



Protecting consumers from
mis-selling of fixed-line
telecommunications services

Consultation

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Section 1

Summary

- 1.1 Mis-selling of telecommunications services results in harm and distress to consumers. It also undermines both the development of effective competition and consumers' trust in the industry. For this reason reducing the level of mis-selling remains an important priority for Ofcom.
- 1.2 Since 2003 Ofcom has imposed obligations on providers of fixed-line telecommunications to prevent consumers from having their services switched without their express knowledge and/or consent. These obligations also require communications providers ('providers') to conduct themselves in an appropriate manner when contacting consumers regarding sales and marketing in line with a Code of Practice. However, the level of mis-selling remains high.
- 1.3 Through our enforcement work, we have investigated allegations of mis-selling and taken action against those providers who do not comply with the rules. However, based on the current rules, the enforcement process is lengthy, resulting in further harm and frustration for consumers.

Review and Consultation

- 1.4 As we continue to receive a high level of complaints on mis-selling of fixed-line telecommunications, in March 2009 we published a consultation proposing changes that would strengthen the regulations to address the ongoing harm to consumers.
- 1.5 Based on our analysis of the existing regulations and our experience from our enforcement work, we identified the following issues:
 - some providers are genuinely confused about what is expected of them;
 - the Code of Practice approach may not be the most effective way of securing compliance and enabling effective enforcement;
 - some consumers have been switched without realising or recalling they had existing contractual liabilities with their existing provider;
 - the Cancel Other process has been abused in order to prevent customers from switching. Cancel Other allows a customer's existing provider to cancel a live order before a transfer takes place. However, it can only be used to prevent a transfer taking place where the customer alleges slamming; and
 - there is variability in the quality of sales records made, and retained, across the industry, as a result of which we have found it difficult, on occasion, to enforce the rules.
- 1.6 In light of this, we consulted on the following preferred options:
 - clarifying the regulations to aid understanding;
 - simplifying the regulations by moving away from an approach requiring all providers to establish, and comply with, a Code of Practice, to one of prohibiting inappropriate sales and marketing activity;

- enabling better information for consumers on the potential consequences of switching by requiring providers to alert consumers at the point of sale, and through letters, that they may have existing contractual liabilities with their existing provider(s);
- extending Cancel Other rules to cover all providers providing fixed-line telecommunications services – at present the rules that are in place apply only to BT; and
- clarifying existing general record-keeping requirements, together with a proposal requiring providers to make, and retain, voice recordings of all relevant telephone contact.

Initial Conclusions

- 1.7 We received 22 responses to this consultation, with a varying degree of support from stakeholders for each of the proposed options. We have evaluated our preferred options in light of responses received and further analysis of the available evidence. In light of this further evaluation, we have concluded that some of the proposals on which we consulted can, in our view, be progressed more quickly whereas others would benefit from further examination. In particular, we note that there were a number of concerns raised in relation to our preferred options relating to call recording requirements for sales and Cancel Other as well as on information to consumers of the potential consequences of switching. We are, therefore, proposing to follow a two-staged approach, as follows:

Stage One Proposals (to be addressed as part of this document)

- clarification and simplification of regulations and, particularly, moving away from a Code of Practice approach to absolute prohibitions within General Conditions ('GCs');
- extending Cancel Other rules to all providers [and withdrawing BT's Cancel Other Direction]; and
- clarifying record keeping obligations.

Stage Two Proposals (requiring further analysis and consultation)

- information to consumers on the potential consequences of switching; and
- mandatory call recording obligations.

- 1.8 We are proposing to deal with the Stage One proposals within this document by confirming our proposals on which we consulted, and by inviting comments on the draft Notification and implementation periods for these options. We are also consulting on the withdrawal of the Direction concerning BT's use of Cancel Other and inviting comments on the draft Notification and implementation period.

- 1.9 We will revisit the Stage Two proposals in a subsequent document following further work, including assessment of the costs and benefits of the options. We plan to publish our Stage Two Consultation Document towards the end of this year.

Section 2

Introduction, background and approach

- 2.1 Ofcom exists to further the interests of citizens and consumers through a regulatory regime which, where appropriate, encourages competition. Effective competition delivers choice and lower prices, better quality of service, and product and service innovation to consumers, as well as opportunities for new services and providers. However, competition alone may not always deliver appropriate results and consumers may need protection from inappropriate and unacceptable behaviour that may undermine confidence in the market as well as causing individual harm.
- 2.2 An example of such unacceptable behaviour concerns irresponsible sales and marketing activity, specifically the mis-selling of telecommunications services. This has the effect of undermining consumer confidence in the transfer and switching process, and causing consequential damage to the industry as a whole.
- 2.3 The term 'mis-selling' covers a range of sales and marketing activities that can work against the interests of both consumers and competition and undermines confidence in the industry as a whole. It can include:
- the provision of false and/or misleading information (for example, about potential savings or promising offers or gifts which do not actually exist);
 - applying unacceptable pressure to change providers, such as refusing to leave until the customer signs, or using threatening or otherwise intimidating behaviour; and
 - 'slamming', an extreme form of mis-selling, where customers are simply switched from one company to another without their knowledge and/or consent. Forms of slamming can include, for example, passing off (i.e. where representatives claim to represent a different company from the company they are actually working for), customers being told they are merely signing for information and then being switched from one provider to another, or forging of customers' signatures on contracts without the customer being aware.
- 2.4 Ofcom considers that there are various aspects of detriment arising from irresponsible sales and marketing activity. These include, amongst others:
- where customers find themselves switched to a different provider without their knowledge and/or consent. This will typically cause significant distress and anxiety (as well as substantial inconvenience) to consumers, particularly where transfers are not stopped in time;
 - where there is likely to be financial harm involved, such as where transfers go ahead and consumers find themselves on higher tariffs with the new provider. This financial harm can be compounded where consumers find themselves potentially subject to termination fees from their previous provider for transferring before their minimum contract periods have elapsed;
 - the risk that consumers lose confidence in the market due to inappropriate sales and marketing activity. This has the effect of discouraging customers from switching, thereby restricting them from making any savings by moving between providers and/or products or both. By making competition less effective, it may

limit the benefits to customers as a whole that accrue from well-functioning markets; and

- if switching is discouraged then this could potentially raise supply side barriers, where new entrants are deterred from entering in the knowledge that it will be difficult to persuade customers to switch from their existing provider, or indeed for customers to enter the market for the first time. Again, this will diminish the effectiveness of competition and therefore limit the benefits that consumers would otherwise derive from it.

Ofcom's policy objectives and aims

2.5 Our overall policy objective is that switching processes should promote switching and competition, whilst protecting consumers, which reflects our principal duty in section 3(1) of the Communications Act 2003 ('the Act'). Amongst others, this objective aims to achieve the following:

- a good customer experience of switching;
- protection against inappropriate sales and marketing activity;
- well-informed consumers able to discipline providers by making informed and considered choices, based on timely, objective and reliable information; and
- that competition is supported in retail and wholesale markets to the benefit of consumers, particularly by minimising obstacles to switching.

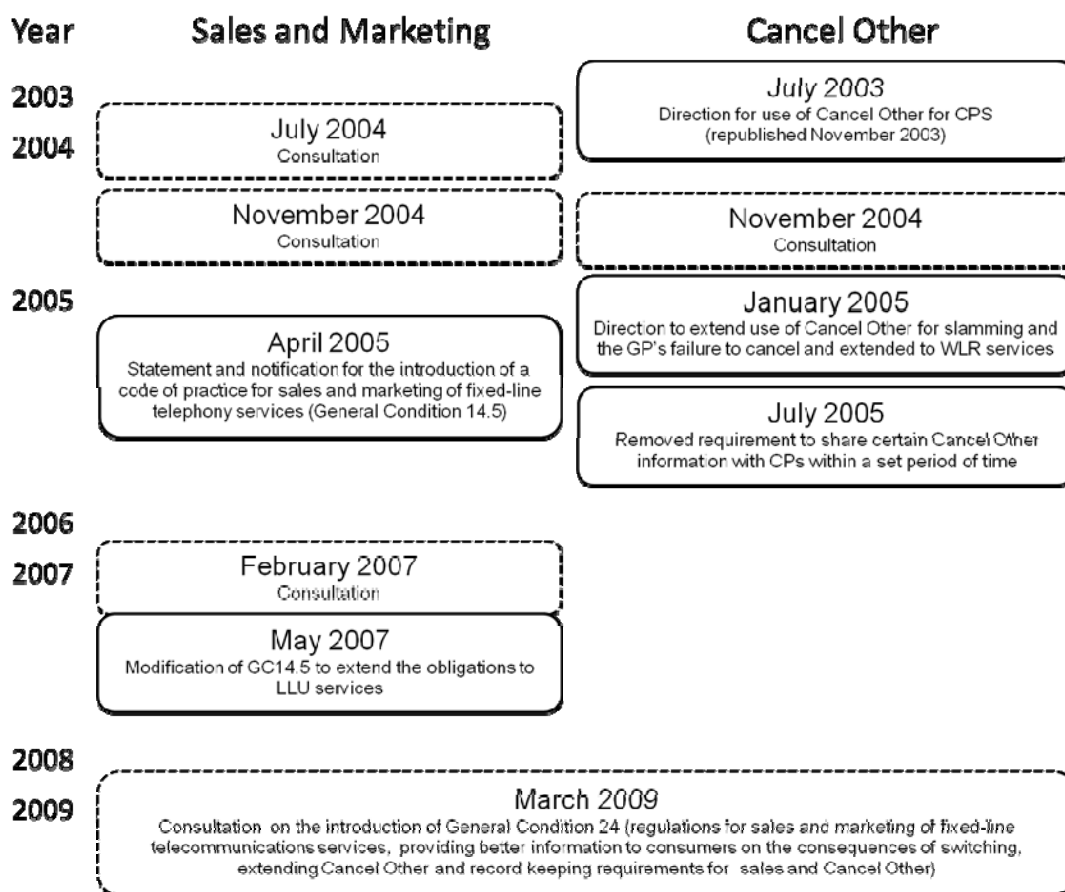
2.6 If we find continuing consumer harm in relation to switching, any proposed solution must be targeted at those activities causing this detriment, be objectively justifiable non-discriminatory and proportionate.

Background

2.7 Ofcom is committed to preventing problems with mis-selling of telecommunications services. Since 2004 we have imposed obligations for providers of fixed-line telecommunications services with the aim of ensuring that providers conduct themselves in an appropriate manner when marketing to consumers. In addition to these rules, Ofcom has also published rules on the circumstances in which BT was permitted to use Cancel Other to cancel orders.

2.8 The background to the regulations is summarised in the diagram below. A more detailed summary of the background is set out at Annex 5.

Figure 1: Background to the regulations



Approach

- 2.9 On 17 March 2009, Ofcom published a consultation document on proposals to strengthen existing safeguards which have been designed to protect consumers from the risks of mis-selling of fixed-line voice services. In the consultation we set out options on:
- clarifying and simplifying the regulations on sales and marketing of fixed-line telecommunications services;
 - providing better information to consumers on the potential consequences of switching;
 - extending Cancel Other rules to apply to all providers who use Cancel Other; and
 - record keeping requirements for sales and Cancel Other.
- 2.10 We received responses from 22 stakeholders. The non-confidential responses are available for viewing on the Ofcom website at:
http://www.ofcom.org.uk/consult/condocs/protecting_consumers/responses/
- 2.11 Having reviewed responses received to the consultation, we note there is broad support for our proposals to clarify and simplify the regulations, extending Cancel

Other rules to all providers and clarifying existing record keeping obligations. However, there is a mixed response in relation to our proposals on call recording requirements and to providing information at the point of sale. In light of this, and having further evaluated our preferred options in light of responses received and further analysis of the available evidence, we have decided to progress some of the proposals on which we consulted more quickly but to revisit other proposals which we consider would benefit from more detailed examination.

- 2.12 We have therefore decided to split out the proposals on which we consulted into two stages, and to deal with the Stage One proposals within this document by confirming our proposals on which we consulted, and to invite comments on the draft Notification and implementation periods for our proposals. We are also consulting on the withdrawal of the Direction concerning BT's use of Cancel Other ('the July 2005 Direction'), including inviting comments on the draft Notification on withdrawal and implementation period.
- 2.13 We will revisit the Stage Two proposals in a subsequent document following further examination of the issues and options involved, including further assessment of the costs and benefits. Accordingly, we do not intend to deal with those responses which fall into 'Stage Two' within this document. The two stage approach will be as follows:

Stage One Proposals

- i) clarification and simplification of regulations and, particularly, moving away from a Code of Practice approach to absolute prohibitions within GCs.
- ii) extending Cancel Other rules to all providers [and withdrawing the July 2005 Direction]; and
- iii) clarifying record keeping obligations.

Stage Two Proposals

- i) information to consumers of the potential consequences of switching;
 - ii) mandatory call recording obligations;
 - iii) extending Cancel Other use for other purposes, including for reasons to do with change of mind, mis-selling and internal mis-communication; and
 - iv) extending the regulations to provide protection to larger business customers.
- 2.14 This is set out in further detail in the table below:

Figure 2: Stage One vs Stage Two Approach

Proposal	Stage 1	Stage 2
	Consultation (September 2009)	Statement & Consultation (towards the end of the year)
Clarifying and simplifying regulations	<p>Conclusions on clarification and simplification of regulations resulting in CoP being replaced with absolute prohibitions relating to mis-selling.</p> <p>Invite comments on the draft Notification and proposed implementation period.</p>	<p>Conclusions on the implementation period.</p>
Better information to consumers on the potential consequences of switching		<p>Consult on options for informing consumers about Early Termination Charges before switch occurs, (including timescales for sending out the Notification of Transfer letters).</p>
Extending Cancel Other ('C/O') rules	<p>Conclusions on extending C/O rules to all CPs, resulting in C/O rules falling within scope of GCs, and invite comments on the draft Notification and proposed implementation period [subject to consultation on withdrawal of the July 2005 Direction].</p> <p>Invite comments on the withdrawal of the July 2005 Direction, including the draft Notification for withdrawal and proposed implementation period.</p>	<p>Conclusions on the implementation period for extending C/O rules to all CPs.</p> <p>Conclusions on withdrawal of the July 2005 Direction.</p> <p>Consult on options for extending C/O rules for (i) change of mind; (ii) internal miscommunication and (iii) mis-selling.</p>
Clarifying record keeping obligations	<p>Conclusions on clarification of record keeping obligations resulting in publication of guidelines, and invite comments on the draft Notification and proposed implementation period.</p>	<p>Conclusions on the implementation period for clarification of record keeping obligations.</p>
Introducing call recording obligations		<p>Consult on options for call recording proposals.</p>
Extending the regulations to medium and large business customers		<p>Consider the case for extending, based on evaluation of evidence and further legal analysis.</p>

Ofcom's general duties

2.15 Section 3(1) of the Act states that:

“it shall be the principal duty of Ofcom, in carrying out their functions:-

- a) to further the interests of citizens in relation to communication matters; and
- b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.”

2.16 Section 3(2) of the Act states that Ofcom is required, when carrying out its functions, amongst other things, to secure the availability throughout the UK of a wide range of electronic communications services.

2.17 Section 3(3) of the Act requires Ofcom, when performing its duties, to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and any other principles appearing to Ofcom to represent best regulatory practice.

2.18 Section 3(4) of the Act states that in performing its duties, Ofcom must also have regard to a number of matters as appears to be relevant in the circumstances which we consider include in the current context, in particular:

- the desirability of promoting competition in relevant markets;
- the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- the desirability of encouraging investment and innovation in relevant markets;
- the needs of persons with disabilities, of the elderly and of those on low incomes; and
- the opinions of consumers in relevant markets and of members of the public generally.

European Community requirements for regulation

2.19 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements. In summary these requirements are to:

- promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
- contribute to the development of the European internal market;
- promote the interests of all persons who are citizens of the European Union;
- not favour one form of or means of providing electronic communications networks or services, i.e. to be technologically neutral;
- encourage the provision of network access and service interoperability for the purpose of securing:

- efficient and sustainable competition; and
- the maximum benefit for customers of providers; and
- encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of providers.

2.20 In doing so, Ofcom has to read these requirements in accordance with the requirements of Art. 8 of the Framework Directive. These include, in particular, the obligation to:

- ensure that users, including disabled users, derive maximum benefit in terms of choice, price and quality (Art. 8(2) (a));
- ensure a high level of protection for consumers in their dealings with suppliers (Art. 8(4)(b)); and
- promote the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services (Art 8(4)(d)).

Outline of the remainder of this document

2.21 The rest of this document is divided into the following sections:

- Section 3 provides a summary of the comments from stakeholders about our assessment of the evidence on mis-selling and our response to these comments
- Section 4 reviews the responses regarding the options on clarifying and simplifying the regulations
- Section 5 reviews the responses regarding the options on Cancel Other rules and withdrawing the July 2005 Direction
- Section 6 reviews the responses regarding the clarifying record keeping requirements
- Section 7 reviews the responses regarding other options suggested in the 2009 March Consultation
- Section 8 considers Ofcom's approach and sets out Ofcom's initial conclusions on the Stage One proposals
- Section 9 considers options on implementation periods for the Stage One proposals

Section 3

Conclusions on consumer detriment and enforcement experience to date

Introduction

- 3.1 In this section we provide an overview of our analysis of the consumer detriment and our enforcement experience to date set out in the March 2009 consultation, summarise the responses on these issues and set out our responses to those comments.
- 3.2 This section sets out our conclusions based on our assessment of the evidence; stakeholder comments and our responses to questions 1 and 2.

Review of mis-selling data

- 3.3 As described in the March 2009 Consultation, Ofcom currently monitors mis-selling issues in two ways, through:
- i) Ofcom's own mis-selling complaints data; and
 - ii) the volume of orders cancelled by providers following allegations of slamming by customers.
- 3.4 In the March 2009 Consultation, Ofcom presented a number of different charts which showed current levels of mis-selling based on the two measures described in paragraph 3.3 above. The data showed that there had been an increase in the number of complaints received by the Ofcom Advisory Team ('OAT'). Compared with complaints regarding other telecommunications services, the OAT received the most complaints about fixed-line services. The data also showed a decrease in the volume of Cancel Other use, from January 2005 to January 2009. However, when viewed as a proportion of new sales, the percentage of complaints about Cancel Other had remained steady.
- 3.5 Ofcom's view, based on our analysis of the data, and taking into account our policy objectives and aims, was that further improvements were achievable, and that both absolute and relative numbers of mis-selling incidences could be reduced.
- 3.6 We acknowledged that there was evidence of some progress over the last 14 months, such as a reduction in the number of Cancel Other (slam) categories. However, we were not persuaded that this had been sufficient. In particular, we noted that OAT mis-selling complaints as a proportion of sales had worsened considerably over the last 14 months.
- 3.7 In light of this, we considered that further reductions would be consistent with our stated policy objectives and aims, given incidences of mis-selling give rise to consumer harm and have the potential to undermine confidence in the operation of the market. We set out our view that it was therefore appropriate to reconsider the regulatory obligations.

Consultation Question

Question 1: Based on our analysis of Ofcom's mis-selling complaints data, do you agree that further improvements are achievable, and both absolute and relative numbers of mis-selling incidences can be reduced? Please provide an explanation to support your response.

Stakeholders' Comments

- 3.8 Respondents generally agreed with our analysis, and some also provided further data from their own investigation of mis-selling.
- 3.9 A number of respondents, such as BT and Citizens Advice, thought that it was crucial to reduce the number of mis-selling incidences in light of the resultant consumer detriment. RNID noted that mis-selling was particularly disenfranchising for people with hearing loss, especially for those users who are unable to use voice telephony to deal with the problem. KCOM noted that the fact mis-selling remains a consistent issue for complaints means that these complaints are driven by both deliberate mis-selling activities and badly managed sales processes. They thought that both issues are ones which providers can take direct action to address and further improvements are achievable. Sky agreed that where the changes are proportionate, and will improve the gaining provider-led process, they should be made.
- 3.10 Some providers questioned the reliability of the data in the consultation document. Providers such as BT thought that Ofcom's data from OAT complaints and Cancel Other requests were only useful indicators rather than statistics that reflect the actual level of mis-selling. FCS also noted caution about the meaning of these statistics. Gemserv argued that OAT data only represents a small proportion of actual mis-selling volumes given that the complaints are typically resolved before reaching OAT. However, they thought that the available data provided sufficient information to identify the trend in mis-selling, and that cases of mis-selling had risen from their lowest point in 2006 and that there were more complaints about mis-selling in fixed-line telecommunications than in other areas.
- 3.11 BT explained that it had strong evidence to show that providers were mis-using Cancel Other. Unicom, too, questioned the reliability of the data. They agreed that Cancel Other data may be inaccurate due to its misuse in industry. For OAT complaints, they noted that not all complaints received by Ofcom may be genuine cases of mis-selling. They suggested that Ofcom should investigate each complaint, in the way that complaints are investigated in the energy markets through Energywatch, or forward these complaints to the provider, who can respond to the allegations. They added that mis-selling complaints should be compared to historic sales, rather than data on current sales, as complaints about mis-selling may occur at the end of a contract when a customer is planning to switch.
- 3.12 Talk Talk did not believe that the evidence presented in the consultation was sufficiently persuasive to justify new regulation, and argued it was important to analyse the data in its proper context to understand the reasons behind any trends. It noted that the mis-selling data showed a positive trend over recent years. Sky also thought that the evidence provided in the March 2009 Consultation showed that mis-selling was low across the industry, but concentrated in a small number of providers. Other respondents, such as FCS and SSE, suggested that action should be targeted at the relatively small number of providers who engaged in systematic mis-selling. However, Virgin Media noted that the data from the consultation suggested the

number of providers generating a small number of mis-selling complaints had grown considerably over recent years.

- 3.13 The Communications Consumer Panel suggested that Ofcom should work with the industry to better understand the nature and scale of the problem of mis-selling. In particular, they noted that it was important to understand how many people are switched without their consent and how many people manage to prevent an unauthorised transfer from taking place after they are notified of the transfer.
- 3.14 A number of respondents suggested alternative approaches to tackling mis-selling. The Post Office noted that they already had proactive post sales practices to ensure that customers understand the contract they have entered into. Gemserv highlighted the Energysure code, introduced in 2002, to reduce the cases of face-to-face mis-selling in the energy sector.
- 3.15 Some respondents proposed that better records could help to reduce the instances of mis-selling. Unicom suggested that OAT data should be analysed with respect to historic sales, to show the trend against when the contracts were first agreed rather than the current practices of the provider. They also proposed that complaints to OAT should be shared with the provider, who can then identify the issue that caused the complaint and reply to Ofcom. SSE suggested that mis-selling data should be considered as a percentage of transfers made by that provider. LACORS suggested that Cancel Other requests should include the name of the salesperson(s) so that cases of mis-selling can be dealt with by both the provider and Ofcom, and they also suggested that there should be more consistent record keeping.
- 3.16 One respondent expressed concern that the proposed regulations would only protect small companies with fewer than 10 employees, leaving mid-sized organisations with a lesser level of protection.

Ofcom's response

- 3.17 We note that many respondents agreed that further improvements were achievable and that the absolute and relative numbers of mis-selling could be reduced. However, a number of respondents highlighted concerns around the reliability of the mis-selling data. Ofcom is aware of such concerns and we noted this in the March 2009 Consultation (see paragraphs 3.13-3.15). There, we set out our view that the data does act as a useful indicator of potential issues, and provides a useful basis to evaluate trends over time as it gives us a consistent basis by which to monitor and track developments. However, we acknowledge that, for various reasons, the data does need to be treated with a degree of caution.
- 3.18 We also agree with the view, expressed by some providers, that our complaints data only reflects a small proportion of actual mis-selling activity. The current process has been designed to stop orders going ahead where slamming is identified. Where a slam has been prevented by this process not all consumers will wish to pursue a complaint with Ofcom. Therefore, we accept that the complaints data from the OAT is likely to be an underestimation of actual levels of mis-selling. Similarly, on Cancel Other data, it is the case that providers are only able to use Cancel Other in cases of slamming, meaning other forms of mis-selling will not be captured. Also, based on our discussions with providers, we are aware that not all providers currently use the Cancel Other process which again diminishes the comprehensiveness of the data.
- 3.19 We accept the view that there has been a positive trend on the volume of Cancel Others over recent years. However, as we set out in the consultation document, our

view is that further improvements are achievable, and that both absolute and relative numbers of mis-selling incidences can be reduced. As we noted in the March 2009 Consultation, the level of complaints received in the OAT on fixed-line mis-selling is significantly higher than complaints on other areas. In respect of Cancel Other, for example, we note that the volume of monthly Cancel Others arising from alleged slamming still runs at some 9,000 which, in our view, remains high.

- 3.20 We have considered Talk Talk's comments that the evidence presented was not sufficiently persuasive to justify new regulation, and that it was important to analyse the data in its proper context to understand the reasons behind any trends. However, for the reasons described in the paragraph above, our view is that there is sufficient evidence to justify new regulation. Ofcom has had an active industry-wide enforcement and monitoring programme in place since May 2005 and, during this period, we are not persuaded that sufficient progress has been achieved. Our view remains that further improvements are achievable and that further regulation is justified.
- 3.21 We have also considered some of the suggested alternative approaches proposed by a number of providers. We welcome these suggestions, including greater use of pro-active post sales practices and mechanisms based on the Energysure code. We believe that such approaches could help reduce mis-selling, and complement Ofcom's proposals to strengthen the current regulations. However, given the nature of the market and, in particular, volume of providers generating fixed-line telecommunications mis-selling complaints, we are not persuaded that such suggestions could act as a substitute to our proposals to amend, and strengthen, the regulations.
- 3.22 We have also considered suggestions that we should target our action against the relatively small number of providers who are causing problems. We already seek to do so through our enforcement and monitoring programme where our enforcement work is targeted against those providers who are generating the greatest volume and/or most serious mis-selling allegations. However, in setting regulations, Ofcom is required to act in such a way so not to discriminate unduly between providers.
- 3.23 We also note that a number of respondents made suggestions intended to aid Ofcom's enforcement programme and provide increased transparency, as summarised in paragraphs 3.14 and 3.15. First, Ofcom does consider historic trends in its monitoring work, and both our complaints data as well as the Cancel Other data allows us to track provider's performances over time. In respect of sharing complaints with individual providers, while we do not share all complaints which we receive, we do have an established process with all providers where we will devolve complaints that raise particular concerns. On SSE's point, we do currently consider complaints data as a percentage of transfers as well as of absolute volumes. We have also considered LACORS' suggestion that Cancel Other requests should include the name of the sales persons. While we accept that there may be value to this, we are not clear how this would work in practice. Nevertheless, we will raise with industry in the context of our planned discussions on improvements to both the process and reason codes.
- 3.24 We have also considered the suggestion that Ofcom should extend the scope of the GC to afford protection to medium and large business customers who are not currently captured within the scope of the GC. We are currently examining whether there is any evidence of harm to such users to support extending the GC in this way.

- 3.25 To this end, we have recently issued a section 135 information request to the industry in order to obtain information relating to harm suffered by different types of customer. We will consider this issue in the Stage Two consultation document.
- 3.26 Similarly, in respect of comments on record keeping, we are only considering the issue of clarifying existing record keeping obligations as part of this document (see section 6). We will address issues around call recording obligations in the Stage Two consultation document.

