Complaints Code

11.11 Under the Current Ofcom Code, CPs must comply with certain obligations to ensure their Customer Complaints Code "is well publicised and readily available".¹²⁸ We proposed that CPs should continue to comply with these obligations. In addition, we proposed to extend the current obligation to provide a hard copy on request free of charge, to include an obligation for CPs to ensure that their complaints handling code is "made available on request, free of charge and in a format reasonably acceptable to any Relevant Customer who is blind or whose vision is impaired. An acceptable format would, for these purposes, consist of print large enough for those Relevant Customers to read, Braille or electronic format appropriate to the reasonable needs of the Relevant Customer".

Improving effective and timely resolution of complaints

11.12 Under the Current Ofcom Code, CPs are under an obligation to "ensure the fair and timely resolution of Complaints".¹²⁹ We proposed to clarify this obligation as well as set out certain procedures with which CPs must comply in order to improve effective and timely resolution of complaints. Specifically, we proposed that CPs would be required to try to resolve a complaint to the customer's satisfaction until it has been either resolved or

¹²⁷ Paragraph 2(b) of the Current Ofcom Code.

¹²⁸ Paragraph 2(a) of the Current Ofcom Code.

¹²⁹ Paragraph 3(a) of the Current Ofcom Code.

closed. At the same time, we proposed that CPs should only be able to regard a complaint as resolved or closed where it meets the circumstances set out in the revised Ofcom Code which we proposed for consultation.¹³⁰

Facilitating prompt access to ADR where the complaint cannot be resolved

11.13 Under the Current Ofcom Code, a customer can take their complaint to ADR if it remains unresolved eight weeks after the complaint was first made, and CPs are currently required to ensure prompt written notification where this situation arises.¹³¹ In addition, if at any time the complaint reaches deadlock prior to that point, the CP must issue what is called a “Deadlock Letter” where requested by the customer, in which the CP agrees to earlier referral to ADR.¹³² Both the obligation to inform the customer of the right to go to ADR after eight weeks and the obligation to do so at any time in the event of deadlock are each subject to three prescribed exceptions.¹³³ We proposed:

- a) to retain both the obligation to inform the customer of the right to go to ADR after eight weeks and the obligation to do so at any time in the event of deadlock;
- b) to change when the obligation arises to inform the customer of the right to go to ADR at any time in the event of deadlock;
- c) to remove all the three prescribed exceptions to both the obligation to inform the customer of the right to go to ADR after eight weeks and the obligation to do so at any time in the event of deadlock;
- d) that only the obligation to inform the customer of the right to go to ADR after eight weeks should have an exception; we proposed that exception would be where the CP has already informed the customer of their right to go to ADR because there is deadlock.

11.14 We also proposed that to ensure that the written notification customers receive of their right to take the complaint to ADR should be made in the same format, whether it is sent after eight weeks or in the event of deadlock. To effect this, we proposed to remove the defined terms “Deadlock Letter” and “Written Notification” and replace them with a single definition of “ADR Letter”. Finally, we proposed to clarify that CPs must ensure their customers have the right to use ADR free of charge.

¹³⁰ These circumstances are set out in paragraphs 14 and 15 of the Revised Ofcom Code.

¹³¹ Paragraph 4(d) of the Current Ofcom Code.

¹³² Paragraph 4(c) of the Current Ofcom Code.

¹³³ In respect of the obligation to ensure customers are informed of their right to go to ADR after eight weeks, the exceptions are set out in paragraph 4(d)(i) to (iii). In respect of the obligation to issue a Deadlock Letter, the exceptions are set out in paragraph 4(c)(i) to (iii).

Strengthening record keeping requirements

- 11.15 Under the Current Ofcom Code, CPs are required to “retain written records collected through the complaints handling process for a period of at least six months including, as a minimum, written correspondence and notes on its customer record management system”.¹³⁴ We made the following proposals:
- a) we proposed to set out in more detail the types of records CPs must retain. Specifically:
 - i) for each complaint, we proposed that CPs must retain certain information, including a record of the date on which the complaint was received, a description of what the complaint is about, all communications between the CP and the customer, and the date on which the complaint was resolved or closed;
 - ii) CPs should also aggregate some of the records on a monthly basis, specifically the number of complaints received, the number of ADR Letters sent, and the number of complaints resolved or closed;
 - b) we proposed to require CPs to retain their records “in an appropriate format”;
 - c) we proposed to extend the minimum period for which the records must be retained from six to twelve months.

Introducing specific obligations to train staff

- 11.16 Under the Current Ofcom Code, CPs are obliged to “ensure that front-line staff are fully informed of the right of consumers to use Alternative Dispute Resolution”.¹³⁵ We proposed that CPs should continue to be under such a broad obligation, but that they should also be subject to these specific obligations:
- a) they must ensure that relevant staff receive training on how to identify a complaint; and
 - b) they must ensure that relevant staff understand their CP’s Customer Complaints Code and know where to access it on the CP’s website.

Ensuring CPs monitor their compliance

- 11.17 The Current Ofcom Code does not require CPs to monitor their own compliance with the obligations it imposes. We proposed to require CPs to monitor their compliance with the obligations imposed by the revised condition and the revised Ofcom Code; and take appropriate steps to prevent the recurrence of any problem(s) identified.
- 11.18 CPs must continue to be members of an independent ADR scheme. Currently CPs are required to be members of an independent ADR scheme, and to comply with the scheme’s

¹³⁴ Paragraph 5 of the Current Ofcom Code.

¹³⁵ Paragraph 4(a) of the Current Ofcom Code.

decisions regarding the complaints that are referred to them for resolution.¹³⁶ We proposed to retain these requirements.

Stakeholders' responses and Ofcom assessment

- 11.19 This is one of the policy areas that generated most debate. We received responses from the following stakeholders: one confidential respondents [§<], an individual respondent (Leon Tarnowski), BT, TalkTalk, The Centre for Consumers and Essential Services¹³⁷, Telefonica, Three, Nine Group, the NADP, Verastar, Virgin Media, Vodafone, StepChange, the FCS, the SCOTSS, UKCTA, the Ombudsman Services, Sky, SSE and the CCP and ACOD).
- 11.20 Telefonica (§ 79), Nine Group, the FCS, SCOTSS, StepChange and an individual respondent (Leon Tarnowski) supported all of our proposals in this area.
- 11.21 Whilst broadly supportive of the objectives we are seeking to achieve with our proposals, UKCTA considered that “some of the key proposals...may actually make the experience less consumer friendly and more cumbersome for consumers” (§ 9).
- 11.22 The CCP and ACOD and the Ombudsman Services were supportive of our proposals, but also made observations where they considered our proposals should go further or could benefit from additional explanation.
- 11.23 As a general point, Vodafone (p. 17) characterised our proposals as “a prescriptive level of micro-management” and it said that “Vodafone is surprised that Ofcom has not sought to harness competitive pressure with the transparency remedy it already utilises through its Telecoms and Pay-TV complaints data rather than micro managing a heavily prescriptive process”.
- 11.24 We set out below stakeholders' responses in more detail and our assessment.

Scope of the revised Ofcom Code

- 11.25 BT said that its welcomes Ofcom's clarification on who the condition applies to, both in the scope and the proposed definition of a complaint (§ 195).
- 11.26 Nine Group agreed that widening the scope to include customer service is appropriate.
- 11.27 Sky did not support the proposed extension of the definition of complaint to include complaints about the level of customer service. Sky considered that “the complaints processes should remain focused on failures by the CP i.e. where something has not happened or has gone wrong, rather than framing a complaint around the level of customer service experienced”. In its view, Ofcom's proposals were “incomplete and if implemented in their current form would give rise to uncertainty and confusion for stakeholders” (§§ 2.4 to 2.7).

¹³⁶ See what is currently GC 14.5.

¹³⁷ A cross-sectoral and inter-disciplinary research centre at the University of Leicester.

- 11.28 We agree that the complaints processes should be focused on failures by the CP, and we consider that poor customer service should be regarded as an example of such a failure. As we explained in the December 2016 consultation, “[s]hould the level of service experienced be so poor as to drive the customer to complain, then the customer (and the CP) should understand that the complaint will be taken seriously and, more specifically, it will be handled in accordance with the [Revised Ofcom Code]” – consequently it is not clear to us why including complaints about general customer service would give rise to uncertainty and confusion for stakeholders.
- 11.29 The Ombudsman Services said its understanding was “that general customer service complaints already fall within our remit, so we wonder whether the intention of this proposal [is] simply to make this more explicit within the general conditions”. The Ombudsman Services added that it “would be keen to discuss this further with Ofcom to seek clarity on this point”.
- 11.30 The Ombudsman Services also noted that Ofcom was not consulting “on extending the ADR requirement to cover complaints about mobile handsets and other equipment purchased as part of a contract”. It said that “this is an area where consumers should have the right to mandatory ADR and we would ask Ofcom to clarify its intentions in respect of equipment complaints”.
- 11.31 We can confirm that cases about complaints made by consumers against their CP about the level of customer service experienced do come within the remit of the ADR bodies.
- 11.32 In response to the Ombudsman Services’ request for clarification, we can also confirm we have not consulted on extending the scope of the Revised Ofcom Code to include complaints about mobile handsets and other equipment purchased as part of a contract. This is because our statutory powers are centered on the provision of electronic communications services, rather than the equipment used to receive such services. However, it remains open to CPs to accept to deal with such complaints according to the obligations imposed under the Revised Ofcom Code, including agreeing with their ADR schemes to agree to allow such complaints to be reviewed by their ADR scheme.
- 11.33 Three considered that “the definition [of complaint] proposed has not undergone substantive change” and that, in its view, “there is a significant difference between an expression of dissatisfaction and a complaint. In the latter instance, a customer clearly expects action from their provider”. Three considered that “[t]his current lack of clarity in terms of the definition of complaint causes significant compliance problems for CPs” and that “there will be cases where it is not always appropriate to submit an expression of dissatisfaction to the full complaints process” (§§ 79 to 81).
- 11.34 Three did not have any objection to our proposal to include customer service complaints within the scope of Proposed Code. However it noted that [X] and proposed that “Ofcom works together with operators to bring forward a more appropriate and workable definition of complaint” (§§ 82 and 83).
- 11.35 The definition of Complaint will continue to consist of two cumulative criteria – not just an expression of dissatisfaction but also where a response or resolution is explicitly or implicitly expected. The Current Ofcom Code sets out the minimum matters in relation to

which expressions of dissatisfaction would fall within the scope of the current definition. However, it has always been open to CPs to accept expressions of dissatisfaction related to additional matters, for example, general customer service. As explained in the December 2016 consultation, our decision to increase those minimum matters reflects the high level of complaints to Ofcom’s consumer contact team about customer service, both in absolute terms and as a percentage of overall complaints.¹³⁸ Consequently, we do not consider our decision to include customer service complaints within the scope of the Revised Ofcom Code highlights the differing interpretation of complaints nor the need to have a more specific definition. In addition, we would expect it to be clear where both cumulative criteria are present, and where that might not be the case then it would be open to the CP’s frontline staff to clarify with the customer whether they wish to make a formal complaint.

- 11.36 Verastar thought that the proposed definition of a “complaint” is too broad. It gave this example: “a customer may express his dissatisfaction that his invoice is higher than usual. The reason for this is that he made a number of overseas calls. The customer, following explanation, accepts that he is responsible for payment of the invoice.” Verastar thought this type of situation should be distinguished from complaints about the behaviour of a CP, and suggested that the definition should categorise complaints differently in terms of severity and impact. It suggested this alternative definition of a complaint:

“a significant level of dissatisfaction made to a CP where a response or resolution is [explicitly] or implicitly expected.”

- 11.37 We consider that the definition of Complaint should remain broad to capture an expression of dissatisfaction, irrespective of the level of that dissatisfaction, where a response or resolution is explicitly or implicitly expected. We also consider that it would not be appropriate to allow CPs to decide whether the level of dissatisfaction expressed by the customer is sufficiently high in order for the consumer protection rules provided by the Revised Ofcom Code to apply.
- 11.38 The FCS suggested that the definition of a complaint should be “an expression of dissatisfaction made by a Domestic OR Small Business Customer...”. As we said above (paragraph 3.34), we have used the term “Domestic or Business Customer” where to do so adds clarity, including in the definition of “Complainant”.

Improving transparency through the Customer Complaints Code

- 11.39 The Centre for Consumers and Essential Services considered that the Customer Complaints Code “should be available in at least some non-English languages”.
- 11.40 We are not minded to require CPs to make their Customer Complaints Code available in any languages other than English. However, given the purpose of the both the Current and Revised Ofcom Code is to set out the minimum standards with which CPs’ complaints

¹³⁸ See paragraph 7.30. See also the findings of research of the Consumer Communications Panel and of Which? Respectively to which we referred at paragraph 7.31.

handling procedures must comply, we would encourage CPs to consider the extent to which it might be appropriate to offer to engage with their customers in other languages.

Improving transparency by providing information about process and timelines

- 11.41 TalkTalk disagreed with this proposal as it does not believe “that the first thing a customer wants to hear when they lodge a complaint is that it may take up to 8 weeks to resolve. This would send a poor signal to customers from the CP” (§ 24). UKCTA also shared this belief, saying “we would urge Ofcom to reconsider this proposal” (§ 13).
- 11.42 Virgin Media (p. 9) said that “Ofcom should avoid being overly prescriptive in how a CP should handle a complaint and what information needs to be provided, particularly by telephone”. Virgin Media suggested, as an alternative approach, “to oblige CPs to include a reference to their Customer Complaints Code, which would include the full complaints process”.
- 11.43 With respect to TalkTalk’s, UKCTA’s and Virgin Media’s responses, we remain of the view that CPs should take on more responsibility for ensuring that customers are aware of the process and timelines. It is up to CPs to determine the most appropriate way to meet their obligations imposed by paragraphs 6 and 8 to 10 of the Revised Ofcom Code, however it is unclear to us why TalkTalk consider that the first thing CPs would be required to inform the complainant about is that it may take up to eight weeks to resolve the complaint. Nor do we consider the obligations imposed are overly prescriptive – they are the most proportionate obligations to address the very low awareness amongst customers of the formal complaints handling process and the findings from Ofcom’s monitoring and enforcement programme as well as the ADR Study¹³⁹ that we set out in the December 2016 consultation:¹⁴⁰
- a) CPs should be aware of the process and timelines and should therefore also be able to explain this information to the complainant;
 - b) we recognise that having to tell the complainant of the actual date by when they should come back if they are unhappy would require CPs to track the timeline of each complaint, but this is something CPs should already be doing in order to meet the requirement under the Current Ofcom Code to send written notification of the customer’s right to take their complaint to ADR where it remains unresolved after eight weeks.¹⁴¹
- 11.44 Three supported the proposal to require details of the ADR processes to be available through online billing as well as paper billing (§ 88).
- 11.45 Nine Group also noted that “the use of the term “Relevant Customer” in section 4 (26) of the Ofcom Approved Code of Practice for Customer Service and Complaints Handling (which in this context includes Domestic and Small Business Customers) effectively extends

¹³⁹ See Annex 10 to the December 2016 consultation.

¹⁴⁰ See paragraph 7.40.

¹⁴¹ See paragraph 4(d).

the requirement to include information about the right to take unresolved complaints to ADR on bills to small business customers". Nine Group said that this would be a significant change and queried whether it was intentional.

- 11.46 We can confirm that our proposal to extend the requirement to provide information on ADR to all bill formats, which we have decided to adopt, did not also include extending the requirement to CPs' small business customers. In order to make this clear, we have amended the drafting of paragraph 26 of the Revised Ofcom Code to the following:

"Every **Bill** provided to **Relevant Customers** who are Consumers, excluding **Bills** provided by **SMS**, must also include..."

Improving accessibility for customers with disabilities and those who are vulnerable

- 11.47 BT said that it agrees that "it is necessary for CPs to recognise when complainants may be vulnerable and to take this into account when processing their complaint" (§ 86), and it noted that "CPs adhering to the Code should already be dealing effectively with complaints from vulnerable customers" (§ 89). However, in BT's view, "until the definition of vulnerable customer is fully resolved (...) including a specific obligation in relation to vulnerable customers in Approved Code of Practice will cause uncertainty" (§ 88). In addition, BT said that "the obligation on CPs under C5 and C6 is inconsistent and should apply to "Vulnerable Consumers" rather than Relevant Customers" (§ 91).
- 11.48 Three agreed "in principle with Ofcom's proposals" but referred to its concerns about their limited ability to identify such customers (§ 90).
- 11.49 In respect of BT's and Three's responses, as explained in the December 2016 consultation, the obligation to ensure CPs' complaints handling procedures are sufficiently accessible to enable customers who are vulnerable to lodge and progress their complaint, is designed to be consistent with the new obligation on CPs to "establish, publish and implement clear and effective policies and procedures for the fair and appropriate treatment of **Consumers** whose circumstances may make them vulnerable" under condition C6.¹⁴²
- 11.50 We explain in the following Section 12 that CPs will be required to take certain steps when they are informed or otherwise made aware that a customer may be vulnerable.¹⁴³ Equally, paragraph 2(b) of the Revised Ofcom Code will require CPs to ensure that when they are informed or otherwise made aware that a customer may be vulnerable, their complaints handling procedures are sufficiently accessible to enable such customers to still make and progress a complaint. Consequently, we do not consider introducing the new obligation in the Revised Ofcom Code will cause uncertainty.
- 11.51 Consistent with the revisions we have made to the wording of condition C5, we have also made revisions to the wording in paragraph 2 of the Revised Ofcom Code:

¹⁴² See condition C5.2.

¹⁴³ And that CPs will not be required to actively seek to obtain information about customers' vulnerability. See, in particular, paragraphs 12.11 to 12.13 below.

- a) changing the title to the following: “Receiving, handling and resolving Complaints by Relevant Customers with disabilities or who are in circumstances that may make them vulnerable consumers”;
- b) changing paragraph 2(b) to the following:

“...**Relevant Customers** who the Regulated Provider has been informed or should otherwise reasonably be aware may be vulnerable due to circumstances, ~~including but not limited to,~~ such as age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement ~~or divorce~~”.

11.52 The NADP made the following suggestions to improve the complaints handling experience:

- a) new guidance should be provided which takes into account the needs of persons with disabilities;
- b) “all email correspondence with deaf customers should be two way, and/or communication via Live Chat should be offered as standard”;
- c) “the timescale to respond to email should be 24 hours”;
- d) further accessible means of communication (in addition to NGTS) should be made available.

11.53 We consider the cumulative effect of the obligations in paragraphs 2(a) to (c) of the Revised Ofcom Code, together with the requirement on CPs to monitor their compliance with the obligations imposed by the revised condition and the Revised Ofcom Code, should ensure as a minimum that customers with disabilities or who are in vulnerable circumstances can make and progress a complaint. Finally, we do not consider it necessary to mandate the maximum period of time CPs should have in which to respond to an email. CPs will be under an obligation to:

“promptly take, and continue to promptly take, active steps to resolve the **Complaint** to the **Complainant’s** satisfaction until the **Complaint** has been resolved or otherwise closed”.¹⁴⁴

However, as with the Current Ofcom Code, it would remain up to CPs to decide the most appropriate way to meet the minimum standards under the Revised Ofcom Code, including whether or not to go beyond them.

11.54 Virgin Media (p. 10) suggested that “allowing CPs to offer web chat during a minimum set of operating hours as an alternative to email or web form” would ensure that customers with disabilities and other vulnerabilities can lodge and progress a complaint. It added that “Virgin Media already has a specialist on-shore support team, which is set up to deal with queries and complaints by disabled customers”, and it finds this effective.

¹⁴⁴ See paragraph 7 of the Revised Ofcom Code.

11.55 It is up to CPs to decide how to make their complaints handling procedures sufficiently accessible for customers with disabilities or in vulnerable circumstances. However, the provision of any particular means for accepting complaints from such customers would need to be in addition to the minimum means of phone, post and either email or web page form.

Improving accessibility by increasing minimum means by which a complaint can be made

11.56 TalkTalk noted that live-chat is becoming increasingly popular as a method for customer complaints, as it provides immediate feedback to customers, meaning that customers feel more empowered. Conversely, TalkTalk said that e-mail and web-form are rapidly becoming outdated methods for customers to contact their CPs, and, as a result, TalkTalk suggested that CPs should be allowed to offer live-chat as an alternative to email or web-form (§ 23).

11.57 Similar to TalkTalk, UKCTA also recommended that CPs should be able to offer online messaging as an alternative to email or web-form (§ 13).

11.58 Virgin Media (p. 9/10) believes that “there are genuine problems in offering email or web form as an option to raise complaints” and considers that “greater customer benefits can be achieved through offering a complaints channel through web chat services”. It added that “web chat sessions can be saved or printed by a customer, so they can easily be used to make a complaint and keep a copy of that complaint”. Virgin Media suggested that “allowing CPs to offer web chat during a minimum set of operating hours as an alternative to email or web form” would also ensure that customers with disabilities and other vulnerabilities can lodge and progress a complaint.

11.59 Sky considered that the channels by which consumers contact CPs to complaint “should keep pace with technological developments and also cater to customers with disabilities who may prefer to use messaging rather than the telephone”. In its view, “[o]nline or SMS based messaging provides quicker responses for customers than email and allows customers a more interactive experience”. In this respect, Sky suggested that CPs should have the option of providing either an email address or internet web page “or by online or SMS messaging” (§ 2.3).

11.60 The Consumer Panel and ACOD said they “strongly support the requirement for providers to make available all three means of contact (phone, letter and electronic)”. They said “[t]he electronic means should...be expanded to include the ability for the consumer to be able to keep a durable copy (e.g. copy e-mail, web form copy, live chat transcript)”. In this respect, they said they “are conscious that some people with sensory disabilities find email correspondence easier than web forms/chat and so would encourage the requirement for an email address via which complaints can be lodged” (p. 6).

11.61 Three considered “Ofcom’s drafting should address the objective that consumers have a range of communications channels with their provider that meet their particular needs – as opposed to dictating the channels they use” (§ 87). Three noted that under our proposals, “operators would have to provide ‘at least’ those services listed in s7.45”. It considered that “requiring operators to continue a number of channels of communication which have

reducing volumes of traffic will impose unnecessary burden and costs”, and suggested the inclusion of Webchat as a means of contact (§§ 84 to 86).

- 11.62 Having considered stakeholders’ responses, we have decided to adopt our proposal to improve accessibility by increasing the minimum means by which a complaint can be made to all of phone, post and either email or web page form:
- a) regarding telephone as a mandated means, as explained in the December 2016 consultation,¹⁴⁵ our research showed that telephone is the most preferred method of contact with CPs at the complaint stage, followed by email;
 - b) regarding post as a mandated means, we continue to consider it relevant in the circumstances to have regard to the needs of those who may not have online access, in particular the elderly,¹⁴⁶ or may have difficulties using other means of contacting their CP;
 - c) regarding either email address or web page form as a mandated means, as mentioned above our research showed that email is second to phone as the preferred method of contact with CP;
 - d) CPs remain free to offer additional means by which complaints can be accepted. And as part of our monitoring and enforcement programme, we intend to review the means offered by CPs that are used by customers and we will use the evidence gathered to consider whether changes are needed to maintain the right balance between ensuring CPs’ complaints handling procedures are accessible and the extent of any regulatory intervention.

Improving effective and timely resolution of complaints

- 11.63 The Consumer Panel and the ACOD supported the proposal for CPs having to set a date by which the complainant has to say whether they are happy with a complaint outcome or not. In this respect, they said that “Ofcom may wish to consider whether a reminder should also be issued” (p. 7).
- 11.64 UKCTA referred to the period of time that complainants would be allowed – 56 days or 8 weeks – in which to inform their CP if they were not satisfied with the outcome of the complaint investigation and, by consequence, the same period of time that CPs would have wait before being able to consider the complaint resolved as a result of no contact from the complainant. UKCTA considered that “under Ofcom’s proposed process, the 28-day period recommended by Mott McDonald would effectively be extended to up to 56 days”. UKCTA was concerned that “Ofcom’s proposals would actually (a) reduce customer awareness of ADR and (b) make the complaints handling process slower and more cumbersome for the customer” (§ 11).

¹⁴⁵ See paragraph A10.13.

¹⁴⁶ See section 3(4)(i) of the Act.

- 11.65 UKCTA considered that changes to the ADR requirements should be based on recommendations in the Mott McDonald report since, in its view:
- a) CPs had already spent time and resources implementing these recommendations;
 - b) these recommendations “were based on clear evidence in the form of a detailed analysis of the impact of the ADR processes on consumers”;
 - c) “Ofcom’s proposals...do not appear to be based on any specific new evidence, only an implicit assumption that 56 days must be better than 28 days” (§ 12).
- 11.66 Sky voiced a similar view to that of UKCTA. It said that “Mott Macdonald recommended a 28 day period...”. In Sky’s view, “extending this to 56 days unnecessarily prolongs the complaints process and we are not aware of any evidence that suggests that the Mott Macdonald recommendation no longer holds. Sky would therefore welcome sight of the evidence that has driven Ofcom to propose the need for this, seemingly unnecessary, extension” (§ 2.12).
- 11.67 Three made the following comments:
- a) it suggested that “the ‘relevant’ date be shortened from 8 weeks” (§ 94). It noted that it follows [§] (§ 94);
 - b) it referred to our use of the word “timely” in a number of paragraphs of the Section on Complaints handling and access to ADR. It also referred to paragraph 7.69 saying that it “states that 8 weeks is a minimum standard and that the communications providers should not be prevented from having a shorter timescale before reference to ADR”. It asked for “clarity around what Ofcom would define as “timely” in this context, particularly in reference to s7.69” (§ 91);
 - c) it referred to Step 4 in the table entitled “Proposed requirements”. It said that “Step 4 states that if a provider is unable to contact a customer and a customer has not replied by the ‘relevant date’ then the provider may close that complaint as unresolved” (§ 93). Three added that [§] (§ 93). Three asked that “providers still be allowed to offer the customer ADR in these case” and considered that the drafting of the Proposed Code prevented it from being able to do so.
- 11.68 TalkTalk [§]. TalkTalk noted that CPs have already spent time and resources implementing the proposals in the Mott McDermott report, and thought it would therefore be sensible to base further changes on the recommendations set out in that report, which was based on clear evidence. In TalkTalk’s opinion, Ofcom’s proposals are not based on evidence, but on “an implicit assumption that 56 days must be better than 26 days” (§21).
- 11.69 Having considered stakeholders’ responses, we remain of the view that is necessary to provide a formal, and consistent, process for resolving and closing complaints. In respect of achieving the aim of ensuring complaints are not closed prematurely, we agree with stakeholders that it would be appropriate to adopt the period of time suggested by Mott

MacDonald¹⁴⁷ for how long CPs must keep complaints open before being able to consider them resolved where the complainant has not come back to them – i.e. 28 calendar days. To effect this decision, and provide greater clarity to the obligation in paragraph 9(a) of the Revised Code, we have inserted the 28 day time period into paragraph 9(a), and we have removed **Relevant Date** as a defined term and also the obligation that was in paragraph 9(b) to inform the complainant of what that date would be. We have also made the necessary changes to paragraph 15(b).¹⁴⁸ These changes are set out below:

“9 When ~~carrying out its obligation in~~ telling the **Complainant** of the outcome of its investigation into the **Complaint** in accordance with paragraph 8, the **Regulated Provider** must also tell the **Complainant**:

(a) that the **Regulated Provider** may consider it reasonable to conclude that the **Complaint** has been resolved to the **Complainant’s** satisfaction if ~~they do not let the **Regulated Provider** know by the **Relevant Date** the **Regulated Provider** promptly tells the **Complainant** of the outcome of its investigation into the **Complaint** and the **Complainant** does not let the **Regulated Provider** know within 28 days that they consider the **Complaint** remains unresolved; and~~

~~(b) what the **Relevant Date** is for the particular **Complaint**;~~

(eb) where a copy of the **Customer Complaints Code** can be found on the **Regulated Provider’s** website and the contact details for the ~~**Regulated Provider’s ADR** scheme~~ **ADR Scheme** of which the **Regulated Provider** is a member.”¹⁴⁹

¹⁴⁷ https://www.ofcom.org.uk/data/assets/pdf_file/0022/55534/access_to_adr.pdf. See also Annex 10 to the December 2016 consultation, in particular paragraph A10.9.

¹⁴⁸ Paragraph 15 sets out the circumstances in which a complaint has been resolved.

¹⁴⁹ At paragraph 11.125 below we explain that where we previously referred to “ADR Scheme” in condition C4 and the Revised Code, we have now re-worded this to “the ADR Scheme of which the Regulated Provider is a member”.

“15 A Complaint has been resolved where:

(a) [...]

(b) it is reasonable for the **Regulated Provider** to conclude that the **Complaint** has been resolved to the **Complainant’s** satisfaction because:

- (i) the **Regulated Provider** has informed the **Complainant** of the outcome of its investigation (~~see paragraph 8.~~) in accordance with paragraph 8 and complied with its obligations under paragraph 9; and
- (ii) the **Complainant** has not come back to the them ~~by the~~ Relevant Date within 28 days to say that they consider the **Complaint** remains unresolved (see paragraph 9(a)).”

11.70 In respect of Three’s response:

- a) we explained in the December 2016 consultation that CPs would continue to be free to go beyond the minimum standards imposed by the Revised Ofcom Code. We gave the example of a CP deciding to commit to a shorter time period than the minimum standard of 8 weeks in which to resolve the complaint (after which, if the complaint remains unresolved,¹⁵⁰ the customer’s right to take their complaint to ADR would apply). The reference to resolving the customer’s complaint “in a timely manner” in paragraph 1 of the Revised Ofcom Code should be interpreted as describing how Ofcom would expect CPs go about meeting either the minimum standards in the Revised Ofcom Code – e.g. the obligation under paragraph 7 to “promptly take, and continue to take, active steps to resolve the **Complaint** to the **Complainant’s** satisfaction until the **Complaint** has been resolved or otherwise closed” – as well as their own higher standards where they choose to commit to such;
- b) compliance with the Revised Ofcom Code would not prevent CPs from issuing a letter (where the CP has not heard from the complainant within 28 days after informing them of the outcome of the investigation) informing them that they may take their complaint to ADR.

Facilitating prompt access to ADR where the complaint cannot be resolved

11.71 BT (§ 193) said that it is “pleased to see the timescale to send a customer an ADR letter remains at 8 weeks” since it believes this is the right timeline. BT added that whilst the majority of its complaints are closed within the first two weeks, more complex or technical complaints require a longer period for resolution (§ 193).

11.72 The FCS said that the “implication in the draft wording of section 11a of the Code for Customer Service and Complaints Handling is that the Regulated Provider should issue an ADR letter at the conclusion of an investigation regardless of whether the outcome is good or bad”. The FCS queried whether this was the intention.

¹⁵⁰ And in the absence of deadlock.

- 11.73 Paragraph 11 of the Revised Ofcom Code sets out the three cumulative criteria that where met, mean the complaint has reached deadlock and the CP is required to issue the ADR Letter. We have added the following text to paragraph 11 to make this clearer:

“The **Regulated Provider** must immediately issue an **ADR Letter** to the **Complainant** at any time, where the following three cumulative criteria are met:

- (a) ~~it~~ **the Regulated Provider** has told the **Complainant** of the outcome of its investigation into the **Complaint** the **Regulated Provider**;
- (b) the **Complainant** has told the **Regulated Provider** that they consider the proposed outcome does not resolve the **Complaint** to their satisfaction; and
- (c) the **Regulated Provider** does not intend to take additional steps to resolve the **Complaint** to the **Complainant**’s satisfaction that would produce a different outcome.”

- 11.74 Virgin Media (p. 8) disagreed with the removal of the current exceptions to the obligation to inform the customer of the right to go to ADR and suggested that “they are retained but amended so they operate to determine the circumstances when a CP is able to close a complaint and a customer does not have the right to go to ADR”, providing guidance on how these exceptions should be interpreted in practice. Virgin Media sought clarifications or guidance on what is considered “frivolous or vexatious” and on what exactly constitutes “resolution to a customer’s satisfaction”. It also considered (p. 8) that “the operation of the ADR procedure needs careful review and existing problems with the process and decisions properly addressed before expanding the scope of complaints subject to ADR”. It argued, in particular, that “there is no incentive for an ADR provider to make the correct decision or ensure strict quality control as they are paid in any event, and there is no form of appeal”. According to Virgin Media, “there is an urgent need to introduce some form of oversight of, and accountability for, ADR providers’ decisions, together with a process for redress where those decisions are incorrect”.
- 11.75 Three asked for “further clarity from Ofcom around its objectives and reasoning behind” the proposed removal of CPs’ ability to decide if a particular complaint was within an ADR scheme’s terms of reference (§ 89).
- 11.76 In respect of Virgin Media’s and Three’s responses:
- a) we explained in the December 2016 consultation why we consider the current exceptions to the obligation to inform the customer of the right to go to ADR after eight weeks and to the obligation to do so at any time in the event of deadlock, no longer appear necessary¹⁵¹ – this included explaining why we considered responsibility for determining whether the subject-matter of the complaint is outside the jurisdiction of the CP’s ADR scheme should rest with the relevant ADR scheme;¹⁵²

¹⁵¹ See paragraphs 7.73 to 7.79.

¹⁵² See paragraph 7.79.

- b) in addition, paragraph 14 of the Revised Ofcom Code sets out the prescribed instances in which a CP may close a complaint.
- 11.77 We consider our changes would therefore mean it is not necessary, as suggested by Virgin Media, to retain exceptions to the general right to inform the customer of the right to go to ADR and provide guidance on their application and when a CP would be able to close a complaint.
- 11.78 With respect to Virgin Media’s request for clarification or guidance on:
- a) what would be considered “frivolous or vexatious”, it will be the responsibility of CPs in the first instance to decide whether a complaint is “frivolous or vexatious”.¹⁵³ And should the complainant disagree and seek to take their complaint to ADR, then this exception is also one of the exhaustive grounds on which an ADR body would be able to refuse to take the complaint on, under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (the “**2015 ADR Regulations**”);¹⁵⁴
- b) when a complaint has been resolved to the customer’s satisfaction, we consider this is set out sufficiently clearly in paragraph 15 of the Revised Ofcom Code.
- 11.79 With respect to their view that there is an urgent need for oversight of, and accountability for, ADR bodies’ decisions, we consider this is provided for by the 2015 ADR Regulations.¹⁵⁵
- 11.80 One CP [3<] referred to how currently an ADR scheme will handle a complaint, and charge the relevant CP, even if the complainant has previously informed that CP that their complaint had been resolved to their satisfaction. The CP said that the proposed code should ensure a complainant ceases to have any right to refer their complaint to ADR where they have previously told their CP that the complaint has been resolved to their satisfaction. The same CP also said that Ofcom “needs to consider what recourse a CP has if the ADR scheme abuses its power and makes a manifestly incorrect decision in law...and if the ADR provider exceeds its jurisdiction”.
- 11.81 As explained above in respect of Virgin Media’s view that there is an urgent need for oversight of, and accountability for, ADR bodies’ decisions, we consider this is provided for by the 2015 ADR Regulations.¹⁵⁶
- 11.82 The SCOTSS welcomed these proposals, in particular the proposal to remove the requirement for the customer to request a deadlock letter and replace it with an obligation on the CP to issue an ADR Letter whenever a complaint reaches deadlock.
- 11.83 The Consumer Panel and ACOD:

¹⁵³ See also paragraph 7.78 of the December 2016 consultation where we explained “the current vexatious exception will continue to apply...and should continue to be interpreted as it has been done to date”.

¹⁵⁴ The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, paragraph 13 of Schedule 13. See also paragraph 7.78 of the December 2016 consultation.

¹⁵⁵ In particular, Regulations 11 to 13.

¹⁵⁶ In particular, Regulations 11 to 13.

- a) suggested “that the minimum target for complaints resolution should be in the order of 14 calendar days, with consumers being able to access ADR after a month if there is no resolution, agreed plan of action or deadlock” (p. 6). In this respect, they said they were “disappointed that the opportunity to be bold and shorten the eight-week period before consumers can approach an ADR Service without a deadlock letter has been missed”. In their view, there is “no sustainable argument for a customer being unable to seek independent complaint resolution within a month if a complaint is unresolved or hasn’t been deadlocked”. The Consumer Panel and ACOD welcomed “Ofcom’s continued consideration of this issue as it begins to gather more data which will highlight where there are opportunities for improvements to be made”. They also said “there needs to be confidence that there is consistency between the ADR Services” (p. 7);
- b) supported the proposal “that deadlock letters should be automatically issued rather than must be requested by the consumer”. In this respect, they said they “would welcome further information about how this will be monitored and enforced; and what the consequence of non-compliance or poor performance will be” (p. 7);

11.84 We consider the reasons we set out for keeping the period at eight weeks after which the CP must inform the customer of the right to go to ADR where the complaint remains unresolved, remain valid.¹⁵⁷ And going forwards, our intention also remains to determine the proportion of cases that are being closed or resolved before eight weeks and assess whether the requirement that CPs take prompt steps to resolve complaints,¹⁵⁸ and issue ADR Letters as soon as a case is deadlocked,¹⁵⁹ are indeed leading to quicker resolution of complaints or prompt referral to ADR where they are deadlocked.¹⁶⁰ Once the Revised Ofcom Code comes into effect, we intend to monitor CPs’ compliance and should that exercise reveal evidence of non-compliance then formal enforcement could be a potential outcome.

