



Regulatory fees for on demand programme services

Consultation

Publication date:

31 January 2017

Closing Date for Responses:

29 March 2017

About this document

On 1 January 2016, Ofcom became the sole regulator (other than in relation to advertising) for on demand programme services (“ODPS”) under Part 4A of the Communications Act 2003 (the “Act”).

In this document, we are consulting on a new regulatory fees regime under section 368NA of the Act, to apply from the 2017/18 financial year onwards. Our preferred proposal is to adopt a fees structure that shares the costs of regulating ODPS only between the largest providers (Option 4 in this document).

We have also provided an estimate of the 2017/18 fee that would be sufficient to meet but not exceed the likely cost of Ofcom carrying out the relevant functions in the financial year 2017/18.

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Section 1

Introduction

Background

- 1.1 On demand programme services (“ODPS”) are regulated in the UK under rules set out in Part 4A of the Communications Act 2003 (the “Act”). Ofcom is the sole appropriate regulatory authority for editorial content in the absence of a co-regulator being designated under section 368B.
- 1.2 Ofcom has been sole regulator for editorial content on ODPS since the designation of the Authority for Television on Demand (“ATVOD”) came to an end on 31 December 2015. The Advertising Standards Authority remains co-regulator with Ofcom in relation to advertising content on ODPS.
- 1.3 As sole regulator for editorial content on ODPS, Ofcom has a number of functions under Part 4A including:
 - (a) To act as a body to whom a person can notify an intention to provide an ODPS as defined under section 368A(1), or to significantly change a notified ODPS, or to cease to provide an ODPS, as they are required to do under section 368BA. Ofcom also enforces the notification requirements under section 368BB.
 - (b) To take steps to secure that ODPS providers comply with (i) substantive rules in relation to harmful material (section 368E), sponsorship (section 368G) and product placement (section 368H); and (ii) administrative rules in relation to provision of information to users, retention of programmes, and cooperation with the appropriate regulatory authority.
 - (c) To encourage ODPS providers to make ODPS progressively more accessible for individuals with visual or hearing impairments (section 368C(2)).
 - (d) To promote, where practicable and by appropriate means, production of and access to European works as defined by the Audiovisual Media Services Directive 2010 (the “AVMS Directive”) (section 368C(3)).
 - (e) To issue enforcement notifications for breaches of substantive or administrative rules under section 368I.
 - (f) In appropriate cases, to impose financial penalties for breaches of substantive or administrative rules, or for failure to notify provision of an ODPS, under section 368J.
 - (g) In appropriate cases, to suspend or restrict services for contraventions of rules or for incitement of crime or disorder (sections 368K and 368L).

Regulatory fees

- 1.4 There are costs associated with fulfilling its functions under Part 4A of the Act and, consequently, Ofcom may levy fees on ODPS providers pursuant to section 368NA of the Act, although it is not required to do so. If it does these must not exceed an estimate of likely costs for carrying out relevant functions. It may also require the

provision of information from those appearing to it to be ODPS providers, under section 368O.

- 1.5 During its period as co-regulator, ATVOD charged fees to ODPS service providers to cover the costs of regulation, as set out in Section 368NA of the Act. This enabled ATVOD to recoup its estimated costs for the year. The ATVOD fees were set on a tiered basis, and the annual fee in ATVOD's final year of operation ranged from £96 up to £14,135 for providers, depending on turnover of the service provider company, with a group cap of £28,725 available for ODPS providers in the same corporate group.
- 1.6 In March 2016, we published a Statement which stated that Ofcom would not charge fees to service providers in the financial year 2015/16. This was because the incremental cost involved in Ofcom becoming sole regulator for editorial ODPS was estimated to be so small, that it would be covered by the surplus ATVOD sent to Ofcom in respect of this financial year. However, we committed to reviewing this position with regard to future financial years.
- 1.7 In this document, we are consulting on the principles of a new regulatory fees regime under section 368NA of the Act. We are also consulting on actual fees applying for the 2017/18 financial year.

Impact assessment

- 1.8 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities¹.
- 1.9 We have carried out impact assessments for some changes referred to in this document, where warranted. The analyses presented in section 2 represent an impact assessment of the consultation proposals on which respondents to the consultation may wish to comment by the closing date. We have also had due regard to our obligations under the Equality Act 2010, but do not expect that the outcome of this consultation is likely to have any particular impact on race, disability or gender equality or those with any of the other characteristics protected by the Equality Act.