Experience of Ofcom's enforcement programme

- 3.27 As described in the March 2009 Consultation, Ofcom has been carrying out an enforcement programme to monitor providers' compliance with the GCs since May 2005. We have monitored trends and determined benchmarks for mis-selling complaints to identify the providers who might not be complying with the rules. To date, we have conducted investigations into 14 providers on fixed-line telecommunications mis-selling issues and issued notifications to four providers for failure to comply with GC1.2 by preventing the customer transfer through the unauthorised use of Cancel Other process.
- 3.28 In the March 2009 Consultation, based on our experience of enforcing the regulations, we identified a number of areas within the existing regulations which have inhibited the extent to which we had been able to meet our stated policy objectives and aims. These were:
- i) some providers are genuinely confused about what is expected of them;
 - ii) the Code of Practice approach may not be the most effective way of securing compliance and enabling effective enforcement;
 - iii) some consumers have been switched without realising or recalling they had existing contractual liabilities with their existing provider;
 - iv) the Cancel Other process has been abused in order to prevent customers from switching. Cancel Other allows a customer's existing provider to cancel a live order before a transfer takes place. However, it can only be used to prevent a transfer taking place where the customer alleges slamming; and
 - v) there is variability in the quality of sales records made, and retained, across the industry, as a result of which we have found it difficult, on occasion, to enforce the rules.
- 3.29 In light of this, we considered that strengthening the regulations would therefore be consistent with those policy objectives and aims by better enabling us to deal with incidences of mis-selling that give rise to consumer harm, and have the potential to undermine confidence in the operation of the market. In our view, strengthening the regulations would help to foster a competitive marketplace where consumers are able to seek out and easily take advantage of the best deals.

Consultation Question

Question 2: Based on our experience of our enforcement activities, do you agree that the regulations should be further strengthened in order to better meet Ofcom's policy objectives and aims? Please provide an explanation to support your response.

Stakeholder's comments

- 3.30 There was general agreement that the regulations should be further strengthened to better meet Ofcom's policy objectives and aims. However, there were also some respondents who disagreed.
- 3.31 Many respondents, such as FCS, agreed that strengthening the regulations through a new GC would result in clearer regulations for providers and this would improve understanding. BT thought that the regulations should provide a mechanism for swift monitoring and enforcement, to protect all consumers (including large business customers) from mis-selling. KCOM noted that the requirements may be particularly confusing for smaller providers, and may seem overly burdensome. They warned that Ofcom must take care to ensure that new requirements are not in themselves overly onerous. SSE also opposed the imposition of a significant regulatory burden on all suppliers, and thought that a more proportionate response was required. They suggested that there should be a moderate level of record keeping and more proactive enforcement action specifically targeted at the providers whose level of cancellations and complaints are of particular concern.
- 3.32 BT also commented that they did not think the current proposals would meet all the requirements. Instead, they thought that there should be an early move to a new migrations process which would provide fully informed consenting transfer and remove the need for action after the transfer.
- 3.33 Other respondents offered suggestions for other ways to strengthen the current regulations. The Post Office suggested that where there are any allegations of mis-selling then all providers should be in a position to investigate the allegation and establish the details of the sale. They thought the implementation of such a process was cost effective given the benefits gained, such as the significant reduction in mis-selling allegations and the ability to carry out the necessary corrective action in a timely manner.
- 3.34 Unicom suggested that Ofcom should maintain and publish a register of providers, and should dispatch periodic communications to the providers on this register so that providers are informed of what is being regulated and how it is being regulated. They suggested that the register should also list organisations which may conduct sales on behalf of providers, such as all sales agent organisations and introducer organisations, and contact details of the person in that company who is responsible for compliance.
- 3.35 Although Gemserv agreed that the regulations should be strengthened, they thought that this alone would not reduce the root cause of mis-selling. They suggested that there should also be a co-regulatory approach to strengthen the frameworks to support providers to tackle the root causes of mis-selling. On the current enforcement activities they commented that:
- in addition to new support mechanisms, clearer switching processes will serve to reduce confusion over what is expected from providers;

- the current Code of Practice approach delays resolving issues of mis-selling, as providers first need to have a code. They agreed that there should be a universal code of practice which is outcome based, supported through additional governance frameworks, so that providers can decide how to reach compliance;
 - to aid compliance with a Code of Practice, providers should be encouraged to work together to enable widespread improvements in performance to be achieved collectively, for example, through fora to share best practice;
 - there should be an independent audit to analyse outcomes, such as complaints and how they relate to providers reporting; and
 - those agents who persistently mis-sell should be entered in a database, so that consumers can be protected against them, even if the agent moves from provider to provider. Gemserv gave the example of the Gas and Electricity market where the EnergySure database lists all agents who sell face to face. If an agent persistently mis-sells they are removed from this database.
- 3.36 One respondent commented that providers could easily avoid enforcement action by Ofcom, meaning that the customer had to pursue other avenues, such as legal proceedings. LACORS proposed that the regulations should legislate for better record keeping and that Cancel Other should be used in a more consistent way.
- 3.37 Citizens Advice noted that the Code of Practice approach may have actually incentivised suppliers not to comply with the rules, as Ofcom are unable to remedy the consequences of mis-selling if the provider did not have a Code of Practice. In addition, they also noted that the current requirements for record keeping have meant that providers were incentivised to not keep records of sales as this would protect them from enforcement action. For both cases, they agreed that the proposals will aid Ofcom to take enforcement action.
- 3.38 RNID disagreed and argued that there should be a fundamental review of strategy as the current proposals would result in continuing consumer harm. Virgin Media also noted that the overall approach did not prevent mis-selling but only prohibited it. They suggested that there may be other approaches such as a losing provider-led process which could limit the scope of mis-selling in the first place.
- 3.39 THUS suggested that the use of RID codes should be further strengthened to help Ofcom quickly identify the reseller or network involved in a transfer. They proposed that there should be an industry wide application of RID codes, and that the RID code of the gaining provider should be made available to the losing provider in a transfer. Then, if a consumer calls the losing provider about a potential case of mis-selling, the losing provider would be able to identify the provider that requested the transfer and pass that information to the consumer.
- 3.40 The Communications Consumer Panel noted that, where possible, Ofcom should impose financial penalties that have a wider deterrent effect on providers that break the rules. They thought that this would help to raise the level of compliance across the industry. They also asked that Ofcom should ensure that its enforcement activity in this area is resourced properly.

Ofcom's response

- 3.41 Ofcom notes that several respondents commented that the new regulations should not impose a greater burden on providers. Our proposals were not intended to

impose an unnecessary burden on providers. In proposing changes to the regulations, we took account of our policy objectives and aims. The preferred options on which we consulted were, in our view, no more than necessary to target the problems we identified. Indeed, a number of our proposals sought to reduce the regulatory burden, such as the proposal to move away from a process-based Code of Practice approach to an outcome driven approach as well as, for BT, the proposal to remove the requirement to share records where Cancel Other is used.

- 3.42 We note that a number of responses argued that Ofcom should explore alternative processes for switching, such as a losing provider model. While Ofcom acknowledges there is a much wider debate around the need for harmonised switching processes for communications services, the focus of this review is on improvements that can be made to the existing processes for fixed-line telecommunications to address identified weaknesses. Ofcom is currently conducting a wider migrations review and plans to publish a further document on this subject in the first half of 2010.
- 3.43 We have considered Unicom's proposals for Ofcom to maintain a register and despatch periodic communications to providers on this register. However, we are not persuaded that this would be workable in practice. Prior notification is not currently required under the Act which provides for a general authorisation regime. In light of this, it is not clear how Ofcom would be able to create and maintain a register of all providers. Also, it is not clear to us how the proposal for a register would offer improvements to the current approach of conducting an industry-wide monitoring and enforcement programme. This programme uses a range of data sources, including Ofcom complaint data to monitor individual provider's performance and make early contact with them where the data suggests there may be an issue.
- 3.44 We also welcome some of the other comments made by respondents, including the Post Office and Gemserve, in terms of how other approaches may yield additional benefits. Given Ofcom's proposed approach in terms of moving away from process-based regulation to more outcome-based regulation, we consider a number of the suggestions offered have merit, and would encourage industry to consider some of the approaches proposed as part of their compliance activities. However, we also note that the Post Office has shown that providers can deliver processes to investigate allegations of mis-selling without having been required to do so by regulation.
- 3.45 A number of respondents referred to the effectiveness of Ofcom's enforcement activities, and made suggestions as to how this could be improved. In response to this, it is important to point out that developing and enforcing consumer protection policies is one of the priorities in Ofcom's current Annual Plan. These priorities are an important part of Ofcom's decision-making process with regard to the allocation of resources across Ofcom's range of duties. We also specifically consider the level of consumer harm, among other factors, when deciding the most appropriate action in relation to the consumer issues identified. In particular, we will only open an investigation where it would be an appropriate use of resources to do so. The proposed new GC is aimed at clarifying what Ofcom expects of providers which will allow us to deal more effectively and efficiently with any consumer harm that arises.
- 3.46 THUS noted that RID codes should be further strengthened to help Ofcom identify the network involved in a transfer. Ofcom is encouraging the industry to review its use of RID codes, so that in the future providers may be able to use them to identify the provider who has placed a Cancel Other or transfer request more accurately than is the case presently.

- 3.47 As already discussed, we do not intend to deal with issues relating to the scope of the GC and call recording obligations as part of this consultation; we will come back to these issues in the Stage Two consultation document.

Section 4

Options on clarifying and simplifying the regulations

- 4.1 In this section we provide an overview of the options set out in the March 2009 Consultation to clarify and simplify the current regulations, summarise the responses to questions 6, 7 and A5.1 and set out our responses to those comments.
- 4.2 In the consultation we discussed whether it is possible to clarify and simplify the regulations by improving clarity to aid understanding and by moving away from a Code of Practice (process-based) approach to one of absolute prohibitions.
- 4.3 Under the current approach all relevant providers are required to establish, and comply with, sales and marketing Codes of Practice which are consistent with Ofcom's published guidelines. Based on discussions with stakeholders, we felt that there was genuine confusion by a number of providers, particularly the smaller providers, about what is expected of them in order to comply with our regulations.
- 4.4 Our view was that the current approach may have inherent weaknesses and potentially hinder swift and effective enforcement action and that it is overly prescriptive and an unnecessary burden on compliant providers.

Options considered

Option 1: Do nothing

- 4.5 Under this option we would not propose to make any changes to the way in which the current GC14.5 or supporting guidelines are drafted. We would also retain the current process-based approach, requiring providers to establish, and comply with, sales and marketing codes of practice which are consistent with Ofcom's published guidelines.

Option 2: Redraft the current provisions in order to achieve greater clarity to the stated objectives of GC 14.5

- 4.6 This option would involve a number of drafting changes to the provisions in order to achieve greater clarity to the stated objectives and aims and supporting guidelines where appropriate.
- 4.7 This option would primarily involve clarifying the provisions in those areas which have caused confusion. However, under this option, there would be no change to either the current structure of the provisions or, indeed, the approach to regulation. Under this option, as with Option 1, we would retain the current process-based approach, requiring providers to establish, and comply with, sales and marketing codes of practice which are consistent with Ofcom's published guidelines.

Option 3: Redraft and simplify the current provisions in order to achieve greater clarity to the stated objectives of GC 14.5 and move away from a largely process-based approach to an outcome driven approach based on absolute prohibitions of mis-selling

4.8 This option would encompass the changes described at Option 2 but also involve a change to our regulatory approach to tackling mis-selling insofar as we would look to move away from current requirements on providers to establish, and comply with, sales and marketing codes of practice to one based on a prohibition of mis-selling.

Ofcom's preferred option

4.9 Our preferred option was Option 3, namely to simplify the regulations by moving away from a Code of Practice (process-based) approach to one of absolute prohibition, and redrafting the current provisions in order to achieve greater clarity to the stated objectives and aims of GC14.5.

4.10 This was because, in our view, this option would address the weaknesses in the current Code of Practice approach, allowing for swifter, more effective enforcement action and less prescriptive regulations. Also, based on our experience to date, we believed there was evidence to suggest that the provisions of the current GC14.5 may not be clear, and that certain improvements to the clarity of the regulations were justified. In the March 2009 Consultation, we explained that we did not anticipate that there would be any costs involved for providers, given that we were merely simplifying and clarifying the current regulations.

4.11 We believed this option met the tests under Section 47(2) of the Act for the following reasons:

- it was objectively justifiable and proportionate, as it did no more than necessary to target the problems we have identified. We considered that it is necessary to simplify the regulations and to move to an outcome driven approach to enable us to better meet our stated objectives and aims to the benefit of industry as well as enhancing the effectiveness of our enforcement activities;
- it did not discriminate unduly between providers, in that it would apply consistently to all providers providing fixed-line telecommunications services, as they would all be under the same obligations to comply with the stated regulations; and
- we were satisfied that it was transparent insofar as the nature and intended effect of the proposed changes are clearly set out in the consultation document.

Consultation Question

Question 6: Do you agree with our preferred option on clarifying and simplifying the regulations, namely that we should:

- i) improve clarity of the regulations by redrafting in order to aid understanding and***
- ii) simplify the regulations by moving away from a Code of Practice (process-based) approach to an outcome driven approach based on absolute prohibition of mis-selling?***

Please provide an explanation to support your response.

Stakeholder's comments

Clarifying the regulations by redrafting in order to aid understanding

- 4.12 There was general agreement from respondents to the consultation that clarifying the rules would make it easier for providers, particularly the smaller providers, to understand their obligations.
- 4.13 However a small number of providers, including BT, argued that mere clarification and simplification of the existing regulations would not eliminate mis-selling and that there should be a review of whether the current Notification of Transfer ('NoT') process can provide effective consumer protection. BT also noted that the proposed regulations did not extend to face to face sales, where mis-selling is also possible. Sky agreed that parts of the regulations were not clear and suggested that Ofcom could clarify the regulations by amending aspects of the existing regulations, rather than replacing them. Vodafone noted that they have struggled to understand the intricacies of the NoT process and, in their view, the MAC process is much simpler to understand and administer.
- 4.14 Gemserv thought that the clarification was necessary as they thought that there is evidence that providers do not fully understand the regulations. Some other respondents gave examples of areas where they would like further clarification. Orange suggested that Ofcom should provide guidance as to the types of conduct which are inappropriate, as the greater clarity will benefit both Ofcom and providers. The Post Office added that the preferred option should also explain what would happen to providers should they fail to comply with the regulations. A confidential respondent asked for clarification on obligations to provide losing and gaining notifications. In particular, they asked that the regulations should oblige losing providers to outline cancellation charges in their notification to ensure consumers could make an informed decision before completing the transfer.
- 4.15 Sky also suggested that Ofcom may already have sufficient powers to take action against providers who mis-sell, for example through the powers under the Consumer Protection from Unfair Trading Regulations 2008 ('the Regulations'), as this makes it an offence for providers to engage in unfair commercial practices which include misleading by action or omission or engaging in aggressive commercial practices. Sky also suggested that, if Ofcom was concerned that these regulations do not go far enough, Ofcom could amend the current GCs to cross refer to these obligations in the regulations. They thought this would ensure that, especially for those providers who are selling fixed-line telephony alongside other services, providers will be subject to one set of regulations in respect of mis-selling.
- 4.16 In light of the above, Sky asked us to set out what we consider the short-comings of the Regulations to be, and why a prohibition under the GCs would be more effective. Sky also stated that if Ofcom is concerned that the sanctions available to it under the Regulations do not go as far as those it would have available to it for breach of a GC, another alternative to the mis-selling prohibition would be for Ofcom to amend the GCs to cross refer to provider's existing obligations under the Regulations.
- 4.17 LACORS added that Ofcom should add the definition of practices which are banned outright to schedule 1 of the Unfair Trading Regulations.

Simplifying the regulations by moving away from a Code of Practice (process-based) approach to an outcome driven approach based on absolute prohibitions of mis-selling

- 4.18 There was overall agreement, from providers such as SSE, the Post Office, Orange and KCOM, with the proposal to move towards an outcome driven approach. Providers agreed that this would be a less resource intensive approach and it would give Ofcom more effective tools to take swift action to curb and prevent mis-selling. Tiscali thought this new approach would provide certainty and clarity which was not possible with the Code of Practice approach. Orange noted the move to a broad prohibition will enable providers to determine their own processes to ensure compliance.
- 4.19 BT noted that the proposal to move away from a Code of Practice approach and towards absolute prohibitions through a new GC would enable consistent and transparent enforcement, and remove the current anomaly where Ofcom cannot take action where a provider has failed to implement a code of practice. They also warned that care should be taken with the new GC to ensure that there are no further loopholes which could minimise the action that could be taken against non-compliant providers, for example, by ensuring that the GC protects different types of customers, not only residential and SME customers, and for different types of sales, such as face to face and online sales as well as telesales.
- 4.20 Virgin Media agreed that moving towards an absolute prohibition of mis-selling would be less resource intensive. Unicom noted that these obligations should be properly communicated to all organisations that conduct sales on behalf of providers, as well as to all providers. Vodafone noted their concern that the proposals remain complex and the simplification of the rules is more apparent than real.
- 4.21 SSE noted that the simplification of the regulations should not introduce any new requirements, and they noted that, in the proposed GCs, there appeared to be some additional requirements for NoT letters. FCS also thought that more reflection on the text of the new GC was needed. Tesco disagreed with the requirement to send notification letters within three days, as it would be difficult to meet this timeframe with their current processes.
- 4.22 Gemserv suggested that Ofcom should still consider the option of a non process-based universal Code of Practice, supported through additional governance frameworks. They thought this would enable providers to remedy the root cause and consequences of mis-selling. They also warned that prohibitive regulations alone do not rectify the root cause and that some process to enable best practice and compliance is necessary.
- 4.23 Sky also questioned the effectiveness of the proposed new approach, and whether it was sufficiently different from the current process-based approach. They thought there were other options which would be more proportionate than Ofcom's proposals. For example, they suggested that Ofcom should produce a version of the Code of Practice which providers without their own version of the Code of Practice would have to adhere to. They also noted that any changes in the approach would result in additional costs for compliant providers, who will need to review their internal documentation and roll out training. Vodafone did not agree with Ofcom's proposals on the basis they did not agree that these were a simplification of the current process-based rules as the proposed new guidelines appeared to carry over many of the current process-based rules. SSE also suggested that Ofcom should consider this approach with respect to a number of other GCs that currently require mandatory codes of practice.

- 4.24 Tesco noted that the guidance for GC24 contained many detailed examples of how compliance could be achieved and sought clarification in relation to how compliance would work in practice. They were concerned that if the Guidance is to be applied more strictly, then it may not be any less prescriptive than the current regulations.

Ofcom's response

- 4.25 Ofcom notes that there was broad support from respondents in respect of our proposals.
- 4.26 Of those who objected above, we note that the majority of comments centred on the view that the current NoT process was fundamentally flawed and that changes would not sufficiently address mis-selling problems. As discussed previously, the focus of the consultation was solely on improvements that Ofcom believed could be made to the existing processes for fixed-line telecommunications to address identified weaknesses. As we set out in paragraph 3.42, while we acknowledge there is a much wider debate around consideration of alternative switching processes, particularly in the context of consideration of the need for harmonised switching processes for communications services, this will be taken forward as part of a wider migrations review.
- 4.27 We also received some comments that the new regulations would not be any less prescriptive. However, we do not agree with these comments. The proposed guidelines have a very different status to the current guidelines attached to GC 14.5. As the proposed guidelines themselves explain, they are not mandatory in nature, and are drafted to provide assistance to providers in establishing their own compliance activities by providing useful summaries, examples and guidance on best practice. The guidelines have not been drafted to dictate how compliance must be achieved but are intended to provide help and advice by suggesting certain approaches. It is open for providers to establish any processes and controls they think are appropriate.
- 4.28 Some respondents, such as Sky and Gemserv, thought that instead of replacing GC14.5 with a new GC, the current regulations could be strengthened to provide the same protection for consumers. For the reasons set out in the March 2009 Consultation at paragraphs 3.35 to 3.38, and further in this document, Ofcom does not agree that a Code of Practice approach would offer the most effective approach. Our view remains that there are inherent weaknesses within such an approach, and we do not believe that the suggested improvements proposed by respondents would be sufficient to resolve our stated concerns as described in the paragraphs listed above.
- 4.29 We acknowledge SSE's comment that there appeared to be new requirements in the proposed GC relating to the time period for sending NoT letters. We accept SSE's view and have decided to amend the proposed wording from "within three Working Days of receiving notification" to "in accordance with the industry-agreed process", as currently drafted at paragraph 6.11 of the sales and marketing guidelines attached at Annex 3 to GC14.5. We note that this issue is closely related to the issue of providing better information to consumers on the potential consequences of switching and propose to consider the two issues together in the Stage Two consultation document. We plan to review the obligations in the NoT letters in the Stage Two document.
- 4.30 Orange asked for guidance on the types of conduct which would be considered as inappropriate. However, our view is that this is already covered in 24.3 of the proposed GC 24, where we state that:

“The Gaining Communications Provider must not:

- (a) engage in dishonest, misleading or deceptive conduct;*
- (b) engage in aggressive conduct; or*
- (c) contact the Customer in an inappropriate manner..”*

- 4.31 There is further guidance in the guidelines to GC 24, in paragraphs A12.9 and A12.10.
- 4.32 A number of respondents also sought clarification in respect of Ofcom’s powers and the range of potential regulatory remedies available to Ofcom. With regard to consumer protection, Ofcom’s main powers fall within the Act and Part 8 of the Enterprise Act 2002 (“Part 8”), including the Regulations.
- Under the Act, Ofcom is able to enforce GCs by issuing notifications of contravention requiring compliance and seeking remedies. It can also issue penalties, up to 10% of turnover, should the provider fail to comply with the notification and/or the remedies not be forthcoming. GC14.5, specifically, imposes obligations relating to sales and marketing activity.
 - Under Part 8, Ofcom is able to secure formal undertakings from persons (companies and individuals) to prevent infringement of certain consumer protection laws where there is collective harm to consumers. If undertakings are not given, or are given and are subsequently broken, Ofcom can apply to the courts for an enforcement order. Failure to abide by an enforcement order can lead to a fine or imprisonment for contempt of court. Further information can be found in Ofcom’s draft enforcement guidelines¹.
- 4.33 We have considered Sky’s points in relation to our powers under the Regulations, and whether this provides sufficient protection to consumers, as well as Sky’s request for clarification on the merits of following a GC route. We agree that consumer protection legislation has an important role in tackling mis-selling in particular circumstances such as large scale investigations, for example, dealing with a relatively large organisation generating substantial complaints. However, it is important to note that GCs enable Ofcom, for the statutory purposes and subject to the relevant tests, to impose targeted and specific rules tailored to industry to meet appropriate policy aims. For fixed-line telecommunications, providers are already required to adhere to regulations under GC14.5. Therefore the changes proposed in the March 2009 Consultation simply builds on the regulations that are already in place and is more proportionate than withdrawing such a GC altogether.
- 4.34 In addition, an important point to note is that unlike the enforcement powers available to Ofcom for enforcing GCs, we are limited in the type of remedies we can employ under consumer protection legislation. We cannot, for example, require the contravening party to remedy the consequences of contraventions, such as providing compensation. Furthermore, we do not have the power under consumer protection legislation to fine a contravening party.
- 4.35 A further limitation is that the consumer protection regime does not extend beyond residential customers and, therefore, Ofcom would have no powers to provide protection to small business customers in the way we are able to do under a GC route. (Section 52 of the Act, however, does require Ofcom to secure effective protection for domestic and small business customers.)

¹ <http://www.ofcom.org.uk/consult/condocs/enforcement/>

- 4.36 Ofcom agrees with BT's comment that there is a need to be careful to avoid potential loopholes which could reduce Ofcom's ability to take action against non-compliant providers. We believe that the proposed new approach of prohibiting mis-selling through high level behavioural prohibitions, as outlined later in this chapter, and focussing on desired outcomes, will greatly improve our ability to enforce against non-complaint providers. That said, we continue to welcome any comments from providers about potential loopholes in the GC's that may enable non-compliant providers to avoid action by Ofcom.
- 4.37 We also note BT, in its response, refers to the need for the regulations to provide protection for different types of customers and through various sales channels, including face to face and online as well as telesales. As set out in paragraphs 3.24 and 3.25, we do not intend to deal with the issue of extending the scope of the GC to afford protection to medium and large business customers as part of this consultation; we will come back to this issue in the Stage Two consultation document. We also acknowledge BT's comment on different sales channels and note that the proposed GC is intended to cover all forms of sales channels except for the proposed requirement to record calls which was specific to telesales.
- 4.38 We note Sky argued that any changes in the approach would result in additional costs for compliant providers, who will need to review their internal documentation and roll out training. However, Sky did not provide any specific cost estimates or further evidence to back up their assertion. Again, it is important to note that what we are seeking to do is to be less prescriptive by moving away from process-based regulations. Accordingly, where providers are already compliant with the current rules, we do not expect there to be any costs imposed. We do not consider that the proposed new GC will require changes to their current compliance activities in relation to sales and marketing practice. In fact, by granting providers extra flexibility in the processes they use, our proposals may help to save compliance costs.
- 4.39 We note Unicom's comment regarding the communication of these requirements to all providers and sales organisations. We intend to notify providers of any changes to the obligations in the normal way, through the publication of a statement. Additionally, it remains open for all interested parties to sign up on the Ofcom website and be notified of new Ofcom publications by e-mail².

Consultation question

Question 7: Do you consider there are other parts of the existing GC14.5 obligations where we could clarify and simplify the regulations, but have not proposed to do so? If so, please explain and set out the reasons for this.

Stakeholder comments

- 4.40 A number of providers requested additional clarification in respect of particular provisions of the proposed new GC. Some commented on the specific wording that was carried over from GC14.5 to GC24. Virgin Media thought that GC24.21 should be amended so that providers cannot make marketing statements during the cancellation call. They also suggested that the definition of Cancel Other should be amended to make it clear that the use of Cancel Other is the use of Cancel Other in respect of wholesale services. The Post Office suggested that Ofcom should conduct a full review of the other parts of the obligations to ensure that they are still necessary and are as simple and clear as possible.

² <http://www.ofcom.org.uk/static/subscribe/telecoms.htm>

- 4.41 BT thought that the proposed regulations did not adequately include the existing end to end processes, such as the current processes for cancellation and transfer periods. They also explained that the current requirements in GC14.5 (paragraph 6.9) had not been carried through to the proposed GC24 and noted that there did not appear to be any prohibitions on slamming in the proposed GC, requiring the provider to gain a customer's informed consent. They suggested that the definition of slamming from the Cancel Other provisions should be carried across into the new GC. Unicom also noted that customers should be permitted to cancel a transfer up until the transfer takes place, or the very last possible moment before it is too late to cancel.
- 4.42 Unicom also thought that providers should be required to keep records of the sales that are made, and to be obliged to provide these to their customers on request. Gemserv also suggested that there should be an additional requirement for record retention for face to face sales which are not verified with an additional phone call. For these cases, they suggest that there should be a requirement for a signature on a contract.
- 4.43 SSE asked for further clarification on the requirements that are new to the GC, as noted in their response to Question 6, they thought that some new requirements had been added for NoT letters. They also thought that it would be helpful to clarify what the 'list of services affected/unaffected' was intended to convey. In their view, they thought this should refer to a high level description of particular services (such as calls and line rental) involved in the transfer. They suggested that instead of an absolute prohibition on mis-selling (which they argued would be difficult to meet in practical terms), paragraph 24.3 should be amended towards an emphasis on suppliers having systems and processes that avoid mis-selling.
- 4.44 Tiscali commented that providers should not be required to publish a summary of the GC, as they thought that providers could publish different summaries and perpetuate the existing situations where there are different Codes of Practice from providers, confusing consumers. Instead they suggested that Ofcom should publish a copy of the GC on its website and require all providers to link to this document.

