
Trialling consumer remedies

[Trialling consumer remedies consultation](#) - Welsh overview

CONSULTATION:

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1. Overview

Helping customers to get a fair deal for their communications services is a priority for Ofcom, and we have an ongoing programme dedicated to achieving this. Our work involves a range of regulatory measures and interventions. To help us assess the likely effectiveness of potential new measures, we are proposing a new rule which would enable us to require providers to participate in trials of customer engagement remedies. This rule, alongside our research and other evidence-gathering work, would be an additional tool to help customers get the best deals.

What we are proposing – in brief

A new rule requiring broadband, mobile, home phone and pay TV companies to trial new measures to help customers find the best deal for them, when directed by Ofcom. A trial would test measures in ‘real life’ scenarios, using a sample of customers in order to evaluate their actual response.

We would apply criteria to enable us to choose which companies should take part in a particular trial. These would include factors such as a company’s customer base; capabilities (e.g. its size, resources and systems); and level of burden to a particular company. Where appropriate, we would also consider other factors relevant to the specific circumstances of each trial.

We would separately then consult on any direction requiring participation in a specific trial. Our proposed rule would not, by itself, require companies to take any immediate action. If we wanted to use this new rule in the future, we would assess how appropriate it would be to carry out a particular trial – including reviewing the expected costs involved for providers – and we would publish a consultation seeking views before we made any decision to use the rule.

This overview is a simplified high-level summary only. The proposals we are consulting on and our reasoning are set out in the full document.

Background

- 1.1 Ensuring customers are treated fairly is a priority for Ofcom, and our ongoing Fairness for Customers programme is dedicated to helping achieve this. We want customers to engage with the market and, when they do, be given the information they need to shop around with confidence, make informed choices and get a fair deal. Our work in this area has involved a range of regulatory measures and interventions, and we are continuing to consider where further measures may be needed.
- 1.2 This ongoing work has included new requirements on providers to send their customers end-of-contract notifications and annual best-tariff advice from February 2020; working with BT to reduce prices for home phone customers; and our recent package of measures to help consumers get better deals for mobile handset contracts. We have identified potential benefits of testing and trialling measures related to helping people find the best deal for them. For example, we worked with BT to voluntarily trial different ways of

communicating with their landline-only customers (no broadband) to encourage them to engage in the market and help them to decide if they were on the best deal.

- 1.3 Modern regulatory practice emphasises the value of trialling remedies in appropriate cases. There is a body of evidence suggesting that trialling potential measures can be an important way of testing their effectiveness before deciding to introduce them more widely. Along with other evidence-gathering, it can help provide insight into whether proposed remedies are likely to work well in practice and insight into their optimal design. Trials can also be used to monitor and assess whether existing remedies are being implemented successfully.
- 1.4 Our ongoing fairness work has shown evidence that some customers find it difficult to engage effectively with communications markets and are not taking advantage of the best deals available to them. Often, new measures to help people find the right deal for them involve seeking to positively influence the way customers behave. These measures can have uncertain effects, which may impact consumers in different ways. Customers may be more likely to benefit from certain measures if those measures have been trialled first to ensure they are as effective as possible.
- 1.5 Therefore, we are looking to put in place a framework that will allow us to conduct effective trials of remedies in appropriate cases.

Our proposals

- 1.6 We are proposing to put in place a new rule to protect customers' interests. It would require all broadband, mobile, home phone and pay TV providers to take part in trials, as directed by Ofcom, in relation to measures which seek to address issues with how customers engage with the communications services they buy.
- 1.7 We are not proposing to undertake trials in all circumstances. We would need to consider on a case-by-case basis whether it is appropriate to trial a particular remedy, by taking into account the likely effectiveness and usefulness of the trial, how appropriate it is for the issue being considered, as well as the likely costs of each trial.
- 1.8 If we were to decide in a particular case that we should conduct a trial, we would consider which provider(s) should take part. To help us fairly identify the most appropriate candidate(s), we are proposing to apply the following set of **selection criteria**:
 - a) the customer base of the provider(s) and its relevance to the remedies under consideration;
 - b) the capabilities we would reasonably expect provider(s) to have;
 - c) the burden of the trial to a particular provider; and
 - d) any other factors relevant to the specific circumstances of each trial, where appropriate.
- 1.9 Examples of what we could consider as part of these criteria include whether the customer base includes a sufficient number of the types/groups of customers whose actions we wish

to test; the costs of running the proposed trial; and providers' size, resources, systems and processes.

- 1.10 The proposals in this document would not, by themselves, require providers to take any immediate action and so would not impose any costs on industry. We would consult on any direction to hold a specific trial in the future.

Next steps

- 1.11 We invite responses to this consultation by 20 November 2019. Subject to our consideration of any responses, we will seek to publish a statement in early 2020.
- 1.12 We propose that these new requirements should take immediate effect from the date of our final statement.
- 1.13 Today, we are also publishing the initial conclusions from our review of broadband pricing practices. As part of this, we are exploring the potential for a trial of collective switching to help the least engaged customers who may benefit from targeted support to get a better deal. Our proposed new rule could facilitate such a trial. We expect to conclude our review in March 2020.

2. Introduction and background

- 2.1 We want customers to get a fair deal for their communications services and ensuring they are treated fairly is a priority for our work.¹ Competitive markets, in which providers invest in their networks and offer innovative services, deliver the best outcomes for consumers. However, the resulting choice can be confusing, and providers don't always make it easy for customers to get the best deal. That can mean some people do not engage with the market and they end up staying with the same provider for long periods, even if there are better deals available elsewhere.
- 2.2 A central part of our work is therefore about ensuring that customers engage with the market and that, when they do, they are given the information they need to shop around with confidence and make informed choices. That way, they can take advantage of the wide choice of communications services available.
- 2.3 Our ongoing work in this area has involved a range of regulatory measures and interventions, and we are continuing to consider where further measures may be needed to secure fairer outcomes for customers. As part of this, we have assessed the potential benefits, in specific circumstances, of testing and trialling remedies that seek to address issues related to customers engaging in communications markets.² Testing and trialling remedies would help us gauge their likely effectiveness in improving customer outcomes.
- 2.4 We are proposing to introduce new regulatory requirements to enable us to require providers to participate in this kind of testing. This document sets out the details of this proposal, including why we think these new rules are appropriate, the circumstances in which we would be likely to use trials and a proposed process for how we would require providers to participate.

Our work to ensure fairer outcomes for consumers

- 2.5 Our ongoing work to ensure fairness for customers³ includes the following:
- a) **Fairer home phone charges.** Following an intervention by Ofcom last year, around a million BT customers who only have a landline – without any broadband – saw their home phone bills cut by £7 a month.⁴ BT also agreed voluntarily to trial remedies to help these consumers check they were on the best deal.⁵ Our investigation into rising prices for landline-only services had found that these customers were not receiving the same value as those who buy landline, broadband or pay TV services together.

¹ Ofcom, March 2019, [Ofcom's Annual Plan 2019/20](#).

² In this document, we use the terms 'trial' and 'test' interchangeably, in accordance with the definition we are proposing to use for the scope of the draft condition set out in Annex 5.

³ See also our recent progress update: Ofcom, June 2019, [Making sure customers get fair deals – Progress update on Ofcom's work to ensure Fairness for Customers](#).

⁴ Ofcom, October 2017, [Review of the market for standalone landline telephone services – Statement](#).