¹ For further information on our approach to impact assessments see our guidelines on Better Policy Making: <http://www.ofcom.org.uk/about/policies-and-guidelines/better-policy-making-ofcoms-approach-to-impact-assessment/>

Section 2

Consultation on fees

- 2.1 This section sets out Ofcom's proposals regarding payment of fees. We begin by setting out the legal context, the previous position on fees adopted by ATVOD, and the position taken by Ofcom for the current financial year.
- 2.2 This section then sets out four options for an appropriate fee structure for future financial years, namely:
- Option 1:** Levying no fee for any ODPS provider.
- Option 2:** Levying the same fee to all ODPS providers.
- Option 3:** Levying a fee for all providers, but not at the same level for each.
- Option 4:** Sharing costs only between the largest providers. This is our preferred option, and we have proposed an approach as to how allocation should take place.
- 2.3 Finally, this section sets out what fees for 2017/18 would be sufficient to meet but not exceed the likely cost of Ofcom carrying out the relevant functions in the financial year 2017/18, and how this fee would be levied between ODPS providers if our preferred Option 4 is adopted.

Legal context

- 2.4 The provisions relevant to setting an appropriate fee structure are contained in sections 368NA(2) to (4) of the Act. They make clear that Ofcom may (but need not) levy a fee on particular ODPS providers, and that what is considered an appropriate contribution which is justifiable and proportionate may vary as between providers. The statute states:
- “(2) The authority [Ofcom] may require a provider of an on-demand programme service to pay them a fee.*
- (3) The authority must be satisfied that the amount of any fee required under subsection (2)—*
- (a) represents the appropriate contribution of the provider towards meeting the likely costs described in subsection (5)(a), and*
- (b) is justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed.*
- (4) A different fee may be required in relation to different cases or circumstances.”*
- 2.5 The provisions relevant to setting the appropriate fee (given the structure adopted) are contained in sections 368NA(5) to (7) of the Act. They make clear that providers likely to be required to pay a fee in a particular financial year must be consulted on Ofcom costs estimates for that year, and that surpluses and deficits for previous financial years may be carried forward and taken into account in that calculation. The statute states:

“(5) The authority [Ofcom] must, for each financial year—

(a) prepare such estimate as it is practicable for them to make of the likely costs of carrying out the relevant functions during that year;

(b) ensure that the aggregate amount of the fees that are required to be paid to them under subsection (2) during that year is sufficient to enable them to meet, but not exceed, the costs estimated under paragraph (a);

(c) consult in such manner as they consider appropriate the providers likely to be required to pay them a fee under subsection (2) during that year;

(d) publish in such manner as they consider appropriate the amount of the fees they will require providers to pay to them under subsection (2) during that year.

(6) As soon as reasonably practicable after the end of the financial year, the authority must publish a statement setting out, for that year—

(a) the aggregate amount received by them during that year in respect of fees required to be paid under subsection (2);

(b) the aggregate amount outstanding and likely to be paid or recovered in respect of fees that were required to be so paid under subsection (2); and

(c) the costs to them of carrying out the relevant functions during that year.

(7) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (6) is to be—

(a) carried forward; and

(b) taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (5)(b) in relation to the following year.”

2.6 Section 368NA(5)(a) of the Act makes reference to “relevant functions”, which is defined under section 368NA(11). This refers to functions as “the appropriate regulatory authority”, and section 368B limits these to functions described in Part 4A of the Act.

Previous position on fees

2.7 By way of context for our proposed options, we note some key and relevant facts about the fees structure in the final year of ATVOD’s operation (2015/16):

(a) ATVOD’s estimated costs for the year were just over £487,000 and the fees collected were just over £488,000.

(b) The 40 largest ODPS providers each paid over £5,000 and accounted for over 93% of fees.

(c) ATVOD differentiated between those in the largest group, with the largest “Super A” providers paying £10,893 each for single outlet services and £14,135 for multiple outlet services (with a group cap available where there were multiple

providers in one corporate group). “A Rate” providers paid £5,010 for single outlet services and £6,502 for multiple outlet services.