Ofcom's response

- 4.45 A number of respondents took the opportunity to put forward suggestions where the guidelines could be simplified and clarified further. We agree with a number of the suggestions made and have sought to amend the regulations to reflect the following comments:
- that providers should not engage in marketing activity in the context of a cancellation call;
 - the NoT letters should be sent in accordance with industry guidelines;
 - a customer should be informed of their right to terminate the contract during the transfer period;
 - more explicitly capturing slamming within the new GC; and
 - providing further clarity in respect of the reference to "list of services affected/unaffected"

- 4.46 A list of the detailed comments on the changes to the GC, together with our response, is attached in Annex 8.
- 4.47 We are also sympathetic to the concerns expressed in relation to publishing a summary of the GCs, and the fact that this may be confusing to consumers. On balance, we are content to take this proposed requirement out and replace it with a requirement to link to the relevant pages of the Ofcom website. We consider that this would provide a more proportionate solution to ensuring those consumers who wish to access the GC electronically can do so. However, we propose to retain the obligation to provide copies of the GC where requested on the grounds that not all consumers will have access to the internet.
- 4.48 BT refers to the need for the regulations to cover existing end to end processes. However, we are not persuaded that this is necessary in the context of the new GC. An important objective of the new GC is to move away from a process-based approach to one of outcome-based regulations.
- 4.49 We agree with Unicom that consumers should be able to cancel a transfer until the last possible moment. However, as we set out in the consultation document, given technical systems restrictions, at the moment consumers are only able to cancel an order up to day 9 of the transfer period (for CPS) and up to day 8 of the transfer period (for WLR). We understand that these systems restrictions have been fixed for WLR 3. We have considered Unicom's comments around requirements on providers to provide records of sales to customers on request. We consider that it should be the decision of providers whether or not they choose to do so although as a matter of best practice, we would support Unicom's sentiments. However, we have stopped short of requiring this under the proposed regulations.
- 4.50 Gemserv suggested that there should be a requirement for a signature on a contract for face to face sales where there has not been verification by phone. While we support Gemserv's sentiments, and agree that sales verification calls or signed contracts can provide strong evidence of legitimate selling, the March 2009 Consultation raised particular issues around telesales which, in our view, justified introducing obligations for call recordings to be made, and retained. However, we are proposing to deal with the specific issue of mandatory call recording obligations as part of our Stage Two consultation document. To this end, we have recently issued a section 135 information request to the industry in order to obtain additional costs data relating to call recording requirements.
- 4.51 We have also considered other comments raised but have not been persuaded on the need for additional clarification, as follows:
- the current definition of Cancel Other for the proposed new GC24 already refers to "wholesale orders"; and
 - a move away from absolute prohibition of mis-selling to an emphasis on systems and processes that avoid mis-selling. We believe that no change is required as the outcome of a prohibition on mis-selling is that providers will have to ensure that their systems and controls do not result in mis-selling.

Impact Assessment Question

Question A5.1: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option [on simplifying and clarifying the regulations]? If not, please provide an explanation and evidence to support your response.

Stakeholder's Comments

- 4.52 KCOM agreed that the preferred option of redrafting and simplifying the current mis-selling provisions through the introduction of high level prohibitions in a new GC should only impose costs on those providers who are not currently compliant with the Code of Practice approach. However, they also noted that this is subject to the costs of the introduction of additional measures such as call recording. SSE also thought that the costs are likely to be minimal, but also added this is subject to Ofcom not introducing any extra requirements in clarifying the existing obligations. The Post Office also agreed that the benefits of a robust mis-selling minimisation regime would outweigh any implementation costs.
- 4.53 BT disagreed with Ofcom's assumption on costs and benefits, explaining that they did not think the estimate for financial loss from mis-selling was robust as it was based on a very small sample of consumers. They did not agree that the changes would result in no incremental costs, as providers would still be required to provide this information to customers free of charge, and providers will need to update the information and make it available.
- 4.54 BT also stated that there would be costs associated with providing the GC free of charge to customers on request.

Ofcom's response

- 4.55 Of those who responded, we note that KCOM, SSE and the Post Office agreed that there would be no additional costs arising from the introduction of the new GC on sales and marketing.
- 4.56 We note that only BT disagreed. In response to BT's comments, while we accept there could conceivably be additional costs associated with re-printing any material to reflect the changes to the GC, we do not believe these will be significant, and we note that BT failed to provide specific cost estimates. BT also commented on the costs associated with providing the GC free of charge to customers on request. This is, however, not a new requirement and therefore not likely to result in a material incremental cost.

Ofcom's initial conclusions

- 4.57 Having taken into account all the responses to the March 2009 Consultation, we are confirming our proposal to clarify and simplify the regulations, and to introduce a new GC (GC24) on sales and marketing of fixed line telecommunication services. In light of our evaluation of the responses received, we have made some changes to the proposed wording of the GC. Specific comments made by respondents to the consultation on the wording of the proposed GC are listed in Annex 8 and the changes are highlighted in Annex 9.
- 4.58 We remain persuaded that the option on which we consulted in the March 2009 Consultation meets the tests under Section 47(2) of the Act for the following reasons:

- it is objectively justifiable and proportionate, as it does no more than necessary to target the problems we have identified. We consider that it is necessary to simplify the regulations and to move to an outcome driven approach to enable us to better meet our stated objectives and aims to the benefit of industry as well as enhancing the effectiveness of our enforcement activities;
- it does not discriminate unduly between providers, in that it would apply consistently to all providers providing fixed-line telecommunications services, as they would all be under the same obligations to comply with the stated regulations; and
- we are satisfied that it is transparent insofar as the nature and intended effect of the proposed changes are clearly set out in this consultation document.

4.59 Additionally, as discussed above, we do not anticipate there will be any costs involved for providers given that all we are seeking to achieve here is to clarify and simplify existing regulations.

Section 5

Options on Cancel Other rules

5.1 In this section, we set out the options in relation to the case for extending Cancel Other rules across the industry, stakeholder comments to questions 9, 10, 11 and A5.4 of the Consultation and our response to comments made. As a part of our March 2009 Consultation, we also consulted on the proposal to withdraw the July 2005 Direction. We also respond to responses made to this question in the Consultation (Question 5).

Options

Option 1: Do nothing

5.2 Under this option we would not propose to make changes to the Cancel Other process as currently defined. This would mean that the July 2005 Direction which applies only to BT would remain in place and we would be able to investigate BT's use of Cancel Other where we receive complaints alleging abuse of the Cancel Other process by BT. However, as at present, we would not be able to investigate and/or enforce against allegations of abuse of Cancel Other by providers except through GC1.2 in those cases where information was being used for a purpose other than that intended.

Option 2: Withdraw the July 2005 Direction concerning BT's use of Cancel Other that there are no specific rules relating to Cancel Other applicable to any provider

5.3 Under this option, Ofcom would look to withdraw the July 2005 Direction concerning BT's use of Cancel Other meaning that there would be no specific rules for Ofcom to enforce against allegations of abuse of Cancel Other by any providers (including BT). Ofcom would only be able to enforce against providers using GC1.2 in those cases where information was being used for a purpose other than that intended.

Option 3: Withdraw the July 2005 Direction concerning BT's use of Cancel Other and incorporate reduced requirements as part of a General Condition

5.4 Under this option, we would look to introduce some but not all of the current requirements on BT relating to use of Cancel Other to cover all providers of fixed-line telecommunications services which, in practice, would mean that the July 2005 Direction which applies to BT would be withdrawn and only those requirements which we consider to best meet our policy objectives and aims, and are objectively justifiable and proportionate, would be incorporated as part of the proposed GC.

5.5 Therefore, we would look to replicate some but not all of the current provisions contained within the July 2005 Directive, namely only those requirements relating to:

- i) permitted usage of Cancel Other; and
- ii) record keeping requirements (i.e. "record of all contact made with that customer... for a period of six months")

Option 4: Withdraw the July 2005 Direction concerning BT's use of Cancel Other (or remove any savings provision keeping it in effect) and incorporate identical requirements as part of a General Condition

- 5.6 Under this option, Ofcom would look to introduce identical Cancel Other requirements to cover all providers of fixed-line telecommunications services which, in practice, would mean that the July 2005 Direction which applies to BT would, in effect be withdrawn, with requirements being incorporated as part of a GC applicable to all relevant providers.
- 5.7 We would look to replicate all current provisions contained within the July 2005 Direction on BT.

Ofcom's preferred option

- 5.8 Our preferred option was Option 3, to withdraw the July 2005 Direction concerning BT's use of Cancel Other and incorporating reduced requirements as part of a GC, applicable to all providers of fixed-line telecommunications services.
- 5.9 Based on our analysis of the evidence relating to the use of Cancel Other, we believed that there was evidence of both widespread use of Cancel Other as well as evidence of systematic abuse of Cancel Other by the losing provider. Our analysis found that:
- industry data, and the findings of the Schema study, showed the use of Cancel Other has changed significantly over recent years. While historically BT was the primary user of Cancel Other, this is no longer the case, and Cancel Other usage is widespread across the industry; and
 - from our enforcement experience to date, as well as the findings of the Schema study, there is evidence of misuse of the Cancel Other process by other providers where Cancel Other would appear to have been used primarily to prevent customers from moving to another provider rather than to protect from slamming.
- 5.10 Our reason for preferring Option 3 over Option 4 was that we were not persuaded that the requirements for information sharing should be transposed, given our policy objectives and aims, that any proposed solution must be targeted at the activities that cause the detriment and be proportionate.
- 5.11 We believed our preferred option best met the tests under Section 47(2) of the Act for the following reasons:
- we considered it was objectively justifiable and proportionate, as the evidence showed that Cancel Other use was widespread in industry. Our enforcement and research had also shown that there was misuse of the Cancel Other process by some providers, where Cancel Other had been used to prevent customers from switching. However, taking account of proportionality, we were not proposing to transpose all the current rules, and were omitting the rules around information sharing;
 - it did not discriminate unduly between providers, in that it would apply consistently to all providers providing fixed-line telecommunications services, as they would all be under the same obligations to comply with the stated regulations; and

- we were satisfied that our preferred option was transparent insofar as the nature and intended effect of the proposed changes was clearly set out in the consultation document.

5.12 We also explained that we did not anticipate that there would be costs arising from our proposal to extend Cancel Other rules, as a significant number of providers already use Cancel Other, and were expected to do so in accordance with the industry-agreed processes. Where they are conforming to agreed processes, they will be compliant with the extended Cancel Other rules. Furthermore, we were not requiring providers to use Cancel Other where they choose not to do so.

Consultation Questions

Question 9: Do you agree that Cancel Other should primarily only be permitted for reasons of slamming as defined by Ofcom, or are there other circumstances where you feel use of Cancel Other should be permissible?

Stakeholders' Comments

Extending Cancel Other rules

- 5.13 There was overall agreement from the respondents that the Cancel Other rules should be extended to be used by all providers who use Cancel Other. Tiscali thought that the preferred option (but without the call recording obligation) would significantly improve on the current situation and provide a rigid set of obligations which providers cannot avoid. They suggested that, together with continuing enforcement, the new GC would act as a weighty deterrent, and give Ofcom the necessary tools to act swiftly and effectively in cases of non-compliance.
- 5.14 BT thought that all providers should be mandated to use Cancel Other, and that it should also apply to businesses customers with more than 10 employees. Vodafone also questioned why use of Cancel Other would not be mandatory for all providers, as providers who chose never to use Cancel Other would be unable to protect their customers against slamming.
- 5.15 In their responses, a number of providers raised their concern about the current unregulated use of Cancel Other by some providers. Orange commented that there was an increasing use of Cancel Other by providers whose use was not regulated, and they may use Cancel Other to frustrate the transfer of customers from that provider to the new provider. BT provided their own data, explaining that 37% of business customers contacted by BT following the cancellation of a transfer by another provider had their transfer cancelled without their permission. They also noted that they had evidence to show that some providers were using Cancel Other where the customer had simply changed their mind about the transfer. Unicom also agreed that some providers were using Cancel Other to frustrate the transfer process and where their customers had changed their minds about the transfer.
- 5.16 UKCTA and Talk Talk thought that the extension of Cancel Other rules should be linked to the ultimate objective of tackling mis-selling. They suggested that it would be disproportionate to impose rules that required observation of Cancel Other rules, regardless of whether the provider was engaged in mis-selling.

Permitted Use of Cancel Other

- 5.17 The majority of respondents, including SSE, the Post Office, KCOM, Gemserv and FCS agreed that the use of Cancel Other should be limited in the way it was currently defined.
- 5.18 However, a number of respondents, such as Unicom and Vodafone, suggested that Cancel Other should be allowed where the customer has changed their mind about the transfer and contacts the losing provider to cancel the transfer. Unicom thought that it would be reasonable to include the use of Change of Mind for Cancel Other, as GC1.2 allows providers to use the transfer notification to take reasonable steps for customer protection. In addition they also thought that this would make Cancel Other data more reliable and suggested that this would be a more consumer friendly process, as the customer does not have to be instructed to call the gaining provider. They noted that the introduction of a Cancel Other code for change of mind would not increase the consumer harm due to the misuse of Cancel Other to block a transfer. Vodafone also suggested that this would be a more consumer friendly process, as the customer does not have to be instructed to call the gaining provider. LACORS also agreed that Cancel Other should be allowed for customer change of mind, where the consumer has been informed of their Early Termination Charges by the losing provider.
- 5.19 Unicom added that the gaining provider could choose to contact the consumer after notification of the cancellation, and if the customer had not approved of this cancellation, they could ask the losing provider for evidence of authorisation. BT disagreed with extending the use of Cancel Other for change of mind, as they thought that this would expose the process to further misuse. They also thought that it would make it more difficult to police the current use of the facility.
- 5.20 BT suggested that Cancel Other should also be allowed to be used where there was customer internal miscommunication. The losing provider should be allowed to cancel the transfer if the named account holder contacted the provider to say that the transfer had been agreed by someone without the authority to do so. An anonymous provider also asked us to clarify the rules around this use of Cancel Other.

Ofcom's response

Extending Cancel Other rules

- 5.21 We note that there was strong support in respect of extending Cancel Other to all providers who use Cancel Other. Evidence from the respondents further strengthened our argument that the current unregulated use of Cancel Other was leading to customer frustration.
- 5.22 We have considered BT's point on whether to extend Cancel Other to incorporate protection to medium and large business customers. The July 2005 Direction does cover these types of customers but the existing GC 14 does not. As set out in paragraphs 3.24 and 3.25, we do not intend to deal with the issue of extending the scope of the GC to afford protection to medium and large business customers as part of this consultation; we will consider this issue in the Stage Two consultation document.
- 5.23 We have also considered BT and Vodafone's argument as to whether Cancel Other should be mandated but are not sufficiently persuaded that there is a case to do this at this stage given that we anticipate that the majority of providers will use Cancel

Other as it protects their customers from being slammed against their wishes. We will nevertheless continue to monitor this and may revisit this issue if there is evidence of increasing numbers of providers not using Cancel Other.

- 5.24 We have also considered UKCTA's and Talk Talk's comments that it would be disproportionate to impose requirements relating to use of Cancel Other where there was no evidence that providers were actually mis-selling. Our view, however, is that mis-selling and abuse of the Cancel Other process are not necessarily linked and, indeed, are quite independent of each other. Both give rise to different forms of consumer harm. For this reason, it is not clear to us that it is necessary or appropriate to first prove that a provider is involved in mis-selling before introducing requirements around Cancel Other.

Permitted Use of Cancel Other

- 5.25 Ofcom notes that there was broad support in relation to permitted use of Cancel Other. We do, however, note that a number of respondents did suggest that Ofcom should consider extending use of Cancel Other for reasons to do with change of mind, mis-selling and internal mis-communication.
- 5.26 We accept arguments made in relation to the fact that the current Cancel Other process, as defined, may not lead to a satisfactory customer experience in all cases given that providers may not be able to resolve their customer issue at first contact but, instead, may be required to direct the customer to the gaining provider. We intend to further examine the merits of extending the Cancel Other process, and will return to this issue as part of our Stage Two proposals.

Question 10: Do you have any other suggestions for improvements to the reliability of the Cancel Other data and, in particular, the existing reason codes?

Stakeholders' Comments

- 5.27 SSE, the Post Office, FCS and another respondent agreed that this would be a good opportunity to review the Cancel Other codes and rules and to clarify the guidance. SSE suggested that there should be greater industry involvement through industry fora, such as through the Commercial Group. They thought that there were other aspects to Cancel Other, in addition to the correct usage, such as the sales scripts, which the industry could discuss to establish best practice and fair use.
- 5.28 Gemserv noted that the energy industry used a different process when customers had been unfairly switched from one provider to another, called the Erroneous Transfer Customer Charter. Like the current system for Cancel Other, this process only applies where an erroneous transfer has taken place and not for customer change of mind.
- 5.29 BT agreed that there should be one set of reason codes for use across the industry. However they noted that the changes would incur development costs which had not been covered in Ofcom's analysis, such as the additional costs for industry to invest in the development of systems, training and monitoring. As an alternative, they suggested that the codes could be simplified to reduce the need to select the most accurate code. They also noted that there did not need to be two 'Failure to Cancel' reason codes, as all industry players now have the same opportunity to cancel an order on the gateway up to the same point of no return. Tiscali also thought that the Cancel Other codes should be used approximately.

- 5.30 Unicom suggested that the 9x60 code should be extended to cover all material mis-selling, including the situation where a gaining provider takes over a customer line where the losing provider has gone bankrupt. They also thought that if the change of mind code was not introduced, then the 9x80 code should be split, as suggested in the consultation. In addition, they proposed that the transfer orders and Cancel Other requests should show the identity of the provider, to encourage the gaining and losing providers to communicate with each other. They also suggested that documentation relating to the regulations for Cancel Other, with clear explanations of all the reasons where Cancel Other can be used, should be clearly communicated to all providers.
- 5.31 In addition, Unicom also suggested that transfer orders and Cancel Other should identify the provider, so that the losing and gaining providers are encouraged to communicate with each other, especially in cases which may reduce repeat transfer requests or Cancel Others. If call recording was to be mandatory, they also proposed that the recording of these calls should be shared with the customer upon request

Ofcom's response

- 5.32 Ofcom agrees with the responses suggesting that more guidance and clarity is needed over the appropriate uses of Cancel Other. As observed by some respondents there may be some confusion currently over what Cancel Other can be used for and how it is used.
- 5.33 We recognise that there could be other reasons where Cancel Other could be used, but the introduction of new scenarios may impact on the way that industry uses the cancellation processes. Our view is that more work is needed to understand how these codes could be best used. We believe that this is likely to be best taken forward by the industry. Similarly, we believe the industry is best placed to consider what information should be provided within Cancel Other requests and would encourage industry to collectively work together to discuss, and agree, possible changes.

Question 11: Do you agree with Ofcom's proposals not to transpose information sharing obligations relating to the use of Cancel Other as part of the proposed new General Condition? Please provide an explanation to support your response.

Stakeholders' Comments

- 5.34 There were mixed views over whether the current information sharing obligations should be transposed into the new GC. While the majority of respondents, such as SSE, Gemserv and BT, thought that such a requirement would be an unnecessary cost, a number of providers (including the Post Office and Unicom), thought that it was essential that gaining providers have access to information about the provider that has placed the cancellation request. BT explained that they have provided information on over 2,000 cancellations at a significant cost. They found that in many cases the information was requested to help the gaining provider to investigate allegations of mis-selling against themselves and, in some cases, the requests were used as retaliation against BT where BT had made allegations of mis-selling against them.
- 5.35 Of those providers who agreed that the information sharing requirement should not be carried over, several also thought that there should be some form of mechanism to identify the providers cancelling the request. BT thought that Ofcom should instead take swifter action against allegations of mis-selling. While FCS and UKCTA thought

that the disclosure of information to Ofcom should be restricted to where Ofcom has a reasonable suspicion of the company under investigation. UKCTA added that enforcement by Ofcom should be focused on the abuse of Cancel Other and not whether a provider is classifying Cancel Other instances in the correct manner. Sky thought that Ofcom should provide further clarity on how it intends to monitor the use of Cancel Other, to identify mis-use and police effectively without issuing a disproportionate number of information requests. SSE thought that if providers were required to share records with each other, there may be data protection issues associated with sharing call recordings.

- 5.36 Although they agreed that the current requirements should not be carried over into the new proposed GC, Virgin Media thought that there should still be some form of information sharing, via regulation or through an industry agreed process. They thought there was likely to be concern about other provider's use of Cancel Other and so providers may need to request information to find out who carried out the Cancel Other. They suggested that the obligation should allow for providers to request records of contact between a provider and a customer in relation to a particular legitimate concern about the use of Cancel Other. They thought reliance on Ofcom for enforcement was insufficient, as due to Ofcom's limited resources, only the most serious allegation of breaches would be investigated. BT also thought that there should still be a mechanism to identify which provider has cancelled the order so that individual consumer issues could be resolved and any major abuse identified by providers.
- 5.37 The Post Office and another respondent were concerned that if the information sharing obligations were not carried over into the proposed GC, the gaining provider would not know who was cancelling the order. The Post Office suggested that by sharing the recordings, providers would have the right to obtain and share records for investigations, to seek improvements and for transparency. They suggested that Ofcom should hold a list of relevant contacts, noting that such a list already exists for other industry processes.
- 5.38 Although they agreed that providers should not be obliged to share call recordings with each other, Unicom thought that through sharing information, providers would be encouraged to communicate amongst themselves. If the requirement for call recording was carried forward, Unicom noted that the provider should also be required to share the call recordings with the customer, on request. Another provider commented that if providers were required to record all Cancel Other calls, the extra cost for supplying samples of these calls would be minimal.

Ofcom's Response

- 5.39 We appreciate that providers should behave transparently when using Cancel Other, using it only in the scenarios where it is permitted. However, as we set out in the March 2009 Consultation, and as commented on by BT in paragraph 5.34, extending information sharing requirements is likely to be an unnecessary burden on providers. Under the proposal for better record keeping, which we will be considering further in Stage Two, Ofcom will propose options which will allow us to be able to more effectively identify whether there are potential contraventions, and encourage providers to comply with the provisions of the GC.
- 5.40 Where Ofcom is to investigate a provider's use of Cancel Other it would do so where there appears to be a case for opening an investigation based on our analysis of mis-selling complaints and Cancel Other data. In these instances Ofcom would request information from providers in line with its published information gathering policy.

Alongside this work on addressing fixed-line mis-selling we are also encouraging the industry to review its use of RID codes. In the future, providers may be able to identify who has placed a Cancel Other request through this code.

Impact Assessment Questions

Question A5.4: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option? Please provide an explanation and evidence to support your response.

Stakeholder's Comments

- 5.41 BT did not agree with the assessment, as they thought the introduction of obligations in a GC across the industry would result in providers having to invest in systems, training and monitoring to ensure correct use. They noted this cost had not been included in Ofcom's cost benefit analysis, and that Openreach and BT Wholesale would incur costs for any changes to the codes. As an alternative, they suggested that the Cancel Other codes could be simplified, reducing the need to select the correct slamming code.
- 5.42 The Post Office thought that all providers should have access to all other providers' Cancel Other records, to ensure consistency throughout the industry, create a level playing field and incentivise appropriate behaviours. They believed that this could be achieved in a cost effective and not unduly burdensome manner.
- 5.43 SSE and KCOM agreed with Ofcom that it was unlikely that there would be any immediate costs for suppliers in incorporating the Cancel Other requirements into the GC. However, they noted that there would be costs associated with the proposed record keeping obligations.

Ofcom's response

- 5.44 In response to BT's suggestion, we are not persuaded that it naturally follows that there are likely to be additional costs for other providers resulting from our proposals to extend Cancel Other rules to all providers. This is because, as we set out in the March 2009 Consultation, where providers already use Cancel Other in accordance with industry guidelines, we anticipate that there would be no impact arising from these proposals given there will be no requirement to do something different; costs would only be a factor where providers are currently not adhering to the Cancel Other process. We also note that BT failed to provide any cost estimates to back up its assertion.
- 5.45 The Post Office did not give us any estimates of how records of Cancel Other use can be shared in a cost effective manner, and therefore at this stage we are not proposing that records of Cancel Other should be shared between providers.
- 5.46 We note that SSE and KCOM noted that any costs associated with our proposals for Cancel Other would only arise in the context of record keeping obligations. As discussed previously, we do not intend to deal with the specific issue of mandatory call recording obligations as part of this consultation; we will come back to this issue in the Stage Two consultation document, based on further evaluation of the evidence and options.

Withdrawal of the July 2005 Direction

- 5.47 The July 2005 Direction set out detailed rules as to when BT is permitted to use Cancel Other and the information it must provide to its competitors about its use of Cancel Other. Under these rules, BT has to take reasonable steps to ensure slamming and/or failure to cancel has actually taken place. After cancelling the order BT is required to provide written confirmation to the customer that the cancellation has taken place and to keep a record (for a minimum of six months) of all contact made with that customer during the transfer period regarding BT's use of Cancel Other. BT is also required to provide, on reasonable request by a gaining provider, records of contact between BT and a customer. BT is also required to record each use of Cancel Other against a category as set out in the July 2005 Direction.
- 5.48 Under Ofcom's preferred option which we proposed in the March 2009 Consultation, some, but not all, of the obligations would be transposed into the new GC. In particular, we proposed all providers would be required to check that slamming or failure to cancel had occurred, that Cancel Other should only be used for specific reasons as set out in the GC, that consumers were notified that transfers had been cancelled and that records were kept. Given the transposition of Cancel Other rules into the new GC, we also set out our view that it was unnecessary for BT to be subject to both the July 2005 Direction and the new GC.

Consultation question

Question 5: Do you agree that it is appropriate to modify, or remove, the July 2005 Cancel Other Direction so that any changes take effect before the end of implementation period for modifications to the General Conditions? Please provide an explanation to support your response.

Stakeholders' Comments

- 5.49 We received mixed responses regarding whether the July 2005 Direction should be withdrawn. BT thought that it should be withdrawn as soon as possible, so that they are regulated under the same rules as other providers who use Cancel Other. Additionally, they noted that they did not plan to change their processes between now and when the new rules come into force.
- 5.50 Other respondents, such as FCS, Gemserv, KCOM, Unicom and SSE, thought that there should be continuous regulation on BT, so the July 2005 Direction should only be withdrawn once the new GC is in place. SSE did not think it was appropriate to remove the Cancel Other obligations from BT before the new GC was implemented as the data showed that BT was still a significant single user of Cancel Other. Alternatively, Unicom suggested that BT should forego the implementation period of the new GC and be immediately bound by it, at the same time as being released from the July 2005 Direction. One respondent commented that their own data showed BT was mis-using Cancel Other.
- 5.51 Virgin Media suggested that there should be some form of information sharing between providers, but not to the extent that BT are currently required to share. They thought that providers should be able to request records relating to contact with a particular customer. One respondent thought that the obligation to provide sample Cancel Other calls should be extended to all SPs, so that there is a way to monitor provider's use of Cancel Other and to prevent misuse of that function. They also suggested that there should be a review of how Cancel Other calls are handled by losing providers.