11.85 The Ombudsman Services made the following comments:

- a) It agreed with our proposal to stick to the eight-week period before consumers have the right to access ADR¹⁶¹. The Ombudsman Services added, though, that “if a customer has already spent a protracted amount of time trying to resolve their issues directly with the company, this could create a barrier to the likelihood of them escalating the matter to ADR. The consumer may, at this point, view ADR as a step too far on the complainant journey, and opt to leave the issue unresolved and suffer in silence”. The Ombudsman Services said that “[i]f a company is aware earlier in the process that it will not be able to resolve the issue within the 8-week period, we would encourage the

¹⁵⁷ See paragraph 7.69.

¹⁵⁸ See paragraph 7 of the Revised Ofcom Code.

¹⁵⁹ See paragraph 11 of the Revised Ofcom Code.

¹⁶⁰ See paragraph 7.70 of the December 2016 consultation.

¹⁶¹ Unless the parties have reached deadlock.

provider to act in the best interests of their customer and go beyond the minimum requirements to signpost them to ADR sooner”;

- b) It suggested that “providers make additional efforts to facilitate access to ADR amongst vulnerable customers once the complaint reaches 8 weeks or deadlock”. In its view, “[t]his would ensure that vulnerable customers do not miss out on the opportunity to have their concerns reviewed by an independent third party, simply due to lack of awareness of consumers rights which we see amongst some vulnerable groups”.

11.86 We consider our changes to the circumstances in which the CP must issue an ADR Letter where the complaint has reached deadlock¹⁶² should cover the situation where a CP is aware at any point in the eight-week process that it will not be able to resolve the complaint. We also consider that if a CP considers additional efforts are necessary to facilitate access to ADR amongst vulnerable customers once the complaint reaches 8 weeks or deadlock in order to comply with the obligations imposed in paragraph 2 of the Revised Ofcom Code regarding how CPs receive, handle and resolve complaints by customers with disabilities or who are in vulnerable circumstances, then we would expect the CP to make those efforts.

11.87 Vodafone (p. 17) said that “it is not helpful to substitute the current requirement for the customer to request a deadlock letter for an obligation on the CP to issue when it believes the customer regards the situation to have reached deadlock”. In Vodafone’s view, this “may require CPs to pre-empt the customer’s decision or interpret their intentions – which may be incorrect” and “issuing a deadlock letter while a customer is still considering their position may, from the customer’s perspective, appear overly aggressive”. Furthermore, Vodafone said that “Ofcom must ensure that CPs are permitted to decide the format of the proactive notification to customers” (p. 18). Vodafone also noted that “Ofcom proposes multiple sign-posting stages during the process advertising a customer’s right to ADR if a complaint is unresolved” and said that “unless Ofcom can be assured as part of its upcoming ADR Review that increased volumes of cases can be dealt with in a timely manner, Vodafone suggests a staggered introduction over time to the additional sign-posting requirements”.

11.88 In respect of Vodafone’s response:

- a) the obligation on CPs to issue an ADR Letter in case of deadlock, applies where the three cumulative criteria are met in paragraph 11 of the Revised Ofcom Code – contrary to Vodafone’s view, paragraph 11 does not impose a requirement on CPs “to pre-empt the customer’s decision or interpret their intentions”;
- b) CPs are permitted to issue the ADR Letter in any format, provided at least one format falls within the scope of the definition of Durable Medium;

¹⁶² See paragraph 11 of the Revised Ofcom Code.

- c) our changes are not designed with the aim of increasing the volume of cases going to ADR – customers will need to continue to engage first with their CP and CPs will need to take active steps to resolve their customers’ complaints. However, where a complaint cannot be resolved then it is important that such complaints can be referred to ADR, and our changes include removing unnecessary obstacles currently preventing this from happening.¹⁶³

11.89 Sky made the following comments:

- a) Sky referred to the circumstance where a complaint is ongoing at 8 weeks. It said that currently “Sky sends an ADR letter to the customer advising of their right to go to the Ombudsman but assuring the customer that we are still trying to resolve their complaint”. Referring then to paragraph 12 of the Revised Ofcom Code, it said this would mean that in such circumstances “even though the CP and customer may still be in contact to resolve a complaint (if for example a customer has not answered calls to provide required information or has been holiday etc), the CP will be required to send a letter to the customer advising that they are receiving this letter because “the complaint cannot be resolved to their satisfaction”” (§ 2.10);
- b) Sky considered it should be made clearer in the drafting of paragraph 9(a) of the Proposed Code that the 56-day period during which time the complainant may come back to the CP if they are unhappy with the outcome of the complaint investigation, “ends if the customer agrees that the complaint has been resolved” (§ 2.11).

11.90 In respect of Sky’s response:

- a) no stakeholder considered eight weeks was an insufficient period of time in which for CPs to seek to resolve customers’ complaints. We consider continuing with this eight-week period as the minimum standard, together with the changes in the Revised Ofcom Code that have increased the minimum standards with which CPs must comply when handling complaints, should lead to customers’ complaints being resolved by CPs more promptly¹⁶⁴ such that situations like the one described by Sky should be regarded as very exceptional;
- b) we do not consider additional clarity is required in paragraph 9(a) since, in our view, the situation where the CP is required to keep the complaint open for the 28-day period where there is no contact from the customer, would not seem to be applicable where the customer has expressly agreed that the complaint has been resolved to their satisfaction.

Strengthening record keeping requirements

11.91 Referring to paragraph 20 of the Customer Complaints Code which sets out the records CPs would need to keep for each complaint received, the Centre for Consumers and Essential

¹⁶³ Specifically removing the requirement under the Current Ofcom Code for the customer to request a deadlock letter, and replacing it with an obligation on the CP to issue an ADR Letter whenever a complaint reaches deadlock.

¹⁶⁴ Or that it becomes clearer where deadlock has been reached.

Services considered CPs should also keep a record of the contact details of the complainant, in addition to the complainant's identity.

11.92 We agree with this view. We would expect all CPs to keep a record of the contact details of complainants and so we have included this in paragraph 20(c) of the Revised Ofcom Code:

“the identity and contact details of the **Complainant;**”

11.93 Nine Group agreed that the new requirement to keep records of complaints for 12 months and provide staff training in this area is proportionate.

11.94 Verastar said that a 12-month period for record retention is “insufficient for fixed term contracts”, saying that they are aware that “a number of CPs claim they no longer hold contracts yet enforce certain conditions such as those relating to termination payments”. As a result, consumers who do not retain copies of their contracts are unable to verify the information they are provided by their CP. Instead, Verastar suggested CPs should be required to retain contracts and relevant records until 6 months after the date of cessation of the service, or 6 months after the end of the fixed term, whichever is the earliest.

11.95 In summary, the improved record-keeping requirements in the Revised Ofcom will require CPs to create, and retain, extensive information about each complaint as it progresses through the complaints handling process¹⁶⁵ – however the new requirements are not designed to also require CPs to retain customers' contracts in case a complaint might be made concerning one or more of its terms.¹⁶⁶

11.96 UKCTA referred to “CPs not serving the ‘mass market’ for retail products like phone, broadband etc. but still potentially having ‘small business’ customers”. UKCTA said that these CPs “will have relatively few complaints and the record-keeping obligations seem onerous in this context”. UKCTA also referred to “Ofcom’s justification for its development of obligations in this area” which it said “seems based on [Ofcom’s] experience of enforcement to date, which has focused on the major CPs providing the products mentioned above”. UKCTA considered it would seem more proportionate to exclude these types of CPs from the proposed record-keeping requirements “perhaps by limiting these to CPs serving or complaints from ‘Consumers’” (§ 14).

11.97 Similarly, SSE also considered the proposed record keeping requirements to be “overly burdensome for CPs who do not provide mass market retail products...”. SSE proposed that “to be more proportionate, the scope of the CPs to whom the record keeping obligations apply is limited to those serving Consumers or alternatively, those providing Publicly

¹⁶⁵ To address the historically inconsistent levels of record-keeping amongst CPs. See, in this respect, paragraphs 7.84 to 7.89 of the December 2016 consultation.

¹⁶⁶ However, at the same time, where a CP seeks to rely on any particular term, it should also be able to provide the customer with a copy of the contract to support and explain its position.

Available Telephone Services...or Publicly Available Internet Access Services, as defined for the scope of some other GCs”.

11.98 We do not agree with the views of UKCTA and SSE. The Current Ofcom Code requires CPs to “retain written records collected through the complaints handling process for a period of at least six months including, as a minimum, written correspondence and notes on its customer record management systems” for complaints from both their domestic and small business customers.¹⁶⁷ Our proposals included ensuring CPs carried on providing the same minimum level of protection to both these types of customers. We also explained that while the proposed minimum requirements go into more explicit detail than the current requirements – e.g. the aggregation obligations in paragraph 23 of the Revised Ofcom Code – at the same time, we would expect CPs to already be keeping the types of records required under our proposals. We have not received any responses to indicate CPs are not already keeping such records. In addition, we consider the number of complaints to Ofcom about CPs’ complaints handling from August 2016 to July 2017 demonstrates a consistent, and not insignificant, level of complaints from small businesses. See the table below for further details.

| Consumer Type | Aug-16 | Sep-16 | Oct-16 | Nov-16 | Dec-16 | Jan-17 | Feb-17 | Mar-17 | Apr-17 | May-17 | Jun-17 | Jul-17 | Total | % of Total |
|--------------------|------------|--------------|--------------|--------------|------------|--------------|--------------|--------------|--------------|--------------|--------------|------------|---------------|------------|
| Business | 11 | 19 | 24 | 29 | 20 | 25 | 28 | 28 | 19 | 23 | 18 | 13 | 257 | 2.0% |
| Employee | 2 | 1 | 0 | 0 | 0 | 2 | 1 | 0 | 1 | 0 | 1 | 0 | 8 | 0.1% |
| Individuals | 819 | 1,032 | 932 | 1,087 | 824 | 933 | 912 | 1,164 | 996 | 1,027 | 901 | 880 | 11,507 | 90.4% |
| Small Business | 85 | 72 | 69 | 103 | 76 | 102 | 82 | 86 | 56 | 71 | 88 | 60 | 950 | 7.5% |
| Anonymous | 0 | 0 | 0 | 2 | 2 | 1 | 0 | 0 | 0 | 1 | 1 | 1 | 8 | 0.1% |
| Grand Total | 917 | 1,124 | 1,025 | 1,221 | 922 | 1,063 | 1,023 | 1,278 | 1,072 | 1,122 | 1,009 | 954 | 12,730 | |

11.99 The Consumer Panel and ACOD welcomed the proposed requirement for CPs to maintain records for 12 months, however they also questioned whether the retention period should be 14 months “given the eight weeks which may have already elapsed prior to going to ADR” (p. 7).

11.100 We note the response of the Consumer Panel and ACOD – however we consider it equally possible that the eight-week period may not have elapsed prior to going to ADR. We continue to consider that 12 months achieves the appropriate balance between, on the one hand, ensuring we have the necessary tools to conduct effective enforcement and, on the other hand, ensuring CPs are not required to incur disproportionate compliance costs.

¹⁶⁷ See paragraph 5)a) of the Current Ofcom Code.

Introducing specific obligations to train staff

- 11.101 StepChange suggested that we introduce “a requirement for staff to be trained in sign-posting or referring to free and independent advice in line with a revised GC 13”.
- 11.102 As explained in the December 2016 consultation, the Revised Ofcom Code will strengthen the minimum standards with which CPs’ complaints handling procedures must comply in order to address the principal challenges identified by our experience of monitoring and enforcing the Current Ofcom Code, as well as research carried out by us and stakeholders. CPs remain free to take additional steps to improve their complaints handling procedures, however we are not minded to introduce the additional requirement suggested by StepChange.

Ensuring CPs monitor their compliance

- 11.103 The Centre for Consumers and Essential Services considered that “instances of non-compliance should be reported to Ofcom, even when they have been resolved” since in their view “this will help Ofcom in identifying industry-wide problems”.
- 11.104 The Consumer Panel and ACOD were unsure how the obligation on CPs to monitor their own compliance would work in practice. In this respect, they asked whether Ofcom “would retain an ability to conduct randomised audits of the data?” (p. 7).
- 11.105 We do not consider it is necessary to include a requirement on CPs to proactively report to us on instances of non-compliance and how those instances were resolved. We intend to monitor the impact of the Revised Ofcom Code when it comes into effect,¹⁶⁸ and this would involve obtaining any information we consider necessary from the CPs in order to carry out this exercise.

Implementation period

- 11.106 Some respondents argued for a longer implementation period.
- 11.107 BT said that “the additional requirements in the proposed code such as specific reporting and record keeping requirements will require significant system developments across multiple systems and platforms” and considered that a six-month period for implementation is “unrealistic” (§ 84);
- 11.108 Virgin Media (p. 10) said that “a minimum of twelve months (and more likely up to eighteen months) will be required for implementation)” (p. 10);
- 11.109 Three considered the proposed implementation period was “completely unrealistic” and believed that the minimum timeframe required was 18 months (§§ 96 to 98).

¹⁶⁸ Similar to the monitoring and enforcement programme we have in place under the Current Ofcom Code: https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01101

- 11.110 More generally, UKCTA said that “[a]ny changes to consumer protection regulations will require extensive systems and operational changes (including staff training etc.)”. UKCTA suggested that a 24-month implementation timescale would be appropriate (§ 7).
- 11.111 SSE noted our proposed 6-month implementation period and said it “agrees that this time would be needed to consider, test and implement the updated messaging in bills and other documents...”.
- 11.112 We have explained in Section 3 that we remain of the view that having a single implementation date when all the changes will come into force is a more practicable approach than a staggered approach to implementation. However, we have decided to allow for a longer implementation period of 12 months, particularly in light of the fact that all the changes will have to be implemented at the same time.

Other comments

- 11.113 We received a number of other comments.

Separate consultation

- 11.114 BT said that “Ofcom should consult separately on this section to ensure stakeholders have adequate opportunity to consider the consequences of the proposed changes and to ensure the changes proposed address the issues identified” (§ 85). We consider the consultation process we have followed has provided stakeholders with adequate opportunity to respond intelligently and from a reasoned position. We have taken those responses on board in reaching our decision and we do not consider stakeholders have raised issues that warrant further re-consultation.

Clear escalation processes and additional publication requirements

- 11.115 The Consumer Panel and the ACOD made the following additional comments:
- a) they suggested that one “element of the CP complaints process that...would benefit from direction set by a GC is the need for clear escalation processes that are apparent to consumers, are devoid of barriers of obstacles and give consumers control over escalating their complaints – rather than control residing with the provider, which currently seems to be the case” (p. 7);
 - b) they said they “would like to see a GC that gives the customer the right to have a copy of the provider’s records/notes of the complaint, promptly – and ideally within contact centre turnaround times”, for the reason that “a consumer cannot anticipate at the start of a contact that it may become a complaint and its’s unreasonable to expect him or her to record dates/details in the same way that a provider would” (p. 7);
 - c) they encouraged “the publication of complaints data by individual CPs – much in the same way that is required by the FCA – of number of complaints received, the percentage referred to the ADR Service and the percentage of those upheld” (p. 7).
- 11.116 We consider that the changes that the Revised Ofcom Code will bring about should ensure CPs provide for clear escalation processes, both internally and for the complainant, and will

remove unnecessary obstacles to taking complaints to ADR (such as removing the need for the CP to agree that the complaint has reached deadlock and so can be referred to ADR).

- 11.117 We do not consider it necessary to introduce an obligation on CPs to provide the complainant with its records of the complaint. This information can already be obtained via a subject access request under the Data Protection Act 1998.
- 11.118 We also do not consider it necessary to include the additional publication requirements, as suggested by the Consumer Panel and the ACOD, in the Revised Ofcom Code. In this respect, we consider increased transparency is provided by the ADR schemes in complying with their information publication requirements under the 2015 ADR Regulations.¹⁶⁹
- 11.119 The Centre for Consumers and Essential Services drew parallels with obligations placed on financial service firms by the Financial Services Authority¹⁷⁰ in recommending the introduction of the following additional obligations:
- a) “to collect information on the causes of complaints, to identify the root causes of complaints and to decide whether or not these root causes need remedying”;
 - b) “to ensure that lessons are learnt from determinations by the relevant ADR scheme”;
 - c) “when systemic problems in terms of the provision of a service or failure to provide a service are identified, the provider should ascertain the scope and severity of the consumer detriment that might have arisen; and consider whether it is fair and reasonable for the provider to undertake proactively a redress or remediation exercise, which may include contacting consumers who have not complained”.
 - d) “to publish an annual complaints report”.
- 11.120 As explained in the December 2016 consultation, the Revised Ofcom Code will strengthen the minimum standards with which CPs’ complaints handling procedures must comply, and at this stage we do not consider it is necessary to include such additional requirements as recommended by the Centre for Consumers and Essential Services.

Premium rate services

- 11.121 A confidential respondent [X] did not consider that our proposals would improve transparency, accessibility and effectiveness for complaints relating to premium-rate services. It suggested that, in order to achieve transparency in relation to the use of premium rate services, [X].
- 11.122 We do not consider it necessary to include specific requirements in the Revised Ofcom Code about how CPs should seek to resolve customers’ complaints relating to premium services. We have explained why we consider our proposals will improve the transparency, accessibility and effectiveness of CPs’ complaints handling procedures, and we would expect this to include how CPs handle complaints from their customers relating to premium rate services. It is the responsibility of each CP to decide the most appropriate

¹⁶⁹ Specifically Regulation 11(2).

¹⁷⁰ And obligations on providers in the energy sector in respect of their recommendation in d) below.

way to comply with their obligations under the Revised Ofcom Code – however, in respect of premium rate services, CPs will also continue to have the responsibility of deciding the most appropriate way to comply with the information provisioning requirements set out in the current GC 14.2(a) and Annex 1 to GC 14, which we have decided to implement through direct obligations in the main body of condition C2.¹⁷¹ These requirements include that CPs shall provide:

(e) “information about the role and remit of the **Phone-paid Services Authority** in dealing with complaints and how to go about making a formal complaint to the **Phone-paid Services Authority** via the website, helpline or in writing”;¹⁷²

(f) “information on the role of **Alternative Dispute Resolution Schemes** in resolving disputes concerning **CPRS**”.¹⁷³

2015 ADR Regulations

11.123 Three said it “would encourage Ofcom to consider further how it might amend its implementation of the EU ADR directive, requiring operators to draw their customers’ attention to online ADR processes that in great many cases they are unable to access in the UK market”. Whilst recognising “the limitations around Ofcom’s ability to act in this regard”, it said “it would be useful if consideration could be given as to further action” (§ 95).

11.124 The obligations on CPs to provide information about ADR are contained in Regulations 19 and 19A of the 2015 ADR Regulations – and they include providing information about online ADR processes where CPs sell their services to consumers online.¹⁷⁴ We consider these obligations are sufficiently clear and we would expect CPs to comply with them.

Further drafting changes

11.125 We have decided to make these further changes:

- a) we have replaced the words “resolved or closed” in the Revised Code, when referring to a complaint, with the words “resolved or otherwise closed” to point out that resolved complaints are a sub-category of those complaints which may be closed;
- b) where we refer to the relevant ADR Scheme, we have consistently used the words “the ADR Scheme of which the Regulated Provider is a member”;
- c) for greater transparency, we have set out the substantive requirements that CPs must comply with when they issue an “ADR Letter” in the condition itself (paragraph 13 of the Revised Ofcom Code) rather than setting out these requirements in the definition

¹⁷¹ See Section 8 above.

¹⁷² See condition C2.11(e).

¹⁷³ See condition C2.11(f).

¹⁷⁴ See Regulation 19A.

of “ADR Letter”. As a consequential change, we have amended the definition of “ADR Letter” as follows:

““ADR Letter” means a notification issued from a **Communication Provider to a **Complainant** concerning the **Complainant’s** right to take their **Complaint** to an **ADR Scheme**;”**

- d) to avoid duplication, we have removed paragraph 13 of the Code (as proposed for consultation) (i.e. “Regulated Providers must issue any ADR Letter in a Durable Medium”), since the same requirement is already set out in paragraph 13(e), as revised;
- e) we have made some drafting changes to paragraph 26 for consistency with paragraph 13 of the Revised Ofcom Code;
- f) we have added the following definition of “Customer Complaints Code”, which we had inadvertently omitted:

““Customer Complaint Code” means a code of practice containing relevant information about how **Complaints from **Domestic and Small Business Customers** are handled and how, and when, **Complainants** can take their unresolved **Complaints** to the **ADR Scheme**;”**.

- g) we have simplified (and corrected) the definition of “Ofcom Approved Code” by amending it as follows:

“Ofcom Approved Complaints Code of Practice for Complaints Handling” means the code of practice annexed to **Condition C4 and entitled “Ofcom approved complaints code of practice for customer service and complaints handling”, ~~in conformity with which Regulated Providers are required, by Condition C4.2(a), to establish and maintain procedures for the handling of Complaints;~~**

Ofcom’s decision

- 11.126 Having considered stakeholders’ comments, we have decided to implement the changes that we proposed in the December 2016 consultation, with the following revisions:
- a) we have amended the drafting of paragraph 26 of the Revised Ofcom Code to clarify that the extension of the requirement to provide information on ADR to all bill formats does not also include extending the requirement to CPs’ small business customers (see, in particular, paragraph 11.46);
 - b) we have revised the title to paragraph 2 of, and the wording in paragraph 2(b) in, the Revised Ofcom Code (see, in particular, paragraph 11.51);
 - c) we have reduced the period of time for which CPs must keep a complaint open before they can consider it resolved in the absence of any contact from the complainant, from 56 to within 28 days (see, in particular, paragraph 11.69);

- d) we have clarified that the obligation on the CP to provide an ADR Letter where the complaint has reached deadlock applies where the three cumulative criteria are met in paragraph 11 of the Revised Ofcom Code (see, in particular, paragraph 11.73);
- e) we have amended paragraph 20(c) of the Revised Ofcom Code to require CPs to also record the contact details of the complainant (see, in particular, paragraph 11.92);
- f) we have made certain further changes to improve the drafting of this condition (see paragraph 11.125);
- g) we have decided to allow for a longer implementation period of 12 months (see, in particular, paragraph 11.112).

11.127 The revised text of the condition that would replace the current GC 14 and Annex 4 to GC 14 can be seen at Annex 14 (see condition C4).

Legal tests

11.128 We consider that the changes we have decided to make to the current GC 14 and Annex 4 to GC 14 (condition C4, as re-numbered) and the condition itself, meet the test for setting or modifying conditions set out in section 47(2) of the Act. The changes are:

- a) **objectively justifiable** as they will address the deficiencies in the scope and clarity of the rules in the Current Ofcom Code and improve awareness on the part of customers with regard to procedures CPs follow when handling complaints, including the rights of customers and obligations on CPs under the Current Ofcom Code. In so doing, our proposals should better enable us to secure that CPs' complaints procedures are transparent, accessible, effective and promote access to ADR in a timely manner and so achieve effective protection for domestic and small business customer of CPs;
- b) **not unduly discriminatory** since all CPs will continue to be required:
 - i) to ensure complaints from the domestic and small business customers are handled in accordance with at least the minimum standards set out in the Revised Ofcom Code;
 - ii) to be members of, and comply with the decisions of, an independent ADR scheme;
- c) **proportionate** as we consider that:
 - i) the Current Ofcom Code does not secure effective protection for domestic and small business customers. The revised condition and the Revised Ofcom Code should better enable us to secure that CPs' complaints procedures are transparent, accessible, effective and promote access to ADR in a timely manner and so achieve effective protection for domestic and small business customers of CPs;
 - ii) by introducing what are, in our view, the minimum standards necessary, CPs will continue to have the opportunity to go beyond the minimum standards, for example in relation to the amount of time that must elapse before the customer may take their unresolved complaint to ADR, and so use their complaints handling procedures as a competitive differentiator;

- iii) the revised condition and the Revised Code should not only raise the minimum standards according to which complaints must be handled by CPs, but they should also improve compliance, in particular as a result of the obligation to train relevant staff, the increased record-keeping requirements which should improve internal transparency with regard to how complaints are being handled, and the obligation on CPs to monitor their compliance; and
- d) **transparent** as the reasons for the revised condition and the Revised Ofcom Code are explained above and the effects of the changes are clear to CPs on the face of the revised condition itself.

12. Measures to meet the needs of vulnerable consumers and end-users with disabilities

Introduction

12.1 The GCs contain provisions (currently in GC 15) which require CPs to adopt certain special measures for users with disabilities. The aim of these requirements is to ensure that users with disabilities can obtain comparable access to voice call services to that of non-disabled people, that their needs are given sufficient consideration by CPs and that their access to voice call services is protected when they have a genuine need. In this section, we set out the changes that we have decided to make to this condition, which include re-numbering it as condition C5.

Consultation proposals

Policy for vulnerable consumers

12.2 Currently, the GCs impose certain requirements on CPs in relation to end users with disabilities. However, we consider that special measures should also be adopted for end-users whose particular circumstances, for example illness or bereavement, may make them vulnerable. We have also received complaints that raise concerns about CPs' failure to consider the needs of vulnerable consumers. We therefore proposed to include a new requirement for CPs to establish, publish and implement policies to ensure that the needs of vulnerable consumers are adequately considered and met. We proposed to specify that such policies must include, as a minimum:

- a) practices for ensuring the fair and appropriate treatment of vulnerable consumers;
- b) reasonable steps that will be taken to identify vulnerable consumers;
- c) how information about vulnerable consumers' needs will be recorded;
- d) how staff will be made aware of, and trained, to act in accordance with the policies;
and
- e) how the impact and effectiveness of the policies and procedures will be monitored and evaluated.

Extension to data services

12.3 In relation to end-users with disabilities, the GCs currently require CPs to: (i) ensure access to directory information; (ii) provide text relay services; (iii) give priority to the requests for fault repair from end-users with disabilities who are dependent on voice services; (iv) make available third party bill management; (v) provide bills and contracts in alternative formats (e.g. braille); and (vi) ensure SMS access to emergency services.

12.4 We proposed to retain all of these requirements because we consider that they remain important to ensure equality of access and choice of services for people with disabilities. However, currently these measures only apply in relation to the provision of voice call services. Given that internet access is now seen as essential or important by most consumers to contribute to society and access information, we proposed to extend the requirements for (i) priority fault repair, (ii) third party bill management and (iii) the provision of bills and contracts in an accessible format to all public electronic communications services, including data services, where applicable, to ensure that these important consumer protections apply equally across the sector.

Access to directory information

12.5 We proposed to broaden the requirement on CPs to ensure that customers who are “so visually impaired or otherwise disabled as to be unable to use a printed Directory” can access directory information to apply to any customers who are “unable to easily use a printed Directory due to visual impairment or other disabilities”. This is because we believe that end-users who can only use a printed directory with difficulty would otherwise have their access to directory services impaired, and we consider that equality of access and choice for people with disabilities is an important policy aim.

Measures for end-users with disabilities

12.6 We proposed to retain the requirement to publicise the measures available to end-users with disabilities, as well as our current guidance which sets out the reasonable steps that we expect CPs to take to ensure that the special measures available to end-users with disabilities are widely publicised¹⁷⁵.

Simplifying and clarifying

12.7 We also proposed several minor changes to clarify and simplify the condition, including:

- a) to replace the requirement in the current GC 15.11 (C5.14, as renumbered) for CPs to consult with the Consumer Panel “from time to time” with a clearer obligation for CPs to consult with the Consumer Panel “on request”;
- b) to replace the word “Subscriber” with “End-User” in the proposed provisions concerning text-relay and priority fault repair to clarify that the provisions apply to all users, even where they are not the subscriber; and
- c) to move the technical requirements that relay services must meet (currently set out in GC 15.3(c), (e) and (h)) into the definition of “Relay Service”, which we have moved into the definitions sections at the end of the GCs.

¹⁷⁵ Ofcom’s document of 9 August 2016, entitled “A guide to publicising services available to disabled people”: https://www.ofcom.org.uk/data/assets/pdf_file/0015/81132/guidance.pdf

Stakeholders' responses and Ofcom assessment

12.8 The following stakeholders responded specifically to our proposals on this condition: three individual respondents¹⁷⁶, a confidential respondent [§<], Action on Hearing Loss, Age UK, BT, the Centre for Consumers and Essential Services, the CFC, the CCP and ACOD, Citizens Advice, FCS, the ICO, the Ombudsman Services, the SCOTSS, Mobile UK, Money Advice Trust, the NADP, Nine Group, TÜV SÜD BABT, Scope, Sky, SSE, StepChange, TalkTalk, Three, UKTCA, Verastar, Virgin Media and Vodafone.

Policy for vulnerable consumers

12.9 The majority of respondents¹⁷⁷ supported our proposal to introduce a requirement for CPs to implement policies to meet the needs of consumers whose circumstances may make them vulnerable, and a confidential respondent [§<] noted that our proposals are “largely sensible”.

12.10 However, Mobile UK, TalkTalk, Telefonica, UKCTA and Virgin Media disagreed with this proposal on the basis that that it is too broad, and would be disproportionate. In particular:

- a) Mobile UK commented that “the issues of end-users with disabilities who require specific services and consumers with vulnerability (which Ofcom has essentially defined as all consumers – for example, we all suffer family bereavement at some point in our lives) should not be conflated” (§ 8). It considered that our proposals would not be simple to comply with or proportionate, and that this topic is “not suitable for top down ‘command and control’ from Ofcom” (§ 11). It suggested that we remove this element of the condition to allow for more evidence gathering, dialogue with industry and assessment of proportionality (§ 8). Mobile UK considered that this condition should address the needs of end users with disabilities, and not customers with vulnerabilities (§ 17);
- b) TalkTalk (§ 25) and UKCTA (§ 17) both thought that the costs of implementing this requirement would be disproportionate to any consumer benefits. TalkTalk also noted (§ 27) that “the proposed requirement does not state what type of services or adjustments a provider would be expected to make”. TalkTalk was therefore “very concerned this proposal would amount to an open-ended requirement to establish different customer service procedures for different perceived vulnerabilities”;
- c) Telefonica said it thought it was “premature for Ofcom to seek to mandate such measures in the GCs without a more detailed dialogue with CPs”. It also thought that the impact assessment in the December 2016 consultation was incorrect; and
- d) Virgin Media said that the proposed policy is “unworkable in practice” and “open to wide-scale abuse by customers”. It made the following comment: “The difficulties with

¹⁷⁶ Gina Antczak, Leon Tarnowski and Trevor Williams.

¹⁷⁷ Three individual respondents, Action on Hearing Loss, Age UK, BT, The Centre for Consumers and Essential Services, University of Leicester, the CCP and ACOD, Citizens Advice, the Society of Chief Officers of Trading Standards in Scotland, FCS, the Ombudsman Services, Nine Group, Scope, StepChange, Three and Verastar.

the new GC proposals stem from the proposed wide ranging set of criteria and circumstances which could make a customer vulnerable either at a single point in time, on a temporary basis or on a longer term basis. This is impractical to manage effectively". Virgin Media also questioned how, if Ofcom are unable to impose specific rules to address all possible risks of vulnerability (as we said in the December 2016 consultation), we would be able to adjudicate on whether a provider has appropriately dealt with vulnerable consumers. It also said that the proposed requirement for CPs to take "reasonable steps" to identify consumers who may be vulnerable is unclear, and that [X].

- e) Vodafone was supportive in principle, but concerned that the proposals "are contradictory and risk failing the legal threshold of proportionality". Similarly, Three considered that some of the proposals (for example in the proposed GC C5.3(d) and (e)) were "much too prescriptive, creating unnecessary burdens for operators". Three also said that identifying customers who may be vulnerable may be difficult, especially if customers do not recognise themselves as vulnerable, or where customers are reluctant to share information with their CP.

12.11 In response to the above comments relating to the scope of the proposed requirement, we are no longer requiring CPs to specify in their policies and procedures "the reasonable steps that will be taken to identify Consumers who may be vulnerable", as proposed for consultation.¹⁷⁸ This is to clarify that our proposal was intended to require CPs to have policies in place setting out the actions they would take when they are informed or otherwise made aware of a customer's disability or any other circumstances which may make them vulnerable. For example, when a customer voluntarily and pro-actively makes a CP aware of a disability or circumstance that may make them vulnerable. It is not our intention to require CPs to actively seek to collect sensitive personal information from all their customers, or to actively seek to identify customers who may be vulnerable. In light of the above comments, we have clarified this point by making the following changes to the wording of condition C5.3(a)-(c):

¹⁷⁸ Condition C6.3(b) as proposed in the December 2016 consultation.

“C5.3 Such policies and procedures must include, as a minimum:

(a) practices for ensuring the fair and appropriate treatment of **Consumers** who the Regulated Provider has been informed or should otherwise reasonably be aware may be vulnerable due to circumstances, ~~including but not limited to,~~ such as age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement ~~[or divorce]~~;

~~(b) the reasonable steps that will be taken to identify Consumers who may be vulnerable;~~

~~(be) in respect of those Consumers that have identified themselves as being in circumstances that make them vulnerable,~~ how information about the their needs of Consumers who the Regulated Provider has been informed or should otherwise reasonably be aware may be vulnerable will be recorded and the different channels by which these **Consumers** will be able to make contact with, and receive information from, the **Regulated Provider**; and

(c) how the impact and effectiveness of the policies and procedures are monitored and evaluated.”

- 12.12 We consider that the revised wording clarifies that CPs are not required to actively seek to obtain information about customers’ vulnerability. Rather, it is intended to capture a situation where, for example, a customer asks its provider for bills in large print.
- 12.13 We also note the other comments from respondents which state that the vulnerability is a broad concept and the proposal is too open-ended and not practical. However, the condition has intentionally been drafted broadly so as to allow flexibility to CPs to identify different forms of vulnerability and set out policies where it is practical to do so, in order to ensure that the requirements are proportionate. There will be circumstances where it should be possible for CPs to identify and plan for a specific vulnerability. For example, consumers who have been bereaved may contact the CP to request that changes are made to the deceased’s accounts. CPs may also expect that hearing-impaired consumers will wish to contact them. There may be other vulnerabilities where it may be more difficult for CPs to set out detailed policies and procedures in advance. However, we would expect that in these circumstances CPs would always aim, as far as possible, to respond appropriately to the consumer when the vulnerability is presented.
- 12.14 We have also replaced the word “implement” with “comply with” in condition C5.2 for consistency with other conditions concerning codes of practice (see condition C4.2) and greater clarity.

Data protection

- 12.15 Several respondents (BT, ICO, Action on Hearing Loss, TalkTalk, Three, Virgin Media and a confidential respondent [X]) expressed concern that collecting and recording information about customers’ vulnerability would raise issues under data protection law. In particular, ICO noted that data about individuals’ health would constitute “sensitive personal data”, which is given special protections under data protection law, and CPs would therefore

need to consider the legal basis for collecting such data. ICO suggested that CPs only collect the minimum amount of information necessary, and ensure that they communicate clearly to consumers the purpose of collecting their information. It suggested that “Privacy Impact Assessments” may be useful to identify risks arising from the collection of data. It also noted that if CPs seek to rely upon explicit consent to process sensitive data, they must ensure this meets the standard set out in the GDPR (General Data Protection Regulation) (p.2). Action on Hearing Loss suggested that it may not be necessary for all staff to have access to all parts of a customer’s records, and details of vulnerability should not be shared without prior consultation. Virgin Media noted that it has “seen cases of family members trying to alter an elderly relative’s package where there is no power of attorney in place”. It said that it “cannot be for the CP to decide if the relatives are acting in the elderly person’s best interest.”

- 12.16 In contrast, TÜV SÜD BABT noted that “there are too many examples of CPs ‘hiding’ behind the requirements of the DPA when interacting with vulnerable consumers”.
- 12.17 As noted in paragraph 12.11 above, this new condition is not intended to require CPs to ask all their customers whether they are vulnerable; rather, it is intended to ensure that where a CP is voluntarily told that customer may be vulnerable, or where a CP should reasonably be aware that a customer is vulnerable¹⁷⁹, that CP treats that customer fairly, in accordance with an established policy. Data protection legislation does not prevent CPs from obtaining or recording personal data, including sensitive data, so long as they do so in compliance with data protection law. For clarity, we have included a new paragraph (C5.13) at the end of this condition to provide that the condition applies subject to relevant data protection legislation. We note that Ofcom has also produced guidance about powers of attorney and third party bill management, which may be useful in this area.¹⁸⁰

Circumstances that may make consumers vulnerable

- 12.18 Several respondents¹⁸¹ commented on the appropriateness and clarity of the term “vulnerable”.
- 12.19 In summary, stakeholders expressed mixed views on the set of circumstances that we specified in the revised condition to give examples of when consumers may be vulnerable.
- 12.20 On the one hand, StepChange and Citizens Advice suggested that our definition of vulnerability may be too narrow. StepChange suggested that the definition used in Ofgem’s Consumer Vulnerability Strategy¹⁸², set out below, would be better:

¹⁷⁹ For example, if a customer repeatedly tells their CP’s customer service representative that they cannot hear well, we would consider the CP to have been made aware that the customer may have hearing difficulties, and we would expect them to, for example, ask that customer whether other communication channels would assist.

