

Additional clarifications arising from Industry meeting Thursday 20 March 2014 concerning implementation of NoT process enhancements for switching processes

Ofcom 7 April 2014

Introduction

1. Ofcom's December 2013 Statement on Consumer Switching set out our decision to introduce enhancements to the NoT switching process by means of modifications to General Conditions¹. These modifications introduce requirements on CPs to implement the enhancements, in most cases by 20 September 2014.
2. Following our publication, a number of CPs sought clarification from Ofcom concerning aspects of the implementation of enhancements and their enforcement by Ofcom. In order to provide a forum for CPs to raise issues and for Ofcom to provide guidance aimed at assisting industry to meet the implementation deadline, we hosted a multi-lateral industry meeting on 20 March 2014.
3. This document sets out our record of points raised by industry, together with our responses to these. Our responses set out here reflect both our views expressed at the meeting itself and our further consideration following the meeting. In terms of guidance to industry, our responses should be read as supplementing but not substituting our positions expressed in our 2013 Statements. We intend that responses set out here provide sufficient additional clarity to enable industry to implement enhancements to the NoT process.
4. Concerning one enhancement, on Record of Consent, we are unable to give a definitive view on any particular CP process. However, we are prepared to discuss the issue further with CPs if they would find that helpful, and will share any further guidance emerging from such discussions with other CPs.
5. We remain open to any need or request for further meetings on either a multi-lateral or bi-lateral basis, to address issues that have arisen or which may arise.
6. The remainder of this document is organised in terms of each of the key enhancements and the corresponding GCs, i.e.:
 - Record of consent to protect against slamming (GC22.8)
 - Provision of better information about switching (GC 22.10 to 22.13)
 - Mandatory use of functionality to ensure seamless transfer of bundled services (GC22.14)
 - Mandate CPs to place a WLT order only where there is an exact match (GC 22.22 and Annex 2).
7. For the avoidance of doubt, Ofcom will at all times determine compliance on the basis of individual circumstances.

Record of consent to protect against slamming

Face to face sales

Points raised

8. Sky raised the issue of Record of Consent (RoC) in face to face sales scenarios and in particular asked whether it would be sufficient as a RoC that the consumer's bank account details had been obtained and entered by the sales agent and/or customer. Sky suggested that an 'electronic signature' (e.g. written by the consumer with a stylus on an

¹ References in this document to General Conditions are to be construed as references to the modified GCs; ie. those that enter into force from 20 September 2014.

electronic pad) would add little as a proof of RoC. Sky also underlined that Ofcom had accepted in its December 2013 Statement that online sale records would qualify as a valid RoC for the purposes of the GC. Sky said that there was little difference, in terms of potential consumer harm, between a sales agent making the entries during a face to face sale and an online purchase.

9. SSE asked whether the demonstration of a sales script would be sufficient, making reference to the guidance Ofcom provided in page 21 (paragraph 3.59, third bullet point) of its December 2013 Statement. This guidance stated that for online applications, Ofcom would be likely to carry out a process audit to confirm that the customer was not able to complete the process without first having given their explicit consent.

Response

10. We can clarify that GC 22.8 does not require that the RoC is paper based. The key aspect is the ability to demonstrate that express consent was given and to make clear which service the customer has consented to. We think this could be achieved through, for example, use of either an electronic or written signature, confirmation email or a customer voice recording.
11. We note that we are unlikely to view entry of bank account details by a sales-agent as sufficient proof in itself that RoC had been obtained. We also do not see how the existence of sales script in isolation demonstrates consent. CPs are required to obtain a direct record of the consumer's consent to migrate from the services provided by the Losing Provider to the services supplied by the Gaining Provider.
12. We reiterate that CPs are best placed to identify what types of records would meet our requirement for clear and direct evidence of consent from the consumer to switch and how best to achieve this. Ofcom is not able to give a definitive view on any particular CP process. However, we are prepared to discuss the issue further with CPs if they would find that helpful, and will share any further guidance emerging from such discussions.

Multiple lines

Points raised

13. Colt noted that in some SME situations, a contract is concluded by a CP and RoC obtained for a set of lines, but that subsequently the purchaser realises that further lines need to be added (e.g. fax lines that the consumer had not thought to include on the original contract). These additional requests are currently processed on an informal basis via email etc. Colt enquired whether subsequent additions of such lines would require a separate RoC.

Response

14. We confirm that each separate transfer order will require a written record of consent. An email request would likely count as such.
15. We also clarify that some SME transactions would be outside the scope of this General Condition 22.8 where the "end-user" in the transaction employs more than ten individuals.

Data transmission to Ofcom

Points raised

16. Tesco asked about what data file formats and security protocols should be used to transmit files to Ofcom in the event that we ask for such data in any enforcement actions concerning GC 22.8.