- 5.52 There were several respondents who disagreed with the withdrawal of the July 2005 Direction. One respondent thought that the July 2005 Direction should be extended to apply to all providers. Sky and Unicom, noted that the Direction was originally introduced as a result of BT's SMP status. Sky considered that since the July 2005 Direction is linked to the assessment of BT's SMP, it cannot be removed unless Ofcom shows that BT does not have SMP. Sky noted that, for the reasons set out in its response to the retail narrowband market review consultation, it considers that the market is insufficiently competitive to conclude that BT no longer has SMP. Sky stated that if Ofcom finds that BT does still have SMP in the relevant market but nevertheless decides to remove the July 2005 Direction, it should be done on the basis of evidence showing that the Direction is no longer required. Sky disagreed with our view that BT were no longer the majority user of Cancel Other; it noted that the data from the March 2009 Consultation showed that BT only used Cancel Other less than all other providers combined. They also noted that the July 2005 Direction could only be removed after a review undertaken in accordance with section 84 of the Communications Act.
- 5.53 The Post Office also thought that the July 2005 Direction should be modified and not withdrawn. They thought that if the July 2005 Direction was removed there would be potential for an increase in mis-selling, and there was still a requirement for a measurement to be in place prior to implementation of the modifications to the GC.

Ofcom's response

- 5.54 As above, Ofcom notes that there was a mixed response – although there was a strong view that, irrespective of the outcome, there should be continuous regulation on BT. Ofcom supports this view, and it is Ofcom's intention to co-ordinate the removal of the July 2005 Direction with the implementation of the new GC. In any event, Ofcom notes that BT, in its response, provided reassurance that it had no intention of changing its processes, which are compliant towards current regulations, in the event of any transitional period.
- 5.55 All respondents agreed that the Cancel Other rules should be extended, in the form suggested in the March 2009 Consultation. However, a number of respondents also suggested that some form of the information sharing requirements should be extended to apply to all providers who use Cancel Other. However, as we explained in paragraph 7.53 of the March 2009 Consultation, Ofcom does not believe that requirements to share records on request is workable in a multi-provider environment, as it is likely to be very expensive for providers to provide records on request given the volumes involved.
- 5.56 We have also considered Sky's comments that it is not appropriate to withdraw the July 2005 Direction unless we are able to demonstrate that BT do not have SMP since the July 2005 Direction is linked to the assessment of BT's SMP designation. However, we do not agree that the BT SMP designation is relevant in this context. As we state in the March 2009 Consultation (paragraphs 7.8 to 7.11), questions relating to Cancel Other issues are being addressed as part of the review of mis-selling of fixed-line telecommunications services. To this end, we were clear that this review cannot prejudge the outcome of the narrowband market review, just as the narrowband market review cannot prejudge the outcome of this consultation process. Our view remains that based on our analysis of the evidence relating to the use of Cancel Other (see paragraphs 7.12 to 7.27 of the March 2009 Consultation), the evidence shows that there is both widespread use of Cancel Other as well as evidence of systematic abuse of Cancel Other by losing providers.

Ofcom's initial conclusions

- 5.57 Having taken into account all the responses to the March 2009 Consultation, we are minded to confirm our proposals on Cancel Other rules; namely to withdraw the July 2005 Direction concerning BT's use of Cancel Other and incorporating reduced requirements as part of a GC on, applicable to all providers of fixed-line telecommunications services, including BT.
- 5.58 We remain persuaded that the option on which we consulted in the March 2009 Consultation meets the tests under Section 47(2) and 49(1) of the Act for the following reasons:
- taking account of our policy objectives and aims, we consider this option is objectively justifiable and proportionate given the evidence shows that use of Cancel Other is now widespread across the industry. Also, as we discuss in the March 2009 Consultation, the evidence from our enforcement experience to date and the findings of the Schema study highlight the level of misuse of the Cancel Other process by providers where Cancel Other appears to be used primarily as a tool to prevent customers from switching. We consider that the evidence we have considered justifies extending the scope of the Cancel Other rules to all providers in order to ensure that where it is used it is done so properly. However, as discussed, taking account of issues of proportionality, we are not proposing at this stage to transpose all current rules, and are proposing to omit rules around information sharing. In addition, we do not anticipate that there will be any costs involved for those providers who are already using Cancel Other properly; costs would only be a factor where providers are currently misusing the Cancel Other process.
 - we consider our preferred option is not such as to discriminate unduly in that it would remove obligations which currently only apply to BT and would apply consistently to all providers providing fixed-line telecommunications services who would all be under the same obligations to comply with the stated regulations; and
 - we are satisfied that our preferred option is transparent insofar as the nature and intended effect of the proposed changes are clearly set out in this consultation document.
- 5.59 We will consult further on the detailed record keeping requirements for Cancel Other as part of our Stage Two proposals within a subsequent document which we intend to publish towards the end of the year. However, during this period, we will expect providers to keep records regarding the cancellations they make and the reason code that has been used.

Section 6

Options on clarifying record keeping requirements

- 6.1 In this section we provide an overview of the options set out in the March 2009 Consultation to clarify existing record keeping requirements, summarise the responses on these issues, from questions 12 and A5.5 of the March 2009 Consultation and set out our responses to those comments.
- 6.2 In the Consultation, we discussed the possibility of using guidelines to provide information and advice to providers in respect of what we consider is required in terms of record keeping across various sales channels. The aim of this would be to provide much greater certainty to relevant providers in terms of what is required by them in order to meet their obligations as set out under paragraph 5.1 of Ofcom's current published guidelines.

Record keeping for sales

Options

Option 1: Do nothing

- 6.3 Under this option we would not propose to make changes to current obligations relating to record keeping for sales meaning that current obligations, as set out at paragraph 5.10 of the current sales and marketing guidelines would be retained. Ofcom's approach to record keeping would remain at high-level, and SPs would retain the freedom to determine what records are made, and retained, in line with their particular business model and circumstance, sufficient to meet the requirements set out at paragraph 5.10.

Option 2: Clarification of existing obligations relating to record keeping obligations for sales

- 6.4 Under this option we would not propose to make changes to the current obligations relating to record keeping for sales meaning that the current obligations, as set out at paragraph 5.10 of the current sales and marketing guidelines would be retained. Ofcom's approach to record keeping would remain at high-level, and SPs would retain the freedom to determine what records are made, and retained, in line with their particular business model and circumstance, sufficient to meet the requirements set out at paragraph 5.10.
- 6.5 However, unlike the option above, Ofcom would look to provide further clarification of the current obligations in order to aid understanding in light of concerns that not all providers are acting fully in accordance with current requirements relating to record keeping. In particular, as we have found providers have very different approaches to record keeping, we will set out what Ofcom believes is required by the existing obligations.

Option 3: Introduce obligations requiring providers to keep, and retain, call recordings, where appropriate

- 6.6 Under this option Ofcom would require providers to keep recordings of the actual sale, plus any subsequent calls that were made as part of the sales process, where telesales is used by providers as a channel to market. While in the majority of cases where telesales is used, it is likely that there will be a paper trail (through welcome packs etc.), it is also likely that customers will have signed up to the service based on the representations made over the telephone. Without a call recording it is difficult to formulate a clear decision on whether or not mis-selling has occurred based on other forms of evidence submitted. From our statutory information request sent prior to the March 2009 Consultation, we found that telesales was the most popular channel to market.
- 6.7 In the consultation we proposed the following sub-options:
- Sub-option 3(i) – 75% call record keeping requirements (with no assumed tolerance levels);
 - Sub-option 3(ii) – 100% call record keeping requirements based on reasonable endeavours [with an explanation why 100% was not possible] and never less than 90%; or
 - Sub-option 3(iii) – 100% call record keeping requirements (with no assumed tolerance levels).

Option 4: Clarification of existing obligations relating to record keeping obligations for sales and introduction of obligations requiring providers to keep, and retain, call recordings where appropriate

- 6.8 Under this option, we would look to provide additional clarification of the current obligations in order to aid understanding in light of concerns that not all providers are acting fully in accordance with current requirements relating to record keeping as well as introducing new requirements on providers to keep recordings of the actual sales, plus any subsequent calls that were made as part of the sales process, where telesales are used by providers as a channel to market.
- 6.9 As described in option 3, we considered different standards, and proposed the following sub-options:
- Sub-option 4(i) – clarification of existing obligations relating to record keeping obligations for sales as well as 75% call record keeping requirements (with no assumed tolerance levels);
 - Sub-option 4(ii) – clarification of existing obligations relating to record keeping obligations for sales as well as 100% call record keeping requirements based on reasonable endeavours [with an explanation why 100% was not possible] and never less than 90%; or
 - Sub-option 4(iii) – clarification of existing obligations relating to record keeping obligations for sales as well as 100% call record keeping requirements (with no assumed tolerance levels).

Ofcom's preferred option

- 6.10 Our preferred option was Option 4, and specifically sub-option 4(ii), to require 100% of records based on reasonable endeavours. In practice, we would expect this to mean as close to 100% as possible and, where not achievable, an explanation to why it was not possible.
- 6.11 We arrived at the option for a 100% call recording obligation as we were concerned that any lower threshold may lessen the value of any record keeping requirement. However, we accepted the need for an assumed tolerance level as we did not believe that a requirement with no tolerance would be feasible without significantly increasing the costs to industry.
- 6.12 We believed our preferred option met the tests under Section 47(2) of the Act for the following reasons:
- we considered it was objectively justifiable and proportionate, as our evidence showed that there was a need to provide additional clarification of existing obligations for record keeping for sales as well as a requirement for obligation for call recordings to be made, and retained. The new rules established a level of 'best practice' which all providers would be expected to achieve. Without this obligation, we were concerned that some providers may deliberately avoid keeping records of sales and then have no evidence to produce when bad practices are alleged. This will have the effect of penalising those providers who continue to follow best endeavours in relation to record keeping;
 - the preferred option did not discriminate unduly between providers, in that it would apply consistently to all providers providing fixed-line telecommunications services, as they would all be under the same obligations to comply with the stated regulations; and
 - we were satisfied that our preferred option was transparent insofar as the nature and intended effect of the proposed changes are clearly set out in the consultation document.
- 6.13 However, in light of the responses to this proposal, we recognise that there is further work needed to explore the different options regarding call recording in order to protect consumers from mis-selling in a sales call and the mis-use of Cancel Other. Therefore, in this section, we will only consider the responses to the proposal to clarify record keeping requirements for sales. The responses to the proposals for call recording for sales and Cancel Other will be analysed in a subsequent document following further examination of the issues and options involved.

Consultation Questions

Question 12: Do you agree with our preferred option on record keeping for sales? Please provide an explanation to support your response.

Stakeholders' Comments

Clarifying record keeping requirements

- 6.14 There were few comments on the proposal to clarify the current record keeping requirements, as many providers directed their responses at the proposal to

introduce a requirement to record calls relating to sales. Of those who commented on this proposal, namely Citizens Advice, KCOM, the Post Office and two other respondents, all expressed support.

Call recording requirements

- 6.15 The responses to the proposal for mandatory call recordings of sales calls and calls where Cancel Other is used will be discussed as a part of the Stage Two proposals.

Ofcom's response

Clarifying record keeping requirements

- 6.16 We note that while there were few responses regarding the proposal to clarify the rules relating to current record keeping obligations, the majority were broadly supportive.

Impact Assessment Questions

Question A5.5: Do you agree that this option will not result in incremental costs to providers? Please provide an explanation and evidence to support your response.

Stakeholder's Comments

- 6.17 KCOM, BT and SSE agreed that the option to clarify requirements for providers to retain records relating to sales and the use of Cancel Other should not result in additional costs for providers. SSE thought that this option may have some benefits in the long run, but they also warned that if there were changes to the current obligations then costs would be incurred across the industry. However, they did not provide an estimate for these costs.
- 6.18 The Post Office thought that the costs would be dependent on the current systems and processes that providers have in place. Should they need to implement a new system, there will be costs accrued along with re-training.

Ofcom's response

- 6.19 As we set out in the March 2009 Consultation, we did not think this option (Option Two) would impose incremental costs to providers as we are simply clarifying existing obligations. In relation to the Post Office's suggestion that there may be costs if providers have to implement a new system, our view is that we do not agree that additional clarification to the existing regulations is likely to lead to the need to implement new systems. It is, of course, open to providers to use the opportunity to make changes, where they wish to do so.

Ofcom's initial conclusions

- 6.20 Having taken into account all the responses to the March 2009 Consultation, we are minded to confirm our proposal on clarification of record keeping obligation for sales.
- 6.21 We believed this option meet the tests under Section 47(2) of the Act for the following reasons:
- we consider it is objectively justifiable and proportionate, as our evidence showed that there was a need to provide additional clarification of existing obligations for

record keeping for sales. The new rules would establish a level of 'best practice' which all providers would be expected to achieve. Without this obligation, we would be concerned that some providers may deliberately avoid keeping records of sales and then have no evidence to produce when bad practices are alleged. This will have the effect of penalising those providers who continue to follow best endeavours in relation to record keeping;

- it does not discriminate unduly between providers, in that it would apply consistently to all providers providing fixed-line telecommunications services, as they would all be under the same obligations to comply with the stated regulations; and
- we are satisfied that it is transparent insofar as the nature and intended effect of the proposed changes are clearly set out in this consultation document.

Section 7

Other Options

7.1 In the March 2009 Consultation, we also asked for comments on other options which could be used if our proposed options did not bring about the level of reduction to mis-selling we had hoped for. In the consultation we set out examples of ex-ante and ex-post validation that could be introduced. As these options are likely to be more interventionist in nature, we did not suggest that any of these options should be implemented at the current time, but we intend to keep them under review.

Consultation Question

Question 14: What are your views in relation to consideration of other options described in section 9? Please provide an explanation to support your response.

Stakeholder's comments

- 7.2 Many respondents agreed that this was not the time to consider fundamental changes to the switching process, and that these options should only be considered if the proposals in the consultation did not result in a sufficient reduction in mis-selling. FCS noted that the case for the implementation of the more “disruptive” interventions had not been demonstrated and the costs involved precluded serious consideration of these options at this stage. One provider thought that it would be more appropriate to deal with these issues in the context of Ofcom’s broader consultation on migrations.
- 7.3 SSE did not support the proposals for ex-ante validation or the proposed options for ex-post validation. Instead they suggested that the investigation of complaints could form part of a co-ordinated approach to switching arrangements for mass-market communications products. They explained that such arrangements are already in place in the energy supply markets, where dataflow and agreed processes have been documented. This arrangement provided the energy sector with transparency over who has caused the problems in executing transfers or generating customer complaints. Therefore they proposed that the development of co-ordinated arrangements for switching, administered by a body responsible to the market, would allow the development of transparency, monitoring and the promotion of good customer relations. However, they did not think that the setting up of the validation bodies proposed in the consultation would be cost effective.
- 7.4 Gemserv also supported this view, noting that for an ex-ante validation process a central switching process will better inform and protect consumers. They thought that, since there is a growing complexity of products and an increasing number of switches, it is in the interest of competition that a central switching model is taken forward at some stage. For ex-post validation, they suggested that the existing switching processes can be supported by frameworks offering compensation for mis-selling, like the Erroneous Transfer Customer Charter in the energy sector. RNID also thought that Ofcom should be more pro-active in pursuing persistent mis-sellers, and to require them to provide compensation to users. They noted that persistent mis-sellers should be prevented from conducting business at all.
- 7.5 The Post Office explained that they already use a validation process on branch sales, which has reduced the number of mis-selling cases and improved the customer experience. They proposed that this should be an option that other providers should

consider for face-to-face selling. In addition, they suggested that Ofcom should initiate an investigation or enforcement programme should mis-selling allegations by an individual provider reach a specific level, such as 2%.

- 7.6 BT disagreed with both the ex-ante and ex-post validation options. They proposed that efforts should be focused towards development of a new migration process which would provide upfront validation. They suggested that upfront validation is the key to eliminating mis-selling, and for that reason they opposed any process based on ex-post validation. They thought that such processes were user-unfriendly, with end-users responsible for raising complaints and seeking compensation, and expensive to operate. They also argued that the ex-ante validation options also appeared to be bureaucratic and unwieldy. They thought that Ofcom's proposals would fail to deliver radical reductions in mis-selling of fixed line telecommunications services. Instead, they proposed that the process should be a MAC process, like that used in broadband.
- 7.7 A number of other respondents also thought that the MAC process, or one similar to it, would be sufficient to meet the requirements of the migrations process. These respondents include Vodafone, Citizens Advice and RNID. RNID added that it was essential that consumer organisations are closely involved when designing a process, so that it meets people's needs in terms of accessibility and usability. RNID also suggested that Ofcom should become more proactive in pursuing persistent mis-sellers through a system that compensates users in full for the harm they suffer at the immediate expense of mis-sellers and to stop these persistent mis-sellers from conducting business.
- 7.8 Conversely, Sky argued for a gaining provider-led process on the basis this was pro-competitive. They noted that a gaining provider-led process is easier and more convenient for consumers and creates the right incentives on providers to make the process as smooth as possible. They thought that there may be a risk that lower prices would be offered primarily to customers who are more likely to switch if the switching process was a losing provider-led process.
- 7.9 In their response, the Communications Consumer Panel suggested that Ofcom should work towards a single process for the switching of bundled services. They suggested that Ofcom should explore all the possible options, including both gaining provider and losing provider-led processes and one where the process is overseen by an independent third party. RNID also supported a single switching process, and to extend this across a range of industries and services. They thought that this would mean that consumers would only need to understand a single process and meet consumers' needs in terms of accessibility and usability.

Ofcom's response

- 7.10 Ofcom welcomes comments received in relation to consideration of other options. As we have flagged up previously in this paper, we acknowledge there is a much wider debate around the need for harmonised switching processes for communications services. We are currently conducting a wider migrations review, and will take forward stakeholder comments which we summarised in this section through the migrations review.
- 7.11 Ofcom is planning to hold a workshop on migrations later in the year to discuss the issues involved with consumer groups and interests. We plan to publish a further document on this subject in the first half of 2010.

Section 8

Ofcom's initial conclusions

- 8.1 As set out in section 2, having evaluated our preferred options in light of responses received and further analysis of the available evidence, we have concluded that some of the proposals on which we consulted would appear to be relatively straightforward to resolve whereas others would benefit from more detailed examination. In particular, we note that there were a number of concerns raised in relation to our preferred options on record keeping for sales and Cancel Other as well as on information to consumers of the potential consequences of switching.
- 8.2 In light of this, we are proposing to split the proposals on which we consulted into 'Stage One' and 'Stage Two' proposals. Under this approach we intend to conclude on the Stage One proposals as part of this document, and to revisit the Stage Two proposals as part of a subsequent document following further examination of the issues and options involved, including further assessment of the costs and benefits. This is as follows:

Stage One Proposals

Clarifying and simplifying the regulations

- 8.3 In light of evidence that the current drafting of the regulations may not be unambiguously clear, as well as the identified inherent weakness of the Code of Practice approach, we believe it is possible to improve the regulations to the benefit of industry as well as enhancing the effectiveness of Ofcom's enforcement regime. There was broad agreement in the responses to the consultation that clarifying and simplifying the rules would make it easier for providers, particularly the smaller providers, to understand, and comply with their obligations. Our preferred options received broad support from the majority of respondents.
- 8.4 Those who disagreed with our proposals generally disagreed due to their objections to the NoT process. As different types of migration processes will be reviewed as a part of the wider work on migrations in general, it is not appropriate to change the process for fixed-line telecommunications at this time.
- 8.5 Having taken into account all the responses to the consultation, we are confirming our proposal to clarify and simplify the regulations, and to introduce a new GC (GC24) on the sales and marketing of fixed line telecommunication services. Reviewing the responses to the consultation, we have made some changes to the proposed wording of the GC. Specific comments on the wording of the proposed GC are listed in Annex 8 and the changes are highlighted in Annex 9.

Extending Cancel Other rules

- 8.6 There was also broad agreement that the Cancel Other rules should be extended to apply to all providers, rather than just BT. In light of evidence that Cancel Other use is now widespread across the industry, and given evidence of systematic abuse of the Cancel Other process by some providers, we believe that extending rules around the use of Cancel Other will have the effect of dampening levels of Cancel Other abuse, thereby ensuring that consumers are able to switch more easily. Therefore the new GC, containing rules for Cancel Other which apply to any provider who uses this function, should be implemented as soon as possible.
- 8.7 The current rules regarding Cancel Other, as set out in the July 2005 Direction, will be carried across into the new GC, to apply to all providers, except for the rules regarding information sharing. In addition, the new GC will apply to domestic and small business customers only as discussed previously at paragraphs 3.24 and 3.25.
- 8.8 Some respondents proposed that Cancel Other should be used for some scenarios other than those already permitted, such as for change of mind or for customer mis-communication. We will consider this further as part of the Stage Two consultation. The current obligations on BT to share records concerning Cancel Other with other providers will not be carried across into the new GC. There was general agreement that to carry over this requirement will be too onerous. Ofcom notes the concerns about having a system in place to identify providers who mis-use Cancel Other. However, the new GC will give Ofcom greater powers to take swift action where there is evidence that a provider is not complying with the rules. Providers who do not adhere to rules regarding Cancel Other can be identified through our enforcement programme.
- 8.9 Ofcom notes that some providers expressed concern about any transitional period resulting in BT not being subject to rules relating to its use of Cancel Other. However, in the event of the withdrawal of the July 2005 Direction, it is our intention to ensure that there is seamless and consistent regulation by co-ordinating the withdrawal of the July 2005 Direction with the new GC taking effect. This will avoid any break in regulation.
- 8.10 We will consult further on the detailed record keeping requirements for Cancel Other as part of our Stage Two proposals within a subsequent document which we intend to publish towards the end of the year.

Clarifying record keeping requirements

- 8.11 We have identified the inadequacy of record keeping, and the fact that different providers have different approaches to record keeping as a major limitation to our enforcement activities. Therefore, we believe that strengthening record keeping obligations by clarifying existing record keeping obligations will improve current record keeping levels. Having taken into account the comments received, and the evidence to hand, we intend to carry out our proposed option of clarifying the current regulations on record keeping obligations.

Stage Two Proposals

- 8.12 In light of comments received, we have decided to further consider our preferred options in relation to:

- (i) information to consumers of the potential consequences of switching, including timescales for sending out the NoT letters; and
- (ii) mandatory call recording obligations.

8.13 We also intend to consider the following issues as part of our Stage Two considerations:

- extending Cancel Other use for other purposes, including for reasons to do with change of mind, mis-selling and internal mis-communication; and
- extending the regulations to provide protection to larger business customers.

8.14 In order to better understand some of the concerns raised, and other options proposed, during consultation, Ofcom is currently collecting further information and evidence. Ofcom has recently issued a formal information request under section 135 of the Act. Separately, Ofcom is also conducting additional consumer research.

8.15 Following our analysis, we intend to formally consult on the areas set out above. This consultation is likely to be published as part of our planned statement concluding on the Stage One proposals towards the end of the year.

Section 9

Implementation periods

- 9.1 In the March 2009 Consultation, we assumed a period of 12 months for implementation of the full package of proposals. We noted, however, that not all the proposals on which we were consulting were likely to require the full 12 months. We asked for views on the appropriate implementation periods for each of the proposed options in the consultation.

Consultation Question

Question 3: What are your views on appropriate implementation periods for each of the proposed measures we are consulting on as set out in sections 5, 6, 7 and 8?

Stakeholder's Comments

- 9.2 Some respondents, such as Gemserv, LACORS, Post Office and Sky, agreed with the proposal that there should be an implementation period of 12 months for all the proposed options. However Sky added that if the proposals were amended as they suggested in their response, the implementation period could be shorter. The Post Office added that they would need to check with their underlying provider that the timescale for implementation is feasible.
- 9.3 Virgin Media thought that a 12 month implementation for all the proposed options was the simplest approach. Notwithstanding, they agreed that a phased implementation period whereby certain areas could be introduced more quickly would bring about benefits sooner. BT and FCS also supported the proposal for a phased implementation of the proposals. BT disagreed with the 12 months' implementation for all options as they noted that this would mean that mis-selling would not be addressed for another 12-18 months. They also commented that it would take more than 12 months to see any results of these new proposals. In addition, they also noted that where Openreach will be required to make changes to their systems these changes will not be delivered in the next 12-18 months due to system development capability restraint. Citizens Advice commented on the need for swift action to address the shortcomings of the current process.

Clarifying and Simplifying Regulations

- 9.4 BT thought that the new GC should be implemented as soon as possible. SSE noted that there may be additional requirements included in the rewording of existing requirements in the GC. They noted that if these changes were intended then a significant implementation period would be needed for changes to the systems and processes. However if these changes were not intentional, they thought that there would not be a need for any material implementation period. Tesco thought that a 12 month implementation would be adequate, while Virgin Media thought that there should be a minimum 6 month implementation period. FSC added that there should be early publication of the new GC to signal Ofcom's intentions.

Extending Cancel Other to all providers

- 9.5 BT, KCOM and SSE all thought that this proposal could be implemented immediately. Tesco also agreed on the basis they already complied with the proposed rules. However FCS thought that there should be an implementation period

of not less than six months and Virgin Media thought that the implementation period should be 12 months, to allow for training and system changes.

- 9.6 In their responses to Question 5 (see paragraphs 5.49 to 5.53) some respondents suggested that there should be co-ordination between removing the July 2005 Direction and the implementation of the new GC to ensure seamless regulation. These respondents included FCS, Gemserv, KCOM, Unicom and SSE. However, in their response, BT noted that they have no intention of changing their processes between now and when the new rules would come into force.

Clarifying Record Keeping Obligations

- 9.7 There were no comments on the implementation for clarifying record keeping obligations.

Ofcom's response on implementation periods

- 9.8 Ofcom notes that there was a mixed response in terms of implementation periods, with a number arguing for combinations of 6 or 12 months for all proposals whereas others supported a phased approach so that the more straightforward and less complex proposals could be implemented earlier. However, of those supporting a phased approach, there was a difference of views in terms of whether there should be a minimum of 6 months for implementation or could be introduced immediately so that consumers could benefit from the improved regulations sooner.
- 9.9 Having considered the responses received on the subject and, in particular, expressed support to implement more straightforward and less complex proposals more quickly, we are minded to consult on an implementation period of one month from the date of publication of the statement. We note the proposal for an implementation period of 12 months in the March 2009 Consultation was largely driven by those proposals which we are now considering as part of the Stage Two work. In light of this, we believe that an implementation period of one month should provide a reasonable period to providers.
- 9.10 While we have considered proposals for longer implementation periods of 6 and 12 months, given the nature of the changes we are proposing and, particularly, our view that the Stage One proposals should not result in a net burden on the industry, it is not clear to us why longer implementation periods would be necessary. We also note that those respondents arguing for longer periods have not provided any evidence why longer periods are necessary. A one month period would also be consistent with previous implementation periods used for changes to GC14.5 in the past.
- 9.11 Accordingly, we are proposing an implementation period of one month for our Stage One proposals. We nevertheless would welcome comments and further evidence which suggests that a longer period for implementation may be necessary.
- 9.12 We have discussed the need to co-ordinate removing the July 2005 Direction and the implementation of the new GC in paragraph 8.9 above.

Question 1:

Do respondents agree that there should be an implementation period of one month for the new GC 24 to take effect?

Question 2:

Do respondents agree there should be a withdrawal period of one month for the July 2005 Cancel Other Direction from the date of publication of the statement?