¹⁸⁰ <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/problems/power-of-attorney>

¹⁸¹ Action on Hearing Loss, the CFC, ICO, Money Advice Trust, the NADP, StepChange, Sky, Three, Virgin Media and Vodafone.

¹⁸² See <https://www.ofgem.gov.uk/ofgem-publications/75550/consumer-vulnerability-strategy-pdf>, page 4

“Our definition of vulnerability is when a consumer’s personal circumstances and characteristics combine with aspects of the market to create situations where he or she is:

- (a) Significantly less able than a typical consumer to protect or represent his or her interests in the energy market; and/or
- (b) Significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial”

- 12.21 However, given the wide range of services that are available in the telecoms sector, we think that the reference to “a typical consumer” which is included in that definition might give rise to uncertainty.
- 12.22 Citizens Advice suggested that we should include financial circumstances in the list of indications of vulnerability, and that a change in circumstance should include a sudden change in income/expenditure, as “low income and debt problems can have a significant impact on consumers coping ability” and “providers’ strategies should recognise both that financial difficulties can make consumers vulnerable and that such difficulties are a key indicator that consumers may be experiencing other problems”. However, we do not consider it necessary to include a sudden change in financial circumstances in the illustrative list of circumstances that may make consumers vulnerable, since we consider that the wording of the revised condition would already cover these situations.
- 12.23 On the other hand, Sky, Vodafone, TalkTalk and UKCTA thought that the set of circumstances that we identified in the revised condition was too broad. In particular, Sky said it is “unclear how a CP would be able to identify the type of vulnerability that an individual consumer may have from time to time” (§ 3.2) and Vodafone said it would “capture extremely large numbers of customers unless such information was regularly refreshed, which as an activity in itself would be at best a nuisance to customers and at worst extremely intrusive” (p.19).
- 12.24 Clearly, for the reasons set out by respondents, it is important to strike a reasonable balance between a set of circumstances which would capture as many as possible of those people who could benefit from the protections in this condition, and a set of circumstances which is detailed enough to provide an appropriate level of guidance to CPs. However, in light of these comments, we have narrowed the illustrative circumstances that may make consumers vulnerable by removing the reference to “divorce” so that the revised condition would read as follows:

“due to circumstances such as age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement.”

- 12.25 We also note that, as explained above, we have revised the wording of this condition to clarify that CPs will not be required to actively seek to obtain information about customers’ vulnerability or, as Vodafone suggested, actively refresh their information. Rather, CPs will

be required to take certain steps when they are informed or otherwise made aware that a customer may be vulnerable.

- 12.26 Action on Hearing Loss, the NADP, the CFC and Age UK suggested that hearing disabilities and age do not necessarily make people vulnerable. Specifically, these respondents made the following comments:
- a) Action on Hearing Loss said that we should consider the appropriateness of using the terms “vulnerable” and “disabled” when identifying consumer groups to mitigate the risk of excluding those customers who may benefit from extra support but who would not identify themselves as members of these groups;
 - b) the NADP and the CFC noted that many deafened people do not feel they fit into the subgroup of “vulnerable consumers”. The NADP said that therefore some deafened people may be “unlikely to be aware of the provisions being made for them and thus not actively support them”. However, it did recognise that “some of the deafened population do feel vulnerable”. It therefore suggested that instead we use a phrase such as “persons with disabilities, some of whom may feel vulnerable at times”;
 - c) Age UK noted that “anyone of any age can become vulnerable through their circumstances”. Although they identified a number of circumstances that could make people vulnerable, they stressed that “age should not be equated with vulnerability” as “many older people are self-reliant and do not want to be seen as ‘vulnerable’”.
- 12.27 We fully agree that neither age nor communications difficulties necessarily make people vulnerable, and we fully accept that not all deafened people would consider themselves vulnerable. However, we have decided not to remove “age” or “communications difficulties” from the list of illustrative examples of circumstances that may make people vulnerable, because our intention is to ensure that CPs’ policies take account of these conditions as having the potential to make people vulnerable. We expect CPs’ staff to be able to assess whether the consumer they are interacting with may be in a circumstance that may make them vulnerable, and to have procedures to follow in order to ensure fair treatment of such consumers. It is clear from the drafting of the condition that the list of circumstances is an illustrative list, and it does not in any way imply that all individuals who are affected by one or more of these circumstances are necessarily vulnerable. On the other hand, the condition is drafted so as to make clear that where a CP should reasonably be aware a particular consumer may be vulnerable, regardless of whether their circumstance is included in the list of illustrative examples, the CP should take steps to ensure the fair and appropriate treatment of that consumer.
- 12.28 While Three welcomed the guidance on the circumstances that are likely to constitute a consumer being vulnerable, ICO, Money Advice Trust and Virgin Media sought more detail on which circumstances may make consumers vulnerable:
- a) ICO said that a “more detailed description of what ‘vulnerability’ means in the context of the general conditions may be helpful” (p.2);
 - b) Money Advice Trust was concerned that the guidance we provided about factors that may make a consumer vulnerable was not sufficiently detailed or explicit; and

c) Virgin Media made the following comment: “there is a lack of clear guidance on what vulnerability means. It is also unclear what level of discretion a CP has to determine how such customers can be identified”. However, it did not consider that prescriptive guidance would be appropriate in this area.

12.29 We do not consider it necessary to provide more detailed guidance since this is a new requirement and, as we said in the December 2016 consultation (paragraph 9.14), we want to provide industry with flexibility in how they implement it, rather than imposing prescriptive requirements.

Other comments

12.30 Action on Hearing Loss agreed with our proposal to specify minimum requirements to ensure consistency in how providers implement their policies. It also suggested that we consider including an additional requirement for CPs to identify and record a customer’s preferred method of communication.

12.31 We consider that the wording in condition C5.3(b) (as re-numbered) will cover the requirement for CPs to ensure that their policies provide for the most appropriate ways of contacting consumers who may be vulnerable since it refers to “the different channels by which these Consumers will be able to make contact with, and receive information from, the Regulated Provider”.

12.32 The Centre for Consumers and Essential Services, University of Leicester strongly supported our proposals. It also suggested that we should clarify the wording of the condition by:

a) changing the heading to this paragraph of the condition, which refers to “vulnerable consumers” to refer to “consumers in vulnerable circumstances”; and

b) amending paragraph C5.3(d), which currently requires all staff to be “appropriately trained”, so that they are required to be “appropriately and regularly trained”.

12.33 We agree with the first suggestion and have changed the heading of paragraphs C5.2-C5.5 of the condition, so that it now reads: “Policy for consumers whose circumstances may make them vulnerable”. However, we have not amended paragraph C5.3(c) (as re-numbered) because we think that it is implicit in the word “appropriately” that the training should be regular.

12.34 Money Advice Trust noted that: (i) other regulators (the FCA, Ofwat and Ofgem) highlight to providers that their own behaviour towards customers may be a factor in making consumers vulnerable; (ii) unlike other regulators, we have made no reference to a link between vulnerability and the risk of detriment, in order to encourage companies to focus on the impact on consumers; (iii) there should be a clear reference to mental capacity; and (iv) the proposals should place considerable weight on how providers should identify consumers in vulnerable circumstances, and the proposals should go further in setting out the requirement once vulnerability has been identified.

12.35 While we agree that vulnerable consumers are normally more exposed to the risk of detriment, we think that referring to a set of circumstances that may make consumers vulnerable provides more useful guidance for identifying those who may be more exposed

to such risk. Further, we consider that the references to “physical or learning disability, physical or mental illness, low literacy, communications difficulties” cover mental capacity. As set out above, we do not intend to require CPs to actively seek to identify vulnerability, or to be overly prescriptive in the requirements once CPs have been informed or otherwise made aware that certain customers may be vulnerable.

12.36 Nine Group said that this requirement should be restricted to consumers as the area is not directly relevant to business customers. While we expect that this requirement will predominately apply to consumers, we believe that business customers should also be entitled to benefit from this condition. See also paragraph 12.47 below in relation to the application of this condition to business customers.

12.37 Sky commented that we didn’t specify the services or adjustments that CPs would be expected to make for vulnerable consumers (§ 3.2). It also noted that it is “unclear how advisors would be trained to be aware of policies or procedures for this broad range of vulnerabilities and how they would navigate conversations without causing offence, whilst attempting to comply with this new definition of ‘vulnerable consumer’” (§ 3.4). As explained above (paragraph 12.29), we want to provide industry with flexibility in how they implement this new requirement, including in relation to how they train their staff. We have also clarified that we do not intend to require CPs to actively seek to identify vulnerability.

12.38 StepChange suggested that we include more detail about how we intend to monitor CPs’ progress on vulnerability, and what outcomes we expect the new focus on vulnerability to produce. In light of this comment, we have included the following paragraph in the condition to clarify that CPs will be required to provide any information necessary to demonstrate compliance with this condition on request:

“C5.4 **Regulated Providers** must provide to **Ofcom**, on request, any information considered by **Ofcom** to be necessary to demonstrate compliance with this **Condition**.”

12.39 We also note that the requirement for CPs to publish their policies will enable us to monitor industry practice to ensure compliance with this condition. We also expect to work with stakeholders to encourage the sharing of best practices on identifying and responding to vulnerable consumers.

12.40 Three considered that the term “publish” is “open to interpretation around the quality and scope of information made available” and that this “could lead to significantly different interpretations of what information is considered publishable in this regard” (§116). In light of Three’s comments, we have re-considered which of the minimum requirements set out in condition C5.3 CPs should be required to publish, and we have decided that it is not necessary to require CPs to publish their staff training procedures (although they will still be required to establish and implement appropriate staff training). However, we do think it is appropriate and proportionate to require CPs to publish the other elements of their policies. We have therefore replaced the provision which we initially proposed in condition C5.3(d) with the following requirement:

“C5.5 **Regulated Providers** must ensure that all staff are made aware of the policies and procedures and appropriately trained, including (if applicable) how to refer **Consumers** to specialist teams or members of staff who have received additional training.”

Extension to data services

- 12.41 The majority of respondents¹⁸³ agreed with our proposal to extend protection for end-users with disabilities to all public electronic communications services. We set out below a summary of the further suggestions respondents made in relation to this proposal.
- 12.42 Citizens Advice thought that this was “an important recognition that the broadband is now an essential service”.
- 12.43 ICO noted that personal data “should not be used for purposes which are incompatible with those for which it was originally collected” and recommended that CPs undertake Privacy Impact Assessments to identify and mitigate data protection risks. It also suggested that it may be more appropriate for CPs to “record information about a person’s needs, rather than details of their condition or vulnerability.” (p.4) As noted in paragraph 12.17 above, we have decided to include a new paragraph at the end of this condition stating that the requirements are all subject to relevant data protection legislation (see condition C5.15 in Annex 14 to this statement).
- 12.44 Mobile UK noted that “this adjustment should not imply an extension of a [CP’s] responsibility to fund text relay to video relay provided over an IP connection.” We note that condition C5 applies to providers of Publicly Available Telephone Services (“**PATS**”), which is defined as “a service made available to the public for originating and receiving, directly and indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan”. If a provider offers a VoIP service that allows calls to and from any number in the Numbering Plan, then it is normally a “PATS” provider and therefore it must offer (and fund) text relay. “VoIP-to-VoIP” calls (i.e. those calls which are neither originated nor terminated on a telephone number in the Numbering Plan), however, are not “PATS”, and VoIP providers providing only this type of service have never been required to offer or fund relay services on them. The extension of the condition to data services is not intended to extend CPs’ responsibility to fund relay services on such “VoIP to VoIP” calls.
- 12.45 NADP thought that access to relay services should be required on all public electronic communications services to ensure that all communication enjoyed by other users is accessible to deafened people as well. They noted that there may be technological hurdles to overcome but that the GCs should be forward-looking. We understand this comment as suggesting that we should require relay services to be provided on “VoIP to VoIP” calls. As

¹⁸³ 3 individual respondents (Gina Antczak, Leon Tarnowski and Trevor Williams), Action on Hearing Loss, the CCP and ACOD, Citizens Advice, the SCOTSS, Mobile UK, the NADP, Nine Group, TUV SUD BABT, Scope, StepChange, Three, Verastar, and Vodafone.

set out above, the condition currently applies only to the extent a service is a PATS. At the moment, we do not consider it necessary or proportionate to extend the condition to all PECS. However, should technological developments mean this would be less burdensome on providers, we could re-consider this in future.

- 12.46 SSE said that the scope of the condition had been set too wide, as the proposed condition would apply to all CPs who provide only connectivity services to a business market. SSE therefore suggested that we should specify in the scope of the condition that it applies to “all providers of Public Electronic Communications Services to Consumers”.
- 12.47 As we set out in paragraph 12.36 above, we think that it is important that where any person could benefit from the measures set out in this condition, they should be entitled to do so (subject to the safeguards set out in the condition), regardless of whether they are a consumer or a business customer. For example, we note that it could be the case that a person who is disabled, or whose circumstances may make them vulnerable, may be self-employed, and therefore a business customer; however, we consider that they should still benefit from any relevant protections and measures set out in condition C5.

Access to directory information

- 12.48 The CCP and ACOD supported our proposal to amend this requirement so that it would apply to all customers who are unable to easily use printed directories.
- 12.49 The CFC said that alternatives to printed directories may no longer be appropriate and we should possibly be talking in addition about alternatives to online access to directory information.
- 12.50 The condition that we proposed for consultation included a requirement for CPs to ensure that directory information is available to any end-user who is unable to easily use a printed directory due to visual impairment or other disabilities, “in a form which is appropriate to meet their needs”.¹⁸⁴ We consider that where alternatives to online access to directory information is appropriate, this would be covered by the revised condition. We have therefore decided to adopt the wording proposed in the December 2016 consultation.

Measures for end-users with disabilities

Promotion of measures for end-users with disabilities

- 12.51 The CCP and ACOD said that they would welcome the current guidance to CPs on good practice in promoting services that are available to disabled end-users (“A guide to publicising services available to disabled people”, 9 August 2016) being interpreted as formal guidance. We note, however, that there is no distinction between guidance and formal guidance. Therefore, stating that the current guidance should be interpreted as “formal” guidance would not change its status or have any practical effect.

¹⁸⁴ Condition C6.5, as proposed in the December 2016 consultation.

- 12.52 The CCP and ACOD also urged us to mandate the promotion of such measures. Similarly, the NADP said that CPs should “actively promote Next Generation Text Relay and any other potential relay service to all its existing and potential future customers”. The NADP also commented that without specific requirements, CPs may take different views on what “widely publicised” means. We also note that CPs are already required to “take all reasonable steps” to ensure that measures for end-users with disabilities are widely publicised by condition C5.6 (as re-numbered). We do not consider it necessary to impose more prescriptive requirements.
- 12.53 The NADP said that knowledge of the accessibility features on handsets is poor, and it believes that “all handsets should be clearly labelled with their accessibility features... so that deafened people can see at a glance which handsets would work for them”. The labelling of handsets falls outside Ofcom’s remit. However, we note that handset manufacturers have worked together on a comprehensive resource about the accessibility features of handsets and other devices: see www.gari.info.
- 12.54 Similarly, Scope suggested that as “disabled people are often lacking the information they need when making consumer choices, and that communications services are vital for all consumers, Ofcom should consider how it could use its profile and credibility to assess the quality of service that communications providers offer to disabled people”. We do not have powers to recommend or compare products. However, we note that we do publish complaints data which consumers may find useful in choosing which products/services they wish to buy.¹⁸⁵

Third party bill management

- 12.55 The CFC suggested extending the option of third party bill management, which is currently available to subscribers, to anyone who requests it. It also suggested “extending the third-party functions to switching or terminating services, which again may well be warranted when life circumstances change.”
- 12.56 We think that it is correct that this provision applies to subscribers only, because it is only the subscriber who gets the bill from the CP (as it is the subscriber who is party to a contract with the CP). The policy objective for third party bill management is to avoid disconnection for people who depend on the phone because of ill-health or disability. We accept that it may be useful for some users to have a third party assist them with switching or terminating their service, but we think that the most appropriate way to arrange for this would normally be for the subscriber to grant power of attorney to a third party. Ofcom has a consumer guide setting out the difference between third party bill management and power of attorney.¹⁸⁶

¹⁸⁵ <https://www.ofcom.org.uk/research-and-data/multi-sector-research/telecoms-complaints-data>

Emergency SMS

- 12.57 The only response we received in relation to emergency SMS access was from SSE, who suggested that we clarify that the obligation to provide emergency SMS access applies only to those CPs who provide “PATS” on a mobile basis. We agree with this comment and have made the following amendments to this paragraph of the condition to clarify this point:

“C5.10 **Regulated Providers** who are **Mobile Service Providers** must provide any **End-User** of their **Mobile Communications Services** who has hearing or speech impairments with **Mobile SMS Access to Emergency Organisations** by using the emergency call numbers “112” and “999” at no charge.”

Priority fault repair

- 12.58 The CCP and ACOD were “pleased to see a proposed revision to the GCs about making text relay and priority fault repair available to ‘people with disabilities who normally use the services, including when they are not the subscriber; for example, family members’”. However, they suggested that the wording “should be clearer so that it is understood that by ‘people with disabilities who use the services’ Ofcom means – for priority fault repair – consumers who meet the eligibility criteria (and promotion of the service should be mandatory so that the most vulnerable can benefit from it).”
- 12.59 The proposed condition is clear that priority fault repair is available to any end-user with a disability who has a genuine need for an urgent repair. The end-user does not need to be the subscriber. The promotion of services for disabled people by regulated CPs will continue to be mandatory, and there are also other initiatives such as Ofcom mailings to social services departments drawing attention to these services. Therefore, we do not think that we need to amend the wording of the condition in light of the CCP and ACOD suggestions.
- 12.60 Verastar commented that the current criteria for priority fault repair is “extremely narrow”. It suggested that we “require wholesalers to widen the criteria so as to enable CPs to ensure that end users with disabilities, who may be more reliant on communications services, can have faults repaired as a priority.” It also suggested that “if there is a conflict as to priority fault repair between different end-users, the wholesaler and CPs should jointly determine the correct order of priority”. In response to Verastar’s comment, we note that in the rare circumstance where a conflict arises, we would expect the wholesale provider to deal with the conflict in a sensible way, but we do not think it is necessary to include wording to this effect in the condition itself.
- 12.61 Virgin Media, BT and Telefonica were all concerned about extending priority fault repair to mobile customers:
- a) Virgin Media was “concerned that Ofcom is considering extending priority fault repair to broadband and other data services such as mobile”. It noted that “it is unclear why the current provision where CPs such as Virgin Media take a case by case approach to priority fix, is not working”. Virgin Media also said that they “consider this a huge area for potential gaming by consumers claiming they need a priority fix for a whole host of

reasons”, while “offence is often taken by genuinely disabled customers who are asked to prove that they need this adjustment.” It also made the following comment: [X];

- b) Telefonica noted that while we stated that mobile is already covered by priority fault repair, the Guidance to GC 15 states that obligations for priority fault repair are for landline services only (§ 83). Telefonica considered that our proposals in relation to priority fault repair lack a robust Impact Assessment (§ 84);
- c) BT said it is unclear how priority fault repair would apply to mobile customers (§ 206).

12.62 We agree that it would be impractical to impose obligations on CPs in relation to priority fault repair of mobile base stations, and we have clarified that the obligation applies only to providers of fixed-line voice services and fixed broadband services by stating in the condition that the obligation applies only to providers of “Fixed-line Telecommunications Services”. However, we are not concerned about the potential gaming of this condition, as CPs are entitled to ask customers to show that they have a genuine need before providing a priority fault repair service, and our understanding is that customers generally demonstrate their need when they first register with a CP. Although we accept that this can cause offence to those customers who are genuinely in need of the service, we think that this is necessary to avoid the problems that Virgin Media have highlighted in their response. [X].

Simplifying and clarifying

12.63 BT agreed that in certain circumstances it is necessary that the protections that currently apply to a subscriber should be extended to an end-user. However, BT said that our proposal to change the definition of those who benefit from the protections in the condition from “Subscriber” to “End-User” would create uncertainty, because the term “End-User” would capture all persons using PECS, including, for example, employees of large companies, for whom obligations fall on employers to ensure appropriate adjustments are made. BT therefore suggested we consider introducing wording to clarify the extent and limits of CPs obligations to “End-Users”.

12.64 We think that in all the places where we have substituted the word “Subscriber” with “End-User”, it is right that the condition should refer to an “End-User”, in order that the right people are always entitled to the protections afforded by the condition. We note BT’s comment that this would sometimes include employees of large companies, but we believe that employees should be entitled the same protections from CPs as they would be entitled to as individuals, even where there are also obligations on their employers.

12.65 Three recommended we recognise the limitations of the term “end-user” because there will always be circumstances where the CP will simply not know who the end-user is (e.g. where the connection is taken out by a friend or family member). We recognise that CPs will not always know who an end-user is; however, in practice, where customers wish to make use of mobile SMS access to the emergency services or priority fault repair services they register in advance, thereby alerting their CP to who they are. Similarly, the requirements in C5.6 and C5.7 to ensure access to directory enquiries information and to relay services both require the end-user to have identified itself to its CP.

- 12.66 NADP commented that the revised condition refers to both “relay” and “text relay”, and suggested that for consistency “relay” is used throughout, to encourage CPs to consider other forms of telephone relay. To date, Ofcom has only mandated a text relay service and the definition of “Relay Service” (which is the only term used in the Condition itself), reflects this.
- 12.67 In relation to text relay, we noted that in trying to consolidate relevant requirements in the revised condition without making any substantive changes,¹⁸⁷ we had inadvertently omitted the requirement for CPs to charge for calls to a relay service at no more than the equivalent price as if that call had been made directly without the use of a relay service, which is currently set out in GC 15.3. We have therefore re-instated that requirement in condition C5.9(a).
- 12.68 The CCP and ACOD supported our proposals to amend the obligation on CPs to consult with the CCP “from time to time” to “on request”, and to include the obligation to consult the CCP “in respect of the requirements and interests of consumers whose circumstances may make them vulnerable”. NADP also welcomed the clearer obligation on CPs to consult with the Communications Consumer Panel “on request”. For clarity, we have also added a definition of “Consumer Panel” (“the panel established under section 16(2) of the Act”).

Stakeholders’ comments set out in the December 2016 consultation

- 12.69 Several respondents commented on the pre-consultation comments made by Vodafone and BT, which were summarised at paragraphs 9.7 and 9.9 of the December 2016 consultation.
- 12.70 A confidential respondent [X] agreed with Vodafone’s comment, which was summarised at paragraph 9.7 of the December 2016 consultation, that “consumer protection regulation is creating opportunities for monopoly wholesale supply”. The respondent suggested that this could perhaps be dealt with “by way of a universal service obligation on the dominant supplier”. The NADP said that Vodafone’s comments at paragraph 9.7 of the December 2016 consultation suggested it would be timely for CPs, Ofcom, the deaf community and potential providers of relay services to have another discussion to encourage a more competitive relay service where consumers have more choice. The CCP and ACOD noted that “customers who are not the target of competition are immediately placed in a vulnerable position when attempting to engage in the market”.
- 12.71 In light of these comments, we note that there is no restriction on the number of relay service providers in the UK, and, as we have made clear to relevant stakeholders, we would approve other providers if they met Ofcom’s key performance indicators.
- 12.72 The confidential respondent [X] and Virgin Media also agreed with BT’s comment, summarised at paragraph 9.9 of the December 2016 consultation, that “there must also be an obligation on the employer to provide facilities to assist their employee in their working day, rather than the obligation being on the CP”. The confidential respondent made the

¹⁸⁷ See paragraph 9.32 of the December 2016 consultation.

following comment: the “current obligations mix responsibilities to the Subscriber (the employer) and the end-user (the employee). The drafting needs to be extremely clear as it is very difficult as it stands to brief helpdesk and customer service agents on the distinctions to a level the various organisations seeking we discharge a duty of care would be satisfied with”. The NADP considered BT’s suggestion that employers should pay the costs rather than CPs “ignores the fact that only a proportion of relay calls are made by deafened people in employment”.

- 12.73 We consider that vulnerable and disabled end-users, whether in their personal capacity or as employees, should be entitled to the special measures and protections that arise from condition C5. We think it is correct that CPs’ obligations should be to end-users, to the extent that the end-user has identified himself as vulnerable or disabled, and we do not see any reason to distinguish between cases where the end-user is not the subscriber because the subscriber is a family member paying the end-user’s bill and where the end-user is not the subscriber because the subscriber is the end-user’s employer. Further, we note that the Universal Service and Users Rights Directive¹⁸⁸ requires Member States to ensure that special measures are available to disabled end-users, as opposed to subscribers.

Other comments

- 12.74 BT thought it was sensible to move the requirements for relay services into the definition of Relay Service, as this helps to separate the role of the relay service provider from the regulatory obligations on CPs. BT suggested that extending the definition further and including the requirement to publish quarterly KPIs, an annual report, and (every other year) conduct and publish customer research would provide further clarity on what a relay service provider must do. It also thought it would be appropriate to include a requirement to provide access to a “Relay Service Helpdesk Facility”, and suggested we remove the requirement to provide operator assistance facilities (§ 208-209).
- 12.75 The CCP and ACOD suggested that we should:
- a) re-name the condition “Measures to meet the needs of consumers in vulnerable circumstances and end users with disabilities”; and
 - b) include a requirement “that CPs train all their staff in Power of Attorney procedures”.
- 12.76 We have decided not to change the main title of the condition as we would prefer to keep it short and succinct. However, we have changed the heading to the relevant paragraphs of the condition in order to clarify this point (see also paragraph 12.33 above). While we agree that CPs should train all their staff in power of attorney procedures, and would encourage all CPs to do so, we have decided not to include this particular requirement in the condition itself, as we would like CPs to retain flexibility and control over what they put in their policies, rather than setting out specific, prescriptive requirements for them (see also paragraph 12.13 above).

¹⁸⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0022&from=EN>. See, for example, Article 7.

- 12.77 Citizens Advice noted that it regularly publishes guides to how the energy industry can support consumers in vulnerable circumstances and arranges forums for providers to share best practice, and suggested that we consider how similar support could be provided to telecoms networks. We note that we have published many consumer guides on Ofcom's website which we hope are also useful to regulated firms.
- 12.78 A confidential respondent [redacted] commented that it was unclear "why access to 18000 (emergency services by a text relay device) is in GC15 presently and not GC4". It noted that as a result there would be no obligation for it to provide location information for a 18000 call. (p.17)
- 12.79 As set out in paragraph 4.81, it is not appropriate to add "18000" to condition A3 (as re-numbered) because, unlike "112" and "999", this number has not been designated in the Numbering Plan as a number for "Access to emergency services". However, we inserted a footnote to condition A3.4 to refer to condition C5.8 and C5.9 ("Relay service") and condition C5.10 ("Mobile SMS access to emergency organisations"). Further, condition C5.6 includes a requirement for CPs to publicise the measures set out in condition C5. We consider that it is important that the requirement to provide access to emergency organisations using a text relay device (by dialling 18000) is one of the measures that CPs are obliged to publicise. It is therefore important that the reference to 18000 remains in condition C5 (it is currently referenced in part (g) of the definition of "Relay Service").
- 12.80 Verastar commented that:
- a) business customers tend not to require information in braille, and such obligations on CPs need to be reasonable, proportionate and flexible. They noted that "the cost of providing braille documentation may exceed any revenue from the customer";
 - b) "end users should inform CPs of life critical apparatus and/or seek a higher care level at the point of sale or within the consolidation period to ensure that their needs are met before the service becomes active"; and
 - c) "wholesalers should be obliged to maintain accurate data on vulnerable customers", which is "not always the case".
- 12.81 We recognise that in some cases provision of the measures in condition C5 may involve some costs to the provider, and note that this is one of the reasons we consider it necessary to place a regulatory obligation on CPs to provide them. We also note that, normally, end-users do inform CPs of life-critical apparatus or seek a higher care level at the point of sale. However, this is not a requirement because (i) end-users may become disabled during the lifetime of their contract; and (ii) we want to ensure we avoid any situation where CPs turn away, or attempt to avoid entering contracts with, consumers who have identified themselves as vulnerable at the point of sale. We also do not consider it necessary or appropriate to mandate that wholesalers maintain data on vulnerable consumers, as this data should be held by the minimum entities necessary.
- 12.82 The NADP commented that:
- a) "Ofcom should be more proactive in encouraging CPs to identify people who could benefit from the Text Relay service or other relay services rather than simply focus on

those who “normally” use the service”. It does “not believe that CPs will proactively look to capture those potential users and would encourage Ofcom to attempt to address this gap”; and

- b) “Access to NGTR should be equivalent so one would expect to be able to make a call in the same way using NGTR as a telephone call made by a hearing person”. However, in the NADP’s experience, the process of using NGTR is “not user friendly and creates barriers to having an equivalent experience”.

12.83 We agree that it is important to encourage CPs to proactively attempt to identify consumers who could benefit from relay services, and we consider that the requirement in condition C5.6, which obliges CPs to take reasonable steps to ensure that the measures in condition C5 are widely publicised, is sufficient to encourage this. Therefore, we consider that it is not necessary to amend the wording of this condition. We also note that the objective of NGTR is to provide users with hearing difficulties functional equivalence to other users when making a telephone call. Unfortunately, as text relay requires users to read captions on a connected device, it is not currently possible to provide users of text relay with an experience which is identical to that of a hearing person making a telephone call.

Implementation period

12.84 Some respondents (BT, Mobile UK, Money Advice Trust, Three and Telefonica) said that the proposed implementation period was too short (although Mobile UK noted that “if compliance with the requirements on vulnerability were to be a matter of just describing what each has currently in place, a 3–6 month compliance period would be reasonable”; §12). Money Advice Trust suggested that, as an alternative to a 3-6 month implementation period, “providers could be required to report their progress and future plans for addressing vulnerability at regular intervals, as an adjunct to on-going monitoring”. Three suggested that an 18-month implementation period would be appropriate (§ 122).

12.85 BT was concerned that the development and implementation of policies would be a complex task, involving the development of new systems and training schemes, because:

- a) identifying consumers who are disabled or vulnerable would not be straightforward;
- b) capturing and recording information about customers’ vulnerability would need careful consideration to ensure principles of data protection legislation were complied with; and
- c) many customers “self-serve” from BT’s website, making opportunities for capturing information about vulnerability limited.

12.86 For these reasons, BT considered that the timescale set out in the December 2016 consultation was too optimistic, and that Ofcom should agree a more realistic implementation period, through more discussion with all interested stakeholders.

12.87 In light of these comments, as set out in paragraph 3.60 above, we have decided that an implementation period of one year is appropriate, and the revised condition will therefore come into force on 1 October 2018. However, we encourage CPs to implement the changes

sooner where possible, particularly in relation to the provisions intended to help vulnerable consumers.

Ofcom's decision

- 12.88 Having considered stakeholders' comments, we have decided to implement the changes that we proposed in the December 2016 consultation, with the following revisions:
- a) we have changed the heading to paragraphs C5.2 – C5.5 to “Measures to meet the needs of consumers whose circumstances may make them vulnerable” (see paragraphs 12.75 to 12.76);
 - b) we have replaced the word “implement” with “comply with” in condition C5.2 (see paragraph 12.14);
 - c) we have amended the wording of the list of illustrative examples of circumstances that may make people vulnerable in C5.3(a) (see paragraphs 12.24 to 12.27 above for more detail);
 - d) we have clarified that CPs will not be required to actively seek to identify consumers who may be vulnerable (see paragraphs 12.11 to 12.12);
 - e) we are no longer requiring CPs to publish their staff-training policies, as proposed for consultation (although they will still be required to have appropriate staff training in place) (see paragraph 12.11);
 - f) we have clarified that the requirement for CPs to provide priority fault repair services does not apply to mobile, by amending the wording of condition C5.11 (as re-numbered) (see paragraph 12.62);
 - g) we have clarified that CPs will be required to provide Ofcom any information necessary to demonstrate compliance with the condition, if requested in C5.4 (see paragraph 12.38);
 - h) we have clarified that the requirement to provide Mobile SMS access to the emergency service only applies to CPs who provide mobile services (see paragraph 12.57);
 - i) we have re-instated the requirement for CPs to charge for calls to a relay service at no more than the equivalent price as if that call had been made directly without the use of a relay service (see paragraph 12.67); and
 - j) we have added a paragraph (C5.15) to this condition to clarify that all the requirements in the condition are subject to data protection legislation (see paragraph 12.11).
- 12.89 The revised text of the condition that will replace the current GC 15 can be seen at Annex 14 (see condition C5, as re-numbered).

Legal test

- 12.90 We consider that the changes that we have decided to make to this condition (condition C5, as re-numbered) and the condition itself, meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:

- a) **objectively justifiable** as we think that:
- i) consumers whose circumstances make them vulnerable are at particular risk of harm and requiring CPs to take account of the needs of such consumers in policies and procedures will reduce this risk and ensure fair treatment; and
 - ii) it is necessary to extend the requirements to provide measures for people with disabilities to all public electronic communications services to update current regulation to reflect recent market development;
- b) **not unduly discriminatory** since these changes will ensure that the same regulatory measures apply in respect of all providers of electronic communications services which are made available to the public;
- c) **proportionate** as we think that none of these changes will introduce any disproportionate regulatory burden on industry. In particular, we note that the extensions to all public electronic communications services of the measures in relation to end-users with disabilities will only apply where the nature of the end-user's disability means that the measure is necessary. In addition, in relation to billing, any additional burden on industry would be mitigated by the increase in take-up of bundles; and
- d) **transparent** as the reasons for the changes that we have decided to make to this condition are explained above and the effects of these changes will be clear to CPs on the face of the revised condition itself.

13. Calling line identification

Introduction

13.1 Calling Line Identification (“**CLI**”) facilities enable the telephone number of a person making a call to be displayed to the recipient of the call. This gives the recipient of the call the ability to identify the person or organisation calling them, and to make informed decisions about how to handle incoming calls. It also assists regulators and enforcement bodies with the identification, tracing and prevention of unwanted nuisance calls, which can cause significant annoyance and, in some cases, distress for consumers. In this section, we set out the changes that we have decided to make to this condition, which include re-numbering it as Condition C6.

Consultation Proposals

Tone dialing

13.2 GC 16 currently requires all providers of public communications networks to provide, where technically feasible and economically viable, tone dialling or dual-tone multi frequency operation, such that the network supports the use of DTMF Tones¹⁸⁹ for end-to-end signalling throughout the network. As tone-dialling is now ubiquitous on all (or virtually all) networks in the UK, we consider it unlikely that in the absence of regulation any major network would stop providing tone dialling facilities, particularly given the expectations of consumers and interconnecting network providers. As such, we proposed to remove the obligation to provide these facilities.

Extension of CLI requirements

13.3 The GCs currently require providers of public communications networks to provide CLI facilities, where technically feasible and economically viable to do so, in accordance with the requirements of data protection legislation. We consider it important that any information presented to the recipient of a call which purports to identify the person making the call is as accurate as possible. Since calls can be routed through a number of different CPs on their journey from the originating calling party to the call recipient, ensuring the accuracy of any CLI data presented to the call recipient relies on accurate initial population of the CLI data by the originator of the call and each of the CPs involved in the transmission of the call passing on accurate CLI data along the chain of delivery. We are concerned that in the absence of a regulatory requirement to provide CLI facilities, the accuracy or availability of CLI data could be reduced and this could have the potential to seriously undermine our efforts (and those of other regulatory and enforcement bodies) to

¹⁸⁹ As defined by ETSI in ETSI Technical Report 207.

tackle unwanted nuisance calls. We therefore proposed to retain (and strengthen) this requirement.

Scope

- 13.4 In order to ensure that consumers are fully protected regardless of the type of electronic communications network or service they are using, we proposed to amend the scope of the condition so that it applies to all providers of publicly available telephone services and public electronic communications networks over which publicly available telephone service are provided. This would ensure that any telephone number which is presented to the call recipient as identifying the calling party is as accurate as possible even if one of the CPs in the chain of delivery is not a network provider (e.g. if the originating or terminating provider is a service provider that does not operate its own network).

Requirements

- 13.5 In order to ensure that CLI data provided remains as accurate and complete as possible, we also proposed to:
- a) amend the wording of the condition to make it clearer that CLI facilities must be provided unless the CP concerned can show that it is not technically feasible or economically viable to do so; and
 - b) insert a new requirement for CPs to inform their customers if CLI facilities which enable the number of the calling party to be displayed to the called party are not available on the service they are providing to end-users.
- 13.6 We also proposed to remove the power that allows us to direct that that the requirement to provide CLI facilities should not apply in areas where there is already sufficient access to those facilities.

CLI Guidelines

- 13.7 The condition is currently supplemented by Ofcom guidelines (the “**CLI Guidelines**”). In order to strengthen the protections available to consumers and to assist with the prevention and detection of nuisance calls, and in accordance with our aim of including all regulatory obligations in the same place¹⁹⁰, we proposed to incorporate certain aspects of the CLI Guidelines into the condition. In particular, we proposed to specify in the condition that where CLI facilities are provided, regulated providers must ensure that any CLI data provided with or associated with a call includes a valid, diallable telephone number which uniquely identifies the caller.
- 13.8 We note that we are also consulting separately on updating the CLI Guidelines.¹⁹¹

¹⁹⁰ As set out in paragraph 3.5 of this statement.

