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**Citizens Advice response to Ofcom consultation seeking inputs into the consultation on the broadband universal service obligation (uso)**

Citizens Advice welcomes the opportunity to provide inputs into this consultation. General points are set out below, followed by detailed responses to the questions asked in the consultation document. We provide data and evidence as an input to this discussion but do not comment on narrowly technical or engineering issues where we feel that others are better placed to do so.

**General Points**

We welcome the extensive research and analysis that Ofcom has undertaken to establish that a 'safety net' uso should be set initially at least at an affordable connection to services of 10Mbit/sec.

Digital exclusion remains a key problem of many of our clients and we recognise that affordable broadband set through a uso can be a key measure in ending such exclusion particularly for rural consumers. Research from the Universities of Aberdeen and Oxford finds that more than one million consumers are excluded from, or face challenges in, engaging in normal online activities because they live in remote rural areas without high speed broadband. This risks eroding further the viability of rural life, for example, in impacting negatively on SMEs and the rural economy and causing considerable consumer detriment and we welcome measures to resolve this issue.<sup>1</sup>

However, access to a fixed broadband connection, by itself, does not resolve the other problems of digital exclusion which often relate to other issues such as affordability (and complexity) of broadband tariffs and digital ability e.g. problems related to computer literacy and the complexity of official forms and information.

Our recent research suggests that only 61% of our clients (many of whom are on low incomes)<sup>2</sup> have internet access in their home, with a further 11% having access only on a smartphone.<sup>3</sup> This could indicate that, even in urban areas, internet access via broadband remains unaffordable for many on low incomes trying to stretch limited resources.

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<sup>1</sup> <http://www.ox.ac.uk/news/2015-09-04-effects-two-speed-britain-internet-access>

<sup>2</sup> <https://www.citizensadvice.org.uk/Global/Public/Impact/Client%20poverty%20briefing%20-%20England%20and%20Wales%20-%20June%202015.pdf>

<sup>3</sup> Citizens Advice: "Measuring the Digital Capability of Our Face to Face clients." (2016 unpublished)

It may also provide evidence that broadband access is often sacrificed by those on low incomes to finance other (what they consider to be more) essential expenditures. Whilst this can create detriment and reinforce compounded problems such as educational inequalities, it does provide an indicator that consumers can separate out their essential communications needs (which may be met via mobiles) from those of entertainment services. The rise in mobile only households could also indicate that some consumers are finding other solutions to meet their entertainment needs and perhaps relying on fixed broadband connections elsewhere. Alternatively, it could be a parallel to self-disconnection by energy consumers. We are conducting research in this area.

Our research also indicates that consumers have not always sought out the best broadband deals<sup>4</sup> and that they have found broadband advertising confusing particularly where products are bundled together.<sup>5</sup> Other issues such as contract exit fees have also caused problems for consumers.

Establishing a fixed broadband use based on connection will not, by itself, resolve these issues or broader problems faced by consumers in the mobile communications market.

Further, there are complex policy trade-offs involved in setting the dimensions of the use. For example, setting a use at a high specification may impose significant investment costs which if funded through an industry compensation scheme and passed on in prices could potentially compound existing affordability issues for some groups of vulnerable consumers. This may also act to preempt consumers choice of other means of accessing communications and entertainment services for example via mobile only. On the other hand, setting a higher level specification may allow for greater delivery of essential services (such as health services) online providing real savings to government and better access for consumers.

Similarly, setting a use for a long period may be good for investment certainty but at the same time presents risks of underestimating the pace of changing consumer needs. Indeed, any obligation may risk causing market distortions and act against innovation.

There are also concerns about potential unintended consequences. For example, a use could, in theory, create scenarios where low income consumers are (through prices or taxes) subsidising connection to services for affluent rural consumers at a time where they themselves cannot afford to access basic broadband services.