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 9 October 2009**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at http://www.ofcom.org.uk/consult/condocs/protecting_consumers/howtorespond/form as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email gavin.daykin@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Gavin Daykin
Ofcom
Consumer Policy Team
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3706
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Gavin Daykin on 020 7981 3859.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement and further consultation document towards the end of the year.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. 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

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 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 to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

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)

Annex 4

Consultation questions

Sub heading

A4.1 In this document we are consulting on the implementation periods for each of the proposals we are carrying forward as a part of the first stage of this work. In summary, the questions are:

Question 1:

Do respondents agree that there should be an implementation period of one month for the new GC 24 to take effect?

Question 2:

Do respondents agree there should be a withdrawal period of one month for the July 2005 Cancel Other Direction from the date of publication of the statement?

Annex 5

Background to the General Condition

Review of consumer safeguards designed to protect consumers from mis-selling of fixed-line telecommunications services

A5.1 Ofcom is committed to preventing problems with mis-selling of telecommunications services. In light of evidence that mis-selling was growing as a problem as well as strong views from stakeholders, Ofcom commenced a review during 2004 considering whether current safeguards designed to protect consumers from mis-selling of fixed-line telecommunications services were effective, or whether it was appropriate for Ofcom to impose different rules.

The April 2004 Consultation

A5.2 In April 2004, Ofcom published a consultation document³ on the effectiveness of current consumer safeguards which were designed to protect consumers from mis-selling of fixed-line telecommunications services. We proposed that consumers were not adequately protected, and there was a need for additional regulation in the form of mandatory guidelines for sales and marketing codes of practice. In addition we also sought views in relation to the need for clarification of certain provisions contained within the existing guidelines for sales and marketing codes of practice for fixed-line telecommunications services.

The November 2004 Consultation

A5.3 In light of stakeholder response to the April 2004 consultation document, Ofcom considered that the balance of arguments supported the conclusion that the current consumer safeguards did not provide adequate consumer protection against the mis-selling of fixed-line telecommunications services. We concluded that there should be a requirement on providers who engage in sales and marketing activity for fixed-line telecommunications services to establish codes of practice on sales and marketing in accordance with published guidelines, and to comply with the provisions of those codes. We proposed the obligation should be subject to a 'sunset' clause, such that it would lapse two years after the date of introduction unless a positive need could be demonstrated to reinstate the obligation.

A5.4 In order to impose this obligation, it was necessary to modify the then existing GC14 in accordance with the procedure for setting, modifying or revoking conditions in section 48 of the Act. This required the publication of a notification of the proposed modification. The November 2004 consultation document⁴ included a notification of a proposed modification of this GC.

³ http://www.ofcom.org.uk/consult/condocs/mis_selling/mis_selling.pdf

⁴ <http://www.ofcom.org.uk/consult/condocs/mis-selling/mis-selling.pdf>

The April 2005 Explanatory Statement and Notification under section 48(1) of the Communications Act 2003

A5.5 Ofcom's explanatory Statement and Notification⁵, published on 13 April 2005, gave effect, with modification, to the proposals set out in the November 2004 consultation document. The Notification and Schedule to the Notification set out the following:

- that there was to be an obligation upon all providers who engage in sales and marketing of fixed-line telecommunications services to establish, under set guidelines, codes of practice, and to comply with the provisions set out in those codes;
- that the requirement to establish, under set guidelines, codes of practice on sales and marketing, and to comply with the provisions set out in those codes, should be subject to a 'sunset' clause. The effect of this clause was that the requirement would lapse two years after the date of introduction unless a positive need was demonstrated to reinstate the requirement;
- the guidelines for sales and marketing codes of practice for fixed-line telecommunications services; and
- that there would be an obligation to provide codes of practice on sales and marketing on request, and free of charge, to customers.

A5.6 The revised GC14.5, which came into effect on 26 May 2005, meant that Ofcom could enforce the requirement to have in place codes of practice for sales and marketing under its enforcement powers in sections 94 to 104 of the Act against providers who fail to establish and thereafter maintain a Code which conforms with our guidelines and/or fail to comply with the provisions of their Code. This included ultimately being able to impose a financial penalty on the relevant provider for non-compliance.

A5.7 The obligations were only applicable to providers who provided fixed-line telecommunications services. Ofcom did consider whether to extend these obligations to other services such as cable services, Local Loop Unbundling and other new voice services. However, in the absence of clear evidence that mis-selling was a problem for these services, Ofcom did not consider that the obligation should be extended to those services at that time. Ofcom pointed out that it remained open for such classes of providers to adopt similar guidelines for sales and marketing on a voluntary basis.

The February 2007 consultation

A5.8 Under the sunset clause, the obligations were due to end on 25 May 2007. In light of this, Ofcom published a consultation⁶ in February 2007 on whether mis-selling of fixed-line telecoms services had been satisfactorily addressed to such an extent that it was appropriate to remove the regulatory obligations. In addition, we also considered whether, if mis-selling had not been satisfactorily addressed, the obligations should only apply to fixed-line telecommunications services or whether they should be extended to cover other services, such as, broadband, cable, LLU and/or mobile services.

⁵ <http://www.ofcom.org.uk/consult/condocs/misselling/statement.pdf>

⁶ <http://www.ofcom.org.uk/consult/condocs/missellingprotection/misselling.pdf>

The May 2007 Explanatory Statement and Notifications under section 48(1) of the Communications Act 2003

A5.9 Ofcom's Explanatory Statement and Notification⁷, published on 21 May 2007, gave effect, with modification, to the proposals set out in the February 2007 consultation. The Notification and Schedule to the Notification set out the following:

- that there should remain an obligation upon all providers who engage in sales and marketing of fixed-line telecommunications services to establish, under set guidelines, codes of practice and to comply with the provisions set out in those codes;
- that the requirement to establish, under set guidelines, codes of practice, and to comply with the provisions set out in those codes, would no longer be subject to a sunset clause;
- that the obligation should be extended to providers offering services based on full LLU;
- amended guidelines for sales and marketing codes of practice for fixed-line telecommunications services;
- that there would be an obligation to provide codes of practice on sales and marketing on request, and free of charge, to customers; and
- that these requirements would enter into force on 26 May 2007 save for services based on full LLU which entered into force four weeks from the date of publication of the final statement and Notification.

The March 2009 Consultation

A5.10 On March 17 2009, Ofcom published a consultation document on proposals to strengthen existing safeguards which have been designed to protect consumers from the risks of mis-selling of fixed-line voice services⁸. In the consultation we set out options on:

- clarifying and simplifying the regulations on sales and marketing of fixed-line telecommunications services;
- providing better information to consumers on the potential consequences of switching;
- extending Cancel Other rules to apply to all providers who use Cancel Other; and
- record keeping requirements for sales and Cancel Other.

A5.11 We received responses from 22 stakeholders. The non-confidential responses are published on our website

⁷ <http://www.ofcom.org.uk/consult/condocs/missellingprotection/statement/statement.pdf>

⁸ http://www.ofcom.org.uk/consult/condocs/protecting_consumers/protectingconsumers.pdf

Background and history of Cancel Other

The July 2003 Direction

- A5.12 On 8 July 2003, following an own initiative investigation prompted by industry concern surrounding BT's use of Cancel Other, the Office of Telecommunications ('OfTel'), one of Ofcom's predecessor regulators, published a Direction specifying in what circumstances BT was permitted to use Cancel Other to cancel orders for Carrier-Pre Selection (CPS) This Direction allowed BT to use Cancel Other to cancel orders for CPS only in certain circumstances, and also imposed a number of further conditions on BT's use of Cancel Other to cancel orders for CPS.
- A5.13 Although the Direction applied to CPS only, BT and the rest of the industry designed equivalent processes for Wholesale Line Rental (WLR) in order to be consistent with the existing processes for CPS.

The November 2003 Direction

- A5.14 On 23 November OfTel published its review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets ('the Wholesale Fixed Markets Review'). In it, OfTel concluded that BT had significant market power (SMP) in a number of wholesale markets in the UK excluding the Hull area and imposed a number of SMP conditions on BT, including:
- a requirement to provide network access on reasonable request (SMP condition AA1(a));
 - a requirement to provide CPS (SMP Condition AA8); and
 - a requirement to provide wholesale analogue line rental (SMP Condition AA10).
- A5.15 The wholesale fixed narrowband market review resulted in a Direction setting out the circumstances in which BT was permitted to use Cancel Other, mirroring the provisions of the July 2003 Cancel Other Direction described above.

The November 2004 Consultation

- A5.16 Following publication of the July 2003 Cancel Other Direction, BT and the industry discussed, at BT's initiative, the possible introduction of a new process for managing customer complaints and cancellations during the transfer period which would replace the current process, including BT's ability to use Cancel Other.
- A5.17 The industry, including BT, considered the current process could be improved. BT's competitors considered the current process, and specifically Cancel Other, enabled BT to cancel their CPS and WLR Cancel Other orders inappropriately. They also argued that the current process did not enable them to address allegations of slamming, because customers who believed they had been slammed could simply ask BT to cancel their order, and did not have to contact their gaining provider directly.
- A5.18 On 26 August 2004, following a dispute between BT and the industry, the referring parties asked Ofcom to resolve a dispute about the process for managing customer complaints during the CPS and WLR transfer process. Having considered the

information provided by the parties, Ofcom published a consultation on a draft Direction and draft Determination for resolving the dispute.

The January 2005 Direction

- A5.19 Having considered the responses to the 2004 Consultation, Ofcom published a final Direction on 21 January 2005⁹, which specified when BT was permitted to use Cancel Other and what information it was required to provide to its competitors about its use of Cancel Other.
- A5.20 As set out in the January 2005 Direction, BT was permitted to use Cancel Other in cases of slamming, described as a provider's attempts to transfer some or all of a customer's calls and /or telephone line without that customer's express knowledge and consent. In the Direction, Ofcom provided further detail on the definition of slamming and clarified the types of behaviour covered by the definition.
- A5.21 As well as being able to use Cancel Other in cases of slamming, BT was also permitted to use Cancel Other in order to prevent a customer from being transferred as a result of another provider's failure to action a customer's request to cancel a transfer. In addition, BT was also permitted to use Cancel Other where a BT account was closed before a CPS or WLR order had matured ('line cease').
- A5.22 In order to make BT's use of Cancel Other more transparent, and to give confidence that it was only using Cancel Other in accordance with the permitted reasons set out in the Direction, BT was required to provide full records of contact between individual customers and BT, on reasonable request, relating to the transfer associated with the provider making the request, where BT had applied Cancel Other.

The July 2005 Direction amending the Direction of 21 January 2005 regarding BT's use of Cancel Other

- A5.23 On July 28 2005, Ofcom published a Direction amending the January 2005 Direction regarding BT's use of Cancel Other¹⁰. The effect of this amendment was to remove the obligation on BT to pass certain Cancel Other information to providers within a set period of time. This was because the CPS Process Group and WLR Process Group agreed that the requirement for BT to "on a fortnightly basis...pass this information to the gaining provider, where the gaining provider was not also the CPS operator or WLR Service Provider" was unnecessary. It was agreed that this information would be passed to the gaining CP by the CPS Operator or WLR provider in the standard course of business, and that as long as BT was passing the information to the CPS Operator or WLR provider as required in the first sub-paragraph of paragraph 6 of the Direction, then the second sub-paragraph requiring the sharing of information was not required.
- A5.24 In addition, as BT had already implemented the processes and systems to comply with all aspects of the January Direction with the exception of the second sub-paragraph of paragraph 6, Ofcom considered that paragraph 7 of the January 2005 Direction (which required BT to do the necessary work to implement paragraph 6 within three months of the January Direction coming into force) was unnecessary.

⁹ <http://www.ofcom.org.uk/consult/condocs/cancel-other/codir/codir.pdf>

¹⁰

http://www.ofcom.org.uk/consult/condocs/cancelother/amendment2direction/amending_direction.pdf

Annex 6

List of Respondents

A6.1 We received 22 responses to this consultation. The responses can be found at: http://www.ofcom.org.uk/consult/condocs/protecting_consumers/responses/

Of these, the following responses were non-confidential:

- BT
- Citizens Advice
- The Consumer Panel for Communications
- Federation of Communications Services (FCS)
- Gemserv
- KCOM
- The Local Authorities Coordinators of Regulatory Services (LACORS)
- Orange
- The Post Office Ltd
- RNID
- Sky
- Scottish and Southern Energy
- Talk Talk
- Tesco
- THUS
- Tiscali
- UKCTA
- Unicom
- Virgin Media
- Vodafone

Annex 7

Notification of proposed modification under section 48(2) of the Communications Act 2003

Proposal for modification of General Condition 14 on Codes of Practice and Dispute Resolution under section 48(1) of the Act published by the Director General of Telecommunications on 22 July 2003

1. Ofcom in accordance with section 48(1) of the Act hereby makes the following proposals for the modifications to General Condition 14 on Codes of Practice and Dispute Resolution.
2. The draft modification is set out in the Schedule to this Notification.
3. The effect of, and Ofcom's reasons for making, the modifications referred to in paragraph 1 above are set out in the accompanying explanatory statement.
4. Ofcom considers that the proposed modifications referred to in paragraph 1 above comply with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the proposals.
5. In making the proposed modifications set out in this Notification, Ofcom has considered and acted in accordance with the six Community requirements in section 4 of the Act, their general duties in section 3 of the Act.
6. Representations may be made to Ofcom about the proposals set out in the Notification and the accompanying statement by **5pm on 9 October 2009**.
7. The modification shall enter into force one month after the publication of the final notification.
8. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1) (a) of the Act.
9. In this Notification:
 - 'Act' means the Communications Act 2003;
 - 'the Director' means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
 - 'Ofcom' means the Office of Communications.
9. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them, otherwise any word or expression shall have the meaning it has in the Act.
10. The Interpretation Act 1978 shall apply as if this modification were an Act of Parliament.

11. Headings and titles shall be disregarded.

12. The schedule to this Notification shall form part of this Notification.

Claudio Pollack.

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

10 September 2009

Schedule

The General Condition and Guidelines shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference).

Basic Code of Practice regarding provision of Public Electronic Communications Services

14.1 The Communications Provider shall produce a basic Code of Practice for its Domestic and Small Business Customers which sets out at least where such customers may avail themselves of the information required to be published under Condition 10.2, as relevant to the provision of Public Electronic Communications Services. The Code of Practice shall be drafted in plain English which is easy to understand, and copies of the Code of Practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

Codes of Practice for Premium Rate Services, NTS Calls,¹¹ calls to 0870 numbers¹² [and calls to Personal Numbers]¹³

- 14.2 Within two months of this Condition entering into force, all Originating Communications Providers who provide Premium Rate Services, NTS calls, calls to 0870 numbers [or calls to Personal Numbers], as appropriate shall:
- (a) establish and thereafter maintain a Code of Practice for the provision of information relating to Premium Rate Services for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 1 to this Condition;
 - (b) establish and thereafter maintain a Code of Practice for NTS Calls, calls to 0870 calls [and calls to Personal Numbers] for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 2 to this Condition; and
 - (c) comply with the provisions of the Codes of Practice referred to at 14.2 (a) and (b) above.
- 14.3 The codes of practice referred to in Condition 14.2 shall be drafted in plain English which is easy to understand, and copies of the codes of practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

Codes of Practice for Complaints

¹¹ Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.

¹² Changes to 0870, Statement and notification, 23 April 2009, replacing condition 14.2 with effect from 1 August 2009.

¹³ Review of the 070 personal numbering range, Statement and notification (and correction), 27 February 2009, inserting references to calls to Personal Numbers (shown in square brackets), to take effect on 28 August 2009.

14.4 Within one month of this Condition entering into force, the Communications Provider shall establish and thereafter maintain procedures that conform with any applicable Code of Practice for Complaints for the handling of complaints made by its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

Codes of Practice for Sales and Marketing^{14,15}

~~14.5 Those Communications Providers who provide Fixed-line Telecommunications Services shall:~~

~~(a) establish and thereafter maintain a Code of Practice for Sales and Marketing for dealing with its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 3 to this Condition; and~~

~~(b) comply with the provisions of the Code of Practice for Sales and Marketing established according to Condition 14.5(a) above.~~

~~14.6 The Code of Practice for Sales and Marketing shall be drafted in plain English which is easy to understand, and copies of it shall be provided on request and free of charge to any Domestic and Small Business Customer, and be prominently available on the Communications Provider's public website.~~

Dispute Resolution

14.75 The Communications Provider shall implement and comply with a Dispute Resolution Scheme, including any final decision of the Dispute Resolution Body made in accordance with that Scheme, for the resolution of disputes between the Communications Provider and its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

Code on the provision by Service Providers of consumer protection information for the provision of Services¹⁶

14.86 Within two months of this Condition entering into force, all Service Providers shall:

(a) comply with the requirements set out in the Code at Annex 4.

14.97 In this Condition¹⁷:

¹⁴ Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005.

¹⁵ Protecting consumers from mis-selling of telecommunications services, Notification, 22 May 2007 – deleting text in 14.5 and adding text in 14.6.

¹⁶ Regulation of VoIP Services, Notification, 29 March 2007, obligations in Annex 4 in force from 29 May 2007.

¹⁷ Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005 – applies to insertion of definitions (a), (d), (h), (j), (m) – (p), and (s) – (v), Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006 – applies to insertion of definitions (i), (k) and (l), Regulation of VoIP

- ~~(a)~~ **“Cable Network”** means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;
- ~~(b)~~ (a) **“Communications Provider”** means a person who provides Public Electronic Communication Services to Domestic and Small Business Customers;
- ~~(e)~~ (b) **“Code of Practice for Complaints”** means a Code of Practice approved from time to time by the Director for the purpose of this Condition in accordance with sections 52 and 53 of the Act;
- ~~(d)~~ **“Code of Practice for Sales and Marketing”** means a Code of Practice established in accordance with Condition 14.5(a);
- ~~(e)~~ (c) **“Dispute Resolution Body”** means the body of persons responsible for administering a relevant Dispute Resolution Scheme;
- ~~(f)~~ (d) **“Dispute Resolution Scheme”** means procedures approved or established from time to time by the Director for the purpose of this Condition in accordance with sections 52, 54 or 55 of the Act;
- ~~(g)~~ (e) **“Domestic and Small Business Customer”** means, in relation to a Communications Provider, a Customer of that Provider who is neither
- (i) himself a Communications Provider; nor
 - (ii) 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);
- ~~(h)~~ **“Fixed-line Telecommunications Services”** means Narrowband call and/or line rental services provided to Domestic and Small Business Customers;
- ~~(i)~~ (f) **“Guidelines”** mean the guidelines as set out in either Annex 1, 2 or 3 to this Condition;
- ~~(j)~~ **“Narrowband”** means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network;
- ~~(k)~~ (g) **“Mobile Number”** means a Telephone Number, from a range of numbers in the National Telephone Numbering Plan, that is Adopted or otherwise used to identify Apparatus designed or adapted to be capable of being used while in motion;]

Services, Notification, 29 March 2007 - applies to insertion of definitions (q) and (r), Protecting consumers from mis-selling of telecommunications services, Notification, 22 May 2007 – applies to insertion of definitions (a) “Cable Network” and (j) “Narrowband”, modification of definition (h) “Fixed-line Telecommunications Services” and deletion of definitions (a) “Carrier Pre-selection”, (j) “Indirect Access”, (o) “Pre-selected Provider”, (p) “Relevant Period”, (s) “Subscriber”, (t) “Wholesale Calls”, (u) “Wholesale Inputs”, (v) “Wholesale Line Rental”.

Review of the 070 personal numbering range, Statement and notification (and correction), 27 February 2009 – applies to insertion of (k) “Mobile Number”, (n) “Personal Number”, (o) “Personal Numbering Service”, (p) “Personal Numbering Service Provider” to take effect on 28 August 2009.

- ~~(h)~~ (h) “**NTS Calls**” means calls to numbers identified in the National Telephone Numbering Plan as Special Services operating on the 08 number range and including calls to 0500 freephone numbers, but excluding calls to 0844 04 numbers for Surftime internet access services, calls to 0808 99 numbers for flat rate internet access call origination and calls to 0870 numbers¹⁸;
- ~~(m)~~ (i) “**Originating Communications Provider**” means any Communications Provider that provides call origination services to Domestic and Small Business Customers but excluding Payphone Service Providers;¹⁹
- ~~(n)~~ (j) “**Personal Number**” means a Telephone Number, from a range of numbers in the National Telephone Numbering Plan, assigned by a Personal Numbering Service Provider, which allows a Subscriber to receive calls or other communications at almost any Telephone Number, including a Mobile Number;
- ~~(o)~~ (k) “**Personal Numbering Service**” means a service based on number translation that enables End-Users to be called or otherwise contacted, using a single Personal Number, and to receive those calls or other communications at almost any Telephone Number, including Mobile Numbers;
- ~~(p)~~ (l) “**Personal Numbering Service Provider**” means a provider of Personal Numbering Services;²⁰
- ~~(q)~~ (m) “**Publicly Available Telephone Services**” means a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for End-Users with disabilities or with special social needs and/or the provision of non-geographic services;
- ~~(r)~~ (n) “**Public Telephone Network**” means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data;
- ~~(s)~~ (o) “**Service**” means a Public Electronic Communication Service, but only to the extent it comprises the conveyance of speech, music or sounds;
- ~~(t)~~ (p) “**Service Provider**” means a provider of a Service.

¹⁸ Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009, inserting the last 5 words to end of the definition of NTS calls.

¹⁹ Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009, inserting new definition of Originating Communications Provider.

²⁰ Review of the 070 personal numbering range, Statement and notification (and correction), 27 February 2009, to take effect on 28 August 2009.

Annex 1 to General Condition 14²¹

Guidelines for codes of practice for handling customer enquiries and complaints about Premium Rate Services

1. Introduction and overview

- 1.1 The key objective of these Guidelines is to ensure that Originating Communications Providers provide their domestic and small business customers with readily accessible and accurate information relating to Premium Rate Service (“PRS”) calls;
- 1.2 These Guidelines seek to ensure that there is a clear framework within which Originating Communications Providers should be working, providing reassurance to customers and consumer representatives as to what constitutes good practice in the provision of information to customers in relation to complaints and enquiries about PRS calls.

2. Status of code

- 2.1 All Originating Communications Providers who provide PRS are required under General Condition 14.2 to establish a Code of Practice for PRS Calls for their domestic and small business customers (the “Code”), which conforms with these Guidelines, and to comply with the provisions of the Code.
- 2.2 Compliance with the Code does not guarantee compliance with any other legal requirements.
- 2.3 Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.

3. Customer information and advice

- 3.1 The Originating Communications Provider that is responsible for the retail billing of PRS Calls to the end-user shall publish the usage charges required to be published under General Condition 10.2(d)(ii) for PRS Calls on its website.²²
- 3.2 Originating Communications Providers shall provide the following information and advice to their customers:
 - (i) information about the role of Originating Communications Providers in relation to:
 - a. general PRS enquiries and requests for number checks via the number-checker facilities provided by PhonepayPlus²³ on the PhonepayPlus website (www.phonepayplus.org.uk);

²¹ Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.

²² Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009, inserting new paragraph 3.1.

²³ Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009, replacing all references to the Independent Committee for the Supervision of Telephone Information Services or ICSTIS in paragraphs 3.2 and 3.3 with PhonepayPlus.

- b. dealing with formal complaints about abuses of service content, the PhonepayPlus Code of Practice and alleged scams.

3.3 In so doing Originating Communications Providers shall provide:

- (i) information about the role and remit of PhonepayPlus in dealing with complaints and how to go about making a formal complaint to PhonepayPlus via the website, helpline or by in writing;
- (ii) information about the tariffs that apply on their network for calls to any PRS number range;
- (iii) basic information about how PRS services work including whether the call(s) in question were routed to service providers (SPs) hosted on the Originating Communications Provider's own network or on the network of a Terminating Communications Provider (TCP), together with a basic explanation of how revenue sharing with SPs operates;
- (iv) information about how consumers can bar access from their telephone to all or specific PRS number ranges for reasons of cost or content;
- (v) information about the purpose of the Telephone Preference Service ("TPS") and Fax Preference Service ("FPS") and how to go about registering with such services;
- (vi) information about how internet diallers operate and how consumers can identify and take action, such as improving their computer's security, to avoid further instances of these or similar scams;
- (vii) in the case of mobiles, in addition to the above, information about how premium rate SMS/MMS/WAP billed services operate and how consumers can unsubscribe from these;
- (viii) information on the role of the Telecoms Ombudsman schemes in resolving disputes concerning PRS calls;
- (ix) information on other options available to consumers for seeking refunds in cases of abuse or scams involving PRS calls;
- (x) contact details of individual SPs or the TCPs which host them; and where available – typically via PhonepayPlus's website at (www.phonepayplus.org.uk);
- (xi) SPs customer service contact details where consumers can obtain further information about services provided on the PRS numbers found on their bills.

4. **Processes and Procedures**

4.1 Procedures should be in place for Originating Communications Providers' enquiry and helpdesk staff to know of the existence and content of the Code in order for them to be able respond to complaints and enquiries about PRS calls and to monitor their compliance with the Code.

4.2 There should be fully documented procedures in place to make customers and advice agencies aware of the existence and content of the Code, for example by

referring to the Code in sales and marketing literature and by making the Code available through Originating Communications Providers' websites.

- 4.3 The Code shall be drafted in plain English, which is easy to understand, and copies of the Code are to be provided on request, and free of charge, to customers.
- 4.4 The Code shall include the name and contact details (including e-mail address) of the Originating Communications Provider's representative who is responsible for the Originating Communications Provider's compliance with the Code.
5. **Terms used in these Guidelines**
- 5.1 Terms used in these Guidelines shall have the same meaning, if any, as set out in Condition 14.

Annex 2 to General Condition 14²⁴

Guidelines for codes of practice for the publication of prices of calls to Number Translation Services, 0870 calls²⁵ [and Personal Numbers]²⁶

- 1.1 The key objective of these Guidelines is to ensure that Originating Communications Providers provide their Domestic and Small Business Customers with readily accessible and accurate information relating to the usage charges for NTS Calls, 0870 calls [and calls to Personal Numbers] on their networks.
- 1.2 These Guidelines seek to ensure that there is a clear framework within which Originating Communications Providers should be operating in relation to the publication and provision of information to domestic and small business customers about usage charges for NTS Calls, 0870 calls [and calls to Personal Numbers].
2. **Status of code**
 - 2.1 All Originating Communications Providers who provide NTS Calls, 0870 calls [and calls to Personal Numbers] are required under General Condition 14.2 to establish a Code of Practice for their domestic and small business customers (the “Code”), which conforms with these Guidelines and to comply with the provisions of the Code.
 - 2.2 Compliance with the Code does not guarantee compliance with any other legal requirements.
 - 2.3 Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.
3. **Customer information and advice: published price lists and websites**
 - 3.1 The Originating Communications Provider that is responsible for the retail billing of NTS Calls, 0870 calls [and calls to Personal Numbers] to the end-user shall publish the usage charges required to be published under General Condition 10.2(d)(ii) for NTS Calls, 0870 calls [and calls to Personal Numbers] on its website and in published price lists in a way that gives those charges the same prominence in terms of location and format given to charges for geographic calls, calls to mobiles and call packages, including bundles.
 - 3.2 Without prejudice to the generality of paragraph 3.1, Originating Communications Providers shall give prominence to the following, in particular:

²⁴ Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.
Review of the 070 personal numbering range, Statement and notification, 27 February 2009 – added reference to “calls to Personal numbers”, paragraph 3.2(iii) on usage charges for calls to Personal Numbers and paragraph 4.3 on prominence – to take effect on 28 August 2009.