(d) None of the remaining 77 providers (the “long tail”) paid more than £815, and 40 of these paid £204 or less. These providers accounted, in total, for under 7% of fees.

2.8 As set out in our statement entitled “*Future regulation of on-demand programme services*”, published on 31 March 2016 (the “**March 2016 Statement**”),² we expected Ofcom’s incremental costs of ODPS regulation to be relatively low for a number of reasons. Reasons for this included certain cost categories, such as the ATVOD Board and CEO, which would not need to be replicated, while others such as cost allocation for office accommodation and IT would be lower due to Ofcom’s existing scale. As set out below, that has indeed transpired and we note at the outset that estimated costs and proposed fees are significantly lower for all ODPS providers than they were under ATVOD.

2.9 The March 2016 Statement said we would not levy a fee for the 2016/17 financial year because, “incremental costs are so small that they are likely substantially to be covered by the surplus which will pass from ATVOD to Ofcom in respect of fees collected but not spent in the 2015/16 financial year.” This has also transpired and a small surplus of £1,000 has been carried forward in the proposed fees calculation set out in this document.

Our proposed options for a future fee structure

Option 1: Levying no fee for any ODPS provider

- 2.10 The first option Ofcom is considering is to charge no fee at all to any ODPS provider. The use of the permissive “may” in section 368NA(2) of the Act and reference to “any fee” in section 368NA(3) indicates Ofcom is not strictly required to levy a fee, albeit there are inevitably some costs as a result of functions involved in regulating ODPS.
- 2.11 Nevertheless, it is our provisional view that recovering the relatively modest costs of ODPS regulation via a fee levied on ODPS providers under section 368NA would be appropriate.
- 2.12 As set out in our March 2016 Statement, we have previously considered the alternative of recovering costs via charges on broadcasting licensees set in accordance with Ofcom’s Statement of Charging Principles under section 347 of the Act. If we were to adopt Option 1, this would result in marginally higher fees for broadcasting licensees for 2017/18 than would otherwise be the case.
- 2.13 We recognise this would result in an incremental cost for broadcast licensees who are not also ODPS providers, while a smaller number of large ODPS providers on whom it may be seen as appropriate to levy a charge would not be required to make a contribution. While the sums involved would be very limited, we recognise the possible unfairness to those broadcast licensees who do not operate ODPS, and this may grow over time depending on developments in the ODPS sector.

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https://www.ofcom.org.uk/_data/assets/pdf_file/0033/83958/statement_on_future_regulation_of_on-demand_programme_services.pdf

- 2.14 On balance, we consider this outweighs the administrative disadvantages of having a separate system to cover what are currently relatively low costs associated with ODPS regulation, and we do not therefore propose Option 1.

Option 2: Levying the same fee to all ODPS providers

- 2.15 We could instead apply a fee to *all* notified ODPS providers (either on a per-provider or per-service basis). We could either charge all ODPS providers the same sum, or we could set a sliding scale, as ATVOD did, where larger providers pay more. We will move on to discussing a sliding scale structure as Option 3.
- 2.16 At time of writing, there are 113 ODPS providers notified to Ofcom under section 368BA of the Act, providing approximately 280 services. As set out in further detail in paragraph 2.34, our estimated total cost for Ofcom regulating ODPS in 2017/18 is £114,000. Under Option 2, this would approximate to £1,000 per provider, or £400 per service. There are several reasons why we provisionally consider it would not be justifiable and proportionate to require smaller providers to pay this sum, and why we consider it would be appropriate to have a different fee for different providers.
- 2.17 In particular, we note that the “long tail” of small ODPS providers includes very small businesses with low numbers of users, and we are particularly concerned not to impose additional cost and administrative burden on these. It includes a number of not-for-profit operators, as the test on who must register as an ODPS does not involve assessment of means or financial motive. A fee of the level indicated is not very large, but nor is it insignificant for the long tail of small ODPS providers. It is important to note that Ofcom’s duties under section 3 of the Act include having regard to the desirability of promoting competition in relevant markets, and encouraging investment and innovation. Small providers can offer welcome diversity and innovation to the on demand sector and we would not want to discourage this. We note, however, that if we reject Option 2, today’s smaller providers could be liable to make a payment in future years if their businesses grow.
- 2.18 We are also mindful of the particular practical difficulties of identifying non-notified ODPS which exist online only and not through traditional broadcast platforms. A fee of the level indicated may discourage some ODPS providers from notifying under section 368BA, which is both unlawful and an impediment to resolution of substantive complaints. It may have the unwelcome consequence of driving providers to intentionally avoid regulation and compliance of their services to the detriment of citizens and consumers.
- 2.19 For the above reasons, we do not favour Option 2.