There are also risks that the pace of regulatory development may lag behind innovation in technology and changes in consumer needs, with measures which would have been appropriate yesterday imposing significant and unnecessary costs today and tomorrow. This cuts both ways with use obligations possibly becoming quickly obsolete or being gold plated.

Given this, it is important that any interventions to set the broadband use are seen within wider policy objectives of improving access and affordability of essential communications services, essential services and entertainments services for all, and that such measures strike a considered balance between diverse consumer interests and avoiding any unnecessary market distortion or technology preference. In particular, it is important that the rationale for regulation is tested regularly.

Clearly this is no easy task and we welcome the breadth of the consultations about the use and the detailed research which has been undertaken on this issue.

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<sup>4</sup> Citizens Advice: (2014) "Consumers' hierarchy of priorities".

<sup>5</sup> Citizens Advice press release (22nd July 2015) Broadband providers 'cashing in on false promises'

On balance, we would tend towards a use specification consistent with Ofcom's recommended levels with a relatively early review period (every five years) and with any subsidy funded out of general taxation or at least a blend of taxation and compensation funding and awarded through a competitive tender process.

For the use to be meaningful it has to ensure affordable services for low income consumers, as well as affordable connection for rural consumers. If, in practice, it appears that a large segment of urban or rural consumers are choosing to self disconnect from this service (due to price), then other regulatory measures should be considered to ensure affordability for these consumers.

We are researching the issue of 'mobile only' consumers, which will provide further evidence on this point at a later stage.

### **Detailed questions**

#### **Specification and scope of use- How should the minimum technical performance of the USO be measured- Upload speed, latency, jitter, contention and capability?**

Ofcom has conducted detailed research on the optimum likely technical need for the use and has concluded that this should be set at 10Mbit/sec. We do not comment on detailed engineering and technical issues here. However, we note the considerable uncertainty created by rapid technological innovation and changing consumer needs. This makes it difficult to predict what an essential consumer need for broadband may look like even in the near future. Innovation towards more sophisticated and larger handsets, 4G and 5G and mobile internet services has changed and enriched the consumer experience of communications and entertainments services. Fixed broadband connection may now be less essential for access to some basic services and this may be reflected in the growth in mobile only households. However, it is also possible that, over time, delivery of some essential services (such as medical e-consultations) may rely on high speeds. In this respect it is important that use specifications do not become a barrier to the development of these services or to consumers access to them.

Given the high cost of investment in broadband networks there are trade offs for consumers, for example in respect of the higher cost of a top-end specification provision as against the affordability of broadband prices (unless these are subsidised in some way). Similarly, setting too short a timeframe for the use may create problems of financing network investments.

Given this, we would like to emphasise the importance of ensuring a proportionate use and one that meets consumers essential needs but does not go beyond them, whilst future-proofing the development of delivery of essential services online. Further, whatever the use that is set, Ofcom should have powers to review and adjust its level periodically, in consultation with stakeholders.

#### **How should we ensure the USO is affordable- uniform pricing obligations, price cap? Should there be a social tariff for low income users of broadband services?**

A key consumer benefit in establishing the broadband use should be in ensuring the affordability of services. However, our research and data suggests that a lack of broadband connection is only one

reason amongst others for a lack of affordability.

Currently broadband services remain unaffordable for some groups of consumers. The average monthly price of a fixed broadband line is £18.86 (in 2014).<sup>6</sup> Compared with the available money for people on very low incomes and/or state benefits this can represent an unaffordable extra cost.<sup>7</sup> This is the same when bundled fixed broadband options are considered. Ofcom shows the lowest cost bundled fixed broadband options from major ISPs largely range from £21.49-£46.60/month (June 2015).<sup>8</sup>

This lack of affordability is expressed in cases of consumer detriment handled by Citizens Advice. For example, there are a range of needs and affordability issues evidenced through Citizens Advice client cases:

- 60 year old man with long-term health condition. He is being required to apply for benefits online but says his income is too low to allow him to afford broadband.
- Profoundly deaf man in his 40s. Financial problems, but needs broadband to use his minicom.
- Long-term unemployed single man in his 50s. Looking for work and told to go online to do so, but cannot afford broadband.
- Single unemployed man in his 30s. Given four week benefits sanction for job search failure. Failure was due to benefit claiming process dependency on the internet. The client was unable to afford own broadband service and his public service (through local library) was not available at the appropriate time.
- Client in his 50s with long term health issues, on very limited budget and looking to economise. Can't cancel her contract for broadband because her daughter relies on computer access for education and is hoping to go to university next academic year. Daughter turns 20 soon, and client will lose child benefit and child tax credit. Client is already having difficulty budgeting and doesn't know how she will pay for internet access when child benefit and child tax credit stop.
- Client's employer no longer issues payslips, and employees are expected to download them. Client has debt problems and no spare income to buy a computer or pay for ongoing costs such as broadband.

In practice, we find that affordability issues are often entwined with other problems which prevent consumers from getting access to broadband and from getting value for money when they purchase communications services. Tackling these issue could help also in ensuring affordability. These issues include tariff complexity, and advertising and bundling of products which obscures individual service prices, and contract exit procedures which make it difficult to switch broadband deals.

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<sup>6</sup> Ofcom, The Communications Market Report, August 2015

<sup>7</sup> Low income threshold set at 60% of median income for a couple with no children is £272/week before housing costs.

<sup>8</sup> Ofcom, The Communications Market Report, August 2015

### *(i) Tariff complexity*

Tariff structures for telecoms services are complex, which makes it hard for consumers to compare and work out the 'best deal'. Broadband frequently sold is part of a bundled service, and this makes price comparison even more difficult. Affordability is, in part, about trying to find the cheapest deal.

Tariff structures should be comparable, this means they should be

- Clearly and consistently laid out
- Advertised appropriately

Information is of limited practical value if it is not given at the right time or presented in a way which allows people to compare deals across the market and to decide which provider and deal best meet their needs. This is particularly important in the digital communications markets as the decisions people are expected to make can be complex due to the inclusion of minimum contract terms which are typically 12 or 18 months.

### *(ii) Advertising*

Citizens Advice welcomes the actions taken by the Advertising Standards Authority in this area. It will be important, though, to monitor adverts after the reforms come into place in October to make sure that companies are applying the rules and obeying the spirit of the changes so that the reforms are effective in making it easier for consumers to compare tariffs and find the best deals.

### *(iii) Bundling of products*

Bundled products make the process of establishing whether packages offer value for money and meet the needs of the individual consumer more complex. These products can also make it difficult to compare deals across the market, particularly in cases where the services are advertised as one monthly headline rate, rather than splitting out the costs of each individual element. Consumers can also run into difficulties when they wish to cancel one of the services included in the bundle, perhaps as a result of a poor standard of service. They often find that they are unable to do so without navigating complex cancellation processes and paying prohibitively high cancellation fees.

Bundled products often offer clear benefits to consumers in terms of lower prices and the convenience of dealing with one contract with one supplier. 63% of consumers buy at least two of their communications services together in a bundle (Q1, 2015). Either dual play: landline and broadband (27%) or triple play - landline, broadband and tv (25%).<sup>11</sup> However, it is vital that Ofcom is vigilant in monitoring to make sure that bundled products are advertised appropriately, clearly structured and consumers are not prevented from comparing deals across the market.

### *(iv) Inflexible contract terms*

Inflexible contract terms can leave consumers considerably worse off and left paying for a service

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<sup>11</sup> Ofcom, The Communications Market Report, August 2015

they are not receiving for months or years. Evidence from Citizens Advice clients about affordability problems around the cancellation of contract fees includes the following case, where a disabled client in her 50s took out a contract for phone, broadband and TV on 18 month contract. The client is confined to home and relies heavily on broadband and on moving house discovered there was no service available there with her provider. She had to cancel the contract and the service provider charged her £239 for breaking contract. Her debt was then passed to a credit agency and she has negotiated £5/week payments which she can ill afford and this has added to client's indebtedness.