²⁵ Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009 – added reference to 0870 calls in paragraphs 1.1, 1.2, 2.1, 3.1 and 4.1 – 4.2 and 5.1, and new publication requirements in paragraphs 3.2(iii), 4.3 and 4.4.

²⁶ Review of the 070 personal numbering range, Statement and notification (and correction), 27 February 2009, to take effect on 28 August 2009 – added reference to “calls to Personal numbers” in paragraphs 1.1, 1.2, 2.1, 3.1 4.1 – 4.3 and 5.1, and new publication requirement in paragraph 3.2(iv) on usage charges for calls to Personal Numbers, all shown in square brackets.

- (i) any usage charges that apply for calls to freephone numbers including details of when those charges will apply;
- (ii) usage charges for NTS Calls which include variations by time of day. For example, "08xx calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax";
- (iii) except where these are charged at the Originating Communications Provider's geographic price including discounts and packages, usage charges for 0870 calls which include variations by time of day. For example, "0870 calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax";
- [(iv) usage charges for calls to Personal Numbers which include variations by time of day. For example, "070 calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax";]
- (v) whether or not any special offers, discount schemes or call bundling arrangements apply to NTS Calls, 0870 calls [and calls to Personal Numbers], including details of which of those arrangements apply to which number range;

4. Customer information and advice: advertising, promotional material and new customers

- 4.1 Originating Communications providers shall publish in their advertising and promotional material which refer to call pricing, alongside maximum prices applying to NTS Calls[,calls to 0870 numbers] [and calls to Personal Numbers], a clear reference as to where on websites and published price lists the complete set of charges, as specified in paragraph 3.2, can be found.
- 4.2 When a new customer signs up for the provider's service, Originating Communications Providers shall provide, alongside maximum prices applying to NTS Calls, calls to 0870 numbers [and calls to Personal Numbers] in the relevant correspondence, a clear reference as to where on websites and published price lists the complete set of NTS Call, 0870 call [and Personal Numbers call] charges, as specified in paragraph 3.2, can be found.
- 4.3 Wherever an Originating Communications Provider states in their advertising or promotional material a price for a call package or bundle which includes geographic calls the Originating Communications Provider must include in that advertising or promotional material a prominent statement indicating whether or not this price includes 0870 calls [and calls to Personal Numbers.]
- 4.4 Originating Communications Providers should only describe calls to 0870 numbers as national calls or priced at the national rate in advertising, promotional material and consumers' retail bills, where their prices for calls to 0870 numbers are the same as their prices for geographic calls.

5. Processes and Procedures

- 5.1 Procedures should be in place for Originating Communications Providers' enquiry and helpdesk staff to know of the existence and content of the Code in order for them

to be able respond to complaints and enquiries about NTS²⁷ calls, calls to 0870 numbers [and calls to Personal Numbers] and to monitor their compliance with the Code.

- 5.2 There should be fully documented procedures in place to make customers and advice agencies aware of the existence and content of the Code, for example by referring to the Code in sales and marketing literature and by making the Code available through Originating Communications Providers' websites.
 - 5.3 The Code shall be drafted in plain English, which is easy to understand, and copies of the Code are to be provided on request, and free of charge, to customers.
 - 5.4 The Code shall include the name and contact details (including e-mail address) of the Originating Communications Provider's representative who is responsible for the Originating Communications Provider's compliance with the Code.
6. **Terms used in these Guidelines**
- 6.1 Terms used in these Guidelines shall have the same meaning, if any, as set out in Condition 14.

²⁷ Changes to 0870, Statement and modification, 23 April 2009, correction of original text.

Annex 3 to General Condition 14^{28,29}

Guidelines for sales and marketing codes of practice for Fixed-Line Telecommunications Services

The following elements to be included within sales and marketing codes of practice

1. Introduction and overview

1.1 Objectives to be outlined:

- to provide Domestic and Small Business Customers (“Customers”) with protection from harmful conduct arising from irresponsible sales and marketing activity;
- to ensure good practice and responsible selling in the marketing of Fixed-line Telecommunications Services, and to help Customers understand the service and behaviour to be expected;
- to provide a clear framework within which responsible Communications Providers (“Providers”) should be working, providing reassurance to Customers and consumer representatives as to what constitutes good practice in the sales and marketing of Fixed-line Telecommunications Services.

1.2 The code to deal primarily with issues arising before, during and at the point of sale, with particular emphasis on the avoidance of mis-selling and misrepresentation, and ensuring customer understanding of the services offered and the key terms of any contracts they are entering into.

1.3 Procedures to be in place for sales and marketing staff, and agents, to be informed of the Codes of Practice for Sales and Marketing (“the Code”) and its contents, and for monitoring their compliance with it.

1.4 Procedures to be in place, and fully documented, for Customers and advice agencies to be made aware of the Code and its contents such as, for example, making reference to the Code in sales and marketing literature, as part of the Providers’ “notification of transfer” letter (referred to in paragraphs 6.11 and 6.12).

1.5 Codes to be drafted in plain English, and to be made available on public websites, and copies of it to be provided on request, and free of charge, to Customers.

1.6 A named person, responsible for compliance, with relevant contact details, including an e-mail address, to be provided.

2. Status of code

2.1 Codes to explain that Providers who engage in sales and marketing for Fixed-line Telecoms Services are required under General Condition 14.5 to establish the Code in accordance with these Guidelines, and comply with the provisions of the Code.

²⁸ Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005.

²⁹ Protecting consumers from mis-selling of telecommunications services, Notification, 22 May 2007 – amended paragraphs 1.1, 1.2, 1.5, 1.6, 2.1, 2.2, 2.3, 4.2, 5.5, 6.1, 6.3, 6.9, 10.1 and deleted paragraph 10.2 (address of Citizens Advice Bureau) and item 4 in the table (Telecommunications (Open Network Provision)(Voice Telephony) Regulations 1998 SI 1998 No. 1580).

2.2 Codes to explain that compliance with the Code does not guarantee compliance with any legal requirement.

2.3 Codes to explain that non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.

3. Sales, marketing advertising and promotion

3.1 Customer approaches may occur in a wide range of ways e.g. by TV, radio or press advertising, promotions in shops or shopping centres, post, fax, electronic mail, telephone or in person. Regardless of the way in which sales and marketing activities are conducted, Providers to act responsibly and compliantly.

3.2 Customers' legal rights and wishes to be respected where they have registered with any relevant preference service, including the Mailing Preference Service, the Telephone Preference Service, the Fax Preference Service and the E-mail Preference Service.

3.3 Advertising and promotion to comply with the British Codes of Advertising and Sales Promotion and all other applicable advertising codes. In addition, advertising and promotional literature to be clear, unambiguous, accurate and fair, containing no false or misleading information about price, value or service and, in particular, must not denigrate other Providers.

4. Recruitment and sales training

4.1 Appropriate procedures to be set up for the selection of staff involved with direct contact with customers for the purposes of sales and marketing activity.

4.2 Providers to be responsible for ensuring that sub-contractors (third party agencies) also set up equivalent selection procedures. Third party agencies shall not include resellers to whom telephony services are sold on a wholesale basis.

4.3 Whilst operating within current employment legislation, recruitment of sales staff to have regard to:

- behaviour and appearance, recognising that the sales person may be seen as the "public face" of the industry;
- security — references and relevant convictions for criminal offences to be checked and taken into account;
- evidence of mis-selling or lack of integrity in any previous selling employment.

4.4 The following requirements related to sales staff based in the UK to be observed:

- the applicant must provide proof of National Insurance number, proof of address and two references;
- referees cannot be related to the applicant;
- business referees must not both be from the same company;

- if a sales person leaves for any reason a copy of his or her sales records (including all recordings and notes on sales) will be retained for a minimum period of six months;
- reasonable endeavours to be made to retrieve the identification badges of staff leaving the company.

4.5 For sales staff not based in the UK, equivalent procedures to be applied, and documented.

4.6 Providers to satisfy themselves that they have taken reasonable steps to ensure that every such person is trained so as to have a sufficient understanding that any relevant advice given by such person is not misleading. Topics covered to include:

- arrangements for competition in the supply of telecommunications in the UK;
- the different telephone options provided by the company and how these differ from other competitive telecoms products (which may or may not be offered by the company); for example, Indirect Access, Carrier-Pre Selection, Wholesale Line Rental or Wholesale Calls;
- the process for ordering the telephone service;
- the relevant principles of consumer protection law;
- the prices charged by the employing company and its other terms and conditions of service and, in particular, methods of payment, duration of contract and any termination fees;
- the nature, and cost, of any additional services on offer;
- the process for cancelling the contract both during the cooling-off period and at any time following commencement of the service;
- the existence of the sales and marketing Code of Practice and the benefits provided; and
- the procedure for handling customer complaints.

4.7 Responsibility for compliance with the Code by representatives, and any sales agency acting on their behalf, to lie with the Provider. The Provider to identify the title of the person accountable for ensuring that the company and its agents observe the Code, and the title of the person responsible for handling complaints relevant to the code.

4.8 Remuneration systems, to be documented, and not to be such as to encourage misleading or exploitative sales practices. The Provider to be kept informed of incentive schemes used by any agencies it employs for sales and marketing.

5. Customer contact

5.1 Discretion to be used when visiting consumers' homes, particularly during the hours of darkness. No face to face contact to be made outside the hours of 08.00 to 20.00, and no telephone calls to be made outside the hours of 08.00 to 21.00, unless at the customer's request

- 5.2 — Representatives involved in face-to-face sales and marketing to be issued with identity badges that clearly display the name of the Provider they represent and a unique identification number for that representative. The identity badge to also display the representative's name, a photograph of the representative and an expiry date for validity of the card. The information on the card to be presented in such a way that does not require close examination. Identity cards must also be made available with key information in Braille, on request.
- 5.3 — All representatives to immediately identify themselves, the company they represent and the purpose of the call and the expected call duration. If visiting or meeting in person, they should draw the Customers' attention to their identity card.
- 5.4 — Reasonable steps to be taken to keep informed of local authority initiatives, password schemes etc, such as the Local Distraction Burglary Initiative.
- 5.5 — All representatives to be courteous, use appropriate language and offer clear and straightforward explanations. All information should be factual and accurate. Representatives should not misrepresent the services being offered by the Provider nor those of other Providers. Representatives should not engage in conduct that misleads or deceives or is likely to mislead or deceive Customers. Representatives to ensure that Customers entering into contracts understand, and intend to enter into them.
- 5.6 — Representatives to cease contact with any person who indicates that the contact is inconvenient, unwelcome, inappropriate or too long. If the Customer requests it, the discussion to be ended immediately and, if making a doorstep call, the premises to be left immediately.
- 5.7 — Representatives not to abuse the trust of vulnerable Customers e.g. those who are elderly or whose first language is not English, or who have special needs. Providers should have a policy regarding such Customers, including that their representatives do not pursue sales presentations to Customers whom they believe may be vulnerable.
- 5.8 — Where there is sheltered housing, nursing homes or residential care facilities contact to be made with the warden or other person in authority before any approach is made to the Customer.
- 5.9 — No sales or marketing activity to be conducted that is directed to those who are under the legal age for entering into contracts.
- 5.10 — Sales and marketing campaign records to be maintained for six months, including the date and the approximate time of the contact with the Customer. Records to be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

6. — Entering into a contract — information, order forms and contracts

- 6.1 — All reasonable steps to be taken to ensure that the person entering into a contract is authorised to enter into the contract for the Fixed-line Telecommunications Services/bills at the premises, and that the person entering into a contract understands, and intends to enter into the contract (i.e. explicit consent of the Customer is obtained before transferring a line).

6.2 Order forms and contract forms to be designed such that the contractual nature of the document is clear to the Customer, and it contains a statement of the contractual nature of the document immediately adjacent to where the Customer signs the document so the statement cannot easily be obscured or concealed. Customers to sign over the word "contract".

6.3 The Customer to be given the information set out in this paragraph, in writing, and during the sales call, in a clear, comprehensible, prominent and accurate manner:

- essential information including the identity of the company, its address, telephone, fax and e-mail contact details, as appropriate;
- a description of the telephone service sufficient to enable the customer to understand the option that the customer has chosen, and how it works;
- information about the major elements of the service, including the cost of any standing charges, the payment terms, line rental, key call types and details of "protected or special support" arrangements;
- the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision. Where there may be significant delay in the likely date of provision, the Customer to be informed;
- the existence of a right of cancellation, the duration of the switchover period during which time that right may be exercised and the process for exercising it;
- the period for which the charges remain valid; and
- any minimum period of contract, minimum contract charges, and any early termination charges, if applicable.

6.4 Customers to be made aware of the existence of the Code, and preferably provided with a summary. Copies of it to be provided on request, and free of charge, to Customers.

6.5 At the Customers request, full written information about tariffs to be made available.

6.6 If a Customer signs an order form following face to face contact, or enters into a written contract, the customer must be given a copy of the order form or contract, as well as the following details in writing either at the same time or within 5 working days, unless previously supplied in writing prior to contract:

- Information about any after-sales services or guarantees; and
- Arrangements for the termination of the contract.

6.7 Orders placed by distance selling means to comply with Distance Selling Regulations, which are set out in the table below.

6.8 In the case of internet orders, a well sign-posted hyperlink to this information which is easily visible to the web site visitor to be prominently displayed with the information being capable of being easily downloaded and printed.

6.9 During the switchover period (i.e. the period before a Customer's order can be activated) there should be "no cost" cancellation for Customers where they change

their mind. Customers to be made aware that they have the right to change their mind during the switchover period.

6.10 — Customers to be permitted to cancel orders and terminate contracts by telephone, in writing, by fax or by e-mail.

6.11 — Providers to send a mandatory letter in accordance with the industry agreed process informing the customer of the details of the transfer, and the following to be clearly communicated:

- date of notification;

- CLI(s) affected;

- list of services affected/unaffected, e.g. IA call barring;

- date of switchover;

- the sender's contacts details for any queries.

6.12 — The notification will be by letter although may be sent electronically where Customers have initiated contact by applying online, and have confirmed online that they wish all future correspondence to be sent electronically. Otherwise Customers would need to positively request by written correspondence that information be sent electronically.

6.13 — Providers to keep under review the procedures by which contracts are agreed and to take appropriate steps to prevent recurrence of any problem identified.

6.14 — In all cases, Customers to be contacted along similar timescales to the industry agreed process described in paragraph 6.11 to confirm that the Customer understands that they have entered into an agreement, are happy to proceed with the agreement and are content with the way in which the sales and marketing activity was conducted.

6.15 — Such Customer contact to be either part of the mandatory Customer "notification of transfer" letter referred to in paragraph 6.11 or through a separate process. This contact to be made by a person not engaged directly in activities leading to the promotion of sales contracts.

6.16 — If it is found that the contract was not understood or intended, or if the order matured before the expiry of the switchover period, and the Customer wishes to cancel, Providers to terminate the contract without charge or other penalty to the Customer.

7. — Consumer protection and other legal requirements

7.1 — Procedures to comply with all applicable legislation and appropriate amendments (see table below for examples).

8. — Audit

8.1 — Providers to carry out regular audits of systems, procedures and documentation to ensure that they are acting compliantly with all aspects of the Code.

9. — Customer complaints procedure

9.1 Providers' internal procedures for handling Customer complaints to also include those relating to their sales and marketing activities. Providers to ensure that all their staff and representatives who deal directly with Customers are made aware of this procedure, and that they should inform Customers of the existence of their complaints procedure in accordance with their current obligations.

9.2 The complaints procedure to set out how Customers may complain about the company's sales and marketing activity and what further steps are available if they believe their complaint has not been dealt with satisfactorily.

9.3 In addition, Customers also to be made aware of any dispute resolution arrangements as recognised by Ofcom. Currently Ofcom has approved two schemes: the Office of the Telecommunications Ombudsman ("Oteho") and the Communications and Internet Services Adjudication Scheme ("CISAS").

9.4 Providers to liaise regularly with Ofcom and the relevant consumer groups to monitor the number and nature of complaints under its code.

10. **Distributing the code: creating awareness**

10.1 The Code to be available to Customers on request, free of charge and in a reasonable range of formats, and to be made available on the Provider's public website.

Legislation of particular relevance to sales and marketing of particular telephony products

Particular attention is drawn to the following regulations (as amended, where appropriate), in addition to all other appropriate consumer protection law and advertising Codes of Practice

	Title	Comment
1.	The Unfair Terms in Consumer Contracts Regulations 1999 SI 1999 No 2083	<ul style="list-style-type: none"> introduces controls over unfair standard terms in contracts with consumers requires written contracts with consumers to be in plain, intelligible language
2.	The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 SI 1987 No 2117	<ul style="list-style-type: none"> requires that written notice of cancellation rights (min 7 days) in prescribed form is given to consumers entering into contracts at their homes or in other places (e.g. shopping precincts)
3.	The Consumer Protection (Distance Selling) Regulations 2000 SI 2000 No 2334	<ul style="list-style-type: none"> requires extensive information to consumers before and after consumers enter into contracts using channels of marketing such as direct response press or TV adverts, telemarketing, mail order, etc requires cancellation rights (min 7 working days) to be given to consumers, starting from the date of delivery of prescribed information provides that making demands for payment for services not ordered by consumer is a criminal offence
4.	Various Misleading Advertising Regulations	
5.	Consumer Protection Act 1987 (Part III)	

6.	Consumer protection legislation	<p>Civil responsibilities</p> <ul style="list-style-type: none"> • Misrepresentation Act 1967 • Unfair Contract Terms 1977 • Sales of Goods Act • Supply of Goods and Services Act 1982 • Consumer Protection 1987 • Sale and Supply of Goods Act 1994 • Control of Misleading Advertising Regulations 1988 SI 1988 No 915 • Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 SI 1987 No 2117 • Unfair Terms in Consumer Contracts Regulation SI 1999 No 2083 <p>Criminal liabilities</p> <ul style="list-style-type: none"> • Trade Descriptions Acts 1968 • Administration of Justice Act 1970 • Fair Trading Act 1973 • Price Act 1974 • Consumer Protection Act 1987 (Parts II, III, IV and V) • Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 SI 1987 No 2117 • Consumer Protection (Distance Selling) Regulations 2000 SI No 2334
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Annex 43 to General Condition 14³⁰

Code on the provision by Service Providers of consumer information to Domestic and Small Business Customers for the provision of Services

Provision

1. This code (the 'Code') sets out the minimum requirements for all Service Providers to ensure that their Domestic and Small Business Customers are provided with information about any feature and/or limitation in that Service Provider's Service that differs from a Publicly Available Telephony Service provided over the Public Telephone Network, in the ways set out in paragraph 4 below.
2. Different sections of the Code may be applicable to different Service Providers, depending on what Services the Service Provider is providing.
3. These requirements are in addition to the information required to be made available by the Service Provider under the General Conditions of Entitlement and any Codes of Practice set under the General Conditions of Entitlement.

Scope

4. The Code requires the Service Provider to provide information to its Domestic and Small Business Customers on:
 - a) service reliability;
 - b) Emergency Calls;
 - c) the ability to Port Numbers; and,
 - d) Other information for Domestic and Small Business Customers.

Service Reliability

5. Each Service Provider shall provide to its Domestic and Small Business Customers clear and readily accessible information regarding whether its Service may cease to function if there is a power cut or power failure, or a failure of the Broadband Connection.
6. The information in paragraph 5 above shall be provided during the Sales Process, within the Terms and Conditions of Use, and in any User Guide issued by the Service Provider.
7. The following text is an indicative example of the information to be provided in paragraph 5 above, that can be adapted to the specific requirements of Service Providers:

"IMPORTANT INFORMATION: If your Broadband Connection fails, your voice service will also fail. Your service may cease to function if there is a power cut or failure. These failures may be caused by reasons outside our control."

³⁰ Regulation of VoIP Services, Notification, 29 March 2007.

Emergency Calls

8. Some Services may not offer any access to Emergency Calls or access to Emergency Calls may be offered by the Service Provider over its Service but the reliability of this access may be affected by a power cut or power failure, or by failure of the Customer's Broadband Connection.
9. This section is intended to ensure that Service Providers provide their Domestic and Small Business Customers with relevant information about their ability to make Emergency Calls.

No Access to Emergency Calls

10. Where the Service provided by the Service Provider does not provide access to Emergency Calls, the Service Provider shall:
 - a) provide the Domestic and Small Business Customers, clear and readily accessible information at the Point of Signature, in the Terms and Conditions of Use and in any User Guide; that its Service does not provide access to Emergency Calls. The same information must also be provided to prospective Domestic and Small Business Customers as part of the Sales Process;
 - b) take reasonable steps to ensure that Domestic and Small Business Customers acknowledge in the form of a signature (or online equivalent), at the Point of Signature, that they understand that the Service will not provide any access to Emergency Calls, (the following text is an example of the wording that could be used):

a) "I understand that this service does not allow calls to the emergency services numbers 999 and 112."

 - c) provide evidence to Ofcom of the acknowledgement in paragraph 10 (b) above, within five working days; following a written request from Ofcom;
 - d) as part of the Terms and Conditions of Use, supply its Domestic and Small Business Customer with a clear and readily accessible printed statement, or an on-screen statement that the Domestic and Small Business Customer is encouraged to print out, that Emergency Calls cannot be made using the Service;
 - e) during the Sales Process, give the Domestic and Small Business Customer the choice whether to receive Labels (at no charge, other than reasonable postage and packaging if applicable) which state that Emergency Calls cannot be made using the Service, and recommend that the Domestic and Small Business Customer use these Labels on or near the relevant Service Access Terminal;
 - where a screen or display is used with the Service, a Label could be an on-screen message or display using a clear and readily accessible graphic, words or icon that Emergency Calls cannot be made using the Service; or
 - in these and other circumstances a Label could be (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file).

- f) if Emergency Calls are made from the Service Access Terminal, provide a network announcement stating (for example):

“Calls to Emergency Services cannot be made from this handset; please hang up and call from an alternative telephone service such as a traditional landline or mobile phone.”

b)

- g) This announcement shall be interspersed with a Number Unavailable Tone for the benefit of hearing-impaired users.

Reliability of Access to Emergency Calls

11. Where the Service Provider provides access to Emergency Calls but the Service may cease to function if there is a power cut or failure or a failure of the Broadband Connection the Service Provider shall:

- a) provide its Domestic and Small Business Customers with clear and readily accessible information, during the Sales Process, in the Terms and Conditions of Use and in any User Guide; that, although access to Emergency Calls is provided, the Service may cease to function if there is a power cut or failure, or a failure of the Broadband Connection;
- b) take reasonable steps to ensure that Domestic and Small Business Customers acknowledge in the form of a signature (or online equivalent), at the Point of Signature, that they understand that Emergency Calls will fail if there is a power cut or failure, or a failure of the Broadband Connection, (the following text is an example of the wording that could be used):

“I understand that this service allows calls to the emergency services numbers 999 and 112. However I understand that calls will fail if there is a power cut or my broadband connection fails.”

c)

- d) c) provide evidence to Ofcom of the acknowledgement in paragraph 11 (b) above, within five working days; following a written request from Ofcom;
- e) d) during the sales process, give the Domestic and Small Business Customer the choice whether to receive (at no charge other than reasonable postage and packaging if applicable), Labels which state that Emergency Calls may fail:
- where a screen or display is used with the Service, a Label would normally be an on-screen message or display using a clear and readily accessible graphic, words or icon that Emergency Calls cannot be made using the Service; and
 - in other circumstances a Label would normally be (at the Customer’s choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file).

Emergency Location Information

12. In respect of Emergency Location Information:

- a) where the Service provided by the Service Provider does provide access to Emergency Calls and the Service is to be used principally at a single fixed

- location, the Service Provider shall require its Domestic and Small Business Customers to register with it the address of the place where the Service is going to be used prior to activation of the Service (the location information), so that up-to-date location information can be used for Emergency Location Information;
- b) where the Service Provider has reasonable expectation that, or has been informed that, the service is to be accessed from several locations, the Service Provider shall recommend that its Domestic and Small Business Customers register and update the location information with it, whenever accessing the Service from a new location, so that up-to-date information can be used for Emergency Location Information;
- c) the Service Provider shall advise its Domestic and Small Business Customer at the Point of Signature, in any User Guide, and in any Terms and Conditions of Use of any limitations on the location information that will be provided to the Emergency Services as Emergency Location Information, if the location information they have provided is not up-to-date. This advice shall be clear and readily accessible;
- d) where the Service Provider does not provide Emergency Location Information, it shall provide clear and easily accessible information to this effect to all Domestic and Small Business Customers at the Point of Signature, in any User Guide, and in any Terms and Conditions of Use. The same information shall also be made available to prospective Domestic and Small Business Customers as part of the Sales Process.

Ability to Port Numbers

13. Where the Service Provider does not offer Number Portability, the Service Provider shall provide clear and readily accessible information to its Domestic and Small Business Customers in any User Guide and the Terms and Conditions of Use to this effect. The same information shall also be provided to prospective Domestic and Small Business Customers as part of the Sales Process.

Other information for Customers

14. In addition to the requirements set out above, the information describing the Service made available by a Service Provider to a prospective Domestic and Small Business Customer shall make it clear and readily accessible as part of the Sales Process if any of the following facilities or features are not available by means of the Service:
- access to a Directory Enquiry Facility;
 - access to operator assistance services (as described in General Condition 8.1);
 - Calling Line Identification Facilities;
 - provision of a Directory on request;
 - special measures for end users with disabilities (as described in General Condition 15); and
 - the non-itemisation of calls which are made from a Subscriber's telephone which are free of charge.

15. The Service Provider shall also make clear and readily accessible, any restrictions on the Number Ranges or Country Codes that may be called using the Service. Where such numbers cannot be dialled, it is recommended that dialling such numbers should produce the standard Number Unavailable Tone.

DEFINITIONS

For the purposes of the Code, the definition of the following terms is:

'Broadband Connection' means the Domestic or Small Business Customer's broadband service which provides speeds which are higher than those attainable over a dial up connection which are 56kbit/s over an analogue line; 64kbit/s over an ISDN2 digital channel and 128kbit/s over the two bonded channels of an ISDN2 line;

'Calling Line Identification Facilities' means facilities by which the Telephone Number of a calling party is presented to the called party prior to the call being established;

'Country Codes' means the international dialling code e.g. 44 for the UK;

'Emergency Calls' means calls to 999 or 112 or its equivalent;

'Emergency Location Information' means information concerning the location from where a call to the Emergency Organisations can be made, that is provided by Service Providers to Emergency Organisation's Operators as part of the handling of such a call;

'Internet Protocol' means the method by which data is sent over the internet or intranet;

'Label' means a mechanism for annotating a Service Access Terminal with a brief message. A Label can consist of an electronic notice that is displayed whenever the Service is used or (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file);

'Number Portability' the facility by which a Domestic and Small Business Customer can transfer their Telephone Number when switching between Service Providers;

'Number Ranges' means a set of contiguous numbers of a specified or unspecified size;

'Number Unavailable Tone' means a continuous tone which differs from dial tone and indicates a dialled number is unavailable or out of service;

'Point of Signature' means the point in the process of concluding a contract immediately before the Domestic and Small Business Customer indicates his/her agreement to enter into the contract;

'Port Numbers' means the process to transfer Telephone Numbers to a new Service Provider;

'Sales Process' means the process of providing information to the prospective Domestic and Small Business Customer about the Service and of establishing the Domestic and Small Business Customer's requirements for the Service before the making of the contract to provide that Service. This includes leaflets and marketing material. It does not include advertisements;

'Service Access Terminal' means the equipment used to access the Service;

'Terms and Conditions of Use' means the contract agreed by the Domestic and Small Business Customer for the provision of the Service;

'User Guide' means the document giving the Domestic and Small Business Customer information about how to use the Service. This does not include any document concerned solely with the operation of a Service Access Terminal.