⁵ See paragraph 2.7 below.

- b) **End-of-contract notifications and annual best-tariff advice.** From February 2020, broadband, mobile, landline and pay TV providers must tell their customers when their contract is coming to an end and show them their best deals.⁶ All customers who do not have a fixed-term contract (e.g. those who are beyond their minimum contract period) will be shown the best deals every year too. This will help customers stay engaged and take advantage of the wide choice of offers available.
 - c) **Helping consumers get better deals for mobile handsets.** We recently completed our review of how mobile customers are charged for handsets when sold in a contract.⁷ As a result of this review, Virgin Mobile, EE, Tesco, Vodafone and O2 made commitments to reduce bills for out-of-contract customers. These commitments will come into effect by February 2020. We have also made proposals to limit the minimum contract periods where customers buy their airtime and handset from a provider under separate contracts, so that they are not unduly bound to that provider and hindered in their ability to switch to better deals. If we adopt them, these proposals will also apply from early 2020.
 - d) **Review of broadband pricing.** Today, we are also publishing initial conclusions from our review of broadband pricing practices, where our findings show that engaging in this sector (e.g. by switching provider or re-contracting with the same provider) can lead to significant savings.⁸ As part of a package of measures to help consumers who find it harder to engage, particularly where they may be vulnerable, broadband providers have agreed to a number of specific voluntary pricing commitments. The review will conclude in March 2020.
- 2.6 We are using a wide range of regulatory tools to support our work to secure fairer outcomes for consumers. Increasingly the trialling and testing of remedies has become relevant to our work.
- 2.7 For instance, we carried out with BT, on a voluntary basis, a randomised control trial (RCT) aimed at improving the engagement of BT's landline-only customers. This trial tested the effectiveness of sending these customers different types of information (via letter) about the deals available to them, so that BT could incorporate insights from these trials into its communications with its landline-only customers. More recently, we asked providers whether they would participate in trials on a voluntary basis to test the effectiveness of end-of-contract notifications. We have no immediate plans to conduct these trials as no providers agreed to participate on a voluntary basis. Finally, as set out above, we are considering a collective switching trial that could assist some customers in finding a better deal.

⁶ Ofcom, May 2019, [*Helping consumers get better deals: Statement on end-of-contract notifications and annual best tariff information*](#).

⁷ Ofcom, July 2019, [*Helping consumers get better deals in communications markets: mobile handsets*](#) (Statement and consultation).

⁸ Ofcom, September 2019, [*Helping consumers get better deals: A review of pricing practices in fixed broadband \(initial conclusions\)*](#).

Enhancing our regulatory toolkit

- 2.8 Modern regulatory practice shows the value of trialling remedies in appropriate cases, particularly where remedies are intended to change consumer behaviours.⁹ Most recently, in its response to the super-complaint submitted by Citizens Advice on excessive prices for disengaged consumers in a number of sectors, the Competition Markets Authority (CMA) highlighted that regulators should continue to trial potential remedies before implementation where appropriate, to evaluate their likely impact.¹⁰
- 2.9 Prior to that, in its 2016 investigation into the energy market, the CMA made specific recommendations about trialling remedies in that sector. It recommended that Ofgem introduce a licence condition requiring suppliers to participate in testing measures intended to improve consumer engagement.¹¹ Ofgem implemented this licence condition in 2017 and published the selection criteria it will use to select suppliers to participate.¹² Ofgem has since trialled a variety of approaches aimed at engaging disengaged consumers (and an example of these is set out in Section 3).
- 2.10 There is also a body of economic literature, based on studies by other regulatory bodies and organisations, about the benefits of conducting trials. It includes studies by the UK Competition Network and the Behavioural Insights Team (BIT).¹³
- 2.11 These experiences and studies (which we discuss further in Section 3) suggest that trialling potential remedies can be an important way of testing their effectiveness. Along with other evidence-gathering, it can help provide insight into whether proposed remedies are likely to work well in practice and into their optimal design. Trials can also be used to monitor and assess whether existing remedies are being implemented successfully. The ability to test remedies can, therefore, be a valuable part of a regulator's toolkit.
- 2.12 Our ongoing fairness work has shown evidence that some customers do not engage effectively with communications markets and are not taking advantage of the best deals available to them. We set out more detail of this evidence in Section 4.
- 2.13 As part of the projects described above, we have imposed (or proposed) remedies, or secured commitments from providers, that are intended to influence the way customers behave so that they engage more with the communications services they buy. Where those remedies do not address barriers to effective customer engagement and/or do not address the effects where customers fail to engage, we may need to take further action, and there may also be other areas (outside of our ongoing work) where we may need to take further measures. It may be appropriate to conduct trials to help design and test the

⁹ For example, the Financial Conduct Authority (FCA) regularly trials remedies before implementation – see its November 2016 [Occasional Paper No.23: Full disclosure: a round-up of FCA experimental research into giving information](#), which summarises eight different recent field trials it has undertaken, and the case studies set out in Section 3 at paragraphs 3.16 and 3.17 respectively.

¹⁰ See Citizens Advice's [super-complaint](#) (September 2018) and the CMA's [response](#) (December 2018) for full details.

¹¹ CMA, June 2016, [Energy market investigation: Final report](#).

¹² See Ofgem's January 2017 [Decision](#) for details of this selection criteria.

¹³ BIT is a social purpose company, owned by the Cabinet Office, Nesta (an innovation charity) and its employees.

effectiveness of any such measures, given the evidence that this could be of value in certain cases.

- 2.14 Accordingly, in this document we are proposing to introduce a new regulatory requirement (a new general condition for protecting customers' interests) which would require communications providers to participate in trials, as directed by Ofcom on a case-by-case basis. We set out our proposals for this new rule, and the factors we are likely to consider before exercising it, in Sections 3 and 4, along with the criteria we are proposing to use to decide which provider(s) would be required to take part in any particular trial. We also set out the different circumstances in which we propose we would be most likely to use trials.

Legal framework

- 2.15 Ofcom's powers and duties are contained in the Communications Act 2003 (the 'Act'). Section 3(1) of the Act states that our principal duty, in carrying out our functions, is:
- a) to further the interests of citizens in relation to communications matters; and
 - b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.¹⁴
- 2.16 In performing that duty, we are required 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, as well as any other principles appearing to us to represent best regulatory practice (section 3(3) of the Act).¹⁵
- 2.17 Section 3(4) says that we must have regard, in performing our duties, to a number of matters (as they appear to us to be relevant) including the desirability of promoting competition in relevant markets; 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; the opinions of consumers in relevant markets and of members of the public generally; and the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in section 3(1) is reasonably practicable.
- 2.18 In addition, section 3(5) of the Act requires that, when performing our duty to further the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.
- 2.19 As set out in section 4 of the Act, when exercising certain functions,¹⁶ we must also act in accordance with the six European Community requirements, which include the requirements:
- a) to promote competition in the provision of electronic communications services;

¹⁴ Consumer is defined in section 405(5) of the Act and includes people acting in their personal capacity or for the purposes of, or in connection with, a business.

¹⁵ Our regulatory principles can be found at: www.ofcom.org.uk/about-ofcom/what-is-ofcom.

¹⁶ Including those we propose to exercise in this document.