Given these concerns about affordability issues, Citizens Advice welcomes Ofcom's consideration of whether there should be price intervention to set either uniform tariffs, price caps or social tariffs. Such price interventions impose costs on consumers not only in creating the need for cross-subsidy or subsidy from other consumer groups or taxpayers but also in distorting natural market development and thereby possibly pre-empting innovation to meet emerging consumer needs.

Price interventions of this type should be based on clear and agreed rationale and be precluded by a thorough impact assessment analysis. We note that social tariffs have been used in other regulated utilities as well as fixed line telecoms services.

Currently there are social tariffs for fixed line connections and BT runs a broadband social tariff BT basic.

Most water companies have social tariffs. The national social tariff Watersure caps bills for metered customers who are on means-tested benefits and need to use a lot of water because of medical needs or because the household has a certain number of school age children.<sup>12 13</sup> Ofwat is also currently considering a mandatory backstop tariff as part of ongoing review on whether there is a case for opening up the household market to retail competition.

Social energy tariffs were aimed at helping households that fell into the category of being in fuel poverty. These have largely been phased out by suppliers, in part as an unintended consequence of regulatory interventions that restricted the number of tariffs they could offer. There are also moves to introduce a mandatory backstop tariff for prepay energy consumers (around 16% of households).

Citizens Advice research on energy tariff options for consumers in vulnerable situations, includes analysing<sup>14</sup>:

- Introduction of a backstop tariff - a low-priced tariff, to which eligible customers would be transferred automatically. Assessment: would require fairly significant regulatory change. Could lead to a reduction in competition in the market. Likely to have a fairly positive impact on the bills of the target group.

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<sup>12</sup> <http://www.water.org.uk/news-water-uk/latest-news/more-social-tariffs-place>

<sup>13</sup> <https://www.citizensadvice.org.uk/consumer/water/water-supply/problems-with-paying-your-water-bill/watersure-scheme-help-with-paying-water-bills/>

<sup>14</sup>

<https://www.citizensadvice.org.uk/Global/CitizensAdvice/essential%20services%20publications/tariff-options-for-vulnerable-consumers-May2015.pdf>

- Direct financial support. Assessment: would have positive distributional impacts. Is a subsidy from government to energy suppliers and does nothing to reduce tariffs themselves.
- Caps on permitted spread between suppliers' cheapest and most expensive offers. Assessment: negative effect on competition.

Based on Citizens Advice experience of energy, if Ofcom decides to move towards a social tariff, we would advocate government-defined eligibility rather than one that is provider-defined. It was a past problem in energy as there were different criteria and as some people 'fell between the gaps' of the definitions. There are also issues arising if only the larger suppliers have to offer schemes - as some people may not be eligible if they're with the wrong supplier.

**Likely demand for the USO- What might the potential demand for the USO be? 2.4m premises no more than 10 Mbits/sec by 2015 (nearly half rural premises affected). Scale of demand for superfast broadband rising.**

It is difficult to predict exactly the likely demand for the broadband created under the universal service obligation. The current estimate suggests that this will include 2.4m premises by 2015. Currently the Universal Service Provider is only required to meet requests for a USO that are considered "reasonable". The definition of "reasonable" will determine who can benefit from the USO. Here it may be important for Ofcom to provide guidance on what it considers to be reasonable grounds for refusal to ensure that companies do not exploit any legal ambiguities in this area.

However, it is important to take into account the interrelationship between USO specifications, industry investments and the development of consumer demand. USO specifications could have a significant effect on the shape of the industry, with high specifications towards superfast broadband more likely to generate new broadband networks.