Annex 8

Detailed comments on the proposed General Conditions

In the tables below we set out, for each provision of the proposed GC, the detailed comments made by stakeholders and Ofcom's response, and where we have made changes, the action taken.

Scope of the General Condition GC 24.1

Comment	Organisation	Ofcom Response and Action
Ofcom should extend the scope of the GC to afford protection to medium and large business customers.	BT, confidential respondent	We will consider this issue in the Stage Two consultation document.
Industry processes (such as cancellation periods, sending of notifications) have not been incorporated into the GC and hence there is no enforcement route for Ofcom to take to ensure compliance.	BT	We are not persuaded that this is necessary in the context of the new GC. An important objective of the new GC is to move away from a process-based approach to one of outcome-based regulations. However, we would ensure that there are rules in place to protect those at greatest risk from dishonest sales and cancellation activities.
All CPs should be mandated to use the Cancel Other process. Not being required to do so places the onus on the GP for the cancellation of slammed orders.	BT, Vodafone	We are not sufficiently persuaded that there is a case to do this at this stage as we anticipate that the majority of CPs will use Cancel Other as it protects their customers from being slammed against their wishes. We will nevertheless continue to monitor this and may revisit this issue if there is evidence of increasing numbers of CPs not using Cancel Other.

Scope of the General Condition GC 24.2

Comment	Organisation	Ofcom Response and Action
Unclear from the guidelines the circumstances where this GC applies (e.g. it would not apply to BT when they bring back CPS customers).	BT	GC24.2 specifies that this GC is only applicable where the Customer is transferring to, from or between Fixed-Line Telecommunications Providers for the relevant service in question. Where BT, therefore, engages in sales and marketing activity in order to bring back a CPS customer, the GC would apply.

Scope of the General Condition GC 24.3

Comment	Organisation	Ofcom Response and Action
No express prohibition on slamming	BT	This paragraph has been amended to include an express prohibition on slamming.
Absolute prohibition is very hard to meet in real terms. The wording of this paragraph should be	SSE, FCS	By moving away from a process-based approach to an outcome-based approach, our view is that this will place an increased emphasis on CPs having to put in place robust systems, processes and

amended towards an emphasis on CPs having systems and processes that avoid mis-selling.		controls.
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Publication of relevant obligations GC 24.5

Comment	Organisation	Ofcom Response and Action
Proposal goes too far and there is no other example in a contractual setting where a retailer is obliged to make it expressly clear that it will treat its customers responsibly, and if requested, to provide evidence of that in hard copy.	BT, Tiscali	The requirement has been clarified, so that CPs are now required to publish a link to a copy of GC24 on Ofcom's website, and to provide a hard copy of this only if requested by a customer. This is similar to the requirements for GC14.5, where CPs were required to publish a copy of their Code of Practice on their website, and provide a hard copy where requested.

Information at the Point of Sale GC 24.6

Comment	Organisation	Ofcom Response and Action
Do not agree that it is possible to "take all reasonable steps" to validate under a gaining CP process.	BT	As set out in the Guidelines, we believe there are a number of ways for the gaining CP to achieve this goal, including an explicit check of the Customer's identity, age and/or address (for example, utility bills, a copy of a passport or driving licence).
Some duplication between (c)(ii) and (c)(iv) on likely date of service provision	SSE	These requirements have been combined into (c)(ii)
Concern about the requirement for customers to provide written information before entering into the sale. Thinks this goes beyond general law and those requirements that apply to distance and doorstep selling	BT	The GC is specifically targeted to address identified problems in the telecommunications sector. Where we have identified sectoral-specific issues, we consider it is entirely appropriate for the GC to provide additional protection to consumers than is available under consumer legislation.
Requirement to identify the legal entity the customer is contracting with ((c)(i)) is overly prescriptive	Sky	We have amended the requirements on provision of information relating to the identity of the legal entity (24.6(c)(i)) to remove the need to provide address and fax, but to include website details.

Post Sales Information GC 24.7

Comment	Organisation	Ofcom Response and Action
Requirement for NoT letters to be sent within three Working Days of receiving the notification is a new requirement.	SSE	We accept the points made and have decided to amend the proposed wording from "within three Working Days of receiving notification" to "in accordance with the industry-agreed process", as currently drafted at paragraph 6.11 of the sales and marketing guidelines attached at Annex 3 to

<p>Clarification is required on from whom the notification is due.</p> <p>It is not appropriate to stipulate three Working Days. It is more appropriate to state that the letter should be delivered at least five Working Days before the transfer takes place.</p>	BT	GC14.5. We note that this issue is closely related to the issue of providing better information to consumers on the potential consequences of switching and propose to consider the two issues together in the Stage 2 consultation document.
Requirement relating to the right to terminate the contract is a new requirement.	SSE	We do not agree this is a new requirement as paragraph 6.3 of the sales and marketing guidelines attached at Annex 3 to GC14.5 requires this information to be provided to consumers.
Clarity on (iii) the services affected/unaffected	SSE	Section 9.3 of the WLR Product Handbook provides examples of the sorts of services which are likely to be relevant in this context. Amongst others, they include services such as 1471, Call Diversion, Call Barring, Caller Display and Remote Call Forwarding.

Post Sales information GC 24.8

Comment	Organisation	Ofcom Response and Action
Requirement to send notification letter by post unless the customer has explicitly agreed to receive correspondences electronically is too onerous.	BT, Sky	We have amended so that consumers can give verbal consent to receive correspondence in a call or confirm when ordering online.

Customer's Termination Rights GC 24.9

Comment	Organisation	Ofcom Response and Action
Wording of the GC is unclear as to whether the gaining CP can satisfy the GC by simply not placing the order on the gateway until the cancellation period expires or has nearly expired.	BT	We have amended the wording of this paragraph to one which states that the gaining CP "must allow the Customer to terminate the contract during the Transfer Period".
The consumer should have the right to cancel right up to the date when the transfer takes place, or as late as possible	Unicom	We agree that customers should have the right to cancel up until the last possible moment. However, given technical systems restrictions, at the moment customers are only able to cancel an order up to day 9 of the transfer period (for CPS) and up to day 8 of the transfer period (for WLR). We understand that these systems restrictions have been fixed for WLR 3.

Customer's Termination Rights GC 24.10

Comment	Organisation	Ofcom Response and Action
Clarification wanted to the meaning of 'without unreasonable effort or expense'	BT	We have amended the wording of this paragraph by removing "or expense" as we accept there may occasions where there may a necessary cost. However, as stated in the guidelines, we consider that termination procedures should not be onerous such as where consumers are required to take unreasonable steps e.g. reliance on letters/faxes.
The requirement refers to the gaining CP allowing the customers to terminate the contract by two of the following: telephone, e-mail and post. This is a reduction of the requirements in GC14.5 where the CP is required to accept contact by all three methods. This could result in some GPs choosing to allow cancellations only by post or e-mails, and increase the possibility of the order not being cancelled in time.	BT	Requirement amended, so that customers are permitted to cancel by telephone, in writing or by e-mail. Requirement for contact made by fax removed as we do not expect this to be a method of contact for many consumers.

Record Retention GC 24.11-12

Comment	Organisation	Ofcom Response and Action
Ofcom should clarify when it may make a request for records kept by the CPs.	SSE, Sky	We have removed the reference to gaining CPs having to provide records referred to in GC 24.11 "on request to Ofcom". We do not consider that this is necessary given we already have powers to request records. Ofcom will only request records in line with our policy on information gathering. This is set out on the Ofcom website at: http://www.ofcom.org.uk/consult/condocs/info_gathering/policy/policy.pdf

Training and Monitoring GC 24.13-14

Comment	Organisation	Ofcom Response and Action
Unclear about the premise of this proposal, as there are no comparable requirements in any other commercial context	BT	By moving away from a process-based approach to an outcome-based one, the proposed new requirement is far less prescriptive than the current requirements. We have retained requirements for staff involved in sales and marketing to be adequately trained as we believe this is essential to minimise the risks of mis-selling.

Record Retention GC 24.15-16

Comment	Organisation	Ofcom Response and Action
Contradictory wording: First, the Cancel Other process shall only 'be permitted' in particular circumstances but in the second, losing CPs	BT	We do not believe this is contradictory. Cancel Other can only be used in certain defined circumstances, including slamming. However, in using Cancel Other for slamming reasons, we would expect the CP to be able to demonstrate that

shall 'take reasonable steps' to ensure slamming has taken place. The two are contradictory.		they have used reasonable steps to verify that slamming has taken place.
Insert definition of CPS, WLR and LLU	SSE	The definitions of these services have been inserted into the definitions section.

Cancel Other GC 24.18-20

Comment	Organisation	Ofcom Response and Action
Provision of records to Ofcom should be linked to a reasonable suspicion by Ofcom	UKCTA	We will consider this issue in the Stage Two consultation document.

Cancel Other GC 24.21

Comment	Organisation	Ofcom Response and Action
Wording of this paragraph should be amended so that the information provided in the NoT letter does not 'induce the customer to terminate'	BT	The wording of this paragraph has been amended, so that the losing CP must not make any marketing statements in their notification.
This clause should be removed as it will effectively prevent any statements about termination charges or any correction of incorrect information that the gaining provider has provided to the customer.	Unicom	As above

Cancel Other GC 24.23

Comment	Organisation	Ofcom Response and Action
Definition of 'Transfer Period': Suggestion that this should only be referred to for Cancel Other provisions as orders may have longer lead time than 10 working days.	BT	We do not agree that the term 'transfer period' should only be referred to in the context of C/O. However, we accept the point BT make in relation to lead times, and have defined 'transfer period' as the period of 10 Working Days before a customer's order can be activated".
Transfer Period may not start on entering into the contract	SSE	As above.

Annex 9

Table of Changes

GC No	GC text ³¹	Main changes from consultation
24.1	A Communications Provider who provides a Fixed-Line Telecommunications Service to Domestic and Small Business Customers ('the Customer') must comply with this General Condition with respect to such Customers.	No changes
24.2	This General Condition is only applicable where the Customer is transferring a Fixed-Line Telecommunications Service between Communication Providers.	No changes
24.3	When selling or marketing Fixed-Line Telecommunications Services, the Gaining Communications Provider must not: <ul style="list-style-type: none"> (a) engage in dishonest, misleading or deceptive conduct; (b) engage in aggressive conduct; (c) contact the Customer in an inappropriate manner; or (d) engage in Slamming. 	Added 'engage in slamming' to provide greater clarity over the types of inappropriate behaviour that will not be permissible under GC24.
24.4	Where the Communications Provider engages representatives, such as any sales agency, to act on its behalf in the sale and marketing of Fixed-Line Telecommunications Services, the Communications Provider shall procure that such representatives comply with the requirements of this General Condition.	No changes
24.5	The Communications Provider must: <ul style="list-style-type: none"> a) publish a link to a copy of this General Condition, published on Ofcom's website, in an easily accessible and reasonably prominent manner on its website or, where there is no such website, by making it available in its registered office during normal office hours for inspection free of charge by members of the general public; and b) provide a copy of this General Condition to a Customer free of charge upon reasonable request. 	Requirement 24.5 (a) modified from 'must publish a comprehensive summary of its obligations' to 'publish a link to a copy of this General Condition published on Ofcom's website', so that customers are referred to the same set of rules regardless of the CP.

³¹ Please note that we re-produce the text of General Condition 24 here solely for reasons of comparison and to highlight the main changes. The text set out in this Annex does not constitute the relevant text for the purpose of establishing CPs obligations. For the latter reason please refer to the original text set out in the Schedule to the Notification in Annex 10.

<p>24.6</p>	<p>The Gaining Communications Provider must take all reasonable steps to ensure that before entering into a contract for a Fixed-Line Telecommunications Service the Customer who is transferring the line:</p> <p>a) is authorised to do so;</p> <p>b) intends to enter into the contract; and</p> <p>c) is provided with the information set out below in a clear, comprehensible, prominent and accurate manner, in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:</p> <p>(i) the identity of the legal entity the Customer is contracting with; its telephone, website and/or e-mail contact details;</p> <p>(ii) a description of the Fixed-Line Telecommunications Service requested; the key charges, including minimum contract charges, and any early termination charges, if applicable; payment terms; the existence of any termination right, termination procedures and the Customer's right to cancel at no cost during the Transfer Period; the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision of the service; and any minimum period of contract.</p>	<p>Requirements on provision of information relating to the identity of the legal entity (24.6(c)(i) has been changed to remove need to provide address and fax. We have included website details.</p> <p>Some duplication of requirements, which have been combined into 24.6 (c)(ii)</p>
<p>24.7</p>	<p>Where the Customer enters into a contract for a Fixed-Line Telecommunications Service, the Gaining Communications Provider and the Losing Communications Provider must each send the Customer a letter, in accordance with the industry agreed process, that the Customer is transferring their Fixed-Line Telecommunications Service, in paper or another Durable Medium, which clearly sets out, as appropriate:</p> <p>(i) the date of the letter;</p> <p>(ii) the Calling Line Identification of [all Electronic Communications Services] which are affected;</p> <p>(iii) the list of services affected/unaffected;</p> <p>(iv) the proposed switchover date;</p> <p>(v) relevant contact details; and</p> <p>(vi) the right to terminate the contract, the means by which the right to terminate during the Transfer Period can be exercised and the date by which the right to terminate must be exercised.</p>	<p>Requirement to send notification within 3 working days modified to 'in accordance with the industry agreed process', so that this is the same requirement as in GC14.5</p> <p>24.7 (vii) removed as it is being considered as a part of the stage two process.</p>

24.8	The letter must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or confirmation when ordering online.	Amended so that customers can give verbal consent in a call or confirm when ordering online.
24.9	When the Customer enters into a contract to transfer a Fixed Line Telecommunications Service the Gaining Communications Provider must allow the Customer to terminate the contract during the Transfer Period without charge or any other form of compensation being required to be given by the Customer to the Gaining Communications Provider.	Minor drafting changes
24.10	<p>The Gaining Communications Provider must have procedures in place to enable the Customer to exercise their right to terminate their contract pursuant to General Condition 24.9 without unreasonable effort. These procedures must include the ability to contact the Gaining Communications Provider to terminate the contract any of the following contact methods:</p> <ul style="list-style-type: none"> (i) telephone; (ii) e-mail; and (iii) post. 	<p>Amended requirement so that the consumer can contact the gaining CP by any of the three methods listed</p> <p>Reference to terminating contracts “[without] expense removed as 24.9 already states “without charge”.</p>
24.11	The Gaining Communications Provider must use reasonable endeavours to create and keep all records regarding the sale of its Fixed-Line Telecommunications Service, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place where the Contract was entered into, where relevant, and be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.	<p>Call recording requirement removed as this is being considered as a part of the stage two process.</p> <p>The next paragraph in the draft consultation was removed as this duplicates Ofcom’s existing powers elsewhere to request records from CPs.</p>
24.12	The Communications Provider must ensure that all its staff or representatives of any sales agency engaged by it, involved in direct contact with Customers for the purpose of sales and marketing activity and/or Cancel Other are appropriately trained to comply with this General Condition.	Amended to provide further clarification over the meaning of staff, so that it is clear that the requirement applies to representatives of sales agencies engaged by a CP.

24.13	The Communications Provider must monitor, including conducting regular audits, its compliance with this General Condition, including compliance on its behalf by any representatives or sales agency engaged by it, and takes appropriate steps to prevent the recurrence of any problem(s) identified.	No changes
24.14	<p>The Losing Communications Provider shall only be permitted to use Cancel Other in the following circumstances:</p> <p>(a) where Slamming has occurred;</p> <p>(b) at the Customer's request, where the Gaining Communications Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");</p> <p>(c) where the telephone line is or will be, ceased during the Transfer Period ("Line Cease");</p> <p>(d) for other specified reasons not related to a Customer's request to cancel a transfer, and agreed by the relevant industry forum and approved by Ofcom; and</p> <p>(e) in such other circumstances as defined by Ofcom.</p>	No significant changes (slamming is now defined in the definitions section instead of this paragraph)
24.15	Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Communications Provider shall take reasonable steps to ensure that Slamming and/or Failure to Cancel has actually taken place.	No changes
24.16	After using Cancel Other, the Losing Communications Provider shall confirm the cancellation of the order by Durable Medium to the Customer, unless this is not possible or appropriate, including where the customer is deceased.	Minor drafting changes
24.17	The Losing Communications Provider shall record its reasons for using Cancel Other in each case, according to categories (a) to (e) set out at paragraph 24.14 above.	<p>Record keeping obligations removed as this is being considered as a part of the stage two process.</p> <p>Minor drafting changes</p>
24.18	Where the Losing Communications Provider communicates with the Customer in order to comply with this General Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Communications Provider and/or remain in a contract with the Losing Communications Provider.	Inserted 'marketing' to clarify the types of statements which may be caught by this provision.

<p>24.19</p>	<p>For the purpose of this Condition:</p> <ul style="list-style-type: none"> a) “Cable Network” means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable; b) “Cancel Other” means the industry term for a functionality that enables the Losing Communications Provider to cancel wholesale orders (during the Transfer Period) placed by the Gaining Communications Provider as defined in 24.14; c) “Communications Provider” means the provider of an Electronic Communications Network and/or Electronic Communications Service, both as defined in section 32 of the Act; d) “CPS” means Carrier Pre-Selection, a facility which allows a customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a telephone number; e) “Domestic and Small Business Customer” has the meaning set out in section 52 (6) of the Act; f) “Durable Medium” means any instrument which enables the Customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored; g) “Failure to Cancel” means where the Gaining Communications Provider has not cancelled a transfer, after a request from the Customer during the Transfer Period; h) “Fixed-Line Telecommunications Services” means Narrowband call and/or line rental services provided to Domestic and Small Business Customer; i) “Gaining Communications Provider” means the Communications Provider to whom the customer is transferring; j) “LLU” means Local Loop Unbundling, the process by which a dominant provider’s local loops are physically disconnected from its network and connected to a competing provider’s network. k) “Losing Communications Provider” means the Communications Provider from whom the customer 	<p>No significant changes, except definitions of CPS, Failure to Cancel, LLU, Slamming, and WLR inserted and definition of Transfer Period amended.</p>
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	<p>is transferring;</p> <p>l) “Narrowband” means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network;</p> <p>m) “Slamming” means where a request for CPS, WLR and/or LLU has been made without the Customer’s express knowledge and/or consent; that is in the following circumstances:</p> <ul style="list-style-type: none"> (i) where the Customer has never been contacted by the Gaining Communications Provider; (ii) where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider; (iii) where the Customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or (iv) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider; <p>n) “Transfer Period” means the period of 10 Working Days before a customer’s order can be activated;</p> <p>o) “WLR” means Wholesale Line Rental, a facility which BT provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) on the BT line; and</p> <p>p) “Working Days” means the hours between 09.00 – 17.00 on Monday to Friday with the exception of bank holidays.</p>	
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Annex 10

Notification under Section 49 of the Communications Act 2003

Proposals for the withdrawal of a Direction under SMP Condition AA1(a) imposed on British Telecommunications plc (“BT”) as a result of the market power determinations made by the Director General of Telecommunications that BT has significant market power

1. Ofcom hereby make, in accordance with section 49(4) of the Act, the following proposal for the withdrawal of a Direction dated 27 July 2005 to BT under SMP Services Conditions AA1(a) in Schedule 1 to the Notification of the market review as a result of which BT was designated as having Significant Market Power in, inter alia, the markets for wholesale residential analogue exchange line services, and wholesale call origination on fixed public narrowband networks.
2. The reasons for making the proposal are set out in the accompanying explanatory statement.
3. In making the proposal set out in this Notification, Ofcom has 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.
4. Representations may be made to Ofcom about the proposed withdrawal by 9 October 2009.
5. In accordance with section 50 of the Act, copies of this notification have been sent to the Secretary of State, the European Commission and to the regulatory authorities of every other Member State.

Claudio Pollack

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

10 September 2009

Annex 11

Notification of proposed modification under section 48(2) of the Communications Act 2003

Proposal for insertion of a new General Condition 24 - Sales and Marketing of Fixed-Line Telecommunications Services, which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General of Telecommunications on 22 July 2003.

1. Ofcom in accordance with section 48(2) hereby make the following proposals for insertion of a new General Condition 24 on Sales and Marketing of Fixed-Line Telecommunications Services.
2. The draft modification is set out in the Schedule to this Notification.
3. The effect of, and Ofcom's reasons for making, the proposals referred to in paragraph 1 above is set out in the accompanying explanatory statement.
4. Ofcom considers that the modification referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the proposed modifications.
5. In making the proposals set out in this Notification, Ofcom has considered and acted in accordance with their general duties in section 3 and of the Act and the six Community requirements in section 4 of the Act.
6. Representations may be made to Ofcom about the proposals set out in this Notification by 5pm on 9 October 2009.
7. The modification shall enter into force one month after the date of publication of the final Notification.
8. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.
9. In this Notification:
 - a. "the Act" means the Communications Act 2003;
 - b. 'the Director' means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
 - c. "Ofcom" means the Office of Communications; and
10. Except insofar as the context otherwise requires, 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.
11. For the purpose of interpreting this Notification:

- a. headings and titles shall be disregarded; and
 - b. the Interpretation Act 1978 shall apply as if this Act were an Act of Parliament.
12. The Schedule to this Notification shall form part of this Notification.

Signed by:

Claudio Pollack

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

10 September 2009

General Condition 24 on Sales and Marketing of Fixed-Line Telephony Services

Scope

- 24.1 A Communications Provider who provides a Fixed-Line Telecommunications Service to Domestic and Small Business Customers ('the Customer') must comply with this General Condition with respect to such Customers.
- 24.2 This General Condition is only applicable where the Customer is transferring a Fixed-Line Telecommunications Service between Communication Providers.

Mis-selling prohibition

- 24.3 When selling or marketing Fixed-Line Telecommunications Services, the Gaining Communications Provider must not:
- (a) engage in dishonest, misleading or deceptive conduct;
 - (b) engage in aggressive conduct;
 - (c) contact the Customer in an inappropriate manner; or
 - (d) engage in Slamming.

Responsibility

- 24.4 Where the Communications Provider engages representatives, such as any sales agency, to act on its behalf in the sale and marketing of Fixed-Line Telecommunications Services, the Communications Provider shall procure that such representatives comply with the requirements of this General Condition.

Publication of relevant obligations

- 24.5 The Communications Provider must:
- a) publish a link to a copy of this General Condition, published on Ofcom's website, in an easily accessible and reasonably prominent manner on its website or, where there is no such website, by making it available in its registered office during normal office hours for inspection free of charge by members of the general public; and
 - b) provide a copy of this General Condition to a Customer free of charge upon reasonable request.

Information at Point of sale

24.6 The Gaining Communications Provider must take all reasonable steps to ensure that before entering into a contract for a Fixed-Line Telecommunications Service the Customer who is transferring the line:

- a) is authorised to do so;
- b) intends to enter into the contract; and
- c) is provided with the information set out below in a clear, comprehensible, prominent and accurate manner, in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:
 - (i) the identity of the legal entity the Customer is contracting with its telephone, website and/or e-mail contact details;
 - (ii) a description of the Fixed-Line Telecommunications Service requested; the key charges, including minimum contract charges, and any early termination charges, if applicable; payment terms; the existence of any termination right, termination procedures and the Customer's right to cancel at no cost during the Transfer Period; the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision of the service and any minimum period of contract

Post-sales information

24.7 Where the Customer enters into a contract for a Fixed-Line Telecommunications Service, the Gaining Communications Provider and the Losing Communications Provider must each send the Customer a letter, in accordance with the industry-agreed process, that the Customer is transferring their Fixed-Line Telecommunications Service, in paper or another Durable Medium, which clearly sets out, as appropriate:

- (i) the date of the letter;
- (ii) the Calling Line Identification of [all Electronic Communications Services] which are affected;
- (iii) the list of services affected/unaffected;
- (iv) the proposed switchover date;
- (v) relevant contact details; and
- (vi) the right to terminate the contract, the means by which the right to terminate during the Transfer Period can be exercised and the date by which the right to terminate must be exercised;

24.8 The letter must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.

Customer's termination rights

- 24.9 When the Customer enters into a contract to transfer a Fixed Line Telecommunications Service the Gaining Communications Provider must allow the Customer to terminate the contract during the Transfer Period without charge or any other form of compensation being required to be given by the Customer to the Gaining Communications Provider.
- 24.10 The Gaining Communications Provider must have procedures in place to enable the Customer to exercise their right to terminate their contract pursuant to General Condition 24.9 without unreasonable effort. These procedures must include the ability to contact the Gaining Communications Provider to terminate the contract by any of the following contact methods:
- (i) telephone;
 - (ii) e-mail; and
 - (iii) post.

Records retention

- 24.11 The Gaining Communications Provider must use reasonable endeavours to create and keep all records regarding the sale of its Fixed-Line Telecommunications Service, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place where the Contract was entered into, where relevant, and be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

Training

- 24.12 The Communications Provider must ensure that all its staff or any representatives of any sales agency engaged by it, involved in direct contact with Customers for the purpose of sales and marketing activity and/or Cancel Other are appropriately trained to comply with this General Condition.

Monitoring

- 24.13 The Communications Provider must monitor, including conducting regular audits, its compliance with this General Condition, including compliance on its behalf by any representatives or sales agency engaged by it, and takes appropriate steps to prevent the recurrence of any problem(s) identified.

Cancel Other process

- 24.14 The Losing Communications Provider shall only be permitted to use Cancel Other in the following circumstances:
- (a) where Slamming has occurred;
 - (b) at the Customer's request, where the Gaining Communications Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");

- (c) where the telephone line is or will be, ceased during the Transfer Period (“Line Cease”);
 - (d) for other specified reasons not related to a Customer’s request to cancel a transfer, and agreed by the relevant industry forum and approved by Ofcom; and
 - (e) in such other circumstances as defined by Ofcom.
- 24.15 Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Communications Provider shall take reasonable steps to ensure that Slamming and/or Failure to Cancel has actually taken place.
- 24.16 After using Cancel Other, the Losing Communications Provider shall confirm the cancellation of the order by Durable Medium to the Customer, unless this is not possible or appropriate, including where the customer is deceased.
- 24.17 The Losing Communications Provider shall record its reasons for using Cancel Other in each case, according to categories (a) to (e) set out at paragraph 24.14 above.
- 24.18 Where the Losing Communications Provider communicates with the Customer in order to comply with this General Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Communications Provider and/or remain in a contract with the Losing Communications Provider.