Option 3: Levying a fee for all providers, but not at the same level for each

- 2.20 Option 3 would involve levying a fee for all providers, but on a sliding scale to address the potential unfairness in Option 2.
- 2.21 Option 3 would, in practice, mean an essentially nominal fee to small providers. In the final year of ATVOD’s operation, the 40 smallest providers paid between £96 and £204. Given Ofcom’s lower overall costs, roughly equivalent fees may be under £50. It is our provisional view that designing a potentially complex calculation in order to charge such small sums to a limited number of providers may create disproportionate costs in recovering such sums, which would be passed on to ODPS providers in future years.

2.22 We do not, therefore, favour Option 3. As noted above, smaller providers may well still contribute to the costs of regulation in later years as their revenues grow.

Option 4: Sharing costs between the largest ODPS providers

2.23 Given the reasoning we have set out above, our preferred option is Option 4, which involves no fee to smaller ODPS providers, and sharing the cost between the largest providers. It follows that there would need to be a cut-off point below which no fee is payable. Inevitably, this means that providers just above the cut-off point would pay and those just below would not, despite potentially being quite similar. However, we note that this is inherent in the existence of a cut-off point and that there would be scope for providers close to the boundary to rise above or fall below the cut-off over time.

2.24 Our preferred Option 4 could be specified in a number of different ways. There is no single, unique solution which is “justifiable and proportionate” within the meaning of section 368NA(3)(b) of the Act. Instead, there is likely to be a range of alternatives meeting that requirement, and we have applied our regulatory judgement as to which to adopt.

2.25 In developing this proposal we have firstly considered which approach to use to assess the size of an ODPS provider. There are a number of alternatives which could be used individually or in conjunction with one another. Each of these has advantages and disadvantages in terms of accuracy, comparability and appropriateness for determining what is justifiable and proportionate. For example, we could consider:

(a) User numbers: We understand that there is a lack of a straightforward, shared approach in the sector to measuring this in terms of unique users, time spent, use across different platforms and so on. We also appreciate that this is not always a good proxy for revenue generation, which will vary by business model.

(b) ODPS-specific revenues: We understand there are often significant practical difficulties in differentiating this from revenues from non-ODPS online services (e.g. subscriptions to text based services or banner advertising on such services), and from broadcasting revenues (given ‘catch-up’ services may be packaged with broadcast services and in subscription deals, and there are similar difficulties in relation to advertising revenues).

(c) Employee numbers for ODPS: There are likely to be issues over allocation of time (e.g. for ‘catch up’ ODPS providers which also provide linear television, many employees are likely to be involved in both aspects to some degree). Again, there is also a risk that this approach would not capture differences in business models, such as the extent to which different ODPS buy-in content rather than producing it in-house.

2.26 Our preferred approach is to define the size of an ODPS provider by reference to the revenue of the ODPS provider from all sources. We note that this is not a perfect proxy for the size of ODPS operations, and may capture revenues which are not directly related to ODPS operations. However, we consider that a revenue basis provides one reasonable measure of the resources available to a provider to pay a fee, it is relatively stable over time, is more easily verifiable than some of the other options, is relatively straightforward, and is adaptable to market change.

2.27 This lack of unnecessary complexity is particularly important in the current context of a fee which is small in absolute terms. The purpose of assessing the size of

providers is to produce a fair cut-off rather than to input into a complex fees calculation. Our provisional view is that, while not insurmountable in theory, requiring providers to develop new means of recording revenues or audiences at this stage in the development of the sector is not a proportionate way to proceed in the context of an industry of the present size and with low regulatory costs. We consider that provider revenue is a reasonable, pragmatic means of assessment that is justifiable and proportionate to categorise providers for fee purposes.