¹⁹¹ The consultation on revising the CLI Guidelines is available here: <https://www.ofcom.org.uk/consultations-and-statements/category-2/guidelines-for-cli-facilities>

Inclusion of privacy requirement

- 13.9 We also proposed to include a provision requiring CPs to respect the privacy choices of end-users when providing CLI facilities. This would mean that, for example, where a caller elects to withhold their number, it should not be displayed to the call recipient.

Charges for the provision of CLI facilities

- 13.10 While most CPs provide basic CLI facilities for free (or at no additional charge), some CPs charge separately for access to these services. We are concerned that charging customers separately for these facilities may lead to their underuse, which reduces our ability to tackle the harm caused by nuisance calls. Further, we understand that the cost of providing basic CLI facilities to end-users is low, and since a number of CPs already provide the basic features of CLI facilities to their users without additional charge, we consider that it must be economically viable to provide basic CLI facilities without charging separately for them. We therefore proposed to add a new requirement prohibiting separate or additional charges for access to or use of standard CLI facilities.

Blocking invalid and non-diallable CLI

- 13.11 We also proposed to add a new requirement for CPs to take reasonable steps to identify calls on which invalid or non-diallable CLI data is provided and to block those calls, where technically feasible. This is because if CPs blocked these calls at the network level, they would be prevented from reaching consumers, yielding significant benefits to consumers in the form of reduced nuisance.

Stakeholders' responses and Ofcom assessment

- 13.12 Of all of the proposals set out in our consultations, this issue generated the most responses and comments. More than forty stakeholders responded specifically to our proposals on this condition: 19 individual respondents¹⁹², two confidential respondents [§<], BT, CFC, the CCP and ACOD, Enigma, FCS, the ICO, Mobile UK, the NADP, Nine Group, TUV SUD BABT, Sky, the SCOTSS, SSE, StepChange, TalkTalk, Telefonica, Three, TrueCall, UKCTA, Verastar, Verizon, Virgin Media and Vodafone.
- 13.13 The responses we received to our proposals on CLI were varied. Many respondents, in particular consumer organisations and individual respondents,¹⁹³ expressed strong support for all our proposals. However, a number of respondents, primarily CPs who would be subject to the proposed conditions, expressed concerns, particularly in relation to the

¹⁹² Cary Hammond, Charles Lulham, Gina Antczak, Henryk Matysiak, Leon Tarnowski, Paul Conway, Quentin Gardiner, Richard Lucas, Trevor Williams and ten confidential respondents [§<].

¹⁹³ Age UK, Cary Hammond, Charles Lulham, Henryk Matysiak, the ICO, the Society of Chief Officers of Trading Standards in Scotland, Leon Tarnowski, Nine Group, Paul Conway and StepChange.

proposal to require CPs to provide CLI at no additional charge. Some respondents also suggested that now was not a good time to impose additional measures in relation to CLI through the GCs – for example, Telefonica said that as there are already voluntary measures being pursued by industry in relation to CLI, it is “premature to mandate technical measures under the GCs” (§ 19 -22).

- 13.14 A number of individual respondents¹⁹⁴ also wrote to us to express their support for the response submitted by TrueCall, which is summarised below (see paragraph 13.37).

Tone dialling

- 13.15 A confidential respondent [X], the FCS, Leon Tarnowski, Mobile UK, Nine Group, Trevor Williams and Veristar supported our proposal to remove the requirement to provide tone dialling. Three said it did not have any particular concerns about this proposal (p 35) and Vodafone gave “qualified support” to it, noting that the continued operation of voice-band data, including DTMF, remains important as networks migrate to IP technology.
- 13.16 TUV SUD BABT said that it may be appropriate to seek information from Openreach/KCOM on the number of customers still using “hard-wired” telephones.
- 13.17 The NADP disagreed with this proposal on the basis that there are no guarantees that the provision of tone dialling will remain common practice in the future, and noted that many deafened people use the tone to check that they are using the correct setting on their hearing aids. The proposal could therefore be seen as a step in the opposite direction to full inclusion.
- 13.18 We have considered the comments from Vodafone, TUV SUD BABT and the NADP; but we have decided to proceed with our proposals as set out in the December 2016 consultation as we fully expect that all operators will continue to provide tone dialling as standard, even in the absence of a regulatory requirement to do so, given the commercial imperative for it. However, should we notice any changes in market provision in this area, we note that we could re-intervene if necessary.

Extension of CLI requirements

- 13.19 The CCP and ACOD (p 11) and the FCS welcomed these proposals.

Scope

- 13.20 A confidential respondent [X] said the extension of scope is welcome (p 15).
- 13.21 BT, Verizon and UCKTA were concerned that the condition was not clear enough about which CPs were required to comply with which rules:
- a) Verizon said “the intended scope of this Condition is unclear...Ofcom mentions a number of different types of CP (originating, transiting, terminating, etc.) and it’s unclear who is subject to what requirements ...While Ofcom says that the onus would mostly be on originating and terminating CPs, recognising the difficulties for transit

¹⁹⁴ Cary Hammond, and five confidential respondents [X].

CPs, it is unclear where accountability lies for issues with CLI provision, and or the blocking of calls with invalid CLI” (§ 21);

- b) UKCTA said the proposal to require CPs to inform their customers when CLI facilities are not available are “confusing” and it is “unclear who Ofcom wants these requirements to apply to as there is mention of a number of different CPs (originating, transiting, terminating, etc.) and it’s unclear who is subject to what requirements” (§ 19);
- c) BT said it was unclear who paragraphs C7.2 and C7.3 should apply to. It said that “Ofcom should clarify that C7.2 applies to Originating (OCP) and Terminating (TCP) providers while C7.3 only applies to Terminating providers” (§ 123).

13.22 In the consultation on the new CLI Guidelines¹⁹⁵, which we have published today, we have set out further guidance on what we expect each CP to do to comply with the new requirements. In summary, the consultation on the revised CLI Guidelines proposes that:

- a) originating CPs are responsible for ensuring that correct CLI data is generated at the origination of a call (unless calls are generated outside the UK, in which case this responsibility falls on the CP at the first point of ingress to the UK network); they are also expected not to initiate calls that have invalid or non-diallable CLIs;
- b) transiting and terminating CPs are responsible for ensuring that the CLI data they provide with a call contains valid CLI, and (where technically feasible) for stopping calls which have invalid or non-diallable CLI (either by blocking or filtering them);
- c) terminating CPs are responsible for ensuring that CLI data is only displayed to the call recipient where the caller has chosen to make this information available and the call recipient has not chosen to prevent the display of CLI data relating to incoming calls; and
- d) all CPs involved in the transmission of a call must do all that is technically feasible to ensure the authenticity of CLI data is maintained from the origination to the termination of the call.

13.23 BT said that Ofcom “should consider how it could oblige all types of communications service providers to comply with the CLI obligations that currently only apply to providers of PATS and PECNs, for example, as part of the number allocation process” (§ 122).

13.24 Our intention is that this condition should apply to all CPs who may be involved in the transmission of a phone call, and we consider that the condition as drafted in the December 2016 consultation would capture all such CPs, as they would all be providers of PATS or providers of PECNs over which PATS are provided.

Requirements

¹⁹⁵ The consultation on revising the CLI Guidelines is available here: <https://www.ofcom.org.uk/consultations-and-statements/category-2/guidelines-for-cli-facilities>

- 13.25 TalkTalk welcomed the proposal to require providers to ensure that any CLI data provided includes a valid, dialable telephone number that uniquely identified the caller (§ 30).
- 13.26 Mobile UK said that “‘uniquely identifies’ the ‘caller’ is also open to misunderstanding, particularly where non-geographic numbers are involved, overriding the geographic number based on any wholesale line rental arrangement. It would be helpful if Ofcom guidance clarified what is meant by uniquely identifies the caller means (for example outgoing calls from Ofcom only identify the Ofcom switchboard number, not the extension number of the person calling.” (§ 26).
- 13.27 Mobile UK also said: “It is our understanding that originating networks require, through contractual arrangements, that an accurate CLI is used. We believe this to be sufficient and that there should be no requirement on the originating networks at this stage to test the CLI on a call-by-call basis to ensure that it is a valid diallable number that uniquely identifies the caller. It is not feasible to expect this of originating networks.” (§ 26).
- 13.28 We intend to clarify both of these points in the revised CLI Guidelines, which we are consulting on today alongside this statement. In summary, we are proposing that the revised CLI Guidelines will explain that CLI data “uniquely identifies the caller” where it includes a number that the user has been given the authority to use (either because the number has been allocated to them or because the user has been given permission to use the number by a third party who has been allocated the number).¹⁹⁶ The proposed new CLI Guidelines would also clarify that we do not currently expect CPs to test whether the CLI provided with a call uniquely identifies the caller on a call by call basis at this stage, but that we do expect CPs to have contractual arrangements in place with other CPs involved in the journey of a call, to ensure that the authenticity of CLI data is maintained throughout the transmission of a call.
- 13.29 BT made the following comments:
- a) the changes should also ensure that “CLI data not only identifies the caller but also the accurate geographic location from which their call has been made”. (§ 120) In particular, BT said that this condition “should explicitly prohibit misuse of CLI and oblige Regulated Providers to ensure the location as well as the identity of the caller must be valid or flagged as such”; (§ 121)
 - b) the condition doesn’t distinguish between presentation CLI (what a caller may choose to display to the party being called, if anything) and network CLI, which should be continually available at the network level to clearly identify the origin of the call. BT said that network CLI can be the “difference between whether someone lives or dies” when it is supplied in connection with an emergency call, and suggested that we should provide additional clarity in GC C7.4 that network CLI must always be present and correctly populated; (§ 127) and

¹⁹⁶ See paragraph 4.11 of the draft revised CLI Guidelines:
https://www.ofcom.org.uk/_data/assets/pdf_file/0021/106392/Annex-Draft-CLI-Guidelines.pdf

c) the drafting of C7.4, which requires CPs to provide CLI data that “uniquely identifies the caller” “dilutes current requirements and jeopardises emergency call handlers’ ability to trace nuisance or emergency calls and lookup address information for 999 services”. BT said “It is our view that this wording would allow an OCP to use the number in service for call termination at another address and even with a different Communications Provider which could put the caller's safety in jeopardy if they are unable to verbally confirm their location when making an emergency call. We believe that this risk could be mitigated significantly by requiring Regulated Providers to provide CLI data that uniquely identifies the point at which the call enters the OCP's network.” (§ 125)

13.30 We note that geographic location is dealt with in the condition relating to emergency services (condition A3, as re-numbered). In addition, the proposed revised CLI Guidelines, on which we are consulting today alongside this statement, will set out the different roles of the “network number” and “presentation number”, and clarify that the network number should identify either:

- a) for calls from fixed devices, the geographic location of the caller;
- b) for calls from mobile devices, the line identity¹⁹⁷; and
- c) for calls that originate outside the scope of these requirements on which the UK CP doesn't trust the CLI data provided, the first UK CP in the call path.

13.31 As a result of the clarifications to the CLI Guidelines set out in paragraph 13.30 above, we expect that the network number should always be provided by the originating provider and will identify the location of a caller where the emergency call is made from a fixed line.

13.32 A confidential respondent [X] disagreed with the “long-winded manner in which CLI Data integrity is proposed to be mandated in the GCs”. It said “Ofcom rightly reference NICC Standards Limited’s ND1016 at §10.30 of the Consultation. We consider that a direction to comply to it under GC2 (assuming such a direction making power is [retained], as we discussed in the Previous Response) would appear to be the cleanest way of ensuring compliance and inter-operability.”

13.33 We have removed the direction making power in GC 2, and have decided to retain the CLI conditions, to be consistent with our overall approach of including all binding regulatory requirements in the GCs themselves, rather than in directions or guidance.

13.34 The SCOTSS suggested that the requirement could have been “more robust” as “the terms “reasonable steps” and “where technically feasible” might be seen as a potential get out to any CP who has not fully bought into the spirit of the requirement or feels they will lose out financially by following it”.

13.35 It is necessary to strike a balance between rules that are legally robust and rules that it is feasible for all providers to comply with. We have decided to retain the qualifiers

¹⁹⁷ The way that mobile networks provide emergency caller location does not rely on the user’s CLI and uses a different approach.

“reasonable steps” and “where technically feasible”, as we proposed in the December 2016 consultation, as we recognise that there are situations where it may not be technically feasible, or where it may be disproportionately burdensome, for CPs to comply with the new requirements. For example, we understand that it is not currently technically feasible for some operators to block calls, due to restrictions in their networks.

13.36 Mobile UK agreed that “it is very important that Regulated Providers who are initiating calls make it a contractual requirement on their customers that an accurate CLI is used”. (§ 25)

13.37 TrueCall made the following suggestions¹⁹⁸:

- a) CPs should be required to enable caller ID facilities by default. TrueCall noted that while CLI facilities are enabled by default and provided for free on mobile phones, landline subscribers have to ask for the service to be enabled on their line, which means that many subscribers would not use the service even if it were free;
- b) CPs should be required to block calls that carry a caller-ID that has a mobile number format where it can be established that a call has originated from a landline or VoIP network;
- c) A subscriber database should be established to enable callers to be identified. TrueCall said it agrees that ensuring CLI data provided with a call should include a valid dialable telephone number which uniquely identifies the caller would be valuable, but they considered that our proposals wouldn’t “give consumers the ability to uniquely identify the caller”. TrueCall proposed that a subscriber database would improve this situation. It also suggested the “Caller ID service would be significantly enhanced if – for calls from a business – the caller’s name as well as their number were displayed with their call”.

13.38 Similarly, a confidential respondent [X] said that “any call identification must be pre-verified against a database of validated registered users and any calls made that fail this verification should not be carried”.

13.39 We agree that CPs should be required to enable caller ID facilities by default, as they currently do on mobile phones, as we think this will help ensure that customers are aware of the availability of CLI facilities, and have easy access to them. We have therefore amended the condition so that it reads:

“C6.2 **Regulated Providers** must provide **Calling Line Identification Facilities**, and enable them by default, unless they can demonstrate that it is not technically feasible or economically viable to do so.”

13.40 We haven’t included a specific requirement for CPs to block calls where the CLI represents a mobile number but the call appears to be coming from a fixed device. However, as a

¹⁹⁸ As set out in paragraph 13.14 above, a number of individuals agreed with TrueCall’s suggestions.

general principle we would encourage CPs to check that the CLI presented with a call appears to accurately represent where the call originated from.

- 13.41 While we consider that a subscriber database of the sort envisaged by TrueCall and the confidential respondent referred to above could also be beneficial to consumers, we do not consider that creating one is currently feasible because there is not currently a comprehensive list of the end-users of all numbers. This is because Ofcom keeps a database of the original allocatee of each number, but does not have up to date, comprehensive information about the end-user of each number.
- 13.42 Vodafone thought that condition C7.4 should “have a “subject to technical feasibility” modifier because absent this the implication is that once it comes into force originating operators must ensure that every Presentation Number CLI is correct using technical means on a call-by-call basis”. Vodafone also considered that the associated Guidelines should state that “at present originating operators would fulfil the obligations of GC7.4 so long as they rigorously collect contractual undertakings from enterprises to only transmit valid CLIs which they have the right to use (as set out in the Annex to the existing CLI Guidelines). Further, the Guidance for transit and terminating operators would state that at present they would fulfil the obligations of GC7.4 so long as their interconnect agreements demand valid CLIs from upstream networks”.
- 13.43 In light of Vodafone’s concern, we have added amended GC C6.4(a) so that the condition reads as follows:

“When providing **Calling Line Identification Facilities, Regulated Providers** must:

- (a) ensure, so far as technically feasible, that any **CLI Data** provided with and/or associated with a call includes a valid, diallable **Telephone Number** which uniquely identifies the caller; and
- (b) respect the privacy choices of **End-Users**.”

- 13.44 However, we do not propose to include Vodafone’s proposed wording in the revised CLI Guidelines (because our intention is that the new Guidelines should continue to be relevant in light of possible future technological developments), but we note that at present the obligations in GC C6.4 can be fulfilled by appropriate contractual arrangements between CPs and their customers and interconnect partners.

CLI Guidelines

- 13.45 The CCP and ACOD welcomed the proposal to “transfer some of the non-binding guidelines into binding conditions”. A confidential respondent [redacted] said the CLI Guidelines are “woefully out of date” and that they should be incorporated into the GCs.
- 13.46 BT and Vodafone were both concerned that we decided to revise the conditions before revising the CLI Guidelines:
- a) BT said “the decision to precede proposed changes to the CLI guidelines with the revisions to C7 may inhibit the implementation of formal regulation that can then be enforced if required. The NICC standard (ND1016) provides the definitive technical

absolutes by which UK Communications Providers should operate and is being revised in light of what is seen as current bad practice to tighten matters up further. It is not enforceable in law, however. We understand that when Ofcom does consult on revisions to the CLI Guidelines that, for the first time, it will refer to this technical standard. However, the Guidelines themselves have no legal status and as the drafting of the revised General Condition 7 refers neither to Guidelines nor the NICC standard, it is our view that the risk exists for legal challenge as the communications industry won't have legal certainty until a dispute is brought against Ofcom's findings." (§ 129)

- b) Vodafone said we should have consulted on the new Guidelines at the same time as the new conditions. As a result, it said that the implementation of the new CLI condition should be delayed until the associated guidance is agreed by stakeholders.

13.47 In response to the above comments from BT and Vodafone, we note that we are today consulting on our proposals for revising the CLI Guidelines, and the GC will not come into force until 1 October 2018. The CLI Guidelines are not legally binding. The approach we have taken to revising the GCs is to ensure that any regulatory obligations that are intended to be binding are included in the revised GCs. Further information and explanation is included in accompanying guidelines, where necessary, as is the case for the proposed new CLI Guidelines.

Inclusion of privacy requirement

13.48 Paul Conway suggested that we should stop people withholding CLI.

13.49 We do not agree with this comment because there are legitimate reasons why individuals may wish to withhold their telephone numbers in some circumstances, for example when calling confidential advice helplines. We also note that the requirement to allow people to withhold their CLI is required by EU law. However, we also note that the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR"), as amended in 2016,¹⁹⁹ prohibit marketing companies from withholding their CLI.

Charges for the provision of CLI facilities

13.50 The CCP and ACOD (p 10), TrueCall, the SCOTSS and [thirteen] individual respondents²⁰⁰ strongly supported our proposal to prevent additional charges for CLI facilities. For example, a confidential respondent [redacted] said that "it is absolutely vital that consumers are informed where any call is coming from. By its very nature, this service must be made available without charge to the consumer in order to protect those who are most vulnerable to this kind of misuse of the telephone service", and Quentin Gardiner said that "identification of a caller should be a basic part of a contract...it should not be charged as an 'extra'". A number of respondents said it would be useful to provide the company name and location in addition to the numeric dialling code.

¹⁹⁹ See in particular regulations 19 and 21 of PECR.

²⁰⁰ Cary Hammond, Quentin Gardiner, Richard Lucas, Gina Antczak, Henryk Matysiak, Leon Tarnowski, Charles Lulham, Trevor Williams and five confidential respondents [redacted].

- 13.51 TUV SUD BABT agreed with this proposal, but questioned whether this change would allow wholesale CPs to charge their retail CP partners for a service that the retail CP would not be able to onward bill their customer.
- 13.52 BT, Sky, Verastar and Virgin Media all disagreed with our proposal to prohibit additional charges for standard CLI facilities, as, among other reasons they thought this is already a competitive area and the costs of providing CLI facilities are likely to be passed on to consumers through an increase in the prices of other products/services. Their comments are summarised in more detail below:
- a) BT said that doing so “unnecessarily limits CPs’ commercial freedom and stifles a retail market that is generally deemed by Ofcom to be effectively competitive”. It suggested that “CPs should be permitted to continue to levy additional charges for CLI facilities as long as they also take effective action to prevent nuisance calls”. (§ 115) Further, BT said “It is disproportionate to prevent CPs from charging for a service like caller display, which is valued by customers but not essential for protection from nuisance calls. Having the option to charge for caller display allows BT to differentiate its offer through the development of value add services to retain competitiveness against firms who do not charge. Forcing the removal of charging would have unintended consequences by removing this form of differentiation which is an important dimension of competition.” (§ 118)
 - b) Sky (p 10) said:
 - i) it “fundamentally objects” to Ofcom taking interventionist measures other than where absolutely necessary to address specific consumer harm where markets are not effectively competitive;
 - ii) many operators already do not impose additional charges for CLI facilities, and “in the absence of any regulatory ban on such charges, competition would continue to dictate that additional charges for such facilities remain low (or are gradually eradicated)”; and
 - iii) it “would strongly urge Ofcom to apply this principle first to the wholesale provision of such services and impose a ban on those charges. Failing to do so will simply allow wholesale providers to profit from the provision of a service that Ofcom considers is vital for all end users without allowing retail communications providers the option of passing these charges onto their customers”.
 - c) Verastar said that “consumers should be able to choose whether they wish to have caller line identification and that those who require it may be required to pay for it should the CP make a charge for this service. Some customers may not require this service and others may not have phones which enable this feature”.
 - d) Verastar, Sky (p 10) and a confidential respondent [redacted] argued that the requirement to provide CLI at no additional charge would result in CPs passing this cost on to consumers by increasing other costs.
 - e) Virgin Media made the following comments:

- i) this proposal is disproportionate and would be ineffective, as “it is possible to “spoof” CLIs to give the impression that a call is valid or from a credible source”. Further, Virgin Media noted that the “work being undertaken on nuisance calls by Ofcom and industry will continue to bring improvements at a network level and other advances in technology, for example the move to IP voice, will allow much greater protection to be provided at the customer level. Therefore, to introduce intrusive price regulation at this time, when any benefits may be overtaken by technology in the reasonably near term seems wholly disproportionate”;
- ii) the fact that some CPs already provide this facility free of charge “demonstrates that it is subject to competitive provision and that if consumers genuinely attribute a high value to it they have the option to switch. Notwithstanding this, there is no evidence that the absence of complimentary CLI display is a barrier or deterrent to consumers switching provider”.

13.53 In response to the suggestion that we should allow competition to remedy this problem, we note that evidence of switching levels and engagement suggests that those customers who could benefit most from CLI (such as elderly and vulnerable consumers) are those who are least likely to engage with the switching process and be aware of the potential benefits of CLI. We therefore consider that it is proportionate to require CPs to provide CLI facilities at no additional charge as doing so will ensure that all consumers are able to enjoy the benefits of CLI, regardless of their ability to engage with the switching process.

13.54 We accept that it is possible that some CPs may seek to pass the wholesale costs of providing CLI on to consumers through other charges such as line rental or call charges. However, the wholesale costs of CLI are relatively low, and provided CPs’ retail pricing is transparent, we expect that competition will work to constrain the pass-through of such costs. Charging end-users for the provision of CLI facilities can act as a disincentive to their use. Wider use of CLI facilities will help consumers identify the source of calls and make an informed decision about whether to answer. We consider that the benefit of reduced harm to consumers from nuisance calls outweighs the potential of the possibility of increased costs elsewhere. Further, although we accept that some consumers may not require CLI facilities, we consider that it is proportionate to impose this new requirement due to the increased benefits it will bring to consumers as a whole.

13.55 We also acknowledge that there is other industry work taking place to tackle nuisance calls, but such work will take time, and we therefore consider that this is a proportionate measure to be implemented alongside other industry measures, given the low cost to CPs and the high benefits it is expected to yield for consumers as a whole.

13.56 We also received a further confidential comment from [X], which said that [X]. [X].

Blocking invalid and non-diallable CLI.

13.57 Mobile UK said that before we impose this requirement there needs to be industry consensus on what is (and will be) technically feasible. It thought that “the best way of achieving this is via a collaborative approach to re-drafting the CLI Guidelines”. Mobile UK was also “concerned that the imposition of call blocking [measures] through a GC regime

could be premature, expensive to implement in the near term and too simple to evade.” (§ 23) It cited the following reasons for this:

- a) detecting invalid or non-diallable calls is not simple and will need significant investment, and condition C7.6 does not have a proportionality test or “economically viable” qualification; and
- b) “[it] is far from clear cut that a system based on invalid and non-diallable numbers is actually better than an intelligence led, manually reviewed system, where the numbers blocked are based on due diligence of crowd sourced and other internally generated information about the numbers that are causing a nuisance”.

- 13.58 We note that what is technically feasible will depend on the circumstances, and will change over time in line with technological developments, and we will continue to work with industry to monitor what is and is not feasible. The new requirement to block calls where invalid or non-diallable CLI is provided is subject to technical feasibility, so CPs whose networks are not currently capable of providing call blocking would not currently be subject to this requirement. We have decided not to include an “economic viability” qualifier to this part of the condition as we expect CPs to implement this requirement even where it may not be profitable for them to do, but we consider that where it is technically feasible to implement this requirement, it ought not to be unduly expensive to do so.
- 13.59 BT noted that C7.6 puts equal obligations on the originating and terminating providers to identify and block traffic with “invalid” or “non-diallable” CLI. BT said “it is our view that this is entirely appropriate with respect to all OCPs and may be helpful for those transit operators and TCPs to be entitled to block such traffic, but BT does not agree that these CPs should be under an obligation to do so (subject to technical capability)”.
- 13.60 As explained above, we have set out in the revised CLI Guidelines, which we are consulting on alongside this statement, the expectations we have of CPs at different levels of the value chain and the different ways they can prevent a call from reaching an end-user, depending on their role in the transmission of the call.
- 13.61 BT also commented that although requiring call blocking for invalid or non-diallable CLI would reduce nuisance calls, “it would also prevent such calls reaching their destination regardless of where or what that was and would inhibit genuine emergency calls and those to services such as Childline and Samaritans where termination of the call with the service dialled would be imperative to the caller”. BT suggested that instead “Ofcom should set out separate requirements in respect of nuisance calls or those associated with fraud that require Regulated Providers (OCP, TCP and transit CP alike) to block calls with specific invalid or non-diallable CLIs where technically feasible and those where the Regulated Provider has good evidence to suggest that these are unwanted calls or calls associated with potentially criminal activity.” (§ 128)
- 13.62 Age UK said “it is important that vital calls from unfamiliar numbers – such as a hospital – are not unintentionally blocked”. Similarly, Vodafone commented that “in some cases delivery of the call without CLI is preferable to failing the call, but the proposed wording precludes this”

- 13.63 We consider this type of situation is highly unlikely to arise in practice, given that originating CPs will either be using a valid number that they have been allocated, or have an assurance from their customers that they are entitled to use their particular number. In the unlikely event that valid calls do end up being blocked, CPs should be encouraged to act quickly to ensure calls from their customers are compliant with this condition.
- 13.64 Three said that “in practice it will be difficult or potentially impossible to identify CLIs that are non-diallable, given both the volume of these (as Ofcom acknowledges at s10.40), and the labour intensive processes involved”. (§ 124)
- 13.65 We note that this condition is subject to a technical feasibility qualifier, so where it is impossible for CPs to comply with the requirement, they would not need to do so.
- 13.66 Virgin Media thought this requirement was unnecessary as CPs are already working on this voluntarily with Ofcom. In accordance with our approach of putting all binding regulatory conditions together in the GCs, we think it is useful to keep this requirement in the condition. Further, we want to ensure that all CPs, not just those who are actively involved in working with Ofcom voluntarily, are bound by this requirement.
- 13.67 Vodafone noted the following “flaws” in the new GC C7.6:
- a) “Guidance is needed as to what Ofcom considers to be technically feasible”;
 - b) “the wording implies that call-blocking is the only solution. Some customers may prefer to have the calls delivered but with some form of indication that the CLI is unreliable”; and
 - c) insufficient thought has been given to the linkage between this condition and GC 20.1 (now renumbered GC B4.2), which mandates that network operators connect calls to all European non-geographic numbers. “As such, if an operator receives a call to a nongeographic number containing an invalid CLI, it will be impossible to avoid being in breach of the General Conditions – connect the call and GC C7.6 is breached, or do not connect the call and GC20.1 is breached”.
- 13.68 As set out in paragraph 13.58 above what is technically feasible will depend on the circumstances, and will change over time in line with technological developments. We also note Vodafone’s comment that some customers may prefer calls to be delivered with an indication that the CLI is unreliable. We do not consider that the GC as drafted precludes operators from offering this service, as it only requires that where calls have invalid or non-diallable CLI, the CP “prevent those calls from being connected to the called party”. This would allow CPs to, for example, divert such calls. We agree that it would help to provide greater clarity for CPs to make the obligation in GC B4.2 to ensure that end-users can access all telephone numbers expressly subject to the new requirement in GC C6.6 to take steps to identify calls with invalid or non-diallable CLI and prevent those calls from being connected, and so we have implemented this change.

Meaning of “invalid” or “non-diallable” CLI

- 13.69 A number of respondents requested further clarification on the definition of “invalid” and “non-diallable” numbers. A couple of respondents also noted that it may be very labour intensive to detect non-diallable CLIs:
- a) TalkTalk said we should “provide a definition of an “invalid or non-diallable” CLI in the proposed C7.6 provision”. It said “Although the proposed wording of the provision specifies that providers only need to take “reasonable steps”, we are concerned that the current wording may suggest an expectation that network providers would have to implement for secure key based CLI verification equipment (Secure Telephone Identity Revisited – STIR) which, as Ofcom will be aware, would be both expensive and time-consuming to implement”. (§ 31(b))
 - b) Mobile UK said there is not complete certainty over what invalid and non-diallable numbers actually are, so any grey areas could prevent genuine calls from reaching their destination and so CPs need to “work with Ofcom to agree the Guidance that would sit alongside the GCs to set the parameters of such numbers”.
- 13.70 We are proposing to include further guidance on the meaning of “invalid” and “non-diallable” in the new CLI Guidelines, which we are consulting on today. In summary, the proposed new CLI Guidelines say that:
- a) a valid number is one that complies with the ITU-T numbering plan E.164 and has been allocated for use in the UK in the National Telephone Numbering Plan; and
 - b) a diallable number is one that is in service, identifies the caller (which can be an individual or an organisation) and can be used to make a return or subsequent call.

Other comments

Retail and wholesale CPs

- 13.71 UKCTA, SSE and Verastar all noted that retail CPs would be reliant on wholesale CPs to fulfil this condition:
- a) UKCTA commented: “Retail CPs are not going to be able to fulfil these requirements directly. As in some other GCs, there needs to be an identification of obligations on the right type of CP, for passing down the wholesale chain as necessary i.e. it would be ok for retail CPs to be required to make the facilities available provided that there are appropriate obligations for these to be provided to them wholesale”. (§ 21)
 - b) Verastar said that “CPs, who do not have their own network, will be heavily reliant on wholesalers to monitor, identify and block nuisance calls before they pass through to the end user. As nuisance calls continue to remain a problem within the industry, we hope that wholesalers allocate significant resource to comply with the new proposals.”
 - c) SSE said that “for a retail-only CP, the technical parts of the proposed GC – for example, preventing calls with invalid or non-diallable CLI Data from being connected to the called party – can only be carried out by its wholesale providers. Given the range of different CP roles in the supply chain between originated and terminated calls, it may

be appropriate for Ofcom to specify more clearly which CP party is responsible for which part of the technical detail underpinning the overall intent of the GC.”

- 13.72 Retail CPs will be reliant on wholesale CPs to fulfil this condition, and accordingly this is something we expect retail CPs to address in their contracts with their wholesale providers, as they would for any other service which they rely on their wholesale CP to provide.

CLI “spoofing”

- 13.73 We received comments from two individual respondents, the ICO and TrueCall, in relation to CLI “spoofing” i.e. where callers intentionally mislead the recipient of the call by inserting a false CLI with the call.

- a) A confidential respondent [redacted] noted that “the unintended consequence of blocking invalid CLIDs will be that unscrupulous people will then pick a valid CLID to make their spam call. i.e. an innocent third party will appear to have made the spam call and then either be a) at risk of receiving angry calls from people who think they have called them, or b) at risk of being reported as the originator of the spam call when it was not them who made it.” He also said it is essential that as well as blocking invalid CLI, there is a process in place to enable people to only use presentation numbers that they are entitled to use.
- b) Similarly, TrueCall said: “A further problem is that many of the nuisance calls are being generated from valid, diallable numbers which are quite often spoofed, or where a reseller has failed to do any due diligence or exercise restraint on its customer, who then goes on to make unlawful unsolicited calls. The GC does nothing to address this problem.”
- c) The ICO noted that while our proposal “will likely help to reduce the number of calls with incomplete CLI information, it does not appear to address situations where valid, but false, CLI credentials are presented.” (p 4)
- d) An individual respondent (Trevor Williams) said “all phone service providers should block calls that are perceived to have spoofed the caller identification”.

- 13.74 We acknowledge that there is an ongoing problem with spoofing of CLI data, and we intend to continue to work with industry to improve the quality of CLI data and to develop authentication techniques that could reduce or prevent this problem in the future.

Other comments

- 13.75 The CCP and ACOD suggested that “alongside the new GCs, there should be an information campaign so that consumers know what is available”. Similarly, the CFC suggested CPs should be required to inform subscribers about the changes, and make available at reasonable charges end-user equipment for displaying received CLI.

- 13.76 There is already some information available on our website about the different tools consumers can use to gain greater control over problematic nuisance calls.²⁰¹ We also intend to do further work to publicise the measures available to consumers in this area after this review.
- 13.77 StepChange suggested that “the UK should switch from an opt-out do not call register to an opt-in register similar to countries such as Germany”. We note that this would require legislative change²⁰² and is beyond the scope of this review of the GCs.
- 13.78 TalkTalk said the words “and/or the identity of the calling party” need to be removed from the proposed definition of “CLI Data”, as “[whilst] there are parameters within signalling (e.g. SIP display name) which could in theory be used to identify the calling party, they are actually not defined in the UK signalling specifications to be used for that purpose at the destination of the call. We believe it is essential that the regulatory requirement reflects the UK signalling specifications to ensure legal clarity and certainty for network operators”; and (§ 31(a))
- 13.79 We are proposing further clarification regarding the definition of CLI Data in the revised CLI Guidelines, by stating that CLI data consists of the caller’s line identity along with a privacy marking, which indicates whether the number can be shared with the recipient of the call. This means that it is not the intention of these requirements to require CPs to provide a name identifying the calling party. Rather, in this situation, the identity of the calling party is represented by a telephone number that uniquely identifies the caller.
- 13.80 Verastar said that rather than increasing the obligations on CPs, “it would be sensible to allocate sufficient resource to TPS/CTPS/ICO to enable them to investigate and take enforcement action in regards to nuisance call complaints”.
- 13.81 Ofcom is not responsible for the resourcing of other organisations, such as the ICO or TPS. However, we note that enforcement is one element of our strategy for tackling nuisance calls, and we continue to monitor all complaints and will take action in this area in line with our enforcement guidelines²⁰³ and statement of policy on persistent misuse²⁰⁴ where we consider it appropriate to do so.
- 13.82 Charles Lulham suggested we consider adding a further facility to allow users to modify the initial response to numbers from which nuisance calls are received so that any nominated caller may in future be denied access to my number, in such a way that the user can determine that such a call was attempted.
- 13.83 We are aware that some CPs already offer this facility, and we support this. However, we do not think it is appropriate to mandate this service in the GCs because it will not help to prevent the underlying problem of invalid CLI.

²⁰¹ <https://www.ofcom.org.uk/phones-telecoms-and-internet/how-to-report-a-complaint/nuisance-calls-and-messages>

²⁰² The rules on direct marketing, including in relation to the Telephone Preference Service, are set out in The Privacy and Electronic Communications (EC Directive) Regulations 2003, as amended.

²⁰³ https://www.ofcom.org.uk/data/assets/pdf_file/0016/102517/Ofcoms-approach-to-enforcement.pdf

²⁰⁴ https://www.ofcom.org.uk/data/assets/pdf_file/0024/96135/Persistent-Misuse-Policy-Statement.pdf

13.84 Henryk Matysiak noted that nuisance calls often originate overseas, and it would be helpful if they could be more clearly identified, rather than just “international” or “overseas”. In order to maintain the trust in CLI data, the GC requires that only valid CLI is presented to the end-user. Where calls originate internationally, it is not necessarily the case that CPs can verify that the CLI provided with the call is valid, and that is why they mark the call as “international”, without providing more specific information. We think this is preferable to the possibility of inaccurate CLI being presented to the call recipient.