- b) to secure that our activities contribute to the development of the European internal market; and
 - c) to promote the interests of all persons who are citizens of the European Union.
- 2.20 Section 45 of the Act allows us to impose regulatory conditions on providers. This includes general conditions which contain provisions authorised or required under section 51 of the Act. Section 51(1)(a) states that we may set conditions making such provisions as we consider appropriate for the purpose of protecting the interests of end-users of public electronic communications services. The general conditions we can set using these powers include conditions which impose requirements to comply with relevant directions we issue (see section 45(10)(a)).
- 2.21 Under sections 47(2) and (3), any general condition we set must be not unduly discriminatory, proportionate and transparent. We set out in Section 5 how we consider our proposals in this document would meet these tests and the notification of the new condition is in Annex 5.¹⁷

Impact assessments

- 2.22 Section 7 of the Act imposes requirements on us to assess the impact of our regulatory proposals. The analysis presented in this document, in particular Section 5, represents an impact assessment for this purpose with respect to our proposed modification of the General Conditions.
- 2.23 We are also required to assess the potential impact of all our functions, policies, projects and practices on the equality of individuals to whom they will apply. Equality impact assessments assist us in making sure we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 2.24 We have therefore given careful consideration to whether or not our proposed general condition will have a particular impact in relation to the following protected characteristics: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation. We are satisfied that the proposal is not detrimental to any group defined by these protected characteristics. In many cases, it would apply to them in similar ways while in others, we may use it to address disadvantages suffered by certain groups.

This document

- 2.25 The rest of this document is set out as follows:
- Section 3 assesses the benefits of testing customer engagement remedies using trials, including the different circumstances in which the use of trials may be appropriate.

¹⁷ Under section 49(2), the same tests would also apply to any directions we subsequently make under the condition.

- Section 4 sets out our proposal for the new General Condition, including our proposed selection criteria for directing a provider or providers to participate in trials in the future.
- Section 5 sets out our provisional conclusions, how we consider our proposals meet the necessary legal tests, and next steps.

2.26 The Annexes are set out as follows:

- Annex A1: Responding to this consultation
- Annex A2: Ofcom's consultation principles
- Annex A3: Consultation cover sheet
- Annex A4: Consultation questions
- Annex A5: Notification of proposed new General Condition

3. The benefits of trialling remedies

- 3.1 In this section, we outline the provisional case for trialling remedies designed to address issues related to effective consumer engagement, including the different circumstances in which the use of trials – specifically field trials, as defined below – may be appropriate. In particular, we propose that there are a number of benefits to using this type of research tool in appropriate cases, which we would assess on a case-by-case basis, considering whether it would be viable, appropriate and proportionate to do so.

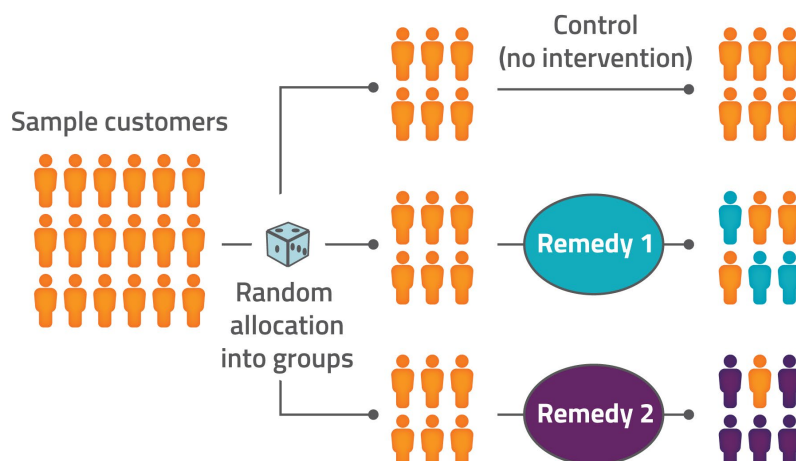
What we mean by a ‘trial’

- 3.2 In this document, we use the term ‘trial’ to refer to field trials. A field trial is a method of testing remedies in ‘real life’ scenarios, carried out using a sample of customers. Unlike a laboratory trial, the remedy is rolled out in the natural environment and the participants are unaware a trial is taking place. The sample of participants used is typically representative of the group of customers the remedy is aimed at, so that the results can be used to infer how this group as a whole would behave.
- 3.3 The most common form of field trial is a randomised control trial (RCT), where the sample is randomly split into different groups of equal size (see Figure 1 below). One group is not given the remedy and acts as the control group.¹⁸ One or more groups, depending on the number of options being tested, receives the remedy. Carrying out research before a trial can help to narrow the number of remedies or variations of the remedy tested (because only one variation can be tested in each treatment arm¹⁹ – the more variations which are tested, the more treatment arms are required, and the larger the sample size that would be required).

¹⁸ This does not necessarily mean that the control group will not receive anything – e.g. for a remedy that added something to bills, the control group could still get their unamended bill.

¹⁹ For example, if we wanted to test whether a letter or SMS was a more effective way of conveying a message, the wording of each message would need to be the same, in order to isolate the effect of the method of communication. To also test different messages, we would require two further treatment arms, holding the method of communication constant.

Figure 1: Structure of a randomised control trial



Note: Consumers whose behaviour is affected by a particular remedy are depicted by the change in colour.

- 3.4 Most field trials are similar in format to an RCT, but there are some variations. These include (but may not be limited to):
- a) phased trials, where the remedy is rolled out to the sample participants in phases. As each group eventually receives the treatment there is strictly no control group, but the impact of the remedy is analysed by comparing the effect over time.
 - b) a cluster randomised trial, where instead of individuals being randomised into treatment groups, groups are randomly assigned to different treatment groups. For example, whole postcode areas could be assigned to control or treatment groups, so every resident in a given postcode area is in the same group.
 - c) a factorial randomised control trial, which is an RCT designed to test the interaction between two different types of intervention.
- 3.5 Trials can also include other forms of research to help understand and refine the results. For example, surveying customers after a trial can help inform why they behaved in the way they did and therefore why some remedies work and others do not.

Trials can be an important tool to test the effectiveness of remedies

- 3.6 Remedies aimed at improving customer engagement in a market will often seek to positively influence customers' behaviour – for example, to get them to shop around more, help them make more informed choices or switch providers. However, customer behaviour is complex – not only may they respond to a remedy in unpredictable ways, but different groups may also react differently.
- 3.7 Regulatory bodies and organisations have assessed the benefits of conducting trials. The UK Competition Network, for example, has looked at the facets of customers and markets

which are liable to affect responses to remedies and which support the idea of regulators testing them.²⁰

- 3.8 The BIT has also done work in this area suggesting there are a number of benefits to trialling consumer remedies. It highlights that a trial can isolate the impact of a remedy on customer behaviour and provide a robust, quantified estimate of the potential impact. This can, in turn, enable a more accurate cost-benefit analysis for any given change.²¹ Trials can achieve the effects described because participants are randomly assigned to different groups, which means that the characteristics of each group should be similar, eradicating any potential selection bias. Furthermore, by having a control group, and comparing the difference in outcomes with that group, one can control for any external factors which might be driving the outcome of interest. Accordingly, differences in outcome between groups can be attributed to the remedy. The BIT has called for the use of rigorous testing and trialling, where appropriate through RCTs.
- 3.9 A further potential benefit of trials is that they can allow regulators to observe actual behaviour of people making real decisions, with limited controls, as opposed to observing intended, desired or recalled behaviour that is often captured by traditional consumer research methods. This can give a far more accurate picture of the likely effect of the remedy on customer behaviour.
- 3.10 We have limited experience of conducting trials. However, as part of our 2018 intervention in relation to its landline-only customers, BT agreed voluntarily to trial remedies to encourage customers to engage in the market and help them to decide if they were on the best deal. In particular, the trials tested the effectiveness of sending these customers different types of information (via letter) about the deals available to them. There were six groups in addition to the control group and each was sent a letter that included different types of information such as information on average spend, landline offers and taking up broadband. Key findings included:
- a general letter with little detail did not have a significant impact and actually led to increased contact/complaints to BT;
 - including a detailed landline offer, or information on average spending, in the letter had a statistically significant effect²² on engagement (though relatively small in absolute terms); and
 - adding broadband information generally reduced the level of engagement, suggesting that information which many of these customers might see as irrelevant weakened the other messages in the letter.

