

Ombudsman Services' response to Ofcom's consultation document "Changes to General Conditions and Universal Service Conditions"

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- Ombudsman Services: Energy
- Ombudsman Services: Property
- Ombudsman Services: Copyright Licensing

This document is OSC's response to Ofcom's consultation document "Changes to General Conditions and Universal Service Conditions", issued on 24 February 2011. OSC is responding only to Questions 5, 9 and 10. We have no comments on any of the other issues. Ofcom's questions are listed below, followed by OSC's responses.

Question 5: Do you agree with our proposed approach to contract related requirements relating to the provision of additional information, the length of contracts and the conditions for termination?

OSC has no comments about the provision of additional information.

With regard to the proposals on contract duration, we note that they apply only to consumers and not businesses, whether small or otherwise. In general consumers currently seem to be able to get 12 month minimum contract periods (MCPs). The proposed modification would ensure that they can continue to do so.

On the matter of conditions for termination, consumers have always been able to benefit from GC 9.3, on termination of contracts where there has been a modification which is likely to be materially detrimental. OSC has seen examples of changes to contracts for small business customers where the changes are likely to have been materially detrimental, but where customers have been unable to terminate the contract because neither GC 9.3 nor the Unfair Terms in Consumer Contracts Regulations 1999 applied. Small business contracts can often be for MCPs of three years (or even more). The potential for detriment in such cases is therefore quite significant. We consider that the extension of the General Condition to include all Subscribers is likely to be of benefit to some customers.

If the change is implemented, we could consider complaints about such matters for small businesses, but while the change may apply to larger businesses they may be excluded from being able to use an Ofcom-approved ADR scheme. While the regulatory criterion for a business wishing to use ADR is ten or fewer employees regardless of annual telecoms spend, the main criterion for access to our ADR scheme, agreed with our participating companies, is that a company spends no more than £5,000 each year with a supplier. This was introduced as a

proxy because it is often difficult to establish how many people work for a company. It works well and we will continue to apply it.

Question 9. Do you agree with our proposals on the one working day requirement in relation to bulk mobile ports and in relation to fixed porting? If not, please explain why?

Question 10: Do you agree with our proposed approach to the porting compensation scheme requirement?

We currently carry out investigations against the background of prevailing law, regulation, and the supplier's terms and conditions. Where a supplier does not accept liability for some event we cannot require it to provide compensation. However, if we consider that the supplier has been negligent in some way, or that it has failed to do something which it could reasonably be expected to do, and further that this has led to a loss by the complainant, or has caused the customer stress or inconvenience, we can require it to make a goodwill award.

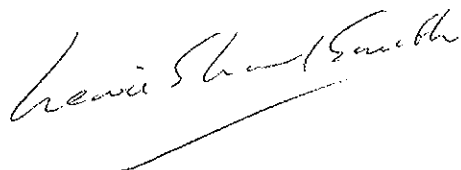
Ofcom proposes to require CPs to pay compensation for porting delays, but has decided to allow CPs to design their own schemes. We interpret this as suggesting that CPs must accept liability for the consequences of porting delays. Our view is that this is likely to be of benefit for customers.

Ofcom's suggestion that a scheme similar to those provided by some suppliers for fixed lines, with compensation based on daily rental charges, could provide a standard approach across the industry. OSC welcomes this clarification, and would work with its participating companies over the introduction and application of such schemes.

There is no reason why complainants should not already ask us to consider complaints about porting delays, and we do see such complaints, but the proposal that any compensation be formalised provides greater certainty for customers about the consequences of delays, and what contractual protection is available to them, as well as their options for ADR if they cannot resolve subsequent disputes.

We agree with Ofcom's proposal that the process and timescales for bringing porting compensation cases to ADR (i.e. after eight weeks) be aligned with other types of complaint.

Ofcom points out that for larger subscribers who cannot use an ADR scheme, because they are an undertaking employing more than ten individuals, the normal court route should be taken to resolve any claims for porting compensation. We note that there are national and European discussions at the moment on whether SMEs should also be able to use ADR as an alternative to the courts.



Lewis Shand Smith
Chief Ombudsman
7 April 2011