Implementation period

- 13.85 As set out above, BT, Vodafone and Mobile UK all noted that the condition should not be implemented until there is industry agreement on the CLI Guidelines. BT also remarked that without the CLI guidelines there was a risk for legal challenge as the industry won't have legal certainty unless a dispute is brought against Ofcom's findings.
- 13.86 TalkTalk said that an implementation period of 3-6 months would “seem sensible”, unless we are expecting CPs to implement STIR (§ 31(c)).
- 13.87 Telefonica thought that it was premature to mandate technical measures, as there is still ongoing work within the industry group. Vodafone and Verastar also thought that more could be done to enforce current rules rather than create new obligations for CPs.
- 13.88 Virgin Media said “A requirement to identify and block calls of this nature would be challenging, prohibitively costly and take much longer than three to six months to implement given the likely system changes required”.
- 13.89 As set out in paragraph 3.60 above, the GCs will come into force on 1 October 2018, i.e., there will be an implementation period of just over a year. We consider that this will be an adequate time period for CPs to make the necessary arrangements to comply with the requirements relating to CLI, particularly as a number of the new requirements are subject to “technical feasibility” and “economic viability”. We also note that we are consulting on the new CLI Guidelines today, alongside this statement.

Ofcom's decision

- 13.90 Having considered stakeholders' comments, we have decided to implement the policy proposals that we set out in the December 2016 consultation, with the following revisions:
- a) We have amended condition C6.2 to require that CPs enable CLI Facilities by default (see paragraphs 13.37 - 13.39 for more detail); and
 - b) We have amended condition C6.4(a) to clarify that the requirement to ensure CLI data provided with a call includes a valid, dialable telephone number that uniquely identifies the caller is subject to technical feasibility (see paragraphs 13.42 - 13.43 for more detail).
- 13.91 The revised text of the condition that would replace the current GC 16 can be seen at Annex 14 (see Condition C6).

Legal test

13.92 We consider that the changes we have decided to make to the current GC 16 (condition C6, as re-numbered) and the condition itself, meet the test for setting or modifying conditions set out in section 47(2) of the Act. These changes are:

- a) **objectively justifiable** in that they will ensure that CLI facilities are made available for all consumers who need them and that CLI data is valid and accurate wherever possible. This will bring direct benefits to consumers, in particular in helping to tackle unwanted or nuisance calls;
- b) **not unduly discriminatory** because they will apply equally to all CPs who provide networks or voice call services and will benefit all consumers equally;
- c) **proportionate** in that they go no further than is necessary to achieve the objectives of ensuring that all consumers benefit from the provision of services and facilities which enable them to identify the persons calling them; and
- d) **transparent** as the reasons for the changes that we have decided to make are explained above and the effects of these changes will be clear to CPs on the face of the revised condition itself.

14. Switching and number portability

Introduction

- 14.1 We explained in the December 2016 consultation that there are rules in the GCs which:
- a) cover the sale, marketing and provisioning of fixed-line services (comprising landline calls and/or broadband) by CPs who operate on the Openreach or KCOM networks, to domestic and small business customers who are switching between such CPs and that these rules were amended in 2013 and 2015 (the “**Openreach/KCOM reforms**”). These rules are contained in the current GC 22 (condition C7, as re-numbered). The switching process covered by these rules is led by the CP to which a customer wishes to move to (the “**gaining-provider**”);²⁰⁵
 - b) cover the process for switching between mobile providers. These rules are contained in the current GC 18 (condition B3, as re-numbered).²⁰⁶
- 14.2 There are also rules in the GCs that deal with number portability, that is, the right of anyone who has been assigned a telephone number from the Numbering Plan to retain that number when they switch to a different landline or mobile provider. These rules are also contained in GC 18 (condition B3, as re-numbered).
- 14.3 In the December 2016 consultation, we proposed changes to the Openreach/KCOM reforms and we also explained how our proposed changes fitted in the context of Ofcom’s ongoing switching projects:
- a) the first project concerned our proposals on reforms to existing processes for changing mobile provider;²⁰⁷
 - b) the second project concerned our proposals to introduce regulatory process reforms to protect the interests of consumers when they switch, or consider switching, one or more of landline, fixed broadband and pay TV between Openreach, KCOM, Virgin cable and Sky satellite platforms (the “**Cross-platform switching consultation**”).²⁰⁸
- 14.4 We explained that in light of these projects, we proposed to carry out the review of the process for switching between providers of fixed-line service who operate on the Openreach and KCOM networks in two stages. We said that the second stage would be conducted to ensure alignment with the results of Ofcom’s assessment of Cross-platform switching and of mobile switching.

²⁰⁵ See Section 11, in particular paragraphs 11.10 to 11.20, of the December 2016 consultation.

²⁰⁶ See Section 11, in particular paragraphs 11.7 to 11.9, of the December 2016 consultation.

²⁰⁷ <https://www.ofcom.org.uk/consultations-and-statements/category-1/consumer-switching-mobile>

²⁰⁸ https://www.ofcom.org.uk/data/assets/pdf_file/0030/58845/making-switching-easier.pdf

- 14.5 In relation to number portability, we said in our DCR Statement²⁰⁹ that in the first instance we would like to see industry reach consensus on how improvements could be made and that, if progress is not possible, then we would welcome more detailed proposals from stakeholders on particular improvements to the current system that could be made. In the December 2016 consultation,²¹⁰ we expressed the same view. We also proposed to simplify drafting and definitions in the current GC 18 without any substantive change, and re-number GC 18 as condition B3.
- 14.6 Since publication of the December 2016 consultation, we have:
- a) published a further consultation updating our proposed reforms to existing processes for changing mobile provider;²¹¹
 - b) published our decision not to proceed with regulatory process reforms to Cross-platform switching;²¹²
 - c) published a Call for Inputs that begins a programme of work to help us better understand how and why some consumers may face difficulties engaging in communications markets, and to help us identify, develop and implement solutions that enable consumers to engage.²¹³
- 14.7 We expect to publish a policy statement on the reforms to existing processes for changing mobile provider in the autumn of 2017. In light of our recent decisions on Cross-platform switching, and to begin the programme of work to help consumers better engage in communications markets, we no longer consider it necessary to conduct a second stage review of the Openreach/KCOM reforms.

Fixed-line switching

Consultation proposals

Remove the reactive save prohibition

- 14.8 The GCs currently require that, where a customer wishes to switch between fixed-line service providers, the customer must contact its current provider (the “**Losing Provider**”) to obtain a Porting Authorisation Code (“**PAC**”) and give this to their new provider (the “**Gaining Provider**”). Both the Losing Provider and the Gaining Provider are then required to provide the necessary facilities to ensure the customer’s number can be ported between them as quickly as possible.

²⁰⁹ See paragraph A1.409.

²¹⁰ See paragraph 11.6.

²¹¹ <https://www.ofcom.org.uk/consultations-and-statements/category-2/consumer-switching-proposals-to-reform-switching-of-mobile-communications-services>

²¹² <https://www.ofcom.org.uk/consultations-and-statements/category-1/making-switching-easier>

²¹³ <https://www.ofcom.org.uk/consultations-and-statements/category-2/helping-consumers-engage-communications-markets>

- 14.9 The current GC 22.15 provides that the Losing Provider “must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Provider and/or remain in a contract with the Losing Provider”. This prohibition, which is known as the “**Reactive Save Prohibition**”, prevents the Losing Provider from making counter-offers to customers that it has been made aware, as a result of the information it receives as part of the switching process, intend to switch. We refer to this activity on the part of the LP as “**Reactive Save Activity**”.
- 14.10 Although Reactive Save Activity is currently prohibited, the Losing Provider is required to communicate with the switching customer in the following instances, all of which are for consumer protection:
- a) in order to comply with their obligation to inform the switching customer of the implications of switching and to provide the necessary notification letter;²¹⁴
 - b) where “cancel other” applies.²¹⁵ “Cancel other” is the ability of the Losing Provider, during a certain period, to cancel the order placed by the Gaining Provider for the switching customer to be switched; and
 - c) where the switching customer is moving to a location currently serviced by the Losing Provider.
- 14.11 The Cross-platform switching consultation²¹⁶ found that consumer experience was mixed as regards contact with their old provider, during which their old provider might try to persuade them to stay. Some consumers actively look to benefit from contacting their current provider where this leads to a better deal. Although we remain concerned about reactive save discussions when they are unwanted or which make the switching experience more difficult, we are generally less concerned about the effects of Reactive Save Activity than was previously the case. Consequently, in the December 2016 consultation, we proposed to remove the Reactive Save Prohibition which is currently set out in GC 22.15.
- 14.12 We noted that the current GC 1.2 (condition A1.3, as re-numbered) requires CPs to treat any information obtained in confidence before, during or after negotiations for network access as confidential and to use such information solely for the purpose for which it was acquired. In the August and December 2016 consultations, we did not propose to make any substantive change to this provision and we noted that, insofar as it does apply to reactive save activity generally, we did not plan to make the enforcement of condition A1.3 an administrative priority in the absence of evidence of consumer harm (paragraph 11.32 of the December 2016 consultation).

Remove references to the “Harmonisation Date”

- 14.13 A number of the rules in the current condition apply prior to the so-called “Harmonisation Date”, which was 20 June 2015. We proposed to remove these rules because they are now

²¹⁴ GC 22.11 to 22.13.

²¹⁵ See the current Annex 2 to GC 22.

²¹⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0030/58845/making-switching-easier.pdf

historical. Specifically, we proposed to remove the rules which are currently set out in GCs 22.21, 22.23, 22.24 and Annex 3 to GC 22 (paragraph 11.33 of the December 2016 consultation).

Mis-selling

- 14.14 The current GC 22 also contains rules relating to selling and marketing of fixed line services. The changes that we proposed to make to these provisions are discussed in Section 15 of this statement, together with the other changes we proposed in relation to mis-selling of mobile services.²¹⁷

Simplification and drafting changes

- 14.15 We also proposed a number of minor drafting changes, and changes to the definitions, in order to simplify and clarify the condition (paragraphs 11.34 and 11.36-11.44 of the December 2016 consultation). Specifically, we proposed to amend the definitions of “Access Charge”, “Broadband Service”, “Communications Provider Migration”, “Durable Medium”, “Migration”, “Switching Customer”, “Transfer Order” and “Transfer Period”. We proposed to omit the definitions of “Communications Provider”, “End-User” and “Customer”, and to replace references to the term “Public Communications Network” with “Public Electronic Communications Network”.

Stakeholders’ responses and Ofcom assessment

- 14.16 A number of stakeholders responded specifically to our proposals on this condition: BT, the CCP and ACOD, ICO, Nine, Sky, SSE, Talk Talk, Verastar, Virgin Media and Vodafone.

Remove the reactive save prohibition

- 14.17 Some respondents said that they agree with our proposal to remove the Reactive Save Prohibition which is currently set out in GC 22.15. These respondents included a confidential respondent [§<], FCS²¹⁸, Talk Talk (§ 32), Three (p. 36)²¹⁹ and some individuals²²⁰.
- 14.18 The following respondents expressed some doubts or concerns, or sought clarifications:
- a) BT supported our proposal (§ 136 and 217), but it had “some concerns about the uncertainty which remains as a result of GC 1.2” since it will still apply to all voice and broadband switches within the Openreach platform (§ 218). In BT’s view, “the most important thing is to achieve a level playing field” and “ensure that consumers can follow a consistent switching process across all services likely to be switched in a bundle” (§ 219);

²¹⁷ The rules relating to selling and marketing of mobile services are contained in the current GC 23.

²¹⁸ Response to question 20.

²¹⁹ Three (p. 36) said that deregulation around the current “reactive-save” provisions will ensure that the GCs are applicable for the new GP-led regime.

²²⁰ Gina Antczack and Leon Tarnowski.

- b) the CCP and ACOD (p. 11) said that they are not fully convinced about our proposal since it “carries the risk of unwanted and over-enthusiastic contact from the losing provider”. In their view, “safeguards must be in place in relation to how the save activity is carried out (for example, a limit on the number of attempted contacts and all information to be factual and accurate)”;
- c) ICO said that whether a reactive save will be appropriate will depend on whether an individual has consented to marketing, and when consent was gained, pointing to the ICO’s Direct Marketing Guidance (paragraphs 102 and 194). ICO added that Losing Providers should consider the obligations placed on them under the Data Protection Act 1998 (in particular, section 11) and the Privacy and Electronic Communications Regulations 2003 (in particular, regulations 19-23) prior to sending any marketing material, and consider the impact of the ePrivacy Regulation once this has been agreed;
- d) Nine questioned how easy it will be to differentiate between “welcome” and “unwelcome” retention activity and suggested that “this is an area that Ofcom should specifically monitor following any change which is ultimately implemented to ensure that there is no negative impact on customers’ willingness and ability to switch”;
- e) Sky said that it welcomes Ofcom’s proposal to remove the ban on reactive save activity (§ 5.1). However, it added that Ofcom’s statement that it intends not to make enforcement of GC 1.2 an administrative priority “provides no certainty for stakeholders (...) and fundamentally undermines Ofcom’s proposal in respect of GC22.15” (§ 5.3-5.4);
- f) SSE said that it “is not in favour of Ofcom making material amendments or reflecting policy changes in the GC before these have been consulted upon and considered as part of the relate work on switching that is still underway”. SSE added that, in that context, it considers that the reactive save prohibition should remain in place (SSE’s response to question 19);
- g) Talk Talk (§ 33) said that it is unclear to what extent GC 1.2 applies to reactive save and asked Ofcom to clarify our position. In addition, Talk Talk said that it is important that Ofcom ensures that excessive save activity does not make it unduly difficult for customers to cancel their contracts with their current provider [3<] (§2 and §34);
- h) Verastar asked Ofcom to confirm to all CPs whether, and if so how, it would enforce compliance with GC 1.2, should the Reactive Save Prohibition be removed. In its view, reactive save activity will diminish the average success rate of the Gaining Provider, as well as increasing its customer acquisition costs, and, as a result, it is likely that there will be less switching activity over time. In addition, Verastar said that we should consider how to encourage inactive consumers to engage and suggested that the approach adopted within the energy sector, where suppliers are required to share information on disengaged customers so that they could be approached by competitors, may also work within the communications industry (Verastar’s response to question 20).

- i) Vodafone (p.22-23) said that it “strongly opposes” the removal of the Reactive Save Prohibition because of the following reasons:
 - i) “the concerns that Ofcom points to justify the proposal are [then] better served by the current switching arrangements”, since “customers that want to benefit from contacting their Losing Provider are permitted to do so” and “customers that do not are not exposed to unwanted marketing messaging”. In light of this, Vodafone suggested that we amend the proposed wording within this condition to clarify that customers are permitted to contact the current provider at any time during the switching process, but do not need to” (p.22);
 - ii) in its view, “by permitting reactive save activity, the propensity for cancellations within the switching process will increase” and this would result in the Gaining Providers incurring cost where they need to use the “cancels own” functionality. According to Vodafone, since smaller providers seeking to gain market share have a “higher propensity to be gaining providers”, permitting reactive save activity would be detrimental to competition (p. 23).

14.19 Having considered stakeholders’ comments, we have decided to adopt our proposal to remove GC 22.15. With regard to stakeholders’ comments about the need for certainty on the extent to which the current GC 1.2 (condition A1.3, as re-numbered)²²¹ would apply to reactive save activity, we remain of the view that insofar as GC 1.2 does apply, enforcement would not be an administrative priority in the absence of evidence of consumer harm. In this respect, we also remain of the view that we would be concerned about reactive save activity discussions when they are unwanted or imposed on consumers and which make the switching experience more difficult. Equally, we would be concerned, in response to comments from Talk Talk and the CCP and ACOD, about excessive save activity in general making it unduly difficult for customers to cancel their contracts with their current provider. With regard to Nine’s comment, we intend to monitor the impact of our decision to remove GC 22.15 on customers’ willingness and ability to switch.

14.20 In response to Vodafone’s comment, we do not consider it necessary to insert wording into this condition to clarify that customers are permitted to contact their current provider at any time during the switching process, but do not need to. Customers have always been able to contact their current provider to discuss obtaining a better deal, both before and during the switching process that is covered by the Openreach/KCOM reforms. In response to the comments from Verastar and Vodafone on what they consider the impact would be of removing the Reactive Save Prohibition on the average success rate, and the acquisition costs, of the Gaining Provider, we consider that removing the Reactive Save Prohibition should go towards achieving a level playing field for all providers to compete on, irrespective of whether they operate on the Openreach, KCOM, Virgin cable or Sky satellite

²²¹ As set out above in Section 4, we have confirmed we are not making any substantive change to the current GC 1.2.

platforms. We also agree with Verastar that we should consider how to encourage inactive consumers to engage in communications markets. In this respect, we have published a Call for Inputs that begins a programme of work to help us better understand how and why some consumers may face difficulties engaging in communications markets, and to help us identify, develop and implement solutions that enable consumers to engage.²²²

- 14.21 Finally, in response to SSE's comments, we have considered the proposal to remove the Reactive Save Prohibition as part of the related work on switching that is still underway. In this respect, we made reference to the Cross-platform switching consultation in the December 2016 consultation in putting forward our proposal.²²³ We have also had regard to our recent decision in respect of Cross-platform switching²²⁴ and to our current proposals to reform the process for switching mobile provider.²²⁵

Remove references to the "Harmonisation Date"

- 14.22 SSE said that it agrees with the removal of redundant text (SSE's response to question 19). We received no other comments on this proposal.

Simplification and drafting changes

- 14.23 In the December 2016 consultation (paragraph 11.41), we proposed to incorporate the definitions of "End-User" and "Customer" into one defined term called "Switching Customer".
- 14.24 BT questioned whether it is appropriate to use this term in the context of Annex 2 to the current GC 22, which is about "Working Line Takeover". BT said that "switching" is generally used in the context of customers migrating between different CPs, whereas in the context of a Working Line Takeover, very often the customer will be remaining with their existing provider (§ 142). For the avoidance of doubt, we have not sought to change the scope of the conditions with which CPs must comply in the context of a Working Line Takeover, nor the type of consumer that has been protected by them. We have proposed to adopt a more simplified approach by incorporating the definitions of "End-User" and "Customer" that were specific only to the Openreach/KCOM reforms into a single definition of "Switching Customer".
- 14.25 SSE said that it agreed with the consequential amendments proposed as a result of reframing the GC in the new style common to all GCs and clarifications of wording such as those proposed to the current GC 22.4(c)(ii). However, SSE suggested that we should avoid changes to significant definitions such as "Transfer Order" and "Customer", "in case there

²²² <https://www.ofcom.org.uk/consultations-and-statements/category-2/helping-consumers-engage-communications-markets>

²²³ See paragraphs 11.30 to 11.32. In the Cross-platform switching consultation we considered our approach to reactive save activity in the context of switching one or more of landline, fixed broadband and pay TV services between the Openreach, KCOM, Virgin cable and Sky satellite platforms. We explained that "we have not included within the scope of our proposed reforms a prohibition on that activity" (paragraph 4.40).

²²⁴ <https://www.ofcom.org.uk/consultations-and-statements/category-1/making-switching-easier>

²²⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0013/102037/Proposals-to-reform-switching-of-mobile-communications-services.pdf

are unforeseen consequences in the operation of the GC and its interaction with actual switching processes”.

- 14.26 As explained above, we have not sought to make changes to the definition of “Customer” that would alter the type of consumer that has been protected by the Openreach/KCOM reforms. Instead, we have decided to incorporate the definitions of “End-User” and “Customer” that were specific only to the Openreach/KCOM reforms into one defined term. In respect of the proposed change to the definition of “Transfer Order”, this is to clarify that KCOM can also be the recipient of the relevant order for a request for the Target Line to be transferred from the losing CP to the gaining CP.

Other comments

- 14.27 The CCP and ACOD (p. 11) said that they strongly support removing notice period charges from the point at which the Losing Provider deactivates the old service. In this respect, we note that, under the Openreach/KCOM reforms, the Losing Provider stops charging the customer after the Migration Date, which is the day on which the consumer stops receiving services from the Losing Provider and starts receiving services from the Gaining Provider.²²⁶
- 14.28 Virgin Media (p.16) said that “unless changes are needed as a matter of urgency to address consumer harm, substantive changes should be made all at once rather than in a piecemeal manner”. As set out above at paragraph 14.7, in light of our recent decisions on Cross-platform switching, and to begin the programme of work to help consumers better engage in communications markets, we no longer consider it necessary to conduct a second stage review of the Openreach/KCOM reforms.

Further drafting changes

- 14.29 We have decided to make these further changes:
- a) in order to avoid making the definition of “Access Network” unnecessarily narrow, we have decided to replace “Domestic and Small Business Customers” with “End-Users”:²²⁷

“**Access Network**’ means the **Electronic Communications Network** which runs from a local access node to a **Network Termination Point** on a ~~Domestic and Small Business Customer’s~~ an End-User’s premises and which supports the provision of copper-based access services and fibre-based access services to **End-Users**. In the case of **KCOM**, this means the **Access Network** in the **Hull Area**;

- b) we have decided to delete the definition of “Address”, which is only used in the definition of “Target Address”, and amend the definition of “Target Address” as follows:

²²⁶ The Migration Date is also provided to the consumer by both the Losing and the Gaining Provider in their respective Notification of Transfer letters which they are required to send to the consumer under Condition C7.9 to C7.11.

²²⁷ The definition of “End-User” includes “Customer” and “Domestic and Small Business Customer” is a type of “Customer”.

“**Target Address**’ means the ~~Address~~ UK postal address where the **Target Line** is situated;”

- c) in order to make the definition of “Switching Customer” easier to understand, whilst ensuring it scope remains the same as under the current GC 22, we have decided to simplify the definition that we proposed in the December 2016 consultation. The revised definition will read as follows:

“**Switching Customer**’ means a **Customer** that is a **Domestic or Small Business Customer** in relation to a **Communications Provider** which provides **Fixed-Line Telecommunications Services** and/or **Broadband Services** using **Openreach’s** or **KCOM’s Access Network**;”

- d) we have made the following amendments to the definition of “Early Termination Charge” to incorporate the new defined “Fixed Commitment Period”:²²⁸

“**Early Termination Charge**’ means any charge payable by the ~~Switching Customer~~ a Subscriber for the termination of a contract before the end of ~~the minimum contract period~~ a Fixed Commitment Period;”

- e) we have made clarificatory amendments to the definition of “Metallic Path Facility”:

“**Metallic Path Facility**’ or **MPF**’ means a circuit comprising a pair of twisted metal wires between a ~~Domestic and Small Business Customer’s~~ premises and a main distribution frame in a local access node that employs electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey **Signals** when connected to an **Electronic Communications Network**;”

- f) for reasons of consistency in how the GCs allow for Ofcom to may make changes,²²⁹ we have made the following change to paragraph 2(e) of Annex 1 to condition C7:

“in such other circumstances as ~~defined~~ directed by **Ofcom**.”

Ofcom’s decision

14.30 Having considered stakeholders’ comments, we have decided to implement the proposals that we set out in paragraphs 11.25 to 11.44 of the December 2016 consultation in full, and the further drafting changes set out above in paragraph 14.29.

14.31 The revised text of the condition that will replace the current GC 22 can be seen at Annex 14 (see condition C7).

²²⁸ See paragraph 7.26 above.

²²⁹ See, for example, condition B2.5.

Number Portability

Consultation proposals

Drafting changes

- 14.32 When we published the December 2016 consultation, we were in the process of consulting on reforms to the processes for changing mobile communications provider, as part of separate reviews.²³⁰ Therefore, we did not propose any substantive changes to the current GC 18 in the December 2016 consultation, but we proposed some minor drafting changes to ensure consistency with the approach that we proposed to take to the other conditions. In particular, we proposed to include a recital to explain what the condition is about, and a “Scope” sub-section to identify the CPs to whom the condition applies (referring to them as “Regulated Providers”) and the persons who can port their number or numbers (referring to these persons as “Relevant Subscribers”).
- 14.33 As explained above, since publication of the December 2016 consultation, we have published a further consultation updating our proposed reforms to existing processes for changing mobile provider.²³¹ If implemented, in order to give effect to the updated process, it would be necessary to set a new GC, make modifications to the current GC 18 (condition B3, as re-numbered), and add new definitions to the GCs.²³²

Stakeholders’ responses and Ofcom’s assessment

- 14.34 Nine stakeholders provided comments on our proposals: two confidential respondents [X], FCS, ITSPA, Magrathea, Nine, SSE, Three and Vodafone.
- 14.35 A confidential respondent [X] said that [X]. It also suggested that we clarify in this condition that porting can only be initiated by end-users (and not by resellers).
- 14.36 Three said that it supports Ofcom’s proposal to implement a two-stage process in relation to switching (§ 128) and that it supports “the minor proposed amendments to take into account new terminology” that we set out in paragraphs 11.49 to 11.53 of the December 2016 consultation (§ 132).
- 14.37 Vodafone said that it “welcomes Ofcom’s continued commitment to looking to industry to deliver a ‘fixed number portability’ solution and agrees that at least in the first instance, the onus remains on industry to reach consensus on delivery” (p. 22).

²³⁰ We issued our consultation on proposals to reform switching of mobile communications services in March 2016 (https://www.ofcom.org.uk/_data/assets/pdf_file/0025/82636/consumer-switching-mobile-consultation.pdf). In July 2016 we issued a further consultation on an additional proposal to enhance the mobile switching process reforms we proposed in March, to address the effect of notice periods within the switching process (https://www.ofcom.org.uk/_data/assets/pdf_file/0023/83453/Consumer-Switching-Further-proposals-to-reform-switching-of-mobile-services-July-2016.pdf).

²³¹ <https://www.ofcom.org.uk/consultations-and-statements/category-2/consumer-switching-proposals-to-reform-switching-of-mobile-communications-services>

²³² See Annexes 13 and 14: https://www.ofcom.org.uk/_data/assets/pdf_file/0016/102049/Annexes-13-14-of-consumer-switching-consultation.pdf

- 14.38 SSE said that the scope of the revised condition is set wider than necessary by applying it to any person who provides an Electronic Communications Network since there are CPs who provide such networks but have no involvement in numbering. SSE suggested that “a narrower set of CPs is brought within scope of the GCs by reference to their involvement in Numbering activities” and added that this comment applies to all the other numbering conditions (response to question 24).
- 14.39 Some respondents suggested that we should make more substantive changes. Specifically:
- a) a confidential respondent [§<] questioned why we consider that the next 10 years will be any different from the last 10 years without any form of intervention;
 - b) FCS said that it is disappointed that we made no significant proposals in respect of number portability. In its view, we should take at least these three actions: (i) clarify what the expression “reasonably practicable” means in the current GC 18.5 and set a defined time period; (ii) introduce a requirement to set up a porting agreement within a defined time on request; and (iii) clarify the responsibilities of range holders and hosted providers, particularly for set-up of porting arrangements and dealing with subsequent issue/failures;
 - c) ITSPA said that its members are surprised that “Ofcom remains wedded to this position of waiting for an industry-led approach given the repeated failure of these attempts over recent years”. According to ITSPA, “the need for a long-term solution does not preclude short term improvements from being made” and “the inclusion of clear timescales around providers establishing porting agreements would have been a suitable measure at this time”;
 - d) Magrathea argued that “industry cannot resolve the issues in isolation” and suggested three “key issues” that could be addressed within this review: (i) we should clarify the requirement to complete service establishment within a defined period on request as well as which party is responsible (range holder or host network) with appropriate follow-up for non-compliance complaints; (ii) we should clarify the requirement to adhere to an industry agreed process (or a new code of practice) with penalties for non-compliance; and (iii) we should clarify the requirement to provide 24/7 fault handling for ported numbers faults;
 - e) Nine said that “re-drafting of the General Conditions to provide more specific obligations in areas relating to the timeliness of establishing porting arrangements, responding to information requests, as well as completing the actual porting and activation of numbers would provide immediate improvements pending industry agreement of a longer term strategic way forward”.
- 14.40 Having considered stakeholders’ submissions, we remain of the view set out in our DCR Statement²³³ that the onus is, in the first instance, on industry to reach consensus (for example by seeking input, and gauging support, through the relevant OTA forums in

²³³ https://www.ofcom.org.uk/data/assets/pdf_file/0026/47852/dcr_annexes.pdf. See paragraphs A1.408 & A1.409.

respect of the suggestions made by certain stakeholders, as set out above, for more substantive changes). In addition, CPs continue to have the option of referring a complaint about another CP's compliance with the obligations imposed by the current GC 18 (condition B3, as re-numbered), to Ofcom as a formal dispute under section 185 of the Act insofar as it relates to the provision of network access.

- 14.41 Finally, in respect of the suggestion of the confidential respondent, we confirm that the obligation on CPs to provide number portability to their Subscribers under the current GC 18.1 (condition B3.3, as re-numbered), is to End-Users. As explained in paragraph 3.29, we have revised the definition of "Subscriber" which will apply across the GCs as a whole to clarify that we are referring only to those subscribers who are the "End-Users" of a certain electronic communications service. In respect of SSE's response, we do not agree that the scope of the revised condition is set wider than necessary. As explained in the December 2016 consultation, we have not sought to change the scope of what is currently GC 18.

Further drafting changes

- 14.42 In respect of the current definition of "Transit Provider", in addition to the changes proposed in the December 2016 consultation (paragraph 11.52),²³⁴ we have replaced this defined term with the term "Portability Transit Provider" to clarify that this term applies in relation to number portability.
- 14.43 To make the obligations in conditions B3.5(a) and B3.12 easier to understand, we have also made the following amendments:

"B3.5 The **Regulated Provider** shall ensure:

- (a) in the case of **Mobile Number Portability**, porting of these numbers and their subsequent activation shall be completed within one business day from the receipt by the **Recipient Provider** of the ~~Relevant Subscriber Request to Port~~ from its new **Subscriber**;"

"B3.12 The **Regulated Provider** shall set out in ~~a clear, comprehensive and easily accessible form~~ plain English and in an easily accessible manner for each **Relevant Subscriber** how **Relevant Subscribers** can access the compensation provided for in **Condition B3.11** above, and how any compensation will be paid to the **Subscriber**."

Ofcom's decision

- 14.44 We have decided to make the minor drafting changes that we proposed in paragraphs 11.49-11.53 of the December 2016 consultation, as well as the changes set out in paragraphs 14.42 and 14.43 above.
- 14.45 The revised text of the condition that will replace the current GC 18 can be seen at Annex 14 (see condition B3).

²³⁴ We proposed to incorporate the definition of "Point of Connection".

Legal test

14.46 We consider that the changes we have decided to make to the current GCs 18 (condition B3, as re-numbered) and 22 (condition C7, as re-numbered) and the conditions themselves, meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our changes are:

- a) **objectively justifiable** because, with regards number portability, they ensure consistency with the approach that we are adopting in relation to the other GCs, and with regards to switching, they should ensure the condition continues to achieve the consumer protection aim pursued by the Openreach/KCOM reforms (i.e. to ensure that customers are protected throughout the switching process and are not switched to another provider against their will). In particular:
 - i) we consider the removal of the Reactive Save Prohibition will update regulation by bringing it into line with our reduced concern about the effects of reactive save activity; and
 - ii) we consider that our proposals to simplify and clarify the rules implementing the Openreach/KCOM reforms by removing historical rules, amending some definitions and making some further drafting changes, should allow both CPs and customers to understand what the relevant rules are and what obligations they impose and rights they create;
- b) **not unduly discriminatory** since, as regards number portability, they do not change the current scope of the condition, and as regards switching, the proposed changes apply in respect of all CPs who operate on the Openreach/KCOM networks and who sell, market and provide fixed-line services to domestic and small business customers switching between such CPs, which is consistent with the current scope of the Openreach/KCOM reforms;
- c) **proportionate** as our view is that none of the changes will introduce any additional regulatory burden on industry, having regard to the consumer protection aim they seek to achieve; and
- d) **transparent** as the reasons for the changes that we have decided to make to these conditions are explained above and the effects of these changes will be clear to CPs on the face of the revised conditions themselves.

15. Mis-selling

Introduction

- 15.1 The GCs contain rules which protect consumers from suffering harm and distress as a result of being mis-sold services by CPs:
- a) the current GC 22 contains rules covering the selling and marketing of fixed line services by CPs who operate on the Openreach or KCOM networks to domestic and small business customers that are switching between such CPs; and
 - b) the current GC 23 contains rules covering the selling and marketing of mobile call and text services to domestic and small business customers.
- 15.2 In this section, we set out the changes that we proposed to make to these rules in the current GC 22 and GC 23 (re-numbered as conditions C7 and C8), our assessment of stakeholders' responses and our decision.
- 15.3 In the December 2016 consultation²³⁵ we explained that our experience of enforcement and engagement with CPs has shown that the majority of instances of alleged mis-selling occur in the context of the switching process. We considered that an overall assessment of the switching process necessarily involves an assessment of the selling and marketing of the services for which the customer is seeking to switch between CPs. We also considered that any significant policy changes to the selling and marketing rules proposed at this stage would be on the basis of the current switching processes, which are currently under review within separate projects.
- 15.4 We said that our provisional view was to include consideration of any significant policy changes to the selling and marketing rules as part of the overall assessment of the switching processes. We remain of this view. In this respect:
- a) regarding reforms to existing processes for changing mobile provider, we expect to publish a policy statement in the autumn of 2017; and
 - b) whilst we have decided not to proceed with regulatory process reforms to Cross-platform switching,²³⁶ we have also published a Call for Inputs that begins a programme of work to help us better understand how and why some consumers may face difficulties engaging in communications markets, and to help us identify, develop and implement solutions that enable consumers to engage.²³⁷
- 15.5 Consequently, the changes that we have decided to make as part of this review focus mainly on the high-level obligations on CPs and are largely limited to:

²³⁵ See Section 12.

²³⁶ <https://www.ofcom.org.uk/consultations-and-statements/category-1/making-switching-easier>

²³⁷ <https://www.ofcom.org.uk/consultations-and-statements/category-2/helping-consumers-engage-communications-markets>

- a) ensuring domestic and small business customers are in a position to make informed purchasing decisions;
- b) making the rules on mis-selling clearer, to make compliance easier; and
- c) simplifying the drafting and definitions in the condition.

Consultation proposals

High level obligations (fixed and mobile services)

- 15.6 When selling and marketing both fixed-line services and mobile services, CPs are currently prohibited from:
- a) engaging in dishonest, misleading or deceptive conduct;
 - b) engaging in aggressive conduct; and
 - c) contacting customers in an inappropriate manner.
- 15.7 Previous enforcement and engagement with CPs have demonstrated that the absence of appropriate information has been a key cause of mis-selling of both fixed-line and mobile services. We therefore proposed to replace the current prohibitions with rules that focus on the information that CPs give to customers when selling or marketing their fixed-line or mobile services to ensure that customers are in a sufficiently informed position when they make a purchase. The new rules we proposed would require CPs to ensure that (i) any information they provide to customers is accurate and not misleading; and (ii) they ask customers if they also want the information to be provided a “Durable Medium” (i.e. in writing either in hard-copy or by email). We considered that that the proposed new rules would continue to prevent CPs from engaging in dishonest or misleading behaviour, and make the condition clearer, which should facilitate compliance by CPs and enforcement by us.

High level obligations (fixed-line services only)

Requirement to provide pre-contractual information in a Durable Medium

- 15.8 We also proposed to amend the obligations on providers of fixed-line services, which are currently set out in the current GC 22. Specifically, we proposed to re-draft the current GC 22.3 to make it clear that CPs can only use “Cancel Other”²³⁸ in the circumstances set out in Annex 2 to that condition, and to further clarify the obligations on CPs to provide accurate information to their customers by specifying what information is subject to the requirements of this condition.

²³⁸ “Cancel Other” is the industry term for the functionality that enables the Losing Provider to cancel, during the transfer period, wholesale orders placed by the Gaining Provider.

Detailed obligations (fixed-line services)

- 15.9 The detailed obligations on CPs in relation to the selling and marketing of fixed-line services are set out in the current GC 22.4 to 22.13. We did not propose any substantive changes to these conditions as part of this review, but we proposed some drafting changes to incorporate the proposed new definitions and to clarify the obligations.

Detailed obligations (mobile services)

- 15.10 We proposed the following changes to the more detailed obligations on CPs in relation to the provision of mobile call and text services:

Retail providers

- 15.11 CPs are required to ensure that provisions are in place imposing the same obligations on the retailer as are imposed on the CP under the current GC 23.2. We proposed to mirror the changes that we proposed to make to GC 23.2 in GC 23.4(b).

Due diligence

- 15.12 CPs are required to carry out a number of due diligence checks in respect of new retailers through which they sell their mobile call and text services. We proposed to include a new requirement that these due diligence checks include checking whether any directors of the new retailers have been subject to periods of disqualification from being a director.

Provision of relevant mobile services

- 15.13 We proposed to introduce a new obligation on CPs to ensure that their customers receive the mobile call and text services that they have bought, as our recent enforcement experience leads us to believe that such an obligation needs to be explicit in order to provide sufficient protection for consumers.

Publication of obligations

- 15.14 The current GC 23.3 requires CPs to make a comprehensive summary of their obligations under GC 23 available in their registered office if the CP does not have a website. We expect the vast majority of CPs to have website. However, where a CP does not have a website, we don't consider that publication at the CP's registered office will necessarily be helpful to customers. We therefore proposed that those CPs who do not have websites should instead be required to publish the summary "in such manner and form as directed by Ofcom".

Drafting changes

- 15.15 We proposed various minor drafting changes to incorporate our proposed new definitions and to simplify and clarify the more detailed obligations for the selling and marketing of mobile call and text services.