²⁰ For a more detailed explanation of the facets of consumers and markets which lead to the benefits of testing remedies, see UK Competition Network, October 2018, [*Helping people get a better deal: Learning lessons about consumer facing remedies*](#), and The Behavioural Insights Team for Citizens Advice, May 2016, [*Applying behavioural insights to regulated markets*](#).

²¹ See Cabinet Office, BIT (2012), [*Test, Learn, Adapt: Developing Public Policy with Randomised Control Trials*](#), p.8-12 and The Behavioural Insights Team for Citizens Advice, May 2016, [*Applying behavioural insights to regulated markets*](#), p.43.

²² The average spend letter was only sent to customers who BT had average spend data for.

- 3.11 The trial enabled the identification of the most effective form of communications with these customers, which BT has agreed to reflect in its future communications with them.

Other regulators' experience of trials

- 3.12 Other regulators have more experience in this area, particularly in trialling remedies designed to encourage customer engagement with relevant markets. Their experiences suggest trials can offer a number of benefits.
- 3.13 Ofgem, for example, has conducted a number of trials in the retail energy markets, testing the effects of different remedies on switching rates. We summarise one of these examples below.

Case study 1: Ofgem's Active Choice Collective Switch Trial²³

Ofgem ran a collective switching trial between February and April 2018 for which it selected one of the larger energy suppliers as the incumbent supplier. Ofgem randomly selected 55,000 of this supplier's customers, who had been on a standard variable tariff (SVT) for at least three years, to take part in the trial.²⁴

The selected customers were randomised into three groups:

1. the control group, who received no additional communications;
2. the first trial group, who received a series of three letters²⁵ from Ofgem and energyhelpline offering an exclusive tariff²⁶ and assistance with the switching process; and
3. the second trial group, who received the same communications as the first trial group, but the letters came from their own supplier, rather than Ofgem (and still contained the same energyhelpline information as the first trial group).

Overall, switching rates increased across both trial groups and customers who switched saved an average of £299 a year each. The results also found that the supplier branded letters were most effective; the switching rate for this group was ten times the rate of the control group.²⁷

Following the trial, Ofgem commissioned additional research to understand why customers took or did not take action.²⁸ This included findings that:

- the ability to discuss the deals with a person over the phone reassured customers about less well-known suppliers; and
- the tailored deal and easy process facilitated switching.

3.14 Ofgem's experience shows how trials can help to refine a remedy and choose the most effective form, because they enable multiple versions of the same remedy to be tested. For

²³ For more detail see Ofgem, November 2018, [Active Choice Collective Switch Trial Final Results](#). This trial is one of a package of five collective switch trials which forms part of a wider Customer Engagement research programme led by Ofgem (see its [website](#) for relevant reports).

²⁴ Standard variable tariff is a basic energy tariff with variable prices that can go up and down with the market. These tariffs are often more expensive than a fixed-term tariff. For further information, see Ofgem's [website](#).

²⁵ Customers in the trial arms received three letters over seven weeks. The first letter announced the forthcoming exclusive tariff details and an option to opt-out. The second letter outlined the projected saving from this switch and encouraged customers to contact the energyhelpline for further options, and the final letter reminded customers of the closing date.

²⁶ This exclusive tariff was with an alternative large supplier negotiated by an Ofgem-appointed consumer partner, energyhelpline.

²⁷ In its discussion of the trial results, Ofgem refers to some of the limitations of this trial, one of which relates to a price increase during the trial by one of the other largest suppliers. This may have raised general consumer engagement, and primed consumers to switch providers. Despite this, Ofgem considers this trial a success and has rolled out a series of further trials with different suppliers. However, this shows the importance of considering the market context when interpreting the results of trials.

²⁸ DJS Research, November 2018, [Collective Switch Trial: Qualitative research, Final Report](#).

example, the above trial provided clear evidence that correspondence from a customer's own supplier was more effective than Ofgem-branded letters in prompting engagement.

- 3.15 Ofgem's work also demonstrates that, if the available sample size is large enough, trials can also allow for the analysis of the impact of the remedy on different sub-groups of the population. This helps ensure that the best remedy for different customer groups, such as vulnerable consumers, can be adopted. An earlier trial it carried out (its 'Cheaper Market Offers Letter Trial'²⁹), for example, showed that sending customers a single, standalone letter, designed to encourage SVT energy customers to switch to a cheaper tariff, improved switching rates among customers who paid by direct debit and managed their account online.³⁰
- 3.16 Other regulators' experience similarly shows how trials can increase the likelihood of implementing remedies that effectively secure the outcome sought, while avoiding negative or unintended consequences. The FCA's work summarised in the box below is a good example of this.

Case study 2: FCA's trial of default credit card repayment options³¹

In 2016, the FCA identified that a quarter of credit card repayments were at, or close to, the minimum payment amount due. As a result, customers tended to pay off their debt more slowly and incur high interest costs.

The FCA therefore carried out a trial to test whether changing the repayment options on the direct debit sign-up screen could increase consumers' repayments and reduce their debt faster. The trial included over 40,000 newly issued credit cards to customers of a large UK lender.

After completing the credit card application process, participants were randomly allocated to either the treatment group or the control group, when they navigated to the payment set-up page. The control group was shown three payment amount options: the minimum payment, the full amount, and a free-form box to manually insert an amount. The treatment group only saw two options: one for the full amount and another for the free-form box.

The results showed that 1 in 5 fewer people set up direct debits for the minimum payment in the treatment group and, on average, the value of these were higher than the minimum amount. However, the results also unexpectedly found that there was no reduction in the overall level of debt of customers in the treatment group, because the treatment also caused customers to reduce the value of the additional manual payments they made.

²⁹ For more detail see Ofgem, November 2017, [Cheaper Market Offers Letter Trial Research Results](#).

³⁰ The letter included three cheaper tariffs offered by rival suppliers, and the tariffs on each letter were personalised to customers, based on their consumption in the previous year and their existing payment and account management methods.

³¹ For more detail see FCA, July 2018, [Occasional Paper No.45: The semblance of success in nudging consumers to pay down credit card debt](#).

- 3.17 A further example from the FCA (summarised below) demonstrates how using other forms of research as part of a trial can help to understand consumer perception of such interventions. In this case study, an overdraft alert trial was combined with survey evidence to demonstrate that consumers generally responded positively to the trialled remedies.