Response

17. We expect data files to be transmitted securely and in a form that is comprehensible to us. We do not wish to be overly prescriptive about the format that the data transmission should take. If CPs are concerned that we may have problems reading their submissions we are happy to engage in bilateral discussions with them over this. We would note that we exchange a lot of data with CPs and do not typically encounter problems in this process. Ofcom is currently considering developing a secure data file transmission capability which may be of use in this process.

Status of contracting provider

Points raised

18. BT Group asked how the RoC obligations would work in cases where sales are made by third-parties reselling the services of a CP.
19. Discussion also moved on to include the more general question of how CPs might be identified, or even labelled as the CP, where a transaction had occurred between a reseller and a consumer where the product (e.g. telephone service and number) is provided by the CP. One CP suggested that thousands more RID codes would be needed to accommodate all the potential retailers of fixed-line services. Discussion also included the question, or necessity of, putting in place correct RIDs on CPs.
20. Most parties round the table agreed that a comprehensive communication plan would need to be put in place by wholesalers to alert downstream resellers to obligations under the new GC.

Response

21. We clarify that such third-parties would qualify either as CPs themselves, and so be subject to the GC, or as “agents” or “representatives” of the CP. This would depend on the nature of their activities (e.g. whether they enter into a contract with the consumer to provide the services) and their relationship with the CP whose services they are reselling. We reiterate that pursuant to GC22.26, where CPs engage representatives or agents, they shall procure that such representatives or agents comply with the requirements of the GC. Where third parties are CPs, the RoC requirements will apply directly to them.
22. This applies equally to RIDs. The RID is a three-alpha code which is used to identify the Gaining CP (i.e. this is the party which has entered into a contractual agreement with the end user for provision of services). Where CPs engage representatives or agents to sell on their behalf, it will not be necessary for such representatives or agents to obtain RID codes.

Provision of better information about switching

Timelines

Points raised

23. SSE noted that GC 22.11 to GC 22.13, which require the Losing Provider to provide the end user with information on the implications of switching, do not require a time frame within which such information should be provided.

Response

24. We note that we did not consider it necessary to prescribe precise timescales for the sending of the Gaining Provider and Losing Provider letters, as we considered that both LPs and GPs would have an incentive to inform the consumer of the impending switch promptly. We also note the role of industry agreed process in this regard and reiterate that GC 22.11 explicitly requires the Losing Provider letter to be sent in accordance with such process.

Requirements for the broadband element of bundles

Points raised

25. BT put the question of whether or not the GC 22.11 to 22.12 requirements for the LP to send an implications of switching letter would need to reflect any broadband element of a bundle, from 20 September 2014.

Response

26. The December 2013 Statement is clear on this point. GC obligations regarding the broadband element of a bundle, including the sending of implications of switching letters, apply from the Harmonisation Date i.e. 20 June 2015, with the exception of the GC 22.14 requirement regarding simultaneous transfers, where broadband will be subject to this provision from 20 September 2014.

Durable medium

Points raised

27. BT asked about the GC 22.13 requirement regarding Durable Medium and the form of the letters to be sent, in particular whether it was sufficient for the CP to send correspondence only electronically, where this was set out in the terms and conditions.

Response

28. The requirement for explicit consent to receive correspondence electronically in the new GC 22.13 reflects the position under the old GC 24.8. The intention is to highlight this as an important issue which must be specifically addressed. Inclusion within a set of standard terms and conditions would not satisfy that objective.

Mandatory use of functionality to ensure seamless transfer of bundled services

Use of SIM1 and SIM2

Points raised

29. Vodafone noted that SIM2 functionality is not (yet) available for all transfer scenarios and that this means Vodafone would effectively be obliged to continue to use SIM1 functionality for some transfer scenarios when GC 22.14 enters into effect. Vodafone explained that this would have the consequence that Vodafone would incur further development costs once SIM2 functionality is developed, and Vodafone begins to use it, for the transfer scenarios in question.

Response

30. We explained that the GC 22.14 requirement does not require use of any particular functionality, and that it would be open to Vodafone to continue to use SIM1 where it is available. Where CPs find SIM1 to be a viable product to meet requirements, we would expect that it would be in the mutual interests of both Openreach and CPs for SIM1 to continue to be made available. On this point, BT Wholesale clarified at the meeting that they had asked Openreach not to discontinue making SIM1 functionality available.
31. We also noted that operators might also use any other functionality developed in the future, in so far as it allows for the simultaneous transfer of the two services, with a minimal loss of service, to meet requirements of GC 22.14.

Obligation for wholesale providers to provide SIM functionality and for CPs to use it

Points raised

32. Zen asked for clarification about whether wholesale CPs were required to consume SIM2 so that they can provide this functionality to their customers and whether retail

CPs were under an obligation to consume SIM2 where this was not made available to them by their wholesalers.

Response

33. We reiterated that there was no obligation on the wholesale CPs but that we would expect CPs to enter into appropriate arrangements to ensure that orders for simultaneous transfers can be placed. The relevant GC (GC 22.14) also explicitly only requires CPs to place an order for a simultaneous transfer where such functionality is available. This is intended to address concerns that the functionality might not be provided by Openreach or other providers in respect of existing or future low volume transfer scenarios.