Stakeholders' responses and Ofcom's assessment

- 15.16 A number of stakeholders responded specifically to our proposals on this condition: a confidential respondent [X], BT, the CFC, the CCP and ACOD, the FCS, the ICO, the SCOTSS, an individual respondent (Leon Tarnowski), the NADP, Nine Group, SSE, Three and Verastar.
- 15.17 A confidential respondent [X], the CCP and ACOD, the FCS and an individual respondent (Leon Tarnowski) supported our proposals, and Three said the proposals are "broadly welcome" (§ 135). In particular, the CCP and ACOD supported the "proposed approach to set out what CPs can and can't do and what consumers and small businesses should and should not expect" (p12).
- 15.18 BT, Nine Group, SSE, Three and Verastar disagreed with some of the changes.
- 15.19 Stakeholders' responses and Ofcom's assessment are set out further below.

High level obligations (fixed-line and mobile services)

Requirement to provide pre-contractual information in a Durable Medium

- 15.20 BT disagreed with this proposal for the following reasons:
- in its view, there is already a legal framework in place to enhance the quality of decision making for consumers before they sign up to contracts, which ensures that all organisations provide consumers with information relating to the products and services they market before the point of sale (§ 151-152);
 - it considered that the proposal "creates a disproportionate burden of compliance upon CPs without any clear benefit" (§ 147);
 - it thought that "there is a real risk that the proposal will divert CP investment away from innovative customer and agent engagement tools recognised to be effective techniques in the prevention of mis-selling"²³⁹ (§ 148/161);
 - it said that it is "impractical and may cause customer confusion", as "offers in this market change regularly, meaning CPs could be obliged to send information about a product that will be imminently withdrawn; this could be confusing for customers and it would onerous for CPs to have to provide this information" (§ 149); and
 - providing communications in a durable medium would have the potential to increase consumer harm (particularly as there is a risk that human error results in the supply of out of date material to customers) (§ 155).

²³⁹ BT also noted that this proposal would require investment in IT infrastructure because currently agents are not able to email customers directly for security and data protection reasons (§ 156).

- 15.21 We do not consider that our changes will create a disproportionate burden of compliance since CPs should already be providing information that is accurate and not mis-leading.²⁴⁰ Equally, we would be surprised if the obligation to provide information that is accurate and not mis-leading should cause customer confusion. In respect of the example provided by BT of having to send in a durable medium the information that it has provided to the customer about a product “that will be imminently withdrawn”, it is not clear to us why, in such a situation, it would be onerous for a CP to inform the customer of that relevant fact, or confusing for the customer to be so informed.
- 15.22 Three thought this proposal risks being “overly prescriptive” and “duplicates existing protections”²⁴¹, although it goes further than existing protections by stipulating that information must be provided in writing. Three said it would cut across current compliant practices, such as when at the point of sale in store, the customer is talked through all relevant information (§ 137).
- 15.23 Three also said that our proposal would add further unnecessary complication to the switching process, as “under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 all contracts taken out online and by phone remain subject to a 14 day cooling off period. In addition, any changes to the sales process will likely be disruptive, and will take a considerable amount of time to rollout the necessary changes across our call handling teams” (§ 138). Three also requested more clarity around precisely what information would be required (§ 139).
- 15.24 In respect of Three’s response, we explained in the December 2016 consultation that the obligation to ask the customer whether they want the information provided by the CP to be put in writing (and to do so if the customer wants that) does go further than the existing protections. However, we remain of the view that this is a necessary additional protection to prevent the provision of inaccurate and mis-leading information. As we explained in the December 2016 consultation, “[c]urrently, customers’ first opportunity to read any information in writing comes at the point at which they are about to sign the contract. We consider our proposed consumer protection rule would provide an appropriate, and necessary, link between the related selling and marketing stage and the actual subsequent sale by seeking to improve the level of information with which the customer then proceeds to the point of sale”.²⁴² Consequently, this consumer protection rule serves a different purpose to the that served by the general consumer protection rule to which Three refers (which applies only where the contract has actually been entered into). Moreover, this obligation on CPs to put in writing the information they have provided, would only apply where the customer decides they want the information in writing.
- 15.25 The SCOTSS provided the following comment: “The current rules are principles based (...) and we believe they are simple, self-explanatory and, where there is good faith and the

²⁴⁰ The current condition 23.2(a) requires that “[w]hen selling or marketing Mobile Telephony Services, the Mobile Service Provider must not engage in dishonest, misleading or deceptive conduct”.

²⁴¹ Three cited Consumer Protection law including the Consumer Rights Act 2015 and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 as examples.

²⁴² See paragraph 12.14(b).

right intention, should be easy to understand and follow. Furthermore, as they are not prescriptive they have the advantage that they be applied flexibly to cover products, services and trading practices which currently may not exist. To that extent we would question why a change is required”.

- 15.26 The CCP and ACOD and Nine Group also questioned our proposal to remove the existing requirements:
- a) the CCP and ACOD said they “support the introduction of more and better information for consumers and small businesses, but do not understand why it is deemed necessary to remove the existing prohibitions – which seem to provide clarity, when it comes to selling. Furthermore, it appears that the proposed amendments may not protect the consumer or small business from conduct issues, such as engaging in aggressive conduct or contacting the customer in an inappropriate manner” (p12);
 - b) Nine Group said that it understood the value of specifying in more detail the information to be provided at the point of sale, but was “sceptical” about the proposal to remove the current prohibition on dishonest, misleading or deceptive conduct, which it thought provides a “useful complement in preventing misleading information being placed on websites and in promotional material”.
- 15.27 In respect of the CCP and ACOD’s response, and the SCOTSS’ response, we have sought to ensure that the consumer protection rules specific to the selling and marketing of fixed-line and mobile services are effective in addressing the key causes of mis-selling of these electronic communications services. However, we note that at the same time general consumer protection legislation²⁴³ will continue to apply and where Ofcom is a designated enforcer²⁴⁴ of that legislation, we have the power to investigate²⁴⁵ and enforce the obligations imposed on CPs.²⁴⁶
- 15.28 In respect of Nine Group’s response, we can confirm that the obligation to ensure any information provided is accurate and not mis-leading will also apply to information placed on CPs’ websites and in promotional material.

High level obligations (fixed-line services only)

- 15.29 SSE did not agree with the new text of GC 22.3 as it considers that the requirements (other than the main principle that marketing material should be accurate) are “overly prescriptive, difficult to apply or applied to the wrong type of CP”. It made the following comments and suggestions in support of its view:

²⁴³ See, for example, The Consumer Protection from Unfair Trading Regulations 2008.

²⁴⁴ Ofcom is a designated enforcer within the meaning of section 213 of the Enterprise Act 2002 by virtue of the Enterprise Act 2002 (Part 8 Designated Enforcers: Criteria for Designation, Designation of Public Bodies as Designated Enforcers and Transitional Provisions) Order 2003/1399.

²⁴⁵ As a public designated enforcer, Ofcom may exercise the information powers in Part 3 of Schedule 5 of the Consumer Rights Act 2015 to, amongst other purposes, enable it to exercise or to consider whether to exercise any enforcement function it has under Part 8 of the Enterprise Act 2002.

²⁴⁶ In accordance with the enforcement process set out in Part 8 of the Enterprise Act 2002.

- a) SSE noted that the proposed GC 22.3(b) requires a Gaining Provider to use “Cancel Other”, even though “Cancel Other” is a Losing Provider facility, “which is adequately described already in Annex 1 of GC22”;
- b) the proposed requirements to ensure the information in the sub-paragraphs of GC22.3(c) is accurate and not misleading “are unnecessary or difficult to comply with”, as “it is not feasible for a GP to be aware of all the impacts that his own services might have on a customer’s existing services” and “it is also completely infeasible for a GP to be aware of a prospective customer’s existing contractual obligations”. “These are areas where the LP is currently best placed to provide information and is required to do so in the Losing Notification of Transfer (NoT) letter specified in GC22.10 & 11 (new numbering).”

15.30 SSE suggested that, if our intention was that “where the GP chooses to provide information about the impact of its proposed services on a customer’s current services and contractual obligations, it does so accurately”, then we should make the wording clearer. SSE suggested using wording such as the following paragraph:

“Where the Regulated Provider that is the Gaining Provider provides marketing information to Switching Customers on the following topics [...], it shall ensure that the information provided is accurate, not misleading and provided in a Durable Medium on request.”.

- 15.31 SSE thought their proposed wording would “avoid giving the impression that the type of information listed must be provided by the GP”.
- 15.32 SSE also made the following comment: “paragraph GC22.3(d) appears to support the proposed text in GC22.3(c) rather than being a separate requirement on the GP. We suggest that the obligation is incorporated in revised wording about topics that a GP may choose to provide to customers in marketing material, as discussed above.”
- 15.33 It is indeed our intention that where the GP chooses to provide information about the impact of its proposed services on a customer’s current services and contractual obligations, it provides information that is accurate and not mis-leading. We consider that the wording proposed for consultation is sufficiently clear. In addition, we intentionally refrained from setting out the “topics” to which the obligation to provide accurate and not mis-leading information will apply²⁴⁷ since the aim is for the obligation to continue to apply to any information CPs provide to customers when selling and marketing.
- 15.34 Verastar did not agree with the proposal to replace the current GC 22.3 with “less prescriptive requirements”, which it said are “less specific and less clear”. Verastar also disagreed with the proposal that “the customer should receive a written offer prior to the sale”, as it thought it unnecessary given that customers can cancel agreements at any time

²⁴⁷ Condition C8.3(c) provides examples of the types of information that CPs might choose to provide to customers when selling and marketing their fixed-line services.

up to the transfer date, and “there is already an obligation to provide certain key information in a durable medium”.

- 15.35 Our experience of enforcement and engagement with CPs has shown, amongst other things, that the absence of accurate and appropriate information has been the key cause of mis-selling of both fixed-line and mobile services, and that both compliance and enforcement could be improved by making the existing rules clearer. Our proposed changes have therefore been designed to ensure that the consumer protection rules specific to the selling and marketing of fixed-line and mobile services:
- a) are effective, by continuing to protect domestic and small businesses customers from the key causes of mis-selling;
 - b) are clearer for both CPs and their customers as to what activity would, and would not, be allowed.
- 15.36 Also, as explained above in respect of Three’s response (paragraph 15.24), the general consumer protection rule to which Verastar refers serves a different purpose in that it applies only where the contract has actually been entered into.
- 15.37 The FCS noted that “the revised wording in C8.3 refers to the Gaining CP using “Cancel Other” whilst in Annex 1 it is correctly referenced that it would be the Losing CP that initiates this”. It suggested C8.3(b) should be moved elsewhere within C8.
- 15.38 We agree with the FCS and SSE that the proposed obligations on the Gaining Provider should not include “Cancel Other” since, as SSE rightly notes, Cancel Other “is a Losing Provider facility”. Consequently, we have removed this obligation and condition C7.3 (as re-numbered) now comprises three parts (a) to c)), instead of four.

Detailed obligations (fixed-line and mobile services)

Detailed obligations (fixed-line services)

- 15.39 We did not receive any specific comments on this proposal.

Detailed obligations (mobile services)

- 15.40 The CCP and ACOD welcomed the stronger obligations that we proposed in respect of mobile services (p12).
- 15.41 A confidential respondent [redacted] queried why there is “no overt obligation for a mobile provider not to engage in slamming”.
- 15.42 We have sought to ensure that the consumer protection rules continue to address identified harms that are specific to the selling and marketing of fixed-line and mobile services. Should evidence emerge of mobile providers engaging in slamming, then we would consider whether the introduction of such an obligation was warranted.

Retail providers

- 15.43 The CCP and ACOD welcomed this proposal.

Due diligence

- 15.44 The ICO noted that this requirement “would entail processing the directors’ personal data” and therefore “CPs will need to ensure that those directors are aware that their personal data will be collected and used in this way” (p6).
- 15.45 Ofcom would expect CPs to continue to have regard to their requirements under data protection law in complying with the consumer protection rules in the GCs, including the new requirement to carry out due diligence on the directors themselves of new retailers.

Provision of relevant mobile services

- 15.46 BT agreed that it is reasonable for CPs to supply the services that consumers have paid for (§163). However, BT noted that “there are occasions where a consumer may not be able to receive services for reasons that are beyond the CPs control. For example, customers may be unable to access the internet on their phone because they’ve failed to configure their mobile device according to the set of instructions provided”. In order to avoid the condition imposing disproportionate burden on CPs, BT suggested the following change to the wording of the proposed condition C9.6:

“Regulated Providers must ensure that each Relevant Customer ~~receives~~ can access the Relevant Mobile Services that they have contracted with the Regulated to receive”.

- 15.47 We recognise the risk that compliance with the new obligation could be affected by factors outside the control of the CP, as noted by BT and also Three. Consequently, we have decided to amend the new obligation in condition C8.6 as follows:

“**Regulated Providers** must ensure that each ~~Relevant Customer~~ receives the **Relevant Mobile Services** that they have contracted with each Relevant Customer to provide are available to each Relevant Customer to receive ~~the Regulated Provider to receive.~~”

- 15.48 Three was concerned that the requirements are “too broad” and “risk unintended consequences” (§ 140). It said it would “welcome greater clarity from Ofcom on the intended scope of this provision, and how it might relate to other Ofcom workstreams around automatic compensation, and how and whether this provision is intended to relate to other matters such as network coverage and outages”. Three also referred to its previous concerns, set out in its response to Ofcom’s Call for Inputs on Automatic Compensation in July 2016, “around the difficulties in defining where a mobile service is being ‘provisioned’ in these terms” (§ 141).
- 15.49 With respect to Three’s response on the new obligation in condition C8.6 entitled “Provision of relevant mobile services”, we do not agree that the requirements are “too broad”, nor that they “risk unintended consequences”. As explained in the December 2016 consultation, we would consider it reasonable to expect CPs to readily comply with an obligation to ensure their customers receive the mobile call and text services that they have bought. Equally, given this new obligation extends only to the services that the customer has contracted with the CP to be provided with, we consider its scope should be sufficiently clear from a CP’s compliance perspective. Finally, we can confirm that this new

obligation would not affect our proposals in respect of automatic compensation²⁴⁸ since these concern landline and/or broadband services.

Publication of obligations

15.50 We did not receive any specific comments on this proposal.

Drafting changes

15.51 We did not receive any specific comments on our proposed drafting changes. However, in light of changes made to definitions,²⁴⁹ in conditions C7.4(c)(ii) and C8.5(c)(ii) we have decided to replace the words “minimum period of contract” with the defined term “Fixed Commitment Period” and to replace the words “early termination charges” with the defined term “Early Termination Charges”.

Other comments

Pre-paid and SIM-only services

15.52 The CFC suggested that we should remove the exemption for pre-paid and SMS-only services (which is set out in the proposed GC C9.1), as pre-pay customers need protection just as much as post-pay customers.

15.53 In the December 2016 consultation we did not include a proposal to extend the consumer protections rules covering the selling and marketing of mobile services to pre-paid and SMS-only services. This is because to date we have not received evidence of consumer harm that would warrant this. However, should such evidence emerge, we would consider the most proportionate means of addressing the identified consumer harm.

Data protection

15.54 The ICO said that:

- a) “While the mis-selling provisions are mainly concerned with the provision of accurate information, communications promoting products and services will fall under the definition of marketing. The instigation and transmission of marketing must comply with the DPA and PECR”; and
- b) “Section 12.11 of the consultation is concerned with keeping separate records of individuals’ consent to switch provider. This aligns with the GDPR requirements regarding consent for processing personal data, which require that consent is unambiguous, requires a positive action to be undertaken, and is recorded.” (p6)

15.55 We note the comments of the ICO which, in our view, would be relevant whether or not we adopted our proposed changes to the selling and marketing of fixed-line and mobile

²⁴⁸ <https://www.ofcom.org.uk/consultations-and-statements/category-1/automatic-compensation>

²⁴⁹ See paragraphs 7.26 and 14.29 above.

services. Consequently, we would expect CPs to be aware of the compliance obligations identified by the ICO.

Accessibility and relay services

- 15.56 The NADP said that that “all information related to accessibility and relay services should be provided to all customers as part of the marketing material and in the information provided on initial set up and renewal”.
- 15.57 We would expect CPs to comply with their obligations under the GCs to meet the needs of vulnerable consumers and end-users with disabilities, including having (and complying with) their respective policies in relation to vulnerable consumers. We do not consider it necessary to go further and require CPs to provide all information on accessibility and relay services to all customers.²⁵⁰

Implementation Period

- 15.58 BT said that if the proposal to require CPs to offer and, upon request, provide, pre-contractual information to customers in a durable medium is implemented, “significant systems changes and updates to training material would be required to support is, and a six-month period of implementation would be unrealistic” (§ 150).
- 15.59 As explained earlier (paragraph 3.60), we remain of the view that having a single implementation date when all the changes will come into force is a more practicable approach than a staggered approach to implementation. However, we have decided to allow for a longer implementation period of 12 months, particularly in light of the fact that all the changes will have to be implemented at the same time.

Ofcom’s decision

- 15.60 Having considered stakeholders’ responses, we have decided to implement the proposals set out in paragraphs 12.17-12.37 of the December 2016 consultation, with the following amendments:
- a) we have decided to adopt our proposals to replace the current prohibitions with rules that focus on the information that CPs give to the customer when selling and marketing their fixed-line or mobile services and ensure that customers are in a sufficiently informed position to make their purchasing decision. However, we have removed the inclusion of “Cancel Other” (see paragraph 15.38);
 - b) we have amended the drafting of the new obligation in condition C8.6 to address the risk of compliance being affected by factors outside the control of the CP (see paragraph 15.47);

²⁵⁰ Since such information may not be relevant to all customers.

- c) we have addressed a minor drafting inaccuracy in condition C8.1 to ensure it refers to condition C8.4(b)(iii);²⁵¹
- d) we have decided to make the drafting changes explained in paragraph 15.51 above.

15.61 The revised text of the condition that will replace the current GC 22 and 23 can be seen at Annex 14 (see conditions C7 and C8, as re-numbered).

Legal test

15.62 We consider that the changes we have decided to make to the current GCs 22 and 23 (conditions C7 and C8, as re-numbered), and the conditions themselves, meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:

- a) **objectively justifiable** as we think our changes:
 - i) focus on what previous enforcement under the current rules, both formally or informally, has demonstrated to us is a key cause of mis-selling of both fixed-line and mobile services, and place domestic and small business customers in a position to make more informed purchasing decisions;
 - ii) aim to produce mis-selling rules that are clearer, as a result of which CPs understand what they should and should not do when selling and marketing their fixed line and/or mobile services, which should make compliance easier;
- b) **not unduly discriminatory** since, consistent with the scope of the current rules, the changes apply in respect of:
 - i) all CPs who operate on the Openreach/KCOM networks and who sell, market and provide fixed-line services to domestic and small business customers switching between such CPs; and
 - ii) all CPs who provide mobile calls and text services to domestic and small business customers;
- c) **proportionate** as our view is that none of these changes go further than is necessary to achieve our consumer protection aim and in doing so they will not introduce any significant additional regulatory burden on industry; and
- d) **transparent** as the reasons for the changes that we have decided to make to GCs 22 and 23 are explained above and the effects of the changes will be clear to CPs on the face of the revised conditions themselves.

²⁵¹ The drafting on which we consulted referred to paragraph C8.4(b)(iv), but this paragraph does not exist – it should be paragraph C8.4(b)(iii).

16. Codes of practice

Introduction

- 16.1 In this section, we set out the changes that we have decided to make to:
- a) the requirement in GC 14.1 for CPs to produce a basic code of practice regarding the provision of public electronic communications services; and
 - b) the Annexes to GC 14, which concern other codes of practice that CPs are required to establish, maintain and comply with.
- 16.2 As set out above (paragraphs 3.5 and 3.40), where possible, our objective is to set out all binding regulatory obligations in the main body of the general conditions, unless there is a clear reason for mandating the adoption of a particular code of practice.

Ofcom's approach

Consultation proposals

- 16.3 In the December 2016 consultation, we asked stakeholders whether they agree with our proposals in relation to the codes of practice that CPs are currently required to establish, maintain and comply with, including replacing these with direct obligations to make information available, where appropriate (question 13).

Stakeholders' responses and Ofcom's assessment

- 16.4 The following stakeholders said that they agreed with our proposals: the CCP and ACOD (p. 8), BT (§ 197), FCS (response to Q13)²⁵², Three (§ 99)²⁵³, TUV SUB BABT, the SCOTSS, SSE²⁵⁴, Verastar, Vodafone (p. 18)²⁵⁵ and some individuals²⁵⁶.
- 16.5 Virgin Media (p. 11) said that it generally supports Ofcom's proposals, but "care needs to be taken to ensure that there is no inadvertent increase in regulation on CPs". Where we have replaced the requirement to have a code the practice with direct obligations set out in the GCs, we have ensured that the GCs set out only those binding regulatory obligations

²⁵² FCS added that "the transposition of information required via the various GC14 annexes into direct condition requirements will make conforming with the new condition significantly less complex".

²⁵³ Three said that it welcomes Ofcom's goal of consolidating its Code of Practice into the main body of the GCs wherever possible.

²⁵⁴ SSE said that they "support the removal of the codes of practice from GC14 and the associated replacement of these, only if it is necessary, with direct obligations in other parts of the GC".

²⁵⁵ Vodafone said that it is "fully supportive of streamlining the codes of practice to, where possible, move the code requirements into the conditions themselves".

²⁵⁶ Gina Antczak, Leon Tarnowski and Trevor Williams.

which are necessary to achieve their purpose. As discussed above (paragraph 3.41), we have taken a similar approach to moving Ofcom’s guidance into the GCs.

Basic code of practice regarding the provision of public electronic communications services (GC 14.1)

Consultation proposals

16.6 The current GC 14.1 requires all CPs to produce a basic code of practice which sets out where domestic and small business customers may avail themselves of the information CPs are required to publish under the current GC 10.2. We are retaining GC 10.2 (C2.3, as re-numbered), which sets out the information CPs are required to publish²⁵⁷, and GC 10.3 (C2.11, as re-numbered), which sets out publication requirements. We therefore proposed to remove the current GC 14.1, as we do not think that a code of practice that merely informs customers of where to find particular information provides any additional benefit to customers.

Stakeholders’ responses and Ofcom assessment

16.7 Three (§ 99) said that it welcomes Ofcom’s proposal to remove the requirement to publish a Code of Practice for domestic and small business customers under the current GC 14.1. We received no further comments on this proposal.

Ofcom’s decision

16.8 Since there were no objections to this proposal, we have decided to proceed with it.

Handling customer enquiries and complaints about Premium Rate Services (Annex 1 to GC 14)

Consultation proposals

16.9 The current GC 14.2(a) requires CPs to establish, maintain and comply with a code of practice for the provision of information relating to Premium Rate Services (“**PRS**”) for their domestic and small business customers which must conform with the guidelines set out in Annex 1 of GC 14 (“Guidelines for codes of practice for handling customer enquiries and complaints about Premium Rate Services”).

16.10 In the December 2016 consultation (paragraphs 5.24-5.25), we proposed to retain the requirement for CPs to provide specific information about PRSs to their domestic and small business customers. However, in accordance with our objective of moving all regulatory

²⁵⁷ This is information about the provider’s applicable prices and tariffs, and its standard terms and conditions.

obligations into the main body of the condition, we proposed to replace the obligation to have codes of practice with a direct obligation, in the main body of condition C2 (as re-numbered), to make such information available to those customers.²⁵⁸ In order to ensure that regulation is targeted at cases that give rise to the greatest potential harm to consumers, we proposed to limit the information requirements to “Controlled PRS”, which are a subset of PRS, including, for example, chat line services and sexual entertainment services.

Stakeholders’ responses and Ofcom’s assessment

16.11 Stakeholders’ comments, and our assessment, are discussed in paragraphs 8.33-8.40.

Publication of prices of calls to Number Translation Services, 0870 calls and Personal Numbers (Annex 2 of GC 14)

Consultation proposals

16.12 Currently, GC 14.7 – 14.12, together with Annex 2 of GC 14, impose certain price transparency requirements on CPs in relation to calls to number translation services (“NTS”), other unbundled tariff numbers, and personal numbers. In addition, the current GC 14.2 requires CPs to establish, maintain and comply with a code of practice for NTS calls, 0870 calls and calls to Personal Numbers for their domestic and small business customers which conforms with the guidelines set out in Annex 2 to GC 14.

16.13 In the December 2016 consultation (paragraphs 5.11-5.21), we proposed some changes to these requirements. In particular, we proposed to replace the requirement for CPs to have codes of practice that ensure specified information is made available, with direct obligations to make the information available (paragraph 5.18).

Stakeholders’ responses and Ofcom’s assessment

16.14 Stakeholders’ comments, and our assessment, are discussed in paragraphs 8.27-8.32.

Information requirements in relation to the provision of VoIP services (Annex 3 of GC 14)

Consultation proposals

16.15 Annex 3 to the current version of GC 14 (“Annex 3”) contains a number of specific information requirements that apply to VoIP providers.

16.16 In the August 2016 consultation,²⁵⁹ we outlined our proposals in relation to paragraphs 5 to 7 and 10 to 12 of Annex 3, which set out certain requirements on VoIP providers about

²⁵⁸ See paragraph 5.25 of the December 2016 consultation, and conditions C2.10 and C2.11 of the new conditions.

²⁵⁹ Paragraphs 4.38-4.40 and 4.57-4.61.

network availability and access to emergency calls. Stakeholders' comments in relation to these proposals and our assessment are discussed in paragraphs 4.49-4.61 and 4.86-4.93 and above.

- 16.17 In the December 2016 consultation, we set out our proposals in relation to the requirements set out in the remaining paragraphs of Annex 3 (in particular, paragraphs 13 to 15). In summary, we proposed to remove Annex 3 to GC 14 except for the requirements relating to network availability and access to emergency calls that are currently set out in paragraphs 11(a), 12(a) and 12(b) of the current Annex 3 to GC 14, which we proposed to move into condition A3 (as re-numbered).

Stakeholders' responses and Ofcom assessment

- 16.18 We received a number of comments on the proposals that we set out in the December 2016 consultation:

- a) a confidential respondent [X] said that it agrees with Ofcom that paragraph 13 of Annex 3 to GC 14 is superfluous and that it also agrees with the proposed removal of paragraph 14 of the same Annex, save for what we said in paragraph 8.20(d) of the December 2016 consultation in relation to printed directories, since this respondent believes that "Ofcom needs to consider its environmental obligations". We deal with this comment in paragraph 6.13 above;
- b) Nine Group (response to Q5) said that they are "pleased that the requirements relating to VoIP services which formed Annex 3 to General Condition 14 have now been moved to a new General Condition A3". However, Nine Group raised concerns in relation to the requirement for VoIP providers to recommend that customers update their location information if the VoIP service is accessed from several locations. We discuss this comment in paragraphs 4.88-4.89 above;
- c) Three said that "in a number of cases the proposed changes would appear to offer weaker protection to VoIP customers" (§ 104), whereas "Ofcom needs to ensure that regulation of OTT services offers adequate protection for customers, and does not create competitive disadvantages for traditional services providers" (§ 103). We note, in this regard, that we are retaining the specific requirements that, in our view, ensure that consumers remain well-informed about network availability and access to emergency calls;
- d) Verizon (§ 20) said that it supports Ofcom's proposed removal of notification requirements around VoIP set out in paragraphs 8.19-8.20 of the December 2016 consultation (i.e. those which are currently set out in paragraphs 14 and 15 of Annex 3 to GC 14);
- e) Virgin Media (p. 11) said that it supports the removal of the information requirements as described in paragraphs 8.19-8.22 of the December 2016 consultation (i.e. those which are currently set out in paragraphs 14 and 15 of Annex 3 to GC 14). Virgin Media made also some comments in relation to the proposed GC 3.7(b), which are discussed in paragraphs 4.88-4.89 above;

- f) with regard to Ofcom’s proposal to remove the information requirement concerning “access to a Directory Enquiry Facility” which is currently set out in paragraph 14 of Annex to GC 14, Vodafone (p. 18) said that it “does not agree with any extension of the requirement to provide access to a Directory Enquiry Service with any suggestion of an any-to-any obligation”. We discuss this comment in paragraph 5.50 above.

Ofcom’s decision

- 16.19 Having considered stakeholders’ comments, we have decided to proceed with our proposals, as revised in the December 2016 consultation. Our reasons for retaining the requirements that we consider are still necessary (i.e. those relating to network availability and access to emergency calls) are discussed in Section 4.²⁶⁰ We have decided to remove the other information requirements which are currently set out in Annex 3 to GC 14, as proposed in our consultation.

The Ofcom Approved Code of Practice for Complaints Handling (Annex 4 of GC 14)

Consultation proposals

- 16.20 Under the current conditions (GC 14.1), CPs must have, and comply with, procedures that conform to the Ofcom Approved Code of Practice for Complaints Handling (which is set out in Annex 4 to GC 14) when handling complaints made by domestic and small business customers about their public electronic communications services.
- 16.21 Our proposals in relation to complaints handling, including the replacement of Annex 4 of GC 14, were set out in Section 7 of the December 2016 consultation document.
- 16.22 Stakeholders’ comments, and our assessment, are discussed in Section 11.

²⁶⁰ See, in particular, paragraphs 4.40, 4.49-4.62, 4.66, 4.71-4.73, 4.86-4.93 and 4.97-4.99.

17. Summary of the main changes to the GCs and further consultation proposals

Summary of the main changes to the GCs

- 17.1 Below, we summarise the main changes that we have decided to make to each condition, noting how we have revised our consultation proposals in light of stakeholders' responses.
- 17.2 All these changes will come into force on **1 October 2018**.

Network functioning conditions

General access and interconnection

- 17.3 The GCs contain rules to require network providers to negotiate access and interconnection in good faith; and to prevent CPs from using information obtained from or in connection with these negotiations for any other purpose.
- 17.4 We have simplified this condition by removing the carve-out that specifically allows network providers to pass confidential information obtained from the negotiation of network access or interconnection to Ofcom. We think this carve-out is unnecessary because Ofcom can use its statutory information gathering powers to require the provision of confidential information and CPs must comply with such requests for information.
- 17.5 We have not made any material change to our consultation proposals in light of stakeholders' responses.

Standardisation and specified interfaces

- 17.6 The GCs require CPs to comply with, or take full account of, certain European and international technical standards and specifications to encourage interconnection and interoperability. Historically, Ofcom's predecessor (Ofcom) chose to include in this condition a power to direct CPs to take full account of certain other standards and to provide a specific network element (the 'interface') in accordance with an existing standard, in the absence of relevant international standards.
- 17.7 We have amended this condition so that it will go no further than what is required by the EU Framework. Specifically, we have removed Ofcom's direction-making power, noting that Ofcom has never made any such direction and we would normally expect CPs to have incentives to agree the appropriate standards to be used for interconnection without the need for specific intervention by Ofcom.
- 17.8 We have not made any material change to our consultation proposals in light of stakeholders' responses.

Proper and effective functioning of the network and calls to emergency call numbers

- 17.9 The GCs includes rules to ensure the fullest possible availability of call services (including in the event of a disaster or catastrophic network failure) and to ensure that people can

always call, free-of-charge, the emergency numbers ('112' and '999'). These requirements are currently set out in two separate conditions.

- 17.10 We have simplified regulation by removing: (i) the requirement for network providers to take all necessary measures to ensure the proper and effective functioning of their networks, which has been replicated in the Act since 2011; and (ii) an unnecessary elaboration of which restrictions of network access/use would be unlawful.
- 17.11 We have also introduced an element of de-regulation by removing certain requirements on VoIP providers which now go beyond what is necessary to ensure that VoIP customers are aware of the specific characteristics of these services. We have moved those other requirements on VoIP providers which we think are still needed from an Annex to the GCs to the single condition that will combine the requirements for network availability and access to emergency services.
- 17.12 We have made some drafting changes to our consultation proposals in light of stakeholders' responses.

Emergency planning

- 17.13 The GCs require CPs to co-operate with central and local government departments and the authorities responsible for emergency operations to make arrangements for the provision or rapid restoration of the communications services which are needed in the event of disasters and major incidents.
- 17.14 We have retained this condition, as it is an important backstop power that has encouraged industry to maintain emergency planning voluntarily.
- 17.15 We have not made any material change to our consultation proposals in light of stakeholders' responses.
- 17.16 We are also consulting on updating Ofcom's direction of 30 July 2003, which specifies which public bodies may request industry to make arrangements for the restoration of communications services in the event of disasters.

Numbering conditions

Allocation, adoption and use of telephone numbers

- 17.17 The current GCs set requirements in relation to the adoption, allocation and use of telephone numbers so as to ensure their effective and efficient use.
- 17.18 We have added a new provision which will enable us to withdraw allocations of blocks of numbers that have not been used for longer than 12 months. We have also removed certain historical obligations that are no longer needed (they deal with a transitional period that has now passed) and decided to require CPs to apply for numbers using the online system which is available on our website, rather than specifying the form of application to be used in an Ofcom's direction.

- 17.19 In addition, as suggested by a stakeholder in response to our consultation, we are consulting on a further extension of our power to withdraw telephone numbers where they are used inconsistently with the Numbering Plan or otherwise misused.

Directory information

- 17.20 The GCs currently require CPs to make operator assistance services (e.g. alarm calls and reverse charge calls), directory enquiry services and printed directories available to end-users. In addition, they require all CPs which have been allocated telephone numbers or authorised to use the numbers allocated to another CP to ensure that details of those numbers which are issued to end-users are made available to other organisations which wish to compile directories or directory enquiry services.
- 17.21 We have decided to de-regulate the provision of operator assistance services, which is no longer an EU requirement; remove the current obligations concerning access to directory enquiry services on the basis that they are no longer appropriate and relevant; and replace the condition dealing with the provision of directory information at the wholesale level with a simple copy-out of the EU minimum requirement. We have retained the requirement to provide printed directories on request as we consider that this is not the right time to switch to electronic directories (e.g. online or on a CD rom). We have also decided to combine these rules into a single condition.
- 17.22 We have not made any material change to our consultation proposals in light of stakeholders' responses.

Number portability

- 17.23 The GCs set out processes to assist consumers in switching between providers, including rules on number portability (i.e. the right of anyone who has been assigned a telephone number from the Numbering Plan to retain that number when they switch to a new provider).
- 17.24 In relation to fixed-line porting, as we said in the DCR Statement, in the first instance we would like to see industry reach consensus on how improvements could be made. We have made some minor drafting changes to this condition to ensure consistency with the approach that we have taken to the other conditions. In relation to mobile porting, Ofcom started a separate project which will continue to proceed in parallel to this review.²⁶¹
- 17.25 We have not made any material change to our consultation proposals in light of stakeholders' responses.

²⁶¹ Ofcom's consultation of 19 May 2017, entitled "Consumer switching. Proposals to reform switching of mobile communications services"; see <https://www.ofcom.org.uk/consultations-and-statements/category-2/consumer-switching-proposals-to-reform-switching-of-mobile-communications-services>

Access to numbers and services

- 17.26 The GCs contain rules to ensure that end-users can access all telephone numbers (and the services hosted on those numbers); and to ensure that CPs only block access to telephone numbers where instructed to do so by Ofcom for reasons of fraud or misuse.
- 17.27 We have removed references in this condition to the ‘European Telephone Numbering Space’ (ETNS), as this is inactive. We have also amended the requirement on CPs to ensure any user can access the hotline for missing children (116 000) to clarify that the obligation applies only to those CPs who provide telephone call services.
- 17.28 We have not made any material change to our consultation proposals in light of stakeholders’ responses.

Consumer protection conditions

Contract requirements

- 17.29 Consumers need protection from potential harm in relation to the contracts they enter into for communications services. They should be provided with certain minimum information before entering into a contract with a communications provider and should have a right to terminate the contract in certain circumstances.
- 17.30 We have not made any significant policy changes in this area, including retaining the rules on automatically renewable contracts. However, we have made some amendments to make this condition clearer and easier to understand. In particular, we have simplified regulation by incorporating key parts of Ofcom’s guidance on the meaning of “material detriment” in relation to price rises and notification of contract modifications (under the current GC 9.6) into the condition itself.
- 17.31 In light of stakeholders’ responses, we have decided not to extend our current rules on mid-contract price rises to large businesses. We have also amended our approach to incorporating the ‘material detriment’ guidance into the GC by including a definition of “Core Subscription Price” and a further paragraph (C1.8) to provide greater specificity on what we would consider to be an increase in the “Core Subscription Price”. In addition, we have included a definition of “Fixed Commitment Period” and inserted additional wording (at C1.7) to make it clear that only increases in the “Core Subscription Price” payable during the “Fixed Commitment Period” are caught by this condition.
- 17.32 We have further decided not to withdraw all guidance on relevant mid-contract price rises but to retain guidance in respect of the application of the condition to bundles and the content and form of communications concerning a price increase.

Information publication and transparency requirements

- 17.33 Consumers need access to adequate, up to date, comparable information on prices, tariffs and terms and conditions so that they can easily compare the offers and services available in the market and choose the right product for them. Therefore, we have retained the information publication and transparency requirements set out in the GCs. However, we have consolidated the various information publication requirements across the GCs into a

single condition, simplifying and clarifying the requirements where possible. We have also revoked the separate condition on the publication of quality of service information, since the Digital Economy Act 2017²⁶² has provided Ofcom with sufficient powers for our purposes.