Case study 3: FCA's trial of retail banking overdraft alerts³²

In 2018, FCA research found that sending text message alerts warning consumers about charges on unarranged overdrafts or other unpaid items resulted in the charges paid being up to a quarter lower. In 2018, all major UK banks were required to automatically send their customers just-in-time alerts for unarranged overdraft and other unpaid items.³³ Given the benefits of these overdraft alerts, the FCA ran a trial to test whether further alerts could reduce total overdraft charges and to measure the impact of automatic alerts on customers.

The trial ran between November 2017 and April 2018 and included over one million customers from two UK retail banks. It tested the benefits of just-in-time alerts for arranged overdraft use and early warning alerts for overdraft usage and other unpaid items.³⁴ A further telephone survey of a sample of participants investigated the effect of these alerts on customer awareness of the charges, and customer actions in response to these alerts. The survey also sought to understand customers' perception of these alerts and whether they resulted in 'alert fatigue' and information overload.

The trial results found that the just-in-time alerts reduced customers' charges and, in contrast, showed no evidence that early warning alerts were effective. The survey responses helped complement the trial findings and confirm the benefits of the just-in-time alerts, as the responses indicated that consumers were broadly supportive of automatically receiving the alerts and did not find them distracting or annoying.

Provisional view on the benefits of trials

- 3.18 Our provisional assessment is that the relevant literature, our own experience and that of other regulators demonstrates how trials can play a valuable role in formulating effective remedies to problems with customer engagement. In particular, their benefits can include:
- a) isolating the impact of a remedy on customer behaviour;
 - b) allowing the observation of actual customer behaviour and decision-making;

³² For more details see FCA, July 2018, [*Occasional Paper No.40: Time to act: a field experiment on overdraft alerts*](#).

³³ CMA Retail Banking Investigation Order 2017 imposed this requirement on banks with more than 150,000 Personal Current Accounts (PCA) and, at the time of the trial in 2018, FCA was consulting to extend this requirement to banks and building societies with more than 70,000 PCAs.

³⁴ Just-in-time alerts are triggered when a customer is about to go overdrawn, and an early warning alert is triggered when a customer bank account balance reaches a certain level.

- c) helping avoid unintended or negative consequences by identifying any unpredictable customer behaviour or outcomes;
- d) enabling multiple versions of the same remedy to be compared so that its most effective form can be chosen; and
- e) providing a robust estimate of the potential impact of a remedy.

Trials could be a valuable tool in supporting our work to improve customer engagement

3.19 Given our view on the benefits of trials, the ability to conduct them could be a valuable part of our regulatory toolkit where there is evidence that customers have difficulties engaging with the communications services they buy. In our work on securing fair outcomes for communications customers, we have observed customers experiencing such difficulties and suffering adverse outcomes as a result. For example:

- a) in 2018, we conducted research into how consumers engage with communications markets and found that many people do not know when to review their existing deal, lack the confidence or ability to identify the best deals for their needs, and/or are deterred from taking up these deals.³⁵
- b) as part of our work to introduce end-of-contract and annual best tariff notifications, we found that customers lacked information, such as information about their contract status, that was fundamental to their ability to make informed decisions about their services.³⁶
- c) more recently, we found that a lack of transparency to customers buying contracts that include a mobile handset was making it difficult for them to know what they were buying and choose the best deal. We found that a significant number of these customers were overpaying by remaining out-of-contract rather than switching to a SIM-only deal that could save them money.³⁷
- d) in our initial conclusions on broadband pricing, meanwhile, we have found that customers who engage, either by switching to a new provider or re-contracting with their existing one, get better deals than those who remain out-of-contract. Customers who are out-of-contract typically pay higher prices than new customers and those who re-contract with their existing provider.³⁸

³⁵ Ofcom, July 2018, [Consumer Engagement Research](#).

³⁶ See paragraphs 3.14 – 3.17 of our [July 2018 consultation](#) on end-of-contract and out-of-contract notifications.

³⁷ See paragraphs 3.51 – 3.55 of our [July 2019 Mobile Handsets document](#).

³⁸ Our research findings suggest that several factors contribute to some broadband customers experiencing barriers to engagement and subsequently paying higher prices than they could do. These include confusion about their contract status; a lack of confidence when negotiating a new deal with their provider; and feeling unsure about the meaning of certain technical terms. Our research also indicates that many people who live in potentially vulnerable circumstances, such as those with a physical or mental disability, or with a low income, lack the confidence to decide on their best option.

- e) we have made similar findings in relation to some business customers. In our end-of-contract notifications work, for example, we found evidence that small business customers are likely to behave in a similar way and raise similar concerns to residential consumers.³⁹

- 3.20 We have, in the work described above, adopted (or proposed to adopt) certain remedies, or secured commitments from providers, that will help address barriers to effective customer engagement and their effects, in particular so that more customers can take advantage of the choice available and find better deals. From February 2020, providers must tell customers when their contract is ending and show them their best deals, and those who are not within minimum contract periods will be told about the best deals annually.⁴⁰ On mobile handsets, we secured providers' commitments to reduce out-of-contract customers' prices and have proposed limits on the lengths of certain contracts. We have also agreed a number of commitments from broadband providers which go some way to addressing our concerns about helping all consumers get fair deals, particularly vulnerable consumers.
- 3.21 While these cases show that trialling remedies is not always necessary or appropriate, they also demonstrate evidence of a lack of customer engagement for which the ability to conduct such trials could be helpful. In particular, where the remedies described do not have the intended effects we may need to take further measures. There may also be other areas in which we need to act to improve, or address difficulties with, how customers engage with communications services.
- 3.22 To illustrate, one area where we might explore trialling a consumer remedy is as part of our broadband pricing review. As outlined in our initial conclusions on that review, and subject to the outcome of this consultation, we will consider whether it is appropriate to require providers to participate in a trial of collective switching targeted at consumers who have not engaged with the market for a long period. We also highlighted in our statement on end-of-contract notifications that we may consider conducting trials of variations to those notifications if we identify scope to improve their effectiveness.
- 3.23 We are, however, currently unable to require providers to participate in trials of any such measures, even if that would be helpful. Given the evidence of the benefits of trialling customer engagement remedies, our provisional view is that this is a gap in our regulatory toolkit that should be addressed. We therefore make proposals for doing that in Section 4.

Trialling remedies will only be appropriate in certain circumstances

- 3.24 Our provisional assessment on the benefits of trials of customer engagement remedies does not mean that using trials would be appropriate in all cases, nor that they are the only

³⁹ We said that these customers were likely to suffer harm as a result of not knowing what happens when their contract period ended, their options and that they could make savings (and/or find a better deal to suit their needs). See paragraphs 3.55 – 3.62 of our [July 2018 consultation](#) on end-of-contract and out-of-contract notifications.

⁴⁰ Ofcom, May 2019, [Helping consumers get better deals - Statement on end-of-contract notifications and annual best tariff information](#).

tool we would use to assess remedies. While trials may be beneficial in a number of instances, they do not necessarily remove the need for other forms of research and evidence-gathering, either in addition to, or instead of, a trial. We would look at whether carrying out a trial is appropriate on a case-by-case basis. There would likely be a range of considerations we would take into account – a non-exhaustive description of the sorts of factors we would be minded to take into account in relevant cases is set out below.