Obligation to use functionality where other solutions may be available

Points raised

34. Tesco noted that their approach to avoiding loss of service for a voice and broadband bundle is to transfer the broadband service first, then the voice service, in both cases without loss of service, though noting that this does not ensure simultaneous migration. Tesco asked why and how CPs taking such an approach should be subject to GC 22.14 and the need to consume simultaneous provide functionality.

Response

35. In our 2013 statements we noted that loss of service remains a significant issue for consumers, particularly where this involves switching a bundle of services. We also noted that, while industry tactical fixes can help address this issue, and that support for these is considered best practice in the OTA's Best Practice Guide, not all CPs are using them. We will therefore require CPs which elect to co-ordinate migration of voice and broadband services to submit an order to Openreach, where available, for simultaneous transfer with minimal loss of service.
36. Accordingly we reiterate that GC22.14 clearly requires the placing of an order for the simultaneous transfer of the fixed and broadband services. Sequential switching of services does not satisfy this requirement of GC 22.14.
37. As a matter of enforcement priorities, we are likely to take into account that consumers suffer no loss of service in cases where a CP fails to comply with the requirement of placing an order for the simultaneous transfer of the two components.

When obligation enters into force

Points raised

38. Vodafone suggested that, if the GC 22.14 requirements take effect from September 2014, this would be an onerous and costly timetable for Vodafone to meet.

Response

39. We clarified that GC 22.14 would apply to CPs from 20 September 2014.

Mandate CPs to place a WLT order only where there is an exact match

Definition and approach to 'exact match'

Points raised

40. SSE said that the CP does not necessarily attempt to achieve an 'exact match' when taking details from a customer, but only later when accessing Openreach's database, and that an 'exact match' achieved at this point could nevertheless be wrong, owing to Openreach address database inaccuracies. He asked whether in such circumstances the CP should then go back to the customer to confirm an 'exact match'.

Response

41. Our intention in mandating that a WLT order may only be placed where the Gaining Provider identifies an 'exact match' for the target line is to minimise the risk that an ELT occurs as a result of an incorrect target line being selected. Hence an 'exact match' means that the GP has, on the basis of the information available to it, through use of relevant industry tools and following industry best practice, unambiguously identified a target line to be taken over. By corollary, where there is ambiguity about the correct target line to be taken over, for example where an address holds more than one line and it is not possible to discriminate between them, no 'exact match' is found.
42. We acknowledge that, to the extent that details provided to the GP by the customer or the asset or address details to be checked against are incorrect, it is possible that even where industry best practice is followed, an exact match can be identified which is nevertheless subsequently found to be erroneous. We note that this possibility does not diminish the importance of seeking to identify correctly the target line. We also note that such a search might in many cases be usefully facilitated by the GP asking the consumer to provide additional information.
43. The OTA explained at the meeting that it is working with industry to refresh and update the industry Best Practice Guide (BPG), including an enhanced description of the process by which GPs should seek to identify an exact match and the circumstances in which no exact match can be considered to have been identified and hence where no WLT order should be placed. The OTA explained that it will be holding bi-lateral meetings with the main industry players and hopes to revise the BPGs by April 2014. We anticipate that this enhanced description will give CPs sufficient further clarity concerning the achievement and identification of an exact match.
44. As a matter of enforcement of GC 22.22 and Annex 2, we are likely to place significant weight on any evidence that a GP has placed WLT orders only where it has identified an 'exact match', including that the GP had followed the relevant guidance in the BPG.

Scope of exact match and question of WLT orders

Points raised

45. Sky and others asked about the scope of the exact match requirement; for example whether it applies to WLT orders only, to migrations more generally, or whether it excludes MPF lines.

Response

46. We clarify that the exact match requirement set out in Annex 2 to GC 22 applies only to WLT orders, including where these involve MPF lines. However we reiterate that we expect CPs to follow best practice as set out in the OTA's BPG in order to minimise the risk of erroneous transfers occurring in either WLT or migration scenarios.
47. The OTA explained at the meeting that it had recently become clear that some CPs use a WLT order in contexts that are not strictly 'home move'. A strict 'home move' would be a consumer arranging to move out of one property and transfer service to the new property. An alternative scenario is that a consumer, with no prior arrangement of a transfer of telecommunications services, may move into a property and request service. Some CPs treat this as a de-facto home move situation and establish service via a WLT order. The OTA explained that it is intended to recognise this scenario in the BPG refresh.

MPF helpline

Points raised

48. Questions arose concerning whether the current manual MPF helpline has sufficient capacity to meet increased demand from CPs attempting to meet GC 22.22 requirements. BT raised concerns about the 25 requests per-day limit applied by Talk Talk Group when using the MPF Helpline.

Response

49. The OTA noted at the meeting that it had no evidence so far that there are capacity issues or constraints on use of the MPF helpline.