Definitions

24.19 For the purpose of this Condition:

- a) “**Cable Network**” means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;
- b) “**Cancel Other**” means the industry term for a functionality that enables the Losing Communications Provider to cancel wholesale orders (during the Transfer Period) placed by the Gaining Communications Provider as defined in 24.14;
- c) “**Communications Provider**” means the provider of an Electronic Communications Network and/or Electronic Communications Service, both as defined in section 32 of the Act;
- d) “**CPS**” means Carrier Pre-Selection, a facility which allows a customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a telephone number;
- e) “**Domestic and Small Business Customer**” has the meaning set out in section 52 (6) of the Act;
- f) “**Durable Medium**” means any instrument which enables the Customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

- g) **“Failure to Cancel”** means where the Gaining Communications Provider has not cancelled a transfer, after a request from the Customer during the Transfer Period;
- h) **“Fixed-Line Telecommunications Services”** means Narrowband call and/or line rental services provided to Domestic and Small Business Customer;
- i) **“Gaining Communications Provider”** means the Communications Provider to whom the customer is transferring;
- j) **“LLU”** means Local Loop Unbundling, the process by which a dominant provider’s local loops are physically disconnected from its network and connected to a competing provider’s network.
- k) **“Losing Communications Provider”** means the Communications Provider from whom the customer is transferring;
- l) **“Narrowband”** means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network;
- m) **“Slamming”** means where a request for CPS, WLR and/or LLU has been made without the Customer’s express knowledge and/or consent; that is in the following circumstances:
 - (i) where the Customer has never been contacted by the Gaining Communications Provider;
 - (ii) where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;
 - (iii) where the Customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or
 - (iv) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider;
- n) **“Transfer Period”** means the period of 10 Working Days from before a customer’s order can be activated;
- o) **“WLR”** means Wholesale Line Rental, a facility which BT provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) on the BT line; and
- p) **“Working Days”** means the hours between 09.00 – 17.00 on Monday to Friday with the exception of bank holidays.

Annex 12

Guidelines in respect of General Condition 24

Guidelines to General Condition 24: Sales and Marketing of Fixed-Line Telecommunications Services

Introduction

- A12.1 General Condition 24 ('GC24') sets out a number of provisions in respect of the sales and marketing of Fixed-Line Telecommunications Services³² with which the relevant Communications Provider providing a Fixed-Line Telecommunications Service ('the Gaining Communications Provider') must comply.
- A12.2 GC24 also comprises provisions relating to the use of Cancel Other with which the relevant Communications Provider providing a Fixed-Line Telecommunications Service ('Losing Communications Provider') must comply. Cancel Other is a consumer protection mechanism designed to ensure that Customers are not switched between Communications Providers without their permission. Therefore, Cancel Other should only be used in certain circumstances, in particular, where the Customer believes they are a victim of slamming.

Purpose of these guidelines

- A12.3 These guidelines are produced by Ofcom to help Communications Providers and Customers understand their rights and obligations under GC24 and are intended to assist Communication Providers in achieving compliance.
- A12.4 The guidelines set out some useful summaries, examples and guidance on the approach Ofcom is likely to take to enforcing GC 24. In particular, these guidelines:
- seek to provide clarity on the meaning of some of the terms and concepts used in GC24 so as to inform Communications Providers and stakeholders of Ofcom's general view on them; and
 - describe factors that Ofcom might consider when applying the relevant requirements or obligations set out in GC24.

Disclaimer

- A12.5 For the avoidance of doubt, where the guidelines set out examples of the way in which Ofcom considers a Communications Provider may comply with a GC, Ofcom is not bound by this and Ofcom will at all times determine compliance on the basis of individual circumstances whilst having regard to these guidelines. If in any given situation we decide to depart from the principles set out in these guidelines we will normally set out our reasons for doing so.

³² means narrowband calls and/or line rental services provided to Domestic and Small Business Customers, including Carrier-Pre Selection, Wholesale Line Rental and services provided over full LLU.

A12.6 These guidelines are not in any way incorporated into the GCs set by Ofcom. The obligations which apply to a Communications Provider will be determined solely according to the GCs. However, when applying GC24, as stated in A12.5 above, Ofcom will have regard to these guidelines and will normally set out its reasons when departing from the principles set out therein. Ofcom advises Communications Providers to seek independent legal advice if they are unsure of their obligations under the GCs.

Scope of General Condition 24

A12.7 GC 24.1 specifies that this GC is applicable to all Communications Providers which offer a Fixed-Line Telecommunications Service to Domestic and Small Business Customers (who are referred to in this document as 'Customers').

A12.8 GC24.2 specifies that this GC is only applicable where the Customer is transferring to, from or between Fixed-Line Telecommunications Providers for the relevant service in question. For the avoidance of doubt, therefore, it does not cover situations where there is an existing relationship between the Communications Provider and the Customer for the relevant Fixed-Line Telecommunications Service in question.

Mis-selling prohibition

A12.9 GC 24.3 sets out prohibitions on the Gaining Communications Provider regarding inappropriate types of sales and marketing behaviour (generally described as 'mis-selling'). Such prohibited mis-selling behaviour includes, but is not limited to:

- the omission of relevant information (for example, the terms and conditions attached to a specific offer including any restrictions on, or limitations of the offer).
- the provision of false and/or misleading information (for example, about tariffs, potential savings or promising offers or gifts which do not actually materialise). Misleading conduct includes deceiving a customer or providing the customer with misinformation which is likely to affect a customer's purchase decision;
- aggressive conduct, such as harassment, coercion, or applying unacceptable pressure on a Customer to enter into a contract, such as threatening or intimidating behaviour or refusal to leave (in case of doorstep selling); and
- as set out in 24.19(m), 'Slamming', means where a request for CPS, WLR, and/or LLU has been made without the Customer's express knowledge and/or consent; that is in the following circumstances:
 - a) where the Customer has never been contacted by the Gaining Communications Provider;
 - b) where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;
 - c) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining

Communications Provider to mislead by submitting a request for a different product or service which the Customer has not agreed to purchase; or

- d) where the Customer has agreed to transfer some of all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider.

A12.10 Below we have included means of approaching Customers that Ofcom considers to be inappropriate:

- current or prospective Customers should not be approached at an inappropriate time of day. For example, we would not expect any outbound Customer contact, including doorstep selling and telesales to take place at an unreasonable time of day, say before 8.00am and after 8.00pm, unless the Customer requests otherwise;
- where sales representatives do not introduce themselves clearly and fully and state the purpose of the contact at the start of any sales and marketing activity to current or prospective Customers. The representatives should clearly state the name of the Communications Provider they represent.
- where sales representatives are discourteous, use inappropriate language (for example aggressive and/or intimidating language) and do not offer clear and straightforward explanations;
- where sales representatives do not cease contact with any person who indicates that the contact is inconvenient, unwelcome, inappropriate or too long. If the Customer requests it, the discussion should be ended immediately and, if making a doorstep call, the sales representative should leave the premises immediately; and
- where sales representatives with direct Customer contact take advantage of vulnerable Customers; e.g. those who are elderly or whose first language is not English.

Responsibility

A12.11 GC24.4 states that the Communications Provider, where it engages representatives, such as any sales agency, to act on its behalf, must procure that such representatives comply with the requirements of GC24.

A12.12 In other words:

- the Communications Provider may engage representatives or agents to act on its behalf; but
- the obligations under the GC are always the Communications Provider's;
- the Communications Provider is responsible for the actions of those it engages to sell and market its services; and
- the Communications Provider is liable where it, or those it engages on its behalf, act in breach the GC.

A12.13 Accordingly, the Communications Provider must ensure that it and its staff, sales representatives and agents who are involved in sales and/or cancellations of Fixed-Line Telecommunications Services to Customers on behalf of the Communications Provider:

- are aware of GC 24; and
- are required to comply with the obligations therein.

A12.14 The Communications Provider must also monitor its and its representatives' and agents' compliance with those obligations. And, it is responsible for the creation and retention of records in accordance with the GC, even where the relevant contact with the Customer is by its representative or agent on its behalf and even if the relevant records are created and/or retained by the representative or agent on its behalf.

A12.15 There are a number of ways in which Communications Providers could seek to ensure they comply with the GC and, in particular, where they engage representatives or agents to act on their behalf. Ofcom does not intend to prescribe exactly how the requirements are to be met. However, there are a number of practical steps a Communications Provider could take, in Ofcom's view, to assist it in meeting its obligations under GC 24.4 (although taking them would not necessarily amount to compliance with the GC). Such steps include:

- in order to ensure awareness of the GC amongst its representatives and agents, the Communications Provider could communicate the GC through account managers, in print through sales bulletins or newsletters, or on websites dedicated to its representatives' or agents' sales and cancellation channels;
- in order to put provisions in place which require representatives and agents to comply with the behavioural obligations, the Communications Provider could include such requirements in contracts with those representatives and agents; and
- in order to ensure appropriate compliance monitoring, the Communications Provider could carry out spot checks and mystery shopping and conduct sample checks of its representatives' and agents' sales and marketing and cancellations material. In addition to its own complaints data, the Communications Provider could also put provisions in place which allow it to collect complaints data made directly to its representatives and agents.

Publication of relevant obligations

A12.16 GC 24.5 sets out that the Gaining Communications Provider has to provide a link to a copy of this GC, published on Ofcom's website, on its website or, where there is no such website, make it available in its registered office. Upon reasonable request, a copy of the GC should be provided to customers, free of charge. The Communications Provider could do this by providing the customer with a paper copy of the GC in their shops, by sending a hard or soft copy to the customer, or by making it available for download or printing on their website.

A12.17 Ofcom considers reasonable requests to include all requests made by consumers, unless proven to be trivial or a repeat request. Free of charge means there should

be no cost to the consumer other than those costs incurred for the provision of the GC (i.e. postage costs).

A12.18 In relation to the obligation to publish this information on a Communication Provider's website, Ofcom considers 'an easily accessible and reasonably prominent manner' to mean providing a clear reference to the obligations under GC24 on a consumer related part of the Communications Provider's website.

Information at Point of Sale

A12.19 GC 24.6 contains a number of provisions relating to information requirements that the Gaining Communications Provider must comply with at the point of sale, when the Customer expresses a positive intention to transfer their service to a new Communication Provider.

A12.20 Ofcom requires that the Gaining Communications Provider must use reasonable endeavours to ensure these requirements are met. There are a number of ways for the Gaining Communications Provider to achieve this goal and we do not intend to prescribe exactly how these requirements are met. However, there are some practical steps that Gaining Communications Providers could take, in Ofcom's view, to assist them in meeting their obligations (although, again, taking them may not necessarily amount to compliance), including the following:

- in order to ensure Customers are authorised to take out a contract, the Gaining Communications Provider may wish to consider whether to require sales records to include an explicit check of the Customer's identity, age and/or address (for example, utility bills, a copy of a passport or driving licence);
- in respect of the provision of information to the Customer, Gaining Communications Providers may wish to ensure there is a check list available or include such a checklist in their training material for their sales representatives which ensures that Customers are provided with all the key relevant information about a service as part of their decision making. This includes advice relating to the fact that the Customer may have existing contractual liabilities with their existing Communications Provider(s). In essence, Customers must be able to make an informed choice as to whether or not to enter into a new contract;
- any claims, offers or incentives to attract customers must not mislead them by stating an untruth or half-truth or through failing to state or not make sufficiently prominent an important term or condition likely to affect their decision;
- order forms and contract forms may be designed such that the contractual nature of the document is clear to the Customer such as by containing a statement of the contractual nature of the document immediately adjacent to where the Customer signs the document so that the statement cannot easily be obscured or concealed. Alternatively Customers to sign over the word contract; and
- take all reasonable steps to ensure that before entering into relevant contracts Customers are authorised, and intend to enter into, a new contract. This includes obtaining Customers' explicit consent to enter into contracts. Getting Customers to enter into contracts through negative opt-out means should therefore be avoided. Ofcom considers this to mean that Customers have been informed that they are entering into a contract and have given positive consent, either verbally or in writing.

A12.21 The information must be provided in one of two ways.

- first, in paper or another Durable Medium which is available or accessible to the Customer. This is likely to mean the information must be provided in written format, to be handed over to the Customer at the point of sale (including, but not restricted to leaflets, letters etc.); and
- second, where the Customer enters the contract by telephone, the information must be provided in the sales call. The information must also then be sent to the Customer in paper or another Durable Medium within three Working Days of the sales call. What this is likely to require is described above.

Post sales information

A12.22 GC24.7 contains provisions relating to the sending out of mandatory 'Notification of Transfer' letters from both the Gaining and Losing Communications Providers which are to be sent out according to the industry agreed process that the customer is transferring their Fixed-Line Telecommunications Service.

A12.23 The post sales information requirements set out at GC24.7 (i) to (vi) specify a number of pieces of information that must be provided to the Customer by the Communications Providers as part of the mandatory 'Notification of Transfer' letters. For GC24.7 (iii), the Communications Provider should warn the Customer of the services which may be disrupted as a result of the transfer, such as ancillary services, alarm care systems, hardware that was provided specifically for that service and online services which may be provided as a part of the broadband package (such as e-mail and online files storage).

A12.24 Under GC 24.8 the notification must be by letter unless the Customer has explicitly agreed to receive correspondence electronically. Ofcom considers this to mean that the letter may be sent electronically where Customers have initiated contact by applying online, and have confirmed online that they wish the information to be sent electronically. Ofcom also considers that such agreement must only be given on an opt-in basis (i.e. 'please tick this box to receive notification electronically') rather than opt-out (i.e. 'please untick this box if you do not wish to receive notification electronically'). Otherwise, Customers would need to positively request by written correspondence that information be sent electronically.

Customer's termination rights

A12.25 GC24.9 sets out that there should be "no cost" cancellation for Customers where they change their mind within the Transfer Period. Ofcom considers "no cost" to mean that there should be no charge to the Customer. In Ofcom's view, the only legitimate costs should be those costs incurred for using the means of cancellation (e.g. the price of a stamp or non-premium rate phone call).

A12.26 GC24.10 contains provisions relating to the need for Gaining Communications Providers to have procedures in place so that Customers are able to terminate contracts without unreasonable effort in the termination procedure such as where the process of termination requires consumers to take unreasonable steps to terminate e.g. reliance on letters/faxes.

A12.27 At a minimum, Ofcom would expect that Customers should be able to terminate using the three prescribed contact methods set out in GC24.10 (i) to (iii). Ofcom would also expect that there should be no onerous or expensive administrative

steps or conditions to be followed, such as onerous validation requirements or complex IVR systems.

Records retention

A12.28 GC 24.11 requires the Gaining Communications Provider to use reasonable endeavours to produce and keep all records regarding the sale of its Fixed-Line Telecommunications Service for a period of not less than six months from the date the record was created.

A12.29 Ofcom considers examples of records in this respect to include (but not be limited to) signed copies of contracts, either in electronic or paper form, check lists intended to confirm that the consumers agrees, and understands, what they are signing up to, copies of emails and correspondence, notes of a conversation with the Customer or the Customer's internet confirmation to buy a certain service and where, telesales are used, voice recordings.

A12.30 By "the means through which the contract was entered into", we mean retail outlets, telesales or websales. In the event a Contract was entered into at a retail outlet, the records should contain sufficient information to be able to identify the outlet, for instance by providing the address of the outlet.

A12.31 Ofcom considers that records should be such as to provide sufficient information to validate that the Customer provided positive consent for the purpose of the transaction and all its terms, as well as information about the type of Contract, the date the Contract was entered into or amended and the sales representative involved in case the Customer questions having entered into a Contract, or has complaints or queries regarding their Contract.

Training

A12.32 GC 24.13 requires Communications Providers to ensure that any person selling their service ('involved in direct contact with Customers') is 'appropriately trained' to comply with GC 24 as well as consumer protection law. Direct contact includes telesales and marketing as well as face to face contact.

A12.33 There are a number of ways for the Communications Provider to achieve this goal and we do not propose to prescribe exactly how this requirement is to be met. However, there are some practical steps that Communications Providers can take to assist with meeting their obligations (although, again, taking them may not necessarily amount to compliance), including where they engage sales representatives and agents:

- putting contractual provisions in place in respect of mandatory training;
- providing all their staff, representatives and agents with training courses, manuals and product information regarding the Fixed-Line Telecommunications Service;
- providing all their staff, representatives and agents with training courses and manuals on using sales related systems;
- providing all their staff, representatives and agents with information on new products; and

- providing all their staff, representatives and agents with training and information on processes, such as ordering a new phone or Customer credit checking.

A12.34 In respect of ensuring there is appropriate training, Ofcom considers 'appropriately trained' to include that all staff, sales representatives, and any sales agencies, acting on the Communications Provider's behalf have been made familiar with and gained sufficient understanding of:

- arrangements for competition in the supply of telecommunication in the UK;
- the different telephone options provided by the Gaining Communications Provider and how these differ from other competitive telecoms products (which may or may not be offered by the Communications Provider (e.g. IA, CPS, WLR, LLU));
- the process for ordering the telephone service;
- the major elements of the Communications Provider's services;
- the key terms and conditions of the Communications Provider's contracts including information listed at GC24.6 (c)(i)(ii);
- the nature, and cost, of any additional services on offer;
- the process for cancelling the Contract both during the cooling-off period and at any time following commencement of the service;
- the relevant principles of consumer protection law; and
- the relevant obligations under this GC.

Monitoring

A12.35 GC24.14 requires that Communications Providers ensure that they have procedures in place to monitor compliance with this GC, including compliance by any representatives or sales agencies engaged by it, and to take appropriate steps to prevent the recurrence of any problem(s) identified.

A12.36 There are a number of ways for the Communications Provider to achieve this goal and we do not propose to prescribe exactly how this requirement is to be met. However, there are some practical steps that Communications Providers can take to assist them to meet their obligations (although, again, taking them may not necessarily amount to compliance). These include the following:

- on discovery of an instance of non-compliance with the Code, Communications Providers will vigorously pursue the matter and will ensure that the complaint is properly investigated within reasonable timeframes (e.g. no more than ten working days) and identify an appropriate explanation for any apparent breach of the Code;
- in the case of serious or repetitive breaches of the Code by its staff or sales representatives and agents who are involved in sales and cancellations of Fixed-Line Telecommunications Services on its behalf, Communications Providers should send a written warning to the offending party. The written warning will include details of sanction(s) that will be imposed on that party should that party continue to be in breach of the Code; and

- providing always that it acts proportionately, a Communications Provider may wish to invoke contractual penalties, including termination of that party's contract, if it fails to cease and desist its non-compliant behaviour after a written warning.

Cancel Other

- A12.37 Cancel Other is a consumer protection mechanism designed to ensure that Customers are not switched – transferred between Communications Providers - without their express knowledge and/or consent. Therefore, Cancel Other should only be used in certain circumstances, in particular, where the Customer believes they are a victim of slamming.
- A12.38 To ensure compliance with this GC Ofcom expects all Losing Communications Providers to apply Cancel Other only in the circumstances set out in GC24.1.
- A12.39 Ofcom considers that the primary purpose of Cancel Other is to protect consumers from slamming, and the Losing Communications Provider must take reasonable steps to ensure that slamming has actually taken place before cancelling the order.
- A12.40 The Losing Communications Provider is not permitted to use Cancel Other where a Customer has placed the order, but wants to change their mind, for e.g. because the information he has received from the service provider does not seem consistent with what they were told at the time of the sale, or because they felt pressured by the sales agent into placing an order. In such cases, the Losing Communications Provider should direct the consumer back to the Gaining Communications Provider to cancel the order.
- A12.41 In respect of 'Passing off', Ofcom considers that this constitutes Slamming because the customer has no knowledge of, and has not consented to, a transfer to the Gaining Communications Provider which placed the order. In this case, they are likely to believe, for e.g., that they have ordered a new service or payment method from the Losing Communications Provider. Ofcom considers that this is qualitatively different from other types of mis-selling where the service provider correctly identifies itself, but gives misleading information about the products or services that it is providing.
- A12.42 Other permitted instances of Cancel Other by the Losing Communications Provider include the following:
- in cases of Failure to Cancel, i.e. where a Gaining Communications Provider has failed to cancel a transfer after the customer has requested this. While the Gaining Communications Provider is required to cancel a transfer if the Customer asks it to do so during the transfer period, Ofcom considers that Customers also need a "safety net" mechanism that enables them to cancel a transfer when a Gaining Communications Provider has failed to do so.
- Losing Communications Providers will therefore be permitted to use Cancel Other where a Gaining Communications Provider has failed to cancel a transfer when the Customer has requested this. However, Ofcom considers that this safety net should be implemented in such a way that it will only be used where a Gaining Communications Provider fails to cancel a transfer, and not simply because a Customer has contacted the Losing Communications Provider for peace of mind and asked it to ensure that the transfer has been cancelled.

Before it uses Cancel Other in cases of Failure to Cancel, the Losing Communications Provider must, therefore, take reasonable steps to ensure that Failure to Cancel has, in fact, taken place. Ofcom considers that the Losing Communications Provider should only use Cancel Other if the customer would otherwise be transferred to the Gaining Communications Provider against their wishes. In practice, where the Losing Communications Provider submits a Cancel Other in response to a Customer's allegation that the Gaining Communications Provider has failed to cancel the transfer, this Cancel Other will not be actioned unless no instruction to cancel has been received from the Gaining Communications Provider by day 9 of the Transfer Period (or day 8 for WLR orders). If the Gaining Communications Provider submits a cancellation before day 9 (or day 8 for WLR orders), this cancellation order will take precedence and no Cancel Other will be recorded.

- In cases of Line Cease and other cases not related to slamming or failure to cancel. Unlike the category discussed above (slamming) the Losing Communications Provider's use of Cancel Other in cases of Line Cease does not follow a conversation with a customer about an order. When the Losing Communications Provider places an order to cease a line, a consequence of this is that any pending orders relating to that line are cancelled automatically. Such cancellations are recorded as Cancel Other.

Ofcom considers that the Losing Communications Provider's ability to use Cancel Other where the line is going to be or has been ceased is a necessary administrative mechanism.

A12.43 To give Customers certainty and transparency, Ofcom proposes that Losing Communications Providers should be required to confirm the cancellation of the order wherever it uses Cancel Other, unless this is not possible.

A12.44 Cancel Other should not be used by the Losing Communications Provider in the following circumstances:

- to frustrate the transfer process, particularly in situations where, for example, the Customer has not yet paid their bill, the notice period has not been served or where disconnection or termination of charges apply. These charges should be included in the final bill, and settled in accordance with standard payment terms;
- in cases of internal miscommunication which is where a request for service has been or may have been made by a person other than the person named on the bill but who may have identified themselves as an authorised decision maker.

In many cases, where a Customer contacts a Losing Communications Provider following internal customer miscommunication, it will appear to the Customer that slamming has occurred. However, Ofcom considers that this is not an appropriate use of Cancel Other given that the named account holder may not be the only authorised decision maker in a household or business, where decisions about fixed-line telecoms services are often made jointly. In such circumstances, Ofcom considers that where the named account holder disagrees with this decision, it is up to those individuals, and not the Losing Communications Provider to resolve. Similarly, in the case of businesses, Ofcom considers that if an individual takes a decision they are not authorised to make, this is a matter for the organisation concerned, and should not be for the Losing Communications Provider to resolve. Where internal customer miscommunication has occurred, the customer

can cancel the transfer by contacting the service provider within the Transfer Period, if the household or organisation has decided it does not want it.

Accordingly, Ofcom believes that it is therefore necessary for the Losing Communications Provider to investigate the possibility that such apparent slams are, in fact, the result of internal customer miscommunication, by asking questions, for example whether anyone else in the household or organisation or business could have placed the order. Losing Communications Providers should therefore ensure that there are adequate procedures in place which enable individuals other than the named account holder to make decisions on an account, subject to a verification process which requires those individuals to provide information that would only be available to an authorised decision maker.

Reason codes

A12.45 Each time the Losing Communications Provider uses Cancel Other, it must record the reason, selecting the appropriate “reason code” from a list corresponding to the permitted uses of Cancel Other and consistent with GC24.19(m)(i) to (iv), as agreed by the industry, and approved by Ofcom.

Annex 13

Glossary

Act: means the Communications Act 2003

Broadband: a service or connection which is capable of supporting 'always-on' services which provide the end-user with high data transfer speeds.

BT: British Telecommunications plc.

Cable Network: means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable.

Cancel Other: is the industry term for a functionality that enables the Provider losing the customer to cancel wholesale orders (during the switchover period) placed by an alternative Provider where slamming has been alleged by the customer.

Communications Provider (CP): a person who provides an Electronic Communications Network or provides an Electronic Communications Service, as defined in the Act.

Carrier Pre-Selection (CPS): means a facility which allows a Subscriber to whom a Publicly Available Telephone Service is provided by means of a Public Telephone Network to select which Pre-selected Provider of such Services provided wholly or partly by means of that Network is the Pre-selected Provider he wishes to use to carry his calls by designating in advance the selection that is to apply on every occasion when there has been no selection of Provider by use of a Telephone Number.

Early Termination Charge (ETC): a charge for consumers who terminate their contract before the end of any Minimum Contract Period (or Subsequent Minimum Contract Period).

Fixed-line Telecommunications Services: means Narrowband call and/or line rental services provided to Domestic and Small Business Customers.

Full LLU" means services where the provision of access to the copper wires from the customer premises to a BT exchange allows a competing provider to provide the customer with both voice and data services over such copper wires.

Gaining Communications Provider: Provider to whom the customer is transferring.

General Conditions of Entitlement: a set of regulations that apply to anyone who provides an electronic communication service or an electronic communications network.

Inappropriate save: relates to inappropriate activity on the part of the CP to retain their customer and is contrary to General Condition 1.2.

Local loop: The access network connection between the customer's premises and the local serving exchange, usually comprised of two copper wires twisted together.

Local Loop Unbundling (LLU): a process by which a dominant provider's local loops are physically disconnected from its network and connected to a competing provider's networks. This enables Communications Providers other than the incumbent to use the local loop to provide services including broadband to end users.

Losing Communications Provider: Provider from whom the customer is transferring.

Migration Authorisation Code (MAC): a unique code that a customer obtains from the losing broadband service provider and gives to the gaining provider, that allows the service to be transferred from an existing service provider seamlessly and with little or no disruption of service.

Minimum contract period: a minimum (fixed-term) contractual period set at the start of a contract (often for 12 to 18 months).

Mis-selling: Irresponsible sales and marketing activities, such as the provision of false or misleading information, applying unacceptable pressure to change CPs and where customers are switched without their express consent.

Narrowband: means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network.

Notification of Transfer ('NoT') process: is the switching process used for fixed-line telecommunications services. It works on the basis of consumers only having to contact their gaining CP in order to switch, and being well informed of an impending switch before it happens (through receipt of letters) and a 10-day switchover period

Ofcom: Office of Communications. The regulator for the communications industries, created by the Office of Communications Act 2002.

OAT (Ofcom Advisory Team): the team within Ofcom responsible for dealing with complaints and enquiries from members of the public.

Openreach: BT's access services division.

Public Telephone Network: means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data.

PSTN: Public Switched Telephone Network.

Reseller Identity (RID) Codes: Reseller Identity Codes, which are also known as Retailer Identity Codes, are three character alphabetic codes that are used to identify the reseller when a reseller wishes to offer CPS via a wholesale provider, or when a WLR service provider wishes to transfer a line to WLR and retain the existing CPS arrangements on that line.

Save: means marketing activity which is undertaken by the losing Communications Provider during the switchover period in an attempt to persuade the customer not to switch to a new Communications Provider.

Slamming" means where a request for CPS, WLR and/or LLU has been made without the Customer's express knowledge and/or consent; that is in the following circumstances:

- (i) where the Customer has never been contacted by the Gaining Communications Provider;
- (ii) where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining

Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;

- (iii) where the Customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or
- (iv) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider;

Significant Market Power (SMP): The position of a person or company who enjoys a market position of dominance with respect to that market.

Switchover period: the period before a customer's order can be activated.

Wholesale Line Rental (WLR): a facility by which BT provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) on the BT line.