- 2.28 We do not propose to charge a different sum for providers with multiple outlets, as there are different approaches to “branding” offerings, including through multiple, overlapping services. We wish to encourage ODPS providers to clearly differentiate brands so users can readily identify a service against the list of notified ODPS if concerns arise. There is a risk that this is not done effectively if there are fee implications involved in notifying multiple outlets.
- 2.29 We propose obtaining provider turnover for the relevant *calendar* year (rather than accounting) year. The calculation of turnover for the calendar year where this does not correspond to the accounting year would be determined in accordance with the Ofcom Statement of Charging Principles issued 8 February 2005³.
- 2.30 We propose to charge providers with total turnover⁴ exceeding £50m (“Category A providers”) the standard annual fee; and those providers with total turnover greater than £10m but not exceeding £50m (“Category B providers”) 50% of the standard annual fee. We proposed to charge no fee to smaller providers with a total turnover not exceeding £10 million (“Category C providers”).
- 2.31 We have estimated, based on publicly available data and market information, that approximately 21 providers fall into Category A and approximately 13 into Category B. Based on the estimate of costs for 2017/18 of £114,000, this would result in a fee of £4,146 for Category A providers, and £2,073 for Category B providers. Category C providers (the majority of providers) would not pay any fee.

Option 4 proposal		
Category	Turnover Band	Fee (estimated)
C	under £10m	£0
B	>£10m but less than £50m	£2,073
A	>£50m	£4,146

- 2.32 As a reminder, a slightly larger group of the largest ODPS providers all paid in excess of £5,000 in ATVOD’s final year of operation and this was substantially higher for “Super A” providers, who paid almost £11,000 each for single outlet services and just over £14,000 for multiple outlet services.

³ https://www.ofcom.org.uk/data/assets/pdf_file/0019/51058/charging_principles.pdf

⁴ total turnover is defined as “Turnover of the VOD provider according to the total turnover as per the Statutory accounts of the provider.”

2.33 As noted above, there are many different ways to design a system sharing costs between the largest providers in line with the principle of Option 4. We consider this option is justifiable and proportionate and, in particular, it shares the cost across a range of providers with the ability to pay. It also avoids creating an overly complex or burdensome system for providers, which would be out of proportion with the level of costs involved in ODPS regulation at this stage.

What are our estimated costs and fees for 2017/18?

2.34 We set out below our estimate of the costs of carrying out our functions for ODPS for the financial year to 31 March 2018.

2.35 As mentioned above, our estimated total cost for Ofcom regulating ODPS in 2017/18 is £114,000. This includes:

- (a) Direct costs (including staff £32,000 and research costs £50,000) of £82,000.
- (b) Indirect costs of £33,000 including premises; ICT; HR; Finance; and non-sector specific activities).
- (c) Estimated surplus for the period 1 January 2016 to 31 March 2017 of £1,000.

2.36 The staff costs allocation included above is based on an assessment of staff time recorded against relevant functions under Part 4A of the Act during 2016.

2.37 For research costs, included in direct costs above, this is an area where costs are higher than those recorded under ATVOD. However, the research that is likely to be reflected in this particular cost would have also been covered to some extent by “Ofcom’s recouped costs” in ATVOD’s previous fees calculation.

2.38 Ofcom regularly produces research reports with a direct bearing on the ODPS sector, including the PSB Annual Research Report,⁵ the Adult Media Use and Attitudes Report,⁶ the Children and Parents Media Use and Attitudes Report,⁷ and the Communications Market Report.⁸ We consider £50,000 represents an appropriate contribution towards that work, and towards any ODPS-specific research we may need to carry out in 2017/18.

2.39 We are mindful that section 368NA of the Act limits us to recovering sums involved in carrying out relevant functions specifically under Part 4A of the Act, so have not sought to allocate a cost reflecting all matters relevant to ODPS covered by Ofcom research. If we took this approach we would arrive at a figure substantially higher than £50,000. Nevertheless, much of our research is clearly relevant to Part 4A functions. For example, it gives a measure of usage of ODPS (including by children) and an understanding of attitudes towards matters relevant to ODPS content such as potentially harmful material. Without such work, we would be less able to carry out Part 4A functions effectively.

2.40 We have calculated the figure for indirect costs allocated to the ODPS sector in accordance with the approach set out in Ofcom’s Statement of Charging Principles. These indirect costs cover the common activities required for the delivery of the regulation of the VOD sector (including premises costs, ICT and HR).

⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0018/80046/psb-annual-report-2016.pdf

⁶ https://www.ofcom.org.uk/data/assets/pdf_file/0026/80828/2016-adults-media-use-and-attitudes.pdf?lang=uqovrjuc

⁷ https://www.ofcom.org.uk/data/assets/pdf_file/0024/78513/childrens_parents_nov2015.pdf

⁸ <https://www.ofcom.org.uk/research-and-data/cmr/cmr16>

- 2.41 We did not charge any fee for the period from 1 January 2016 to 31 March 2017 when Ofcom took on sole regulation of editorial content on ODPS as we estimated the surplus transferred from ATVOD would approximately cover the first year of operation. As stated above, a small surplus of £1,000 has also been estimated up to 31 March 2017, and this slightly reduces the amount we need to recover in fees for 2017/18.
- 2.42 Given the above, we are required to ensure the aggregate amount of fees is sufficient to meet, but not exceed, the estimate.
- 2.43 As stated above, we have proposed charging only the larger providers. We estimate that approximately 21 providers are likely to have a turnover over £50 million per annum, and a further 13 between £10 million and £50 million. Based on our Option 4, a cost estimate of £114,000 equates to a fee of £4,146 per provider for the largest (Category A) providers, and £2,073 for the next largest providers (Category B).
- 2.44 We proposed that fees will be charged by reference to the total turnover⁹ in the relevant calendar year, two years prior to the charging year e.g. the calendar year 2015 turnover will be used for the determination of fees for the financial year fees for 2017/18. The choice of calendar year is so that all stakeholders will have submitted their statutory accounts and be on the same basis for the determination of fees. If, following consultation, we adopt Option 4, we will write to providers in due course requesting turnover figures, which we may take further steps to verify if necessary.
- 2.45 Conditions may change in the future such that, for example, it is more practicable to ask providers to calculate relevant turnover in relation to ODPS, as is the case for television and radio for example. For the foreseeable future, however, fees will be determined annually on the same basis as above (Category A providers paying 100% of the standard fee, Category B providers 50%, and Category C providers 0%).
- 2.46 As set out in section 368NA of the Act, in future years we will prepare an estimate of the likely costs of carrying out our functions each year and ensure that the aggregate amount of the fee charged according to the above formula is sufficient to meet but not exceed the estimate. We are required under the legislation to consult providers likely to be required to pay a fee (i.e. under our proposed option, those likely to fall into Category A or B) in such a manner as we consider appropriate. We would generally do this by writing to such providers at around the time of the publication of our proposed Annual Plan, which is usually published around December of each year, with estimated costs and resulting fees for the following financial year. We would publish a finalised figure with the Tariff Tables each March.

⁹ total turnover is defined as “ Turnover of the VOD provider according to the total turnover as per the Statutory accounts of the provider.”

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 29 March 2017**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <https://www.ofcom.org.uk/consultations-and-statements/category-3/fees-for-VOD/>, 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 VODconsultation@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.
- Ofcom
'Consultation on ODPS fees structure'
5th Floor
Riverside House
2A Southwark Bridge Road
London
SE1 9HA
- Fax: 020 7981 3806
- 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 Anna Lucas on 020 7981 3130.

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/terms-of-use/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in April 2017.
- 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/email-updates/>

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 Steve Gettings, Secretary to the Corporation, who is Ofcom's consultation champion:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email steve.gettings@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 <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- 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	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	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

We are consulting on two issues in this consultation document. Firstly, we are consulting on a new regulatory fees regime under section 368NA of the Act, to apply from the 2017/18 financial year onwards. We have also provided an estimate of the 2017/18 fee that would be sufficient to meet but not exceed the likely cost of Ofcom carrying out the relevant functions in the financial year 2017/18.

The consultation questions are as follows:

Question 1: Do you agree with Ofcom's preferred proposal to adopt a fees structure that shares the cost of regulating ODPS only between the largest providers (Option 4)? If not, which alternative option do you consider would provide a proportionate, fair and pragmatic basis for a fees structure?

Question 2: Do you agree that Ofcom's costs estimate is appropriate in relation to carrying out our relevant ODPS functions for 2017/18, and that the estimated fee for 2017/18 is sufficient to meet but not exceed such costs?