This itself will affect consumer demand in that superfast provision may create opportunities for new types of communications and entertainment services on the one hand and the increasing delivery of essential services online, but also additional costs (and uplift in prices) on the other.

Our research suggests that some consumers already find broadband services unaffordable, and the growth in the group of 'mobile only' consumers further evidences this trend. Given this, there are concerns that, in practice, (unless there is a social tariff or price-cap) a high USO specification may foster the development of a 'two-tier' communications market where some consumer groups benefit from a (subsidised and protected) broadband USO, whilst others (largely those on low incomes) self-disconnect towards cheaper and inferior services.

Technological innovation also may be eroding the communications rationale for a broadband USO as other types of internet become richer and more widely available. There are therefore trade-offs here, and a need to consider the balance in ensuring as many people as possible can benefit from the USO and the overall cost of delivering it.

**Cost, proportionality and efficiency of use-Cost evidence, proportionality and definition of ‘a reasonable request’, ensuring efficiency.**

The rapid pace of technological innovation and changing consumer demands makes it difficult to predict what may be the optimum use with any certainty beyond this application of better regulation principles.

It is also important here (as far as possible) to avoid any measures which breach the principle of technology neutrality. Where possible, consumers should be able to drive innovation in services and infrastructure through the choices they make in purchasing services. In this respect, it is important that the use should be thought of as a minimum which consumers are entitled to, above which some consumers may choose more expensive options, rather than seen as an attempt to second-guess future consumer preferences and the speed of innovation. There are risks, of course, in setting too low a specification which quickly gets obsolete and which could lead to sunk costs in redundant cabling networks. In this respect we welcome that Ofcom’s current proposals appear to be based on a substantial basis of research and deliberation.

Clearly, it is also important to balance the costs of connecting up remote communities to high speed broadband with the potential impact of the use on the prices (or taxes) of other consumers and the wider affordability of the service. As stated earlier, it is important to ensure that broadband use specifications are not gold-plated imposing costs which render more basic services unaffordable for low income consumers.

However, it is also important to consider the potential that broadband offers to help in the delivery of essential services (for example through online appointments) and the access that rich internet can provide to educational resources, including online lectures and educational programming.

Setting the use also has profound implications for providers’ investment decisions and on innovation in internet provision and in content development. This suggests that consumers in general will benefit from a use which is set at the minimum level possible to guarantee access for all consumers to the essential benefits that broadband offers, which has minimum effects on either innovation and investment in the market, or the range of consumer choice. This is most likely to promote competition and choice in the market and therefore efficiency.

If firm evidence emerges that low income or rural consumers are priced out of access to broadband then some further intervention should be considered to remedy this.

**Universal service provider or providers-How should the universal service provider be designated?**

Competition in general benefits consumers and it is important that the process of selecting or appointing universal service providers should follow a competitive tendering process and accord with the principles of non-discrimination between operators and of technology neutrality.

In principle, public procurement procedures typically represent the best protection of consumer



interests, but where, in practice, there may be only one bidder it is important to ensure effective monitoring of efficiency and customer service and to set a timeframe for any licence as short as possible (consistent with the needs for investment returns). Here price caps may be considered.

We do not comment here on the rival benefits of different types of network technologies, where we feel others are better placed.

**Funding of the USO and potential market distortions-Funding of the USO, How could any potential market distortions of competition be minimised? When and on what basis should the USO be reviewed?**

Given the possible impacts on affordability in funding the USO through prices, particularly on affordability of services for low income groups, it would be best if USO costs could be funded through taxation or, at least, through a blend of taxation and compensation funding.

If USO costs were funded purely through a compensation fund levied on operators (on the basis of a proportion of their broadband turnover) then there are risks that this could lead to a rise in prices for broadband services which could render them unaffordable for some consumers.

Given the pace of innovation in the sector and of changing consumer demands it would be best if Ofcom could change the USO specifications without the need for legislation, consistent with its policies on consultation. An initial five year review timeframe appears reasonable at this point.