- 17.34 In light of stakeholders' responses, we have decided to clarify that CPs should make small business customers aware where their tariff is a business tariff which differs from standard tariffs, but do not have to provide them with a detailed comparison of their contract compared to standard consumer tariffs.

Public pay telephones

- 17.35 We have significantly scaled back the requirements on providers of public pay telephones, by reducing the amount of information which must be displayed on or around public pay telephones and removing requirements related to the design of new public call boxes from the GCs. We have incorporated the information requirements that we have retained into the new condition that will consolidate all the main information publication and transparency requirements.
- 17.36 We have not made any material change to our consultation proposals in light of stakeholders' responses.

Billing requirements

- 17.37 The GCs contain rules on the accuracy of bills, the provision of itemised bills and fair debt collection and disconnection procedures for non-payment of bills. We have retained these conditions since we consider that they are still necessary to protect consumers from being overcharged or treated unfairly. We have re-drafted these rules to make them simpler, and we have also extended the scope of some of these rules in response to market developments since they were put in place. In particular, in the light of the progressive growth in the take up and importance of broadband services, we have extended the current rules on billing accuracy (i.e. the "metering and billing scheme") and debt collection and disconnection procedures for non-payment of bills to data services in addition to voice call services. We have also extended the current rule that requires CPs to ensure that free calls are not itemised on bills to cover also text messages to free numbers.
- 17.38 We have decided to make some minor changes which stakeholders suggested for greater clarity, e.g. to clarify that certain types of business services (e.g. "multi-site connectivity services") will continue to fall outside of the requirement for CPs to have their billing systems approved by an authorised body.

Complaints handling and access to alternative dispute resolution

- 17.39 When things go wrong, consumers should be treated fairly and have their complaints resolved in an effective and timely manner. Although communications providers are

²⁶² <http://www.legislation.gov.uk/ukpga/2017/30/contents/enacted>

required to adhere to a code of practice on complaints handling and to sign up to an approved alternative dispute resolution scheme, recent experience has shown that our current complaints code of practice is not working as effectively as it should. We have introduced a new code that contains strengthened provisions on the transparency of the complaints process, the provision of information to consumers at different stages of the process, more effective signposting of access to alternative dispute resolution when complaints become deadlocked, and improved record-keeping and monitoring requirements for communications providers.

- 17.40 In the December 2016 consultation, we proposed to require CPs to keep complaints open for 56 days (8 weeks) where there had been no contact from a complainant. In response to stakeholders' comments on this point, we have decided to reduce this period to 28 days (4 weeks).

Meeting the needs of vulnerable consumers and end-users with disabilities

- 17.41 We highlighted in our DCR statement that consumers in vulnerable circumstances often find it particularly difficult to engage with this market. In light of this, we have introduced a new requirement for CPs to put in place clear and effective policies for ensuring that vulnerable consumers are treated fairly and appropriately. We have also updated the existing regulatory protections for end-users with disabilities, which currently apply only in relation to voice call services, by extending them so as to cover all public electronic communications services, where relevant.
- 17.42 We have decided to make some clarificatory changes to our consultation proposals in order to address stakeholders' concerns. For instance, to clarify that CPs will not be required actively to seek to identify vulnerable consumers.

Nuisance calls and calling line identification facilities

- 17.43 Calling line identification – which allows someone receiving a call to see the caller's number – has proved to be increasingly useful tool for consumers to combat the harm caused by nuisance calls. As such, we have maintained the current regulation requiring the provision of calling line identification facilities and extended regulation to improve the accuracy of the provision and display of the calling party's telephone number to end-users. We have done this by including a new obligation on CPs to ensure that where calling line identification data is provided, it includes a valid, diallable telephone number which uniquely identifies the caller. We have also included additional new requirements on CPs to inform their customers if calling line identification facilities are not available, to provide calling line identification facilities at no additional charge to their customers and to take reasonable steps to identify and block calls on which invalid or non-diallable calling line identification is provided.
- 17.44 In addition to requiring CLI facilities to be provided free of charge, we have specified in this statement that they should be switched on by default, as suggested by a respondent.

Switching and mis-selling

- 17.45 Customers should be protected throughout the process of switching from one provider to another, which includes ensuring that the processes themselves do not create unnecessary difficulties or act as a deterrent for customers to switch provider. The GCs already contain detailed rules on switching between retail providers who rely on BT's or KCOM's fixed wholesale networks. The only substantive change that we made to these rules is to remove the specific "reactive save prohibition" which currently prevents the losing provider from making counter-offers to customers that it has been made aware, as a result of the information it receives as part of the switching process, intend to switch.
- 17.46 The GCs also contain essential provisions on tackling erroneous transfers and prohibitions on mis-selling of fixed (landline and broadband) and mobile communications services, which include both general prohibitions and more specific protections, e.g. to prevent so-called 'slamming'. The changes that we have made as part of the GC review were limited to re-focus this condition on the information that CPs give to customers when selling or marketing their services to ensure that customers are in a sufficiently informed position when they make a purchase.
- 17.47 We have not made any material change to our consultation proposals in light of stakeholders' responses.

Implementation date

- 17.48 In the December consultation, we proposed a common implementation period of 3 to 6 months. In light of stakeholders' responses, we have decided to allow a 12-month period. However, we encourage CPs to implement the changes sooner where possible, particularly in relation to the provisions intended to help vulnerable consumers.

Summary of further consultation proposals

- 17.49 We are also consulting on:
- a) a further extension of our power to withdraw telephone numbers where they are used inconsistently with the Numbering Plan or otherwise misused (see paragraphs 5.66 - 5.74);
 - b) updating a 2003 direction which specifies which public bodies may request industry to make arrangements for the restoration of communications services in the event of disasters (see paragraphs 4.115 - 4.121); and
 - c) providing guidance about the procedures for terminating contracts (see paragraphs 7.61- 7.66).
- 17.50 The consultation questions are set out in Annex 4. We invite stakeholders to provide comments on these proposals by **14 November 2017**.

18. Consequential changes

Introduction

18.1 Our amendments to the GCs, and, in particular, GC 17 (GC B1, as re-numbered) and GC 11 (GC C4, as re-numbered), require us to make certain consequential changes to the National Telephone Numbering Plan (the “**Numbering Plan**”), the Premium Rate Services Condition (the “**PRS Condition**”) and the Metering and Billing Direction.

Changes to the Numbering Plan

Consultation Proposals

18.2 We proposed the following consequential amendments to the Numbering Plan in the August 2016 consultation:

- a) amend the definitions of “Access Charge”, “Service Charge” and “Portability” so that they cross-refer to the proposed Definitions section at end of the new GCs (rather than, as at present, to the definitions of those terms in GC 17 and GC 18);
- b) amend paragraph 2(i) of the “Definitions and Interpretation” section so that it cross-refers to the proposed Definitions section at end of the new GCs (rather than, as at present, to the definitions in Part 1 of the GCs); and
- c) amend the references throughout the Numbering Plan to specific paragraphs of the current GC 17, to reflect our proposed deletion of paragraphs from GC 17 and subsequent renumbering of sub-paragraphs.

18.3 We then proposed the following further changes to the Numbering Plan in the December 2016 consultation:

- a) as noted above, we have decided to reorganise and renumber the GCs so that GC 17 becomes General Condition B1 and GC 18 becomes General Condition B3. We therefore also proposed to amend any cross-references in the Numbering Plan to GC 17 and GC 18 accordingly;
- b) amend the definition of the “General Conditions of Entitlement” so that it refers to the Notification to be issued by Ofcom setting new GCs at the conclusion of this project, rather than the Notification issued in July 2003 (to reflect the fact that we proposed to revoke the existing GCs and set new GCs);
- c) amend the definition of “Communications Provider” to make it consistent with the corresponding definition proposed for the GCs; and
- d) correct for an error in the definition of “Per Call Release of CLI”, which currently refers to “Caller” (which is undefined) instead of “Calling Party” (which is defined).

Stakeholders' responses and Ofcom assessment

18.4 Nine Group said that “the proposed changes appear to be logical and appropriate to reflect and support the changes to the relevant General Conditions”. We received no further comments on these proposals in response to the December 2016 consultation.

Ofcom's decision

18.5 We have decided to implement the changes that we proposed to make to the Numbering Plan in the December 2016 consultation (paragraphs 14.2-14.8). However, we noted that Section B3.2 (“Non-Geographic Numbers”) in Part B of the Numbering Plan, which we proposed to amend²⁶³, has not been in force since June 2017.²⁶⁴ Therefore, it is no longer necessary to amend that paragraph.

18.6 A notification setting out the changes that we have decided to make to the Numbering Plan is at Annex 6 to this document.

Legal Test

18.7 We consider that the changes we have decided to make to the Numbering Plan meet the test set out in section 60(2) of the Act. These changes are:

- a) **objectively justifiable**, because they are necessary as a consequence of the changes we are making to the GCs, or to correct minor drafting errors;
- b) **not unduly discriminatory** since the changes will apply equally to all CPs;
- c) **proportionate** as the changes are not intended to make any substantive changes to the scope of regulation; and
- d) **transparent** as the reasons for the changes are explained above and the purpose of the changes is to ensure consistency between the GCs and the Numbering Plan, thereby increasing transparency for CPs.

18.8 We also consider that the changes we are making to the Numbering Plan comply with our general duty in relation to our numbering functions, as set out in section 63 of the Act. In particular, we consider that ensuring the Numbering Plan is easily understood and consistent with the GCs will assist industry and Ofcom in making best use of telephone numbers, and encouraging efficiency and innovation for that purpose.

²⁶³ See paragraph 5 of the Schedule to the Notification set out in Annex 6 to the December 2016 consultation, page 152.

²⁶⁴ See Ofcom's statement of 3 June 2014, entitled “The 0500 Number Range. Decision to withdraw 0500 telephone numbers”; https://www.ofcom.org.uk/_data/assets/pdf_file/0031/74389/0500_statement.pdf

Changes to the Premium Rate Services Condition

Consultation Proposals

- 18.9 In the August 2016 consultation (paragraphs 9.5-9.6), we proposed to make a minor amendment to the PRS Condition²⁶⁵, which was consequential upon our proposed amendments to the current GC 17 (condition B1, as re-numbered).
- 18.10 A respondent to the August 2016 consultation²⁶⁶ pointed out that the PRS Condition contains several provisions that are now obsolete. We agreed and therefore proposed the following additional amendments to the PRS Condition in the December 2016 consultation:
- a) to delete sub-paragraph (i) of the definition of “Controlled Premium Rate Service”, which provides for services of a certain type to fall within that definition prior to “the Effective Date” (defined as 1 July 2015);
 - b) to delete the words “from and including the Effective Date” at the start of sub-paragraph (ii) of the definition of “Controlled Premium Rate Services”;
 - c) to delete the reference to “Special Services Number” in sub-paragraph (iii) of the definition of “Controlled Premium Rate Service” as this category of number is no longer used in the Numbering Plan; and
 - d) to delete the definitions of “Effective Date” and “Special Services Number” in their entirety from the PRS Condition.

Stakeholders’ responses and Ofcom assessment

- 18.11 Only the PSA responded specifically to our proposals for the PRS Condition. It welcomed our proposed minor amendments, but noted that we had not undertaken a wider review of the PRS Condition (§ 11-13).

Ofcom’s decision

- 18.12 We have decided to implement the proposals that we set out in the December 2016 consultation. A notification setting out the changes that we have decided to make to the PRS Condition is at Annex 7 to this document.

Legal Test

- 18.13 We consider that the changes that we have decided to make to the PRS Condition meet the test set out in section 47(2) of the Act (applicable by virtue of section 120(5) of the Act). These changes are:

²⁶⁵ The current version of the PRS Condition is set out in Annex 3 to Ofcom’s Statement of 26 February 2015 entitled “Simplifying non-geographic numbers – change of implementation date”;

https://www.ofcom.org.uk/data/assets/pdf_file/0031/82678/ngcs_revised_date_statement.pdf

²⁶⁶ https://www.ofcom.org.uk/data/assets/pdf_file/0024/94092/Confidential-Response-1-Annex.pdf

- a) **objectively justifiable** because they relate to the deletion of obsolete provisions that are no longer required;
- b) **not unduly discriminatory** since these changes will apply equally to all CPs;
- c) **proportionate** as these changes are not intended to make any substantive change to the scope of regulation;
- d) **transparent** as the reasons for these changes are explained above and the purpose of the changes is to remove obsolete references from the PRS Condition, thereby increasing transparency for CPs.

Changes to the Metering and Billing Direction

18.14 A summary of the December 2016 consultation proposals, stakeholders' responses and our decision is set out in Section 10 above (paragraphs 10.84 - 10.99). The final revised Metering and Billing Direction is included in Annex 15 to this document.

Changes to the 2003 Oftel Direction

18.15 As set out in paragraphs 4.115 - 4.121, we are proposing to amend the 2003 Oftel Direction relating to the emergency planning GC, in order to update it, and to refer to the new condition A4, rather than the current GC 5. The draft new Emergency Planning Direction is included in Annex 9 to this document.

A1. Responding to this consultation

How to respond

- A1.2 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on **14 November 2017**.
- A1.3 We strongly prefer to receive responses via the online form at <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions>. We also provide a cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>) for responses sent by email or post; please fill this in, as it helps us to maintain your confidentiality, and speeds up our work. You do not need to do this if you respond using the online form.
- A1.4 If your response is a large file, or has supporting charts, tables or other data, please email it to gcreview@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this consultation only.
- A1.5 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Selene Rosso
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.6 If you would like to submit your response in an alternative format (e.g. a video or audio file), please contact Selene Rosso on 020 7981 3000, or email selene.rosso@ofcom.org.uk.
- 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 4. 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 Selene Rosso (selene.rosso@ofcom.org.uk) or Robert Wells (robert.wells@ofcom.org.uk) by email or on 020 7981 3000.

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 early next year.
- A1.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

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

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

A2. Ofcom's consultation principles

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

Before the consultation

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

During the consultation

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

After the consultation

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

A3. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

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

DECLARATION

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

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

Name

Signed (if hard copy)

A4. Consultation questions

Question 1: Do you agree with our proposal for updating the direction issued by Oftel (one of Ofcom's predecessors) in 2003 which specifies which public bodies may request industry to make arrangements for the restoration of communications services in the event of disasters? If not, please give reasons.

Question 2: Do you agree with the proposed extension of Ofcom's power to withdraw numbers where they are used inconsistently with the Numbering Plan or otherwise misused? If not, please explain why you do not agree giving reasons.

Question 3: Do you have any comments on the proposed extension of Ofcom's Guidance under condition C1 to cover contract termination procedures? If you do not agree with the proposed extension, please explain why.

A5. Notification of Ofcom's decision to revoke existing conditions and set new conditions

Notification revoking the general conditions and setting new general conditions under section 48(1) of the Communications Act 2003

Background

- A5.1 The Director General of Telecommunications published on 22 July 2003 a notification setting general conditions under section 45 of the Act which took effect on 25 July 2003 (the “**2003 Notification**”). Since July 2003, the General Conditions so set have been modified on several occasions and new General Conditions have been set by Ofcom.
- A5.2 On 2 August 2016, Ofcom published a notification under sections 48(1) and 48A(3) of the Act setting out proposals to revoke General Conditions 1 to 6, 8, 17, 19 and 20 and set new general conditions (the “**First Notification**”). On 20 December 2016, Ofcom published another notification under sections 48(1) and 48A(3) of the Act setting out proposals to revoke General Conditions 7, 9 to 16, 18 and 21 to 23 and set new general conditions (the “**Second Notification**” and, together with the First Notification, the “**2016 Notifications**”).
- A5.3 Ofcom invited representations on the proposals set out in the First Notification (and accompanying consultation document) by 11 October 2016 and on the proposals set out in the Second Notification (and accompanying consultation document) by 14 March 2017.
- A5.4 Copies of the 2016 Notifications were sent to the Secretary of State in accordance with section 48C(1) of the Act.
- A5.5 By virtue of section 48A(6) and (7) of the Act, Ofcom may give effect to the proposals with respect to which it has published a notification, with any modifications that appear to Ofcom to be appropriate, where Ofcom has:
- a) considered every representation about the proposals made to Ofcom within the period specified in the notification; and
 - b) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.
- A5.6 Ofcom received responses to the 2016 Notifications and has considered every such representation made in respect of the proposals set out in the 2016 Notifications (and the accompanying explanatory statements); and the Secretary of State has not notified Ofcom of any obligation of the United Kingdom for this purpose.

Decision

- A5.7 Ofcom, in accordance with sections 45 and 48(1) of the Act, has now decided to:

- a) revoke the General Conditions of Entitlement with effect from 1 October 2018, as set by the 2003 Notification; and
 - b) set the Revised General Conditions of Entitlement.
- A5.8 The Revised General Conditions of Entitlement that Ofcom has decided to set are set out in the Schedule to this Notification, which is published as a separate Annex (Annex 14).
- A5.9 The effect of, and Ofcom’s reasons for making, the decision referred to in paragraph A5.7 above are set out in the accompanying statement.
- A5.10 Ofcom considers that these decisions comply with the requirements of sections 45 to 48C and 51 of the Act, insofar as they are applicable.
- A5.11 Ofcom considers that these decisions are not of EU significance pursuant to section 150A(2) of the Act.
- A5.12 In making these decisions, Ofcom has considered and acted in accordance with its general duties under section 3 of the Act, the six Community requirements set out in section 4 of the Act and its general duty as to telephone numbering functions under section 63 of the Act.
- A5.13 Any direction which is currently in force, made under the General Conditions that Ofcom is hereby revoking, will continue to have effect after revocation of the relevant General Condition, other than where Ofcom has removed the relevant direction-making power from the corresponding Revised General Condition that Ofcom is now setting²⁶⁷ or revoked the direction. Specifically, the Metering and Billing Direction²⁶⁸ issued by Ofcom under General Condition 11, will remain in force, as amended by Ofcom (see the Notification set out in Annex 8).²⁶⁹
- A5.14 The Revised General Conditions that Ofcom has decided to set shall enter into force on 1 October 2018.
- A5.15 Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 48C(1) of the Act.
- A5.16 In this Notification:
- a) “**Act**” means the Communications Act 2003;
 - b) “**General Conditions of Entitlement**” or “**General Conditions**” means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time;

²⁶⁷ Ofcom’s direction under General Condition 17.9(a) set out in Annex 4 to the Ofcom’s statement of 1 December 2014 entitled "Telephone number application form", as amended by Ofcom on 1 July 2015, will cease to have effect from 1 October 2018 since Ofcom has decided to remove General Condition 17.9(a).

²⁶⁸ The current version of the Metering and Billing direction is set out in Annex 2 to Ofcom’s statement of 31 July 2014, entitled “Review of the Metering and Billing Direction”:

https://www.ofcom.org.uk/_data/assets/pdf_file/0032/58838/statement.pdf

²⁶⁹ Ofcom is consulting on updating the direction that Oftel made on 30 July 2003 under General Condition 5.1(b) by revoking that direction and replacing it with a new direction (see Annex 9).

- c) **“Ofcom”** means the Office of Communications;
- d) **“Revised General Conditions of Entitlement”** or **“Revised General Conditions”** means the general conditions set under section 45 of the Act by Ofcom on 19 September 2017, which will enter into force on 1 October 2018.

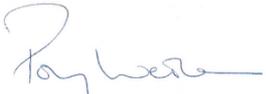
A5.17 Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.

A5.18 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.

A5.19 The Schedule to this Notification (which is set out in Annex 14 to this document) shall form part of this Notification.

Signed by



Polly Weitzman

General Counsel

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

19 September 2017

A6. Notification of Ofcom's decision to modify the National Telephone Numbering Plan

Notification of modifications to the National Telephone Numbering Plan under section 60 of the Communications Act 2003

Background

- A6.1 Section 60 of the Act applies since General Condition 17 is a numbering condition for the time being having effect by reference to provisions of the National Telephone Numbering Plan (the “**Numbering Plan**”) and also the Revised General Condition B1 will have effect by reference to the provisions of the Numbering Plan when it comes into force on 1 October 2018.
- A6.2 On 20 December 2016, Ofcom published a notification under section 60(3) of the Act setting out proposals to modify the Numbering Plan (the “**2016 Notification**”).
- A6.3 A copy of the 2016 Notification was sent to the Secretary of State.
- A6.4 In the 2016 Notification (and accompanying consultation document), Ofcom invited representations on the proposals by 14 March 2017.
- A6.5 By virtue of section 60(5) of the Act, Ofcom may give effect to the proposals with respect to which it has published a notification under section 60(3), with or without modifications, where Ofcom has:
- a) considered every representation about the proposals made to Ofcom within the period specified in the notification; and
 - b) had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- A6.6 Ofcom received responses to the 2016 Notification and has considered every such representation made in respect of the proposals set out in the 2016 Notification (and the accompanying consultation document); and the Secretary of State has not notified Ofcom of any obligation of the United Kingdom for this purpose.

Decision

- A6.7 In accordance with section 60 of the Act, Ofcom has decided to modify the provisions of the Numbering Plan. The modifications to the Numbering Plan are set out in the Schedule to this Notification.
- A6.8 Ofcom's reasons for making these modifications, and the effect of the modifications, are set out in the accompanying statement.
- A6.9 Ofcom considers that the modifications comply with the requirements of section 60(2) of the Act.

- A6.10 In making these proposals, Ofcom has considered and acted in accordance with its general duty as to telephone numbering functions under section 63 of the Act, its general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
- A6.11 The modifications shall enter into force on 1 October 2018.
- A6.12 In this Notification:
- a) “**Act**” means the Communications Act 2003;
 - b) “**General Conditions of Entitlement**” or “**General Conditions**” means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time;
 - c) “**Ofcom**” means the Office of Communications;
 - d) “**Numbering Plan**” means the National Telephone Numbering Plan published by Ofcom pursuant to section 56(1) of the Act, and amended from time to time;
 - e) “**Revised General Conditions of Entitlement**” or “**Revised General Conditions**” means the general conditions set under section 45 of the Act by Ofcom on 19 September 2017, which will enter into force on 1 October 2018.
- A6.13 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.
- A6.14 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.
- A6.15 The Schedule to this Notification shall form part of this Notification.



Polly Weitzman

General Counsel

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

19 September 2018

SCHEDULE

The modifications to the Numbering Plan are shown as follows:

- (a) the words in marked red text and highlighted indicate the insertions; and
- (b) the words marked in strike-through and highlighted indicate the deletions:

The following modifications to the Numbering Plan shall enter into force on 1 October 2018.

1. In paragraph 1 of the “Definitions and Interpretation” section, the following amendments shall be made to the definitions of ‘Access Charge’, ‘Communications Provider’, ‘General Conditions of Entitlement’, ‘Per Call Release of CLI’, ‘Portability’ and ‘Service Charge’:
 - (i) **“Access Charge**’ shall have the meaning ascribed to that term in ~~General Condition 17 of the General Conditions of Entitlement~~ **the Definitions set out in the Schedule to the Notification issued by Ofcom on 19 September 2017 setting general conditions under sections 45 and 48(1) of the Act (as that Schedule may be modified from time to time);**”;
 - (ii) **“Communications Provider**’ means a person who **(within the meaning of section 32(4) of the Act)** provides an Electronic Communications Network or an Electronic Communications Service;”;
 - (iii) **“General Conditions of Entitlement**’ means those conditions set by ~~the Director General of Telecommunications on 22 July 2003~~ **Ofcom on 19 September 2017 under section 45 of the Act** by way of a Notification published pursuant to section 48(1) of the Act, and modified by Ofcom from time to time;”;
 - (iv) **“Per Call Release of CLI**’ means the ability to release the identity of the ~~Caller~~ **Calling Party** in accordance with normal Calling Line Identification;”;
 - (v) **“Portability**’ shall have the meaning ascribed to that term in ~~General Condition 18 of the General Conditions of Entitlement~~ **the Definitions set out in the Schedule to the Notification issued by Ofcom on 19 September 2017 setting general conditions under sections 45 and 48(1) of the Act (as that Schedule may be modified from time to time)**”; and
 - (vi) **“Service Charge**’ shall have the meaning ascribed to that term in ~~General Condition 17 of the General Conditions of Entitlement~~ **the Definitions set out in the Schedule to the Notification issued by Ofcom on 19 September 2017 setting general conditions under sections 45 and 48(1) of the Act (as that Schedule may be modified from time to time)**”.
2. In paragraph 2 of the “Definitions and Interpretation” section, sub-paragraph (i) shall be amended as follows:
 - (i) ~~in paragraph 1 (Definitions) of Part 1 of the Schedule to the Notification published by the Director General of Telecommunications on 22 July 2003 under section 48(1) of the Act and modified by Ofcom from time to time;~~ **in the Definitions set out in the Schedule to the Notification issued by Ofcom on 19 September 2017 setting general**

conditions under sections 45 and 48(1) of the Act (as that Schedule may be modified from time to time);”.

3. The last sentence in the “Introduction” section shall be amended as follows:

“Part C should be read in conjunction with paragraph 17.3 B1.4 of General Condition 17 B1 of the General Conditions of Entitlement.”

4. In Part A, Section A1 “Public Telephone Network Numbers”, the entries for the following numbers shall be modified as follows:

(i) 0843, 0844 and 0845 numbers

| | | |
|---------------------|------------------------|--|
| 0843, 0844 and 0845 | Non-Geographic Numbers | <p>Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs 17.24 – 17.30 B1.21 – B1.27 of the General Conditions of Entitlement.</p> <p>The applicable Service Charge must not exceed:</p> <ul style="list-style-type: none"> • 5.833 pence per minute, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or • 5.833 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate. |
|---------------------|------------------------|--|

(ii) 0870, 0871, 0872 and 0873 numbers

| | | |
|---------------------------|------------------------|--|
| 0870, 0871, 0872 and 0873 | Non-Geographic Numbers | <p>Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs 17.24 – 17.30 B1.21 – B1.27 of the General Conditions of Entitlement.</p> <p>The applicable Service Charge must not exceed:</p> <ul style="list-style-type: none"> • 10.83 pence per minute, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or • 10.83 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate. |
|---------------------------|------------------------|--|

(iii) 090 and 091 and 098 numbers

| | | |
|---|--|--|
| 090 and 091 (except 0908 and 0909 – see Part C5) | Non-Geographic Numbers | Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs 17.24 – 17.30 B1.21 – B1.27 of the General Conditions of Entitlement. |
| 098 | Non-Geographic Numbers: used to provide Sexual Entertainment Services | The applicable Service Charge must not exceed: <ul style="list-style-type: none"> • 300 pence per minute, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or • 500 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate. |

(iv) 118XXX numbers

| | | |
|--------|--|---|
| 118XXX | 6-digit Non-Geographic Numbers used to access a Directory Enquiry Facility (“Type B Access Codes”) | Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs 17.24 – 17.30 B1.21 – B1.27 of the General Conditions of Entitlement. |
|--------|--|---|

5. In Part C, Section C5 “Public Communications Network Numbers which have been individually Allocated”, the entry for 0908 and 0909 numbers shall be modified as follows:

| | | |
|------------------|---|---|
| 0908 and 0909 | Non-Geographic Numbers used to provide Sexual Entertainment Services. These numbers are no longer available for Allocation, but numbers which have been Allocated may be Adopted or otherwise used. | Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs 17.24 – 17.30 B1.21 – B1.27 of the General Conditions of Entitlement. The applicable Service Charge must not exceed: <ul style="list-style-type: none"> • 300 pence per minute, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or • 500 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate. |
|------------------|---|---|

A7. Notification of Ofcom's decision to modify the Premium Rate Services Condition under s120A of the Communications Act 2003

Background

- A7.1 On 20 December 2016, Ofcom published a notification under section 120A of the Act setting out proposals to modify the Numbering Plan (the “**2016 Notification**”).
- A7.2 A copy of the 2016 Notification was sent to the Secretary of State.
- A7.3 In the 2016 Notification (and accompanying consultation document), Ofcom invited representations on the proposals by 14 March 2017.
- A7.4 By virtue of section 120A(5) of the Act, Ofcom may give effect to the proposals with respect to which it has published a notification under section 120A, with or without modifications, where Ofcom has:
- a) considered every representation about the proposals made to Ofcom within the period specified in the notification; and
 - b) had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- A7.5 Ofcom received responses to the 2016 Notification and has considered every such representation made in respect of the proposals set out in the 2016 Notification (and the accompanying consultation document); and the Secretary of State has not notified Ofcom of any obligation of the United Kingdom for this purpose.

Decision

- A1.1 Ofcom has decided to modify the PRS Condition. The modifications are set out in the Schedule to this Notification.
- A1.2 Ofcom's reasons for making this decision, and the effect of the modifications, are set out in paragraphs 18.9 - 18.12 of this document.
- A1.3 Ofcom considers that this decision complies with the requirements of sections 47, 120 and 120A of the Act, insofar as they are applicable.
- A1.4 In making this decision, 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.
- A1.5 The modification shall enter into force on 1 October 2018.
- A1.6 A copy of this Notification and the accompanying consultation document is being sent to the Secretary of State.
- A1.7 In this Notification:

- a) “**Act**” means the Communications Act 2003;
- b) “**Ofcom**” means the Office of Communications; and
- c) “**PRS Condition**” means the condition set under section 120 of the Act by the Director General of Telecommunications on 23 December 2003, as amended from time to time.

A1.8 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.

A1.9 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.

A1.10 The Schedule to this Notification shall form part of this Notification.



Polly Weitzman

General Counsel

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

19 September 2017

SCHEDULE

The modifications to the PRS Condition are shown as follows:

- (a) the words marked in red text and highlighted indicate the insertions; and
 - (b) the words marked in strike-through and highlighted indicate the deletions.
-
- 1. The Communications Provider and Controlled Premium Rate Service Provider shall comply with:
 - (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and
 - (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.

 - 2. In this Condition,
 - (a) “Act” means the Communications Act 2003;
 - (b) “Approved Code” means a code approved for the time being under section 121 of the Act;
 - (c) “Communications Provider” means either:
 - (i) a person who:
 - (A) is the provider of an Electronic Communications Service or an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
 - (B) is a Controlled Premium Rate Service Provider in respect of that Controlled Premium Rate Service;
 - (ii) a person who:
 - (A) is the provider of an Electronic Communications Service used for the provision of a Controlled Premium Rate Service; and
 - (B) under arrangements made with a Controlled Premium Rate Service Provider, is entitled to retain some or all of the charges received by him in respect of the provision of the Controlled Premium Rate Service or of the use of his Electronic Communications Service for the purposes of the Controlled Premium Rate Service; or
 - (iii) a person who:
 - (A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
 - (B) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of that Controlled

Premium Rate Service with a Controlled Premium Rate Service Provider;

- (d) “Chatline Service” means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:
- (i) each of them having agreed with each other; or
 - (ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted, in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service;
- (e) “Controlled Premium Rate Service” means a Premium Rate Service (other than a service which is only accessed via an International Call or a service which is delivered by means of an Electronic Communications Service and is provided by the person who is also the provider of the Electronic Communications Service) which falls within one or more of the following categories:
- ~~(i)~~ until the Effective Date, the service is obtained through a Special Services Number (except an 0843/4 number), and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 5 pence per minute for BT customers inclusive of value added tax;
 - ~~(i)(ii)~~ from and including the Effective Date, the service is obtained through a PRS Number and the Service Charge for the call by means of which the service is obtained is a rate which exceeds 5.833 pence per minute or 5.833 pence per call, exclusive of value added tax;
 - ~~(ii)(iii)~~ the service is obtained other than through a Special Services Number or a PRS Number, and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax (and which also includes, for the avoidance of any doubt, a service delivered by means of an Electronic Communications Service which is charged by means of a Payment Mechanism and for which the charge exceeds 10 pence inclusive of value added tax);
 - ~~(iii)(iv)~~ the service is a Chatline Service;
 - ~~(iv)(v)~~ the service is Internet Dialler Software operated; or
 - ~~(v)(vi)~~ the service is a Sexual Entertainment Service;

- (f) “BT” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 and the Companies Act 2006;
- (g) “Controlled Premium Rate Service Provider” means a person who:
- (i) provides the contents of a Controlled Premium Rate Service;
 - (ii) exercises editorial control over the contents of a Controlled Premium Rate Service;
 - (iii) packages together the contents of a Controlled Premium Rate Service for the purpose of facilitating its provision; or
 - (iv) makes available a facility comprised in a Controlled Premium Rate Service;
- (h) “Dial-up Telephone Number” means the telephone number used by an end user's computer that connects it to the Internet;
- ~~(i)~~ “Effective Date” means 1 July 2015;
- ~~(i)(j)~~ “Enforcement Authority” means, in relation to an Approved Code, the person who under the code has the function of enforcing it;
- ~~(j)(k)~~ “Facility” includes reference to those things set out in section 120(14) of the Act;
- ~~(k)(l)~~ “International Call” means a call which terminates on an Electronic Communications Network outside the United Kingdom;
- ~~(l)(m)~~ “Internet Dialler Software” is software that replaces a Dial-up Telephone Number with a different Dial-up Telephone Number; other than where it is used so that:
- (i) an end-user's existing Internet Service Provider replaces the Dial-up Telephone Number; or
 - (ii) an end-user moves from his existing Internet Service Provider to another Internet Service Provider or is so moved with his consent;
- ~~(m)(n)~~ “Internet Service Provider” means a person who provides end-users, by means of a Dial-up Telephone Number, with connection to the Internet in the ordinary course of its business;
- ~~(n)(o)~~ “National Telephone Numbering Plan” means a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act;
- ~~(o)(p)~~ “Non-Geographic Number” shall have the meaning ascribed to it in the National Telephone Numbering Plan;
- ~~(p)(q)~~ “Premium Rate Service” shall have the meaning ascribed to it by section 120(7) of the Act;
- ~~(q)(r)~~ “Payment Mechanism” is a mechanism whereby the charge for a service delivered by means of an Electronic Communications Service is paid to the Communications Provider providing the Electronic Communications Service;

- (r)(s) “PRS Number” means a Non-Geographic Number starting 087, 090, 091 or 118;
- (s)(t) “Service Charge” shall have the meaning ascribed to that term in ~~the Definitions set out in the Schedule to the Notification issue by Ofcom on 19 September 2018 setting general conditions under sections 45 and 48(1) of the Act (as that Schedule may be modified from time to time)~~ ~~General Condition 17 of the general conditions set by the Director General of Telecommunications on 22 July 2003 by way of a Notification published pursuant to section 48(1) of the Act, and modified by Ofcom from time to time;~~ ~~and~~
- (t)(u) “Sexual Entertainment Service” means an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature; ~~and.~~
- (v) ~~“Special Services Number” means a telephone number designated by Ofcom in the National Telephone Numbering Plan as Special Services basic rate, Special Services higher rate or Special Services at a Premium Rate.~~

For the purposes of interpreting this Condition, except in so far as the context otherwise requires, words or expressions shall have the same meaning as ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has been ascribed in the Act.

A8. Notification of Ofcom's decision to modify the Metering and Billing Direction under section 49A of the Communications Act 2003

Decision to modify the Metering and Billing Direction

Background

- A8.1 On 20 December 2016, Ofcom issued a notification pursuant to section 49A of the Act setting out its proposals for the modification of the 2014 Metering and Billing Direction, given under Condition 11 on of the General Conditions of Entitlement (the "2016 Notification").
- A8.2 A copy of the 2016 Notification was sent to the Secretary of State in accordance with section 49C(1) of the Act.
- A8.3 Ofcom invited representations about any of the proposals set out in the 2016 Notification and accompanying consultation document by 14 March 2017.
- A8.4 By virtue of section 49A(6) of the Act, Ofcom may give effect to the proposals with respect to which it has published a notification under section 49A, with or without modifications, where Ofcom has:
- a) considered every representation about the proposals made to Ofcom within the period specified in the notification; and
 - b) had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- A8.5 Ofcom received responses to the 2016 Notification and has considered every such representation made to it in respect of the proposals set out in the 2016 Notification and the accompanying explanatory statement; and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose.
- A1.11 From 1 October 2018, the General Conditions will be revoked and replaced by the Revised General Conditions, which will continue to include the relevant direction-making power (condition C3.4 of the Revised General Conditions). Therefore, the 2014 Metering and Billing Direction will continue to have effect after revocation of General Condition 11.

Decision

- A8.6 Ofcom has decided to modify the 2014 Metering and Billing Direction. The Revised Metering and Billing Direction is set out in the Schedule to this Notification, which is published as a separate Annex (Annex 15).
- A8.7 Ofcom's reasons for making this decision, and the effect of this decision, are set out in paragraphs 10.84 - 10.99 of this document.