Viability

- 3.25 To run a successful trial, we would need to design a process capable of detecting the expected effect of the remedy, were it to exist. This will depend on:
- a) **The measurability of the outcome:** this will require processes to measure the trial's outcome. This could be a pre-existing process⁴¹ or a process or feature that has been put in place for the trial itself.⁴²
 - b) **The timing of the expected outcome:** for remedies that aim to drive either long-term changes or changes which take a long time to materialise, a trial may be less appropriate. This is because trials will only be able to detect impacts which are expected to materialise during the trial period – and so, to detect long-term impacts, a long trial would be needed.⁴³
 - c) **The size of the effect of the remedy:** if a remedy has the potential to generate a relatively large effect or change, then it could be a good candidate to trial. The larger the expected effect, the smaller the sample size required to be able to detect the effect.⁴⁴
 - d) **Available sample size:** if an issue that we are trying to remedy affects a large number of consumers, it could be a good candidate for a trial. Trials can require large sample sizes, particularly if the trial is seeking to test a number of different elements. Having access to large pools of consumers is therefore beneficial.
- 3.26 In addition, having access to data on the demographics of the population being trialled and trend data on the outcome being measured is useful in running an effective trial. Its availability may also affect the viability of a trial.
- 3.27 Trials which do not satisfy all these considerations, such as trials of remedies which are expected to have long-term effects, or which are likely to have relatively small effects, may still be viable in some cases. For example, we may be able to run longer trials and may have access to a sufficient sample size in order to detect smaller effects. However, the

⁴¹ For example, where the remedy aims to encourage consumers to change their communications package, then data held by providers (e.g. account information) can be used to measure the change.

⁴² For example, a tool to analyse the click-through rate for a specific website landing page that has been set up for the trial.

⁴³ As well as increasing the length of time by which implementation of the remedy may be delayed, the longer the trial, the more difficult it may be to prevent confounding factors affecting the results.

⁴⁴ The relative size of the effect is also proportionate to the base rate of the outcome measure. For example, if the base rate is already very low, then a relatively large effect size will still mean a small change in absolute terms. Therefore, by large effect we do not necessarily mean a large change in absolute terms.

more of these considerations that are not satisfied, the less likely we would be minded to conduct a trial.

Appropriateness and proportionality

3.28 There would also likely be a range of other factors relevant in our consideration of whether a trial would be appropriate, some of which go to the question of whether running a trial would be proportionate, taking account of the expected benefits and costs. Our assessment would likely depend on a number of factors, including:

- a) **Our objectives and reasons for acting:** we would take account of why we are considering imposing a remedy and the basis for doing so. For example, we may be implementing legal requirements⁴⁵ or seeking to meet specific policy objectives. Where our discretion is limited, or a policy we have decided upon points to a particular remedy, we may not need, and/or it may not be appropriate, to undertake trials.
- b) **The strength of existing evidence:** trials seek to provide additional information on the effectiveness of a proposed remedy. Where there is already strong evidence of this (and how best it should be designed), a trial is unlikely to provide significant additional information and so could be of limited value.⁴⁶ Conversely, where existing evidence is less clear, trials could provide important additional evidence.
- c) **The costs and benefits of conducting the trial:** we would likely compare the expected benefit of trialling a particular remedy to the expected costs of conducting that trial. This could involve weighing up the harm we are trying to address and the value the remedy may have in addressing it, against costs such as the cost of sending and designing communications to customers; the costs from an increase in customers contacting that provider; and the costs associated with collecting and evaluating data on the effectiveness of a trialled remedy. It could also involve taking account of the burden imposed on providers.⁴⁷
- d) **The time required to trial:** running trials takes time, including that required to prepare the trial, to observe consumer actions and to evaluate the results. During the trial, the remedy will be withheld from non-participating customers and from those in the control group. In some cases, the benefit of the trial in informing policy development, and the risk of implementing a remedy without trialling (e.g. the risk it is ineffective or has negative unintended consequences), could be sufficient to justify a small delay to rolling it out more widely. But there may be circumstances where we consider the ongoing harm to consumers to be sufficiently high that waiting for the trial results

⁴⁵ Such as those which may apply under the European Electronic Communications Code.

⁴⁶ For example, the FCA undertook extensive analysis to assess the effectiveness of disclosure in the cash savings market, finding that disclosure had limited effects on internal switching and no effects on external switching. It considered making small changes to the disclosure but did not think the additional information that would have been gained would be sufficient to justify the resources of a further trial. FCA, July 2018, [When and how we use field trials](#).

⁴⁷ Though we note that we are unlikely to consider the potential loss of revenue to trialled providers which may arise as a result of the trial as part of these costs. We would be minded to regard these as consumer benefits (for example because they reflect a customer having switched to a better deal).

before implementing the remedy would not be appropriate, given the need to act quickly. In such circumstances, however, we may be minded to consider testing alternative refinements of the remedy at a later date.

4. Proposed approach to requiring providers to take part in trials

- 4.1 Given our provisional assessment of the benefits of trials in identifying effective customer engagement remedies, and the evidence relating to disengagement among some customers and the work we are doing to address this, we are proposing to introduce a new general condition which will require providers to take part in trials, as directed by Ofcom. This section sets out our reasoning as to why and how we propose to do this.
- 4.2 We propose to include in the new condition criteria we would apply in selecting the provider(s) whom we may direct to take part in particular trials. If we implement the proposed condition, we would consult on any direction we issue under it requiring participation in any trial.

The ability to conduct trials would be a valuable part of our regulatory toolkit

- 4.3 To run effective trials of customer engagement remedies, we would need to work in conjunction with providers who have a direct relationship with, and understanding of, their customer base. We have therefore considered whether it would be sufficient to rely on voluntary arrangements with providers in place of requiring their participation. Our provisional judgment is that it is likely to be necessary to use formal powers to require participation in trials, to ensure their effectiveness.
- 4.4 There are two main reasons for our view. The first is that taking part in trials may not always be in providers' commercial interests. Trials which successfully increase customer engagement may cause the provider taking part in the trial to lose revenue, for example due to customers switching away to competitors, or due to receiving less revenue from their existing customers. As such, providers may be unwilling to participate in trials on a voluntary basis.
- 4.5 Second, to ensure trials are effective, it is important to set appropriate details and parameters for the trial. These are necessary to identify and assess the effects of the trialled remedy (and to mitigate the possibility that those effects are attributable to some other factor). We think we are more likely to be able to achieve this if we have control over the process, rather than relying on voluntary participation. In this respect, we note that, as part of its recommendation to Ofgem to introduce a licence condition requiring suppliers to participate in testing measures, the CMA said that, for trials to yield relevant information that provides a robust basis for regulatory changes, it is essential that suppliers be required to participate.⁴⁸

⁴⁸ CMA, 2016, [*Energy market investigation: Final report*](#).

- 4.6 Even where a provider is willing voluntarily to conduct a trial, the potential misalignment of its incentives and the purposes of a trial mean they may seek to place restrictions on the design of that trial. For example, they may not want to give participating customers information on their competitors' tariffs, or they may wish to place restrictions on the sample size to limit costs.⁴⁹ Directing providers to conduct a trial under regulation would allow us to control the details and parameters of that trial to ensure its effectiveness.⁵⁰
- 4.7 That said, we recognise that in some cases trials run on a voluntary basis could achieve many of the same benefits as those providers are formally required to participate in. In addition, trials run on a voluntary basis may be quicker to implement. So, we would continue to seek to work collaboratively with providers on a voluntary basis, where appropriate, e.g. where the concerns outlined above are less likely to arise.