- A8.8 Ofcom considers that the decision complies with the requirements of sections 49, 49A and 49C of the Act, insofar as they are applicable.
- A8.9 Ofcom considers that these decisions are not of EU significance pursuant to section 150A(2) of the Act.
- A8.10 In making this decision, 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.
- A8.11 The Revised Metering and Billing Direction shall enter into force on 1 October 2018.
- A8.12 A copy of this Notification and the statement is being sent to the Secretary of State in accordance with section 49C(1) of the Act.
- A8.13 In this Notification:
- a) **“2014 Metering and Billing Direction”** means the direction issued by Ofcom using its power derived from General Condition 11 on 31 July 2014²⁷⁰;
 - a) **“Act”** means the Communications Act 2003;
 - b) **“General Conditions of Entitlement”** or **“General Conditions”** means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time;
 - b) **“Ofcom”** means the Office of Communications; and
 - c) **“Revised General Conditions of Entitlement”** or **“Revised General Conditions”** means the general conditions set under section 45 of the Act by Ofcom on 19 September 2017, which will enter into force on 1 October 2018; and
 - d) **“Revised Metering and Billing Direction”** means the **2014 Metering and Billing Direction**, as amended by Ofcom on 19 September 2017, which is set out in Annex 15 of this document.
- A8.14 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.
- A1.12 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.
- A8.15 The Schedule to this Notification shall form part of this Notification.



²⁷⁰The current version of the Metering and Billing direction is set out in Annex 2 to Ofcom’s statement of 31 July 2014, entitled “Review of the Metering and Billing Direction”:
https://www.ofcom.org.uk/data/assets/pdf_file/0032/58838/statement.pdf

Polly Weitzman

General Counsel

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

19 September 2017

A9. Notification of a proposed revocation and the giving of a direction under s49A(3) of the Communications Act 2003

Proposal for a new Emergency Planning Direction

- A9.1 Ofcom, in accordance with section 49A(3) of the Act, hereby make the following proposals for Directions, by reference to which the Revised General Condition A4 on emergency planning will have effect:
- a) the revocation of the 2003 Oftel Direction from 1 October 2018 or such later date as specified in the final Notification; and
 - b) the giving of the draft Emergency Planning Direction set out in the Schedule to this Notification.
- A9.2 The draft Emergency Planning Direction is set out in the Schedule to this Notification.
- A9.3 The effect of, and Ofcom's reasons for making, these proposals is set out in paragraphs 4.115 - 4.121 of this consultation document.
- A9.4 Ofcom consider that the proposals are not of EU significance pursuant to section 150A(2) of the Act.
- A9.5 Ofcom consider that the proposals comply with the requirements of sections 49 to 49C of the Act, insofar as they are applicable.
- A9.6 In making the proposal set out in this Notification, Ofcom have considered and acted in accordance with their general duties in section 3 of the Act and the six community requirements in section 4 of the Act.
- A9.7 Representations may be made to Ofcom about the proposal set out in this Notification by 5pm on 14 November 2018.
- A9.8 If implemented, the proposed Emergency Planning Direction shall enter into force on 1 October 2018 or such later date as specified in the final Notification.
- A9.9 Copies of this Notification and the accompanying consultation document are being sent to the Secretary of State in accordance with section 49C(1) of the Act.
- A9.10 In this Notification:
- c) "**2003 Oftel Direction**" means the direction made by Oftel on 30 July 2003 for the purposes of General Condition 5.1(b)²⁷¹;

²⁷¹ The 2003 Oftel Direction is available at the Annex to this statement:
http://webarchive.nationalarchives.gov.uk/20080715052813/http://www.ofcom.org.uk/static/archive/oftel/ind_info/licensing/determinations/2003/emergplan0803.pdf

- d) **“Act”** means the Communications Act 2003;
- e) **“Emergency Planning Direction”** means the proposed new direction which would replace the 2003 Oftel Direction and which is set out in the Schedule to this Notification;
- f) **“General Conditions of Entitlement”** or **“General Conditions”** means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time; and
- g) **“Ofcom”** means the Office of Communications; and
- h) **“Revised General Conditions of Entitlement”** or **“Revised General Conditions”** means the general conditions set under section 45 of the Act by Ofcom on 19 September 2017, which will enter into force on 1 October 2018.

A9.11 For the purpose of interpreting this Notification:

- a) 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;
- b) headings and titles shall be disregarded; and
- c) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

A9.12 The Schedule to this Notification shall form part of this Notification.



Polly Weitzman

General Counsel

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

19 September 2017

SCHEDULE

The Emergency Planning Direction

Introduction

Condition A4.2 of the Revised General Conditions of Entitlement states that:

“A4.2 Subject to paragraph A4.4, **Regulated Providers** shall, on the request of and in consultation with:

- (a) the authorities responsible for **Emergency Organisations**; and
- (b) such departments of central and local government as **Ofcom** may from time to time direct for the purposes of this **Condition**,

make arrangements for the provision or rapid restoration of such communications services as are practicable and may reasonably be required in disasters (including in any major incident having a significant effect on the general public and in any incident of contamination involving radioactive substances or other toxic materials).”

Pursuant to Condition A4.2(b), this Direction sets out those departments of central and local government, on who’s request and in consultation with which, CPs may be required to make arrangements for the provision or rapid restoration of such communications services as are practicable and may reasonably be required in disasters (including in any major incident having a significant effect on the general public and in any incident of contamination involving radioactive substances or other toxic materials).

The Direction

Those central and local government departments with whom the Regulated Provider shall be required to consult pursuant to Condition A4.2 of the General Conditions of Entitlement and who may make a request for the arrangements specified in that paragraph to be made shall be:

- a) all ministerial and non-ministerial departments of UK Government;
- b) in relation to England:
 - i) Metropolitan districts;
 - ii) London boroughs;
 - iii) the City of London;
 - iv) the Greater London Authority;
 - v) Local Government Regulation;
 - vi) Unitary authorities;
 - vii) the Council of the Isles of Scilly;

- viii) County councils; and
- ix) District councils;
- c) in relation to Wales:
 - i) a county council; and
 - ii) a county borough council;
- d) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; and
- e) in relation to Northern Ireland, a local council.

In this Direction:

- a) “**Regulated Provider**” has the meaning given to it in Revised General Condition A4.1;
- f) “**Revised General Conditions of Entitlement**” or “**Revised General Conditions**” means the general conditions set under section 45 of the Act by Ofcom on 19 September 2017, which will enter into force on 1 October 2018;
- g) except in so far as the context otherwise requires, any word or expression shall have the same meaning as it has in the Revised General Conditions of Entitlement; and
- h) the Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

A10. Ofcom's revised Guidance under Condition C1

Introduction

A10.1 This is Ofcom's guidance on how we are likely to apply General Conditions (GCs) C1.6- C1.9 in relation to changes to contractual prices in consumer and small business contracts.

A10.2 GC C1.6 states:

C1.6 Regulated Providers shall:

- (a) give their Subscribers adequate notice not shorter than one month of any contractual modifications likely to be of material detriment to that Subscriber;
- (b) allow their Subscribers to withdraw from their contract without penalty upon such notice; and
- (c) at the same time as giving the notice in Condition C1.6(a), inform the Subscriber of its ability to terminate the contract without penalty if the proposed modification is not acceptable to the Subscriber.

A10.3 GCs C1.7 to C1.9 set out increases in price that are contractual modifications likely to be of material detriment to a Consumer or Small Business Customer for the purposes of condition C1.6.

Changes to contractual prices

Application to bundles

A10.4 In some circumstances, communications services may be marketed and sold to subscribers together as part of a bundle. Such a bundle may include some services subject to GCs C1.6 to C1.9 and some not. It will be a question of fact and proper contractual construction as to whether all the services comprised in any such bundle are:

- a) governed by one set of terms and conditions that comprise a single contract;
- b) purportedly subject to separate terms and conditions for each service but which in reality comprise a single contract (as may be the case where, for example, the subscriber is required to pay a single price for the bundle as a whole); or
- c) subject to separate terms and conditions for each service such that each service can properly be said to be subject to separate contracts.

A10.5 In the first two circumstances, Ofcom is likely to treat GCs C1.6 to C1.9 as applying to the whole contract even if there are elements within it which, on their own, are not subject to that condition. We would be likely to regard any mid-contract increase in the agreed core-subscription price to be materially detrimental (or likely to be materially detrimental) for the purposes of GCs C1.6 to C1.9.

Notification of contract modifications

A10.6 We expect Communication Providers (“CPs”) to actively communicate to their subscribers any proposed contractual modifications. CPs need to ensure that subscribers know how such changes will be communicated to them. For example, the terms and conditions should state the method(s) used to communicate contractual modifications and timescales for doing so.

Notification methods

A10.7 Notifications should be set out with due prominence in order to attract the subscriber’s attention. They should be in a form which subscribers can reasonably be expected to read. Letters and emails (if that is the means of communication chosen by the subscriber) are the most obvious examples of notifications.

- i) Hard copy notifications should be clearly marked as such in a prominent manner e.g. on the front of the envelope/communication material/the subscriber’s bill, and possibly in more than one place in order to attract the subscriber’s attention.
- ii) Providers should consider issuing the modification notification on a separate piece of paper from any marketing material. This could help to ensure that the notification does not get lost in other communications that the subscriber receives from the provider but may not necessarily read.
- iii) Other printed material, such as pamphlets or magazines, may be used but whether this would be deemed sufficient will depend on how transparent it is made to the subscriber upfront that such publications may contain important information. Not all customers read pamphlets and magazines sent by their CP.
- iv) Email notifications of contract modifications should be clearly marked as such in the subject line of the email.
- v) We do not consider that asking subscribers regularly to check their CP’s website for possible changes to their contract is acceptable.

Content of notification

A10.8 The notification must be clear and easy to understand. For example, it should make the subscriber aware of the nature of the contract modification, the likely impact on him/her, and, where relevant, set out clearly what action the subscriber can take to avoid the impact, should he/she wish to.

A10.9 Information about the subscriber’s termination rights should be made clear upfront. For example, on the front page of a hard copy notification, in the main email message rather than via a link in the message or on the actual webpage of the modification notification rather than via a link to another page.

Notification of termination rights

A10.10 Where it arises, a subscriber’s right to terminate their contract must be real and capable of effective exercise in practice.

- A10.11 To that end, where the subscriber does have the ability to terminate, this should be made clear in the main body of the notification rather than in a footnote or a reference to the relevant clause of the terms and conditions.
- A10.12 The minimum timescale that CPs should give subscribers the ability to exit the contract for any relevant changes is 30 days. This is to enable subscribers to consider the proposed contractual modification and give them time to research their options.
- i) When this 30 day period for termination starts and ends should be made clear to the subscriber in the notification they receive from the CP of the proposed changes.
 - ii) When the cancellation of the services actually takes effect following a subscriber's request to terminate should also be made clear.
 - iii) CPs may give their customers a period of more than 30 days in which to withdraw from the contract if they wish to do so.
- A10.13 The terms and conditions or other practices CPs apply (whether in contracts for bundled services or other contracts relating to that in respect of which a relevant price rise occurs) in respect of contract termination are also important considerations. Terms and/or practices which frustrate the practical effect of GC C1.6 are liable to attract suspicion of non-compliance with the relevant rules.
- A10.14 CPs should also keep in mind the need to comply with all their obligations under the General Conditions, including as to switching processes. This is particularly relevant where the rules provide for a gaining provider-led process under which a subscriber is able to switch providers by contacting a new provider and without needing to contact their existing one.
- A10.15 Neither GC C1.6 itself nor this guidance requires that a subscriber must exercise their rights under that condition by contacting their existing provider. One way the CP making contract modifications could meet its obligations in a relevant case is by telling the subscriber that the GC C1.6 termination rights may be exercised by contacting a new provider.

A11. Proposed extension of Ofcom's Guidance under Condition C1 to cover termination procedures

Guidance on 'disincentives to switch' under General Condition C1.3

- A11.1 This guidance does not form part of General Condition C1.3 (GC C1.3). Its purpose is assist Communications Providers (CPs) by outlining Ofcom's likely approach to investigating whether certain conditions or procedures for contract termination comply with GC C1.3. It is not an exhaustive list of the types of conditions or procedures that Ofcom may consider under GC C1.3.
- A11.2 We have included some examples of what we consider to be good practice in relation to a number of specific procedures, as identified through our monitoring and enforcement work. CPs may wish to consider these examples when considering compliance with GC C1.3. This guidance also incorporates our previous guidance on automatically renewal contracts.
- A11.3 The guidance is not binding on Ofcom and while we will take it into account, we will determine compliance with GC C1.3 on the basis of the individual circumstances of any given case. However, where we decide to depart from the guidance, we expect to give reasons for doing so. Words and expressions used in GC C1.3 shall have the same meaning when used in this guidance.

Conditions or procedures for contract termination acting as a disincentive for End-Users against changing their CP

- A11.4 We consider that "conditions or procedures for contract termination" should be interpreted broadly. In particular, we consider that, as well as covering industry practices and a CP's contractual conditions, a CP's internal processes may also be procedures that potentially provide a disincentive to switch providers. Such internal processes need not necessarily be in writing, as it is their effect that is relevant, rather than their form. In addition, we consider that behaviour of individual customer service agents that is inconsistent with a CP's written or established conditions or procedures could itself amount to a breach of GC C1.3 in certain circumstances; for example, if it demonstrated a failure by the CP to have sufficient procedures in place to ensure agents are properly trained, or for monitoring their compliance with internal procedures.
- A11.5 We consider that to act as a "disincentive" a condition or procedure does not necessarily have to deter an end-user from switching (although it may do so). A condition or procedure could cause unreasonable effort or hassle, undue difficulty when seeking to terminate a contract such that it acts as a disincentive for an end-user even if that end-user ultimately still completes a switch of provider.

A11.6 We recognise that some end-users contacting CPs about ending their services will have chosen to do so in order to have a conversation about any offers or options available to them and to take advantage of any discounts that the CP might provide as a result of those conversations. This can be beneficial to the consumers concerned, and we are not seeking to prevent these conversations for those end-users who wish to have them. However, we are also aware that other end-users want to terminate their services without having these conversations and in those circumstances prolonged retention activity may act as a disincentive. We set out below, among other things, how we expect CPs to consider the needs of these particular end-users within their conditions and procedures to ensure that they do not act as a disincentive against changing CP.

Contractual conditions and procedures for ending a contract

Communication options and accessibility of contract termination procedures

A11.7 To take account of different end-user preferences and needs, we expect CPs to offer a range of communication options for end-users to terminate their contracts. For example, as well as allowing end-users to terminate contracts by phone and/or webchat, (where the end-user would speak directly in real-time to a customer service agent), we expect CPs to offer alternative communication options, such as allowing end-users to terminate contracts by letter, email or via an online account (where they do not need to speak directly to the CP). We refer to the latter as “non-real time requests” throughout this guidance.

A11.8 The full range of communication options should be equally prominent to end-users, along with information about the steps required in order to end a contract. For example:

- a) We do not consider it sufficiently prominent for CPs only to reference the procedures in their contractual conditions.
- b) We would expect all communication options available to end-users to be published on a CP’s website in a clear, easy to understand and accessible form.
- c) Details on each of the communication options (including phone numbers, email addresses, links to online accounts etc.) could, for example, be listed on a dedicated “terminations” page on a CP’s website.

Identification and verification procedures

A11.9 We understand that CPs need to verify the identity of an end-user prior to terminating their contracts. However, these verification procedures should not themselves act as a disincentive to switch providers. We consider that any verification procedure relating to contract termination should be the same as required to make any other substantive change to an end-user’s account (e.g. a change requiring an additional financial commitment, such as an upgrade or contract renewal).

A11.10 We also expect CPs to:

- a) Make end-users aware, as part of explaining the range of communication options to end-users as set out in paragraph A11.8, if the end-user will need to provide information to verify their identity before their termination request will be processed;

- b) Be clear about the types of identification information that the end-user will need to provide before their contract will be terminated;
- c) Adopt identification and verification procedures that are consistent with the communication option that the end-user has selected to make their termination request.
 - The communication option selected by the end-user should be accepted by the CP as that end-user’s preferred communication method for providing verification information, unless the end-user consents to contact by a different communication method. For example, if an end-user has made a non-real time request, then the CP should have procedures in place to verify the end-user’s identity in the same way.
- d) Ensure that any verification procedure for contract termination does not delay the start of an end-user’s notice period. For example:
 - If an end-user makes a non-real time request, their notice should be effective from the date a CP receives that request and should not be dated from any subsequent contact with the end-user to verify their identity.

Minimum notice periods

- A11.11 We expect CPs to allow end-users to give more than the minimum period of notice specified within the CP’s contractual conditions to terminate their services, should the end-user request it, subject to any maximum technical limits.
- A11.12 We would expect to consider any condition or procedure where a CP required end-users to give the exact number of days’ notice specified as the minimum notice period in the CP’s contractual conditions as acting as a disincentive to switch. An example of this would be where an end-user tells a customer service agent that she wishes to end her contract in six weeks’ time, and that agent informs the end-user that she can’t give effective notice now, but instead needs to call back exactly 31 days before her proposed contract end date in order to give the exact minimum notice period outstanding on her contract.
- A11.13 We would expect that any maximum notice period and/or the ability of end-users to be able to give more than the minimum notice period to be clearly referenced in CPs’ internal guidelines for customer service agents (see paragraph A11.17). We also consider that any maximum notice period should be referenced in the end-user’s contractual conditions.

Internal processes for customer service agents handling termination requests

- A11.14 As noted above, we recognise that CPs are likely to wish to seek to retain end-users that express an intention to switch providers, usually through a conversation (referred to throughout this guidance as “a retention conversation”). We note that some consumers will welcome a retention conversation, while others will not.
- A11.15 Where the retention conversation occurs, we expect CPs to have procedures in place to ensure that:
- a) end-users seeking to terminate contracts do not face significantly longer wait times than those signing up to new contracts or making other changes;

- b) customer service agents' incentive schemes do not encourage poor behaviour that constitutes or otherwise gives rise to a disincentive to switch. We would not expect CPs' incentive schemes to:
 - i) penalise customer service agents for terminating contracts in response to an end-user's request or for correctly identifying that an end-user does not want to have a retention conversation; or
 - ii) reward customer service agents for failing to process termination requests. For example, CPs should have measures in place to ensure that agents only receive incentive payments for retaining a customer where the customer is satisfied with the outcome of a conversation about retaining their services;
- c) end-users' intentions are recorded and actioned correctly. For example, we expect CPs to:
 - i) ensure that their customer service agents make clear notes on an end-user's file about any retention conversation or offers made so that they can be accessed by other agents;
 - ii) give written confirmation to end-users once a termination request is processed; and
 - iii) have sufficient monitoring and quality assurance procedures to ensure that agents are processing end-users' termination requests as agreed;
- d) customer service agents understand what is appropriate retention activity, particularly in circumstances where it is evident that an end-user does not want to have a retention conversation. For example, CPs should:
 - i) train their agents to identify if an end-user making a termination request wants to do so without having a retention conversation;
 - ii) have clear internal guidance and provide regular briefings and ongoing training for agents about what is appropriate retention activity, making clear in particular that in circumstances where an end-user does not want to have a retention conversation, the agents understand it is not appropriate to engage in any further retention activity and that they should instead promptly process the termination request;
 - iii) have appropriate monitoring and quality assurance procedures to ensure that action is taken where agents act inappropriately and, for example, engage in inappropriate retention behaviours. We consider examples of inappropriate behaviour would include agents:
 - placing pressure on end-users or exhibiting aggressive behaviour;
 - failing to process termination requests as agreed;
 - continuing to engage in retention activity after the end-user has made it clear that they do not want engage in a retention conversation; or
 - agents giving end-users the impression that they are required to answer questions about their reasons for terminating a contract before their termination request will be processed.

- e) consider whether they need to adopt specific procedures for end-users who have made non-real time requests as, given their preferred communication option, these end-users may be more likely to not want to have a retention conversation.

A11.16 We consider that consumers whose circumstances make them vulnerable (e.g. due to age, physical or learning disability, physical or mental illness, low literacy, communication difficulties or changes in circumstances, such as bereavement) should be treated with greater care. Consistent with their obligations under GC C5, we expect CPs to develop specific guidance for agents about how to deal with termination requests from end-users in these circumstances.

Monitoring and review, including staff training and guidance

A11.17 We expect CPs to have clear written internal policies and processes for customer service agents handling termination requests for each of the conditions and procedures for contract termination outlined above (paragraphs A11.7-16) and any other condition or procedure for contract termination not covered by this guidance, such as early termination charges. These internal policies and processes should be sufficiently referenced in relevant agent training and briefings and captured within specific criteria quality assurance processes (e.g. scorecards) to ensure agents are regularly assessed on their compliance with them. For example, we would expect:

- a) CPs to have monitoring and quality assurance procedures to check that:
 - i) notice periods are being correctly applied, for example, when customers ask (or would have been eligible) for a longer notice period, or for end-users who make non-real time requests, checking whether the notice has been correctly applied from the date of the request;
 - ii) customer service agents are appropriately identifying when customers do not want to engage in a retention conversation and are processing these termination requests promptly as requested; and
 - iii) customer service agents handling termination requests meet service level agreements;
- b) CPs regularly to monitor all conditions and procedures for contract termination and make necessary and timely changes as required. For example, if a pattern of poor behaviour is identified via monitoring procedures, we would expect CPs to take steps to ensure that it does not occur in the future, and that they make any necessary changes to their internal policies and processes, including guidance, training and quality assurance procedures; and
- c) CPs to ensure that advisors who fall short of the behaviour required of them are subject to an appropriate disciplinary process.

Automatically renewable contracts

A11.18 GC C1.3 prohibits the use of Automatically Renewable Contracts (ARCs) in the provision of fixed voice and fixed broadband services to residential Consumers and Small Business

Customers (together ‘customers’ for the purposes of this Guidance). A fixed commitment period is the period beginning on the first day a contract takes effect and ending on a day falling no more than 24 months thereafter (GC C1.4). These provisions mean that CPs cannot roll forward (or automatically renew) a customer contract to a new fixed commitment period following the expiry of an initial or subsequent fixed commitment period without having obtained the Express Consent of the customer.

‘Informed choice’

A11.19 ‘Express Consent’ is defined as follows:

“Express Consent” means the express agreement of a Customer to contract with a Communications Provider in relation to each Fixed Commitment Period, where the Communications Provider has obtained such consent separately for each Fixed Commitment Period in a manner which has enabled the Customer to make an informed choice;

A11.20 The requirements of this definition are clear. However, we think it is important to clarify that the timing of Express Consent and method by which it is obtained are important in order for customers to be able to make an informed choice.

Method and timing for obtaining Express Consent

A11.21 Where Express Consent is given for a fixed commitment period initiated by a customer, we think it is likely to be reasonable for it to be given at any time in the process.

A11.22 In all other circumstances, CPs should ensure that customers have sufficient time to properly consider the deal they are being offered (including, for example, allowing them time to consider the market more generally) before setting deadlines requiring them to opt in to a further fixed commitment period. For the avoidance of doubt, the guidelines on the timing of obtaining Express Consent are in relation to CPs contacting customers for the purposes of renewing a fixed commitment period rather than, for example, for offering an upgrade or a different deal.

A11.23 We have not prescribed specific time frames with which CPs must comply, however, there are certain types of behaviour that are unlikely to satisfy the requirements of GC C1.3.

These include (but are not limited to) the following examples where:

- a) A CP has asked a customer to provide a “one off” consent which purports to cover all fixed commitment periods that that Consumer or Small Business Customer may subsequently enter into (“stacking”);
- b) Consent is sought at a time which is too far in advance of the ending of the fixed commitment period for a customer to reasonably know what other offers may be available at that time;
- c) A CP contacts a customer either on the day that their fixed commitment period is due to expire, or very shortly before that day, and requests their consent to enter into a further fixed commitment period in circumstances where that customer has not been given an opportunity to consider what other offers may be available.

A11.24 We expect CPs to have reasonable steps in place to prevent stacking and to ensure reasonable and appropriate timing for obtaining Express Consent. Therefore, other things being equal, it is generally likely to be reasonable for Express Consent to be obtained by CPs no sooner than six months before the end of each fixed commitment period.

Small Business Customers

A11.25 The definitions of a Domestic and Small Business Customer and Domestic or Small Business Customer for the purposes of GC C1.3 are consistent with the definition of Domestic and Small Business Customer in Section 52(6) of the Communications Act 2003 which is reproduced here for ease of reference.

“Domestic and Small Business Customer” means, in relation to a Communications Provider, a Customer of that Provider who is neither:

- (a) himself a Communications Provider; nor
- (b) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise).

A11.26 This means that the prohibition in GC C1.3 applies to small business customers with 10 or less employees (the ‘10 employee threshold’).

A11.27 We recognise that it may, at times, be difficult to identify whether or not a customer has 10 employees or less. CPs have informed us that they do not routinely collect or hold information about the number of employees of their business customers. Furthermore, employee numbers can fluctuate over short timescales. We accept, therefore, that estimates as to whether or not a customer falls within the 10 employee threshold may not be precise.

Approach to enforcement

A11.28 We note that other regulatory requirements also apply to small business customers as defined by Section 52(6) of the Act. For example, General Condition C4 (GC C4) requires that an alternative dispute resolution (ADR) scheme be made available to small business customers. We note also that we have indicated elsewhere that we will take a pragmatic and flexible approach to compliance monitoring and enforcement for these requirements. For example, in guidance on GC C4 we said “...we would be satisfied if, rather than having to contact the Complainant to determine whether they have ten or fewer employees (and is therefore potentially ‘eligible’ to take a case to ADR), a CP instead had reasonable processes in place for determining whether business customers are likely to be small businesses for the purpose of this obligation (for example, making an assessment based on annual communications expenditure of that customer).”

A11.29 We will take an approach consistent with this to enforcement of GC C1.3. In assessing compliance, we will consider whether CPs have taken reasonable steps to identify business customers to whom the prohibition applies. For example, they may (but not be limited to):

- a) Identify the size of the business by the annual communications spend and ensure that packages without ARCs are targeted to low spending small business customers.
- b) Identify the size of the business by the number of lines it has, and ensure that packages without ARCs are targeted to small business customers with few lines.
- c) Ensure that where customers self select an ARC (for example, by purchasing online), they may easily identify themselves as being 'eligible' for an ARC.

A11.30 In addition, in assessing compliance, we will expect CPs to take reasonable steps to inform staff and existing ARCs customers affected by the amendments to GC C1.3 of these new regulations. For example, CPs may:

- a) Ensure that sales staff are comprehensively briefed on the regulations.
- b) Provide clear information to customers about the regulations on ARCs.
- c) Ensure that sales scripts and contract negotiations include necessary information about, for example, migration process, key dates and charges, and any termination procedures.

A11.31 We also expect that CPs will take a reasonable approach to redress in cases where a small business customer has been sold an ARC inadvertently. Generally, we would expect the CP to enable the customer to exit the contract or move to another package penalty free in such cases (after the ending of any fixed commitment period). We believe this flexible approach is an appropriate way to monitor compliance and enforce the small business prohibition for businesses with 10 or less employees.

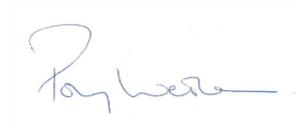
A12. Notification of proposed modifications to condition B1 of the revised GCs to further extend Ofcom's power to withdraw numbers

- A12.1 From 1 October 2018, the General Conditions of Entitlement will be revoked and replaced by the Revised General Conditions, which will continue to include a condition on the allocation, adoption and use of telephone numbers (condition B1 of the Revised General Conditions).
- A12.2 Ofcom, in accordance with sections 48(1) and 48A(3) of the Act, hereby proposes to modify condition B1 of the Revised General Conditions.
- A12.3 The draft modifications are set out in the Schedule to this Notification.
- A12.4 Ofcom's reasons for making these proposals, and the effect of the proposals, are set out in the accompanying consultation document.
- A12.5 Ofcom considers that the proposals comply with the requirements of sections 45 to 48C of the Act, insofar as they are applicable.
- A12.6 Ofcom considers that the proposals are not of EU significance pursuant to section 150A(2) of the Act.
- A12.7 In making the proposals set out in this Notification, Ofcom have considered and acted in accordance with their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act and its general duty as to telephone numbering functions under section 63 of the Act.
- A12.8 Representations may be made to Ofcom about the proposals set out in this Notification by 5pm on 14 November 2018.
- A12.9 If implemented, the proposed modifications to condition B1 of the Revised General Conditions shall enter into force on 1 October 2018 or such later date as specified in the final Notification.
- A12.10 Copies of this Notification and the accompanying consultation document are being sent to the Secretary of State in accordance with section 48C(1) of the Act.
- A12.11 In this Notification:
- a) **"Act"** means the Communications Act 2003;
 - b) **"General Conditions of Entitlement"** or **"General Conditions"** means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time; and
 - c) **"Ofcom"** means the Office of Communications; and
 - d) **"Revised General Conditions of Entitlement"** or **"Revised General Conditions"** means the general conditions set under section 45 of the Act by Ofcom on 19 September 2017, which will enter into force on 1 October 2018.

A12.12 For the purpose of interpreting this Notification:

- a) 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;
- b) headings and titles shall be disregarded; and
- c) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

A12.13 The Schedule to this Notification shall form part of this Notification.

A handwritten signature in blue ink, appearing to read "Polly Weitzman".

Polly Weitzman

General Counsel

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

19 September 2017

SCHEDULE

Proposed modifications to condition B1 of the Revised General Conditions

The proposed modifications to condition B1 of the Revised General Conditions are set out below. The words marked in red text and highlighted indicate the proposed insertions and the words marked in strike-through and highlighted indicate the proposed deletions.

B1. Allocation, adoption and use of telephone numbers

[Paragraphs B1.1 – B.17 are not reproduced for the purposes of this Notification.]

Withdrawal of a number allocation

B1.18 Ofcom may withdraw an **Allocation of Telephone Numbers** from a **Communications Provider** where:

- (a) the **Communications Provider** has not **Adopted** those **Telephone Numbers** within six months, or such other period as **Ofcom** may from time to time direct, from the date on which the **Telephone Numbers** were **Allocated**;
- (b) in relation to an **Allocation** of a series of **Telephone Numbers**, the **Communications Provider** has not **Adopted** those **Telephone Numbers** to any significant extent within six months, or such other period as **Ofcom** may from time to time direct, from the date on which the series of **Telephone Numbers** was **Allocated**; ~~or~~
- (c) the **Communications Provider** is unable to demonstrate to **Ofcom**'s reasonable satisfaction either:
 - (i) that those **Telephone Numbers** are assigned to a **Subscriber** (or **Subscribers**); or
 - (ii) if those **Telephone Numbers** are not so assigned, that they were so assigned within the preceding twelve months, and
the withdrawal is made for the purpose of securing that what appears to **Ofcom** to be the best and most efficient use is made of the numbers and other data that are appropriate for use as **Telephone Numbers**;
- (d) the **Communications Provider** has used a significant proportion of those **Telephone Numbers**, or has used such **Allocation** to a significant extent, inconsistently with this **Condition**, or to engage in fraud or misuse; or
- (e) **Ofcom** has advised the **Communications Provider** in writing that a significant proportion of those **Telephone Numbers**, or that such **Allocation** has been used to a significant extent, to cause harm or a nuisance, and the

Communications Provider has failed to take adequate steps to prevent such harm or nuisance.

[Paragraphs B1.18 – B.29 are not reproduced for the purposes of this Notification.]

A13. List of respondents

Respondents to the August 2016 consultation

Organisations

British Telecom (“**BT**”)

The Chief Fire Officers Association (the “**CFOA**”)

The Communications Consumer Panel and the Advisory Committee for Older and Disabled People (the “**CCP and ACOD**”)

The Federation of Communications Services (the “**FCS**”)

Internet Telephony Services Providers’ Association (“**ITSPA**”)

Microsoft Corporation (“**Microsoft**”)

The National Association of Deafened People (the “**NADP**”)

Nine Group

Ofcom Advisory Committee for England (the “**ACE**”)

Ofcom Advisory Committee for Scotland (the “**ACS**”)

RAC Motoring Service (“**RAC**”)

SSE

Talk Talk Group (“**Talk Talk**”)

Virgin Media Limited (“**Virgin Media**”)

Vodafone UK (“**Vodafone**”)

Two confidential respondents [redacted]

Individuals

Two confidential respondents [redacted]

Respondents to the December 2016 consultation

Organisations

Action on Hearing Loss

Age UK

British Telecom (“**BT**”)

Campaign to Retain Payphones (“**CARP**”)

Centre for Consumers and Essential Services - Leicester Law School
Consumer Forum for Communications (“**CFC**”)
Citizens Advice
Communications Consumer Panel and ACOD (“**CCP and ACOD**”)
Enigma QPM Limited (“**Enigma**”)
The Federation of Communications Services (“**FCS**”)
The Information Commissioner (“**ICO**”)
Internet Telephony Services Providers' Association (“**ITSPA**”)
Magrathea Telecommunications Ltd (“**Magrathea**”)
Mobile UK
Money Advice Trust
National Association of Deafened People (“**NADP**”)
Nine Group
Ombudsman Services
Phone-paid Services Authority (“**PSA**”)
Scope
Sky
Society of Chief Officers of Trading Standards in Scotland (“**SCOTSS**”)
SSE
StepChange Debt Charity (“**StepChange**”)
TalkTalk Group (“**TalkTalk**”)
Telefonica
Three
Truecall
TUV SUD BABT
UK Competitive Telecommunications Association (“**UKCTA**”)
Verastar Limited (“**Verastar**”)
Verizon
Virgin Media
Vodafone
Three confidential respondents [3<]

Individuals

Confidential Respondent 1 [REDACTED]

Confidential Respondent 2 [REDACTED]

Confidential Respondent 3 [REDACTED]

Confidential Respondent 4 [REDACTED]

Confidential Respondent 5 [REDACTED]

Confidential Respondent 6 [REDACTED]

Confidential Respondent 7 [REDACTED]

Confidential Respondent 8 [REDACTED]

Cary Hammond

Charles Lulham

[REDACTED]

Gina Antczak

Henryk Matysiak

Leon Tarnowski

Paul Conway

Peter Robinson

[REDACTED]

Quentin Gardiner

Richard Lucas

Trevor Williams

A14. Glossary

“**2015 ADR Regulations**” means the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015;

“**Access Directive**” means EU Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities;

“**Act**” means the Communications Act 2003;

“**August 2016 consultation**” means the Ofcom’s consultation of 2 August 2016 on our proposals in relation to the first part of this review, which focused mainly on the network functioning, numbering and technical conditions²⁷²;

“**Caller Line Identification**” or “**CLI**” provides information about the party making a telephone call;

“**Communications Provider**” or “**CP**” means a provider of electronic communications networks and services;

“**Cross Platform Switching Consultation**” means the Ofcom’s consultation of 29 July 2016 setting out Ofcom’s provisional view on the difficulties consumers currently experience when they switch, or consider switching, one or more of landline, fixed broadband and pay TV between the Openreach, KCOM, Virgin cable and Sky satellite platforms²⁷³;

“**Current Ofcom Code**” means the Code of Practice annexed to the current GC 14 which sets out the minimum standards with which CPs’ complaints handling procedures must comply;

“**Customer Complaints Code**” means the written complaints handling procedures that CPs are currently required to have under the Current Ofcom Code;

“**DCR Statement**”²⁷⁴ means Ofcom’s Statement of 25 February 2016 entitled “Making communications work for everyone. Initial conclusions from the Strategic Review of Digital Communications”;

“**December 2016 consultation**” means the Ofcom’s consultation of 20 December 2016 on our proposals in relation to the second part of this review, which focused mainly on the consumer protection conditions²⁷⁵;

“**Digital Economy Act**” means the Digital Economy Act 2017;

“**EU Framework**” means the European framework consisting of the following five Directives: the Framework Directive, the Authorisation Directive, the Access Directive, the Universal Service Directive and the Privacy and Electronic Communications Directive;

²⁷² <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions>

²⁷³ https://www.ofcom.org.uk/data/assets/pdf_file/0030/58845/making-switching-easier.pdf

²⁷⁴ <http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/digital-comms-review/DCR-statement.pdf>

²⁷⁵ <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions-relating-to-consumer-protection>

“**Gaining Provider**” or “**GP**” means the communications provider to which a customer wishes to move;

“**GCs**”, “**general conditions**” or “**conditions**” means the regulatory conditions set by Ofcom under section 45(2)(a) of the Act that apply to all communications providers that operate in the UK;

“**Losing Provider**” or “**LP**” means the current communications provider of a customer who is in the process of, or considering, switching communications provider;

“**Numbering Plan**” means the National Telephone Numbering Plan published by Ofcom pursuant to section 56(1) of the Act, and amended from time to time²⁷⁶; and

“**Reactive Save Prohibition**” means the rule in the current GC 22.15 which prevents the Losing Provider from making counter-offers to customers that it has been made aware, as a result of the information it receives as part of the switching process, intend to switch.

Abbreviations

“**ENTS**” means that European Telephone Numbering Space;

“**CLI**” means Calling Line Identification;

“**CP**” means Communications Provider;

“**GC**” means General Condition;

“**GP**” means Gaining Provider;

“**LP**” means Losing Provider;

“**PAC**” means Porting Authorisation Code;

“**PATS**” means Public Available Telephone Service;

“**PAYG**” means Pay-As-You-Go;

“**PBX**” means Private Branch Exchanges;

“**PRS**” means Premium Rate Services;

“**PSB**” means public service broadcasting; and

“**WAP**” Wireless Application Protocol.

²⁷⁶ https://www.ofcom.org.uk/data/assets/pdf_file/0013/102613/national-numbering-plan-june-2017.pdf