We are proposing a new condition that applies to all providers, requiring them to participate in trials as directed by Ofcom

- 4.8 We are accordingly proposing to introduce a new general condition. It would apply to all providers, and would enable Ofcom to require them to take part in trials.
- 4.9 A key purpose in making general conditions is to protect the interests of end-users, reflecting a risk to, or a problem affecting, those interests. It is important that the conditions we make, and any remedies we impose on providers, are effective in protecting the end-user interests we are concerned about. That ensures customers have the protection they need, but it is also in providers' interests that conditions protecting end-users are appropriately targeted, to ensure they retain the right incentives to invest in providing innovative, high-quality services and choice. The ability to conduct trials in appropriate cases would, in our provisional view, support this.
- 4.10 In Section 3, we set out why we are minded to regard trials as particularly relevant where there is evidence of customers not engaging sufficiently with the communications services they buy. On that basis, we propose that the ability to require participation in trials should focus on 'Customer Engagement Measures'.
- 4.11 Customer engagement would mean the behavioural changes and decisions customers make when navigating communications markets. That includes considering their options in relation to the services they buy, assessing the market, agreeing a new deal with their provider, switching to another provider or taking in information relating to the market or their position within it (for example, being informed of and considering the terms and conditions of their existing contract).

⁴⁹ We note Ofgem has relied on its power to direct suppliers to test consumer engagement measures (SLC 32A) in order to trial remedies as it deemed appropriate, in ways it may not have been able to absent that power. For example, in its Autumn Collective Switch Direction, Ofgem determined it appropriate to run a trial with 100,000 customers of a particular supplier; however, the supplier wanted to limit this to 50,000 customers. See [here](#).

⁵⁰ There may be instances where a provider volunteers to participate in a trial, but where we could not conduct an effective trial with that provider. For example, it may be that the volunteer provider does not have sufficient customers of the necessary type(s). In such a situation, an effective trial would require the participation of other providers.

- 4.12 These are the areas where we think trialling measures would be most useful. Often, the remedies to these problems will seek to positively influence customers' behaviour, and they can have uncertain effects which may be specific to certain groups of customers. On that basis, these measures are likely to benefit from trialling to ensure they are implemented effectively.
- 4.13 Our proposal, therefore, is to put in place a new general condition for the purpose of protecting end-users' interests, which requires all broadband, mobile, landline and pay TV providers to take part in trials of remedies relating to customer engagement, as directed by Ofcom. The proposed new condition is set out in the formal notification in Annex 5.
- 4.14 We also have evidence of customer engagement issues in relation to some business customers (see, for example, paragraph 3.19e) above), so we propose that the condition should enable us to direct providers to take part in trials of remedies designed to protect these customers too. Our proposed definition of 'Customer Engagement Measures' in the draft condition therefore applies to all 'Customer' engagement.

How we would use the proposed direction-making condition

- 4.15 We have considered carefully how the proposed new condition would apply. It is important that, even at this stage, we set out a clear and transparent framework within which we might exercise any direction-making power it contains.
- 4.16 We have taken account of the purposes for which trials would be undertaken, the need to set up any trials effectively and the requirement to act fairly and reasonably, as well as our general duties as they affect citizens, consumers and providers. With these factors in mind, we have set out our proposed approach below.

Overall context and approach

- 4.17 The purpose of the proposed condition is to protect end-users' interests. The purpose of a trial is to identify the effects of a proposed remedy and to assess its effectiveness in addressing the harm it seeks to put right. The criteria we apply in setting up any trial, including the selection of participating providers, should therefore help us achieve those outcomes.
- 4.18 We recognise that taking part in trials will impose burdens on providers. In addition to the direct costs of running a trial, a trial of a remedy designed to increase customer engagement may result in customers switching away from a participating provider. As such, a direct consequence of a trial may be that some providers in the trial lose customers and revenue, and other providers gain them.
- 4.19 The size of such potential losses of revenue would depend on the specific circumstances of the trial in question. However, such losses of revenue would be most likely to occur where the trial has demonstrated a positive impact for consumers (e.g. where customers have chosen to move to a provider who is in their view offering them a better deal).

- 4.20 In such cases, we would be likely (subject to the usual tests and considerations) to implement the trialled remedy to the wider market following the trial, and so all providers would be subject to potential losses of customers and revenue from this time. As a result, any relative losses to competitors (and any distortion of competition) during the trial would be limited.
- 4.21 Nevertheless, we acknowledge the need to distribute the burden of trials fairly and appropriately between providers, not least to maintain their incentives to innovate and offer good deals to customers. Doing so should also help prevent a longer-term distortion of competition. We are therefore minded to reflect this point in our approach too.
- 4.22 Accordingly, we are proposing to apply selection criteria which would enable us to identify, through a clear and fair process, a provider or multiple providers with whom an effective trial could be undertaken – in particular, to identify the provider(s) who have an appropriate customer base, who could reasonably be expected to have the capability to take part in a trial of the necessary scale that identifies the effects of the trialled remedy, and which takes account of the need to distribute the burden of trials fairly.

Determining whether to undertake a trial

- 4.23 An important consideration in any particular case will be whether a trial is appropriate at all. We would likely consider whether there is evidence of barriers to effective customer engagement or the effects of disengagement causing harm, and whether we can identify a potential remedy or remedies to address it.
- 4.24 As we set out in Section 3, whether we undertake a trial will depend on the specific circumstances of each case. We set out the kinds of considerations we would be minded to take into account. In particular:
- a) **whether it is viable to run a trial**, taking into account a number of possible factors such as those set out in paragraphs 3.25 to 3.27.
 - b) **the appropriateness and proportionality of a trial**, taking account of the sorts of factors described at paragraph 3.28.

Proposed selection criteria for participating in trials

- 4.25 If we implement the proposed general condition, and decide in a particular case that we should conduct a trial, we would need to consider which provider(s) should take part. We may first consider whether any providers were willing voluntarily to participate in a trial that could effectively test the remedy or remedies we are contemplating. In considering whether an effective trial could be run with any volunteering providers, we are likely to take account of the same sorts of factors and criteria as we propose in cases where we plan to issue a formal direction to participate, which we outline below.
- 4.26 We propose that, where we are minded to direct provider(s) formally to take part in trials, we would apply the selection criteria set out below and as part of the draft condition in Annex 5. These criteria would, in our provisional view, enable us fairly to identify the provider(s) to take part in an effective trial.

- i) **the customer base of the provider(s) and its relevance to the remedy or remedies under consideration:** i.e. whether the provider(s) have a customer base that would enable us to run an effective trial of the remedy or remedies in question. The factors we would take into account under this criterion would depend on the circumstances. They would likely include the nature of the customer engagement issue in question, the group(s) of customers affected by it and whether a provider's customer base includes enough of those customers to enable us robustly to identify any impacts of the proposed remedy. These would go directly to our objective of setting up an effective trial.
- ii) **the capabilities provider(s) should reasonably be expected to have** in relation to the trial under consideration. We propose to take into account in this regard factors that we consider relevant, including a provider's size, resources and processes (and the resources and processes it ought reasonably to be expected to have). These considerations would go to both our objectives of enabling the running of an effective trial and of acting fairly.
- iii) **the burden of the trial to a particular provider:** the considerations we would be likely to take into account would include the costs of running the proposed trial and whether they would be disproportionate to a particular provider. We also propose to take account of the extent to which providers have previously participated in effective trials, whether voluntarily or pursuant to a formal direction, and their impact on those providers. These considerations would help us achieve our objective of acting fairly.
- iv) **any other factors relevant to the specific circumstances of each trial, which we consider appropriate:** it is not possible at this stage to identify all the considerations that may be relevant in the selection of providers to participate in any particular trial. We therefore propose to include a broad final criterion designed to ensure we are able to identify other factors that may be relevant in setting up a fair and effective trial, in the circumstances at the time. These would be the subject of consultation in any case where we propose to direct providers to take part, ensuring transparency and that they have an opportunity to make representations before we make decisions in any particular case.

4.27 We also propose to require providers, where relevant, to provide us with specific information to help us use, and implement, the new rule effectively. This includes, but is not limited to, information to help inform our assessment of which provider(s) to direct to take part in trials, as well as information relating to the findings of any relevant trial (including any underlying data).⁵¹ Again, these requirements would go to our objectives of fairly conducting an effective trial.

⁵¹ See the draft condition at Annex 5 for further detail.

We would consult on any directions we propose to make

- 4.28 Before we issue a direction under any new general condition, we would consult on it in accordance with the relevant statutory requirements.⁵² We would likely take the following steps in any case where we identify a potential remedy we consider appropriate for testing:
- a) develop an initial design and parameters for that trial (e.g. necessary sample size);
 - b) identify potential providers based on our existing market data/experience and taking account of the selection criteria set out in the general condition;
 - c) conduct initial engagement with providers to discuss our proposal and, if necessary, gather information needed to apply the relevant selection criteria;
 - d) consider whether it is possible to undertake a trial with a provider or providers on a voluntary basis;
 - e) if appropriate, apply the selection criteria and publish a consultation setting out our assessment of the trial we plan to undertake and the provider(s) we propose to direct to take part, and the timetable;
 - f) consider consultation responses, make a decision and issue a statement giving any direction we decide upon; and
 - g) engage with directed provider(s) to implement the trial.
- 4.29 By consulting on any direction, relevant stakeholders would have the opportunity to make representations to us on our proposals before we make decisions.

Consultation questions

- 4.30 We welcome stakeholder comments on the following:

Question 1: Do you agree with the proposal to make a general condition to protect end-users' interests requiring all providers to participate in trials of customer engagement remedies, as directed by Ofcom?

Question 2: Do you agree with our proposed approach for determining whether it is appropriate to conduct a trial in future cases?

Question 3: Do you agree with the proposed criteria for selecting which provider(s) we would direct to take part in a trial?

Please provide evidence in support of your views on each question.

⁵² Section 49A of the Act sets out requirements for consulting on directions we propose to give.

5. Provisional conclusions and next steps

- 5.1 In this section, we consider the likely impact of our proposal. In doing so, we explain our provisional judgment that it is an effective and proportionate means of achieving our objectives and would satisfy the applicable legal tests. We also briefly set out the next steps in the consultation process.

We have assessed the impact of our proposal

- 5.2 We have explained in Section 3 our provisional assessment that there would be occasions where trialling customer engagement remedies either ahead of their possible wider implementation, or to test their ongoing effectiveness, could provide a number of benefits. In Section 4, we have similarly assessed that, to be effective, such trialling requires us to have the ability to require providers to take part, rather than relying on their voluntary agreement alone.
- 5.3 Taking those points into account, we propose to make a new general condition to protect end-users' interests. This would apply to all providers, and would enable Ofcom to require them to participate in trials, on a case-by-case basis as directed by Ofcom. We have set out the criteria we propose to apply to identify the provider(s) to whom we would issue directions in particular cases. Our provisional view is that our proposals would enable us to conduct effective trials in suitable cases using a fair selection process.
- 5.4 The condition we are proposing to introduce sets up the ability to direct providers to take part in relevant trials. By itself, it would not require them to take any action and, as such, would not impose any costs on industry. Insofar as trials would have an impact on providers, these would arise in the future and we would consult on proposals for specific trials, including their likely impact, on a case-by-case basis at the time. As part of this, we would consider the specific costs to the relevant provider(s) and take account of responses to the consultation, before determining whether or not it was appropriate to proceed with the trial.

Legal powers and tests

- 5.5 Section 2 of this document sets out our general statutory powers and duties as well as the powers, duties and requirements relevant to the setting of general conditions. Here, we explain our view that our proposed general condition would meet the requirements of the relevant provisions of the Act.
- 5.6 In accordance with sections 45 and 51 of the Act, we have a power to make general conditions to protect end-users' interests. We have identified evidence of the value of trials of remedies, particularly of those designed to address a lack of customer engagement and/or its effect. We have also identified evidence of a lack of customer engagement in communications markets. To date, we have not set a condition to require providers to take part in trials. As set out in Section 4, we do not consider that relying on providers' voluntary agreement to participate in trials is likely to be effective. On those bases, our

provisional assessment is that it would be **appropriate** to impose a new condition requiring providers to participate in trials of remedies, as directed by Ofcom on a case-by-case basis.

- 5.7 As set out in more detail in Section 4 of this document, the condition would do no more than is necessary to protect relevant end-user interests and enable us to require selected providers to take part in effective trials in appropriate cases. On those grounds, we think it would be **proportionate** were we to adopt it.
- 5.8 The proposed condition would apply to all regulated providers. Insofar as it would discriminate between them in any particular case, in that certain providers may be directed to take part in a trial, we have proposed criteria for their selection. Those criteria would, in our preliminary view, enable us fairly and objectively to select those providers. We would, in particular, take account of the extent of providers' previous participation in trials, in order to fairly distribute the burden of doing so. On that basis, our proposed condition would not be **unduly discriminatory**.
- 5.9 We are also minded to regard the proposed condition as **transparent**. The condition itself is clear as to its application and effects and it is explained in this document and the formal notification in which it is proposed. We also note that any direction we propose to issue under it would also be subject to further public consultation.
- 5.10 In terms of our general duties in section 3 of the Act, we draw similar provisional conclusions. In enabling us fairly and effectively to test the impacts of remedies prior to their being imposed more widely on providers, we think our proposed condition would further the interests of citizens and consumers. We would be able, for example, to focus remedies more specifically on the needs of persons with disabilities, of the elderly and of those on low incomes.
- 5.11 Moreover, we would be able to further those interests in ways that are consistent with the promotion of competition in that, because we could test remedies in appropriate cases, we may be better able to target them effectively. That would address harm where we need to do so without imposing undue burden on providers, leaving those whose practices produce fairer outcomes for customers to focus on innovating and offering a choice of high-quality services that compete for customers' business.

Next steps

- 5.12 We invite comments on our proposal by 20 November 2019. We will take account of consultation responses before making our decision and publishing a statement early in 2020.
- 5.13 Today, we are also publishing the initial conclusions from our review of broadband pricing practices. As part of this, we are exploring the potential for a trial of collective switching to help the least engaged customers who may benefit from targeted support to get a better deal. Our proposed new rule could facilitate such a trial. We expect to conclude our broadband pricing review in March 2020.

Consultation questions

5.14 We welcome stakeholder comments on the following:

Question 4: Do you have any comments on our assessment and provisional conclusions set out in Section 5?

Question 5: Do you have any comments on the draft condition set out in Annex 5 to this document?

Question 6: Do you have any other comments on our proposals?

Please provide evidence in support of your views on each question.

A1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 20 November 2019.
- A1.2 You can download a response form from https://www.ofcom.org.uk/_data/assets/rtf_file/0032/167693/trialling-consumer-remedies-consultation-response-form.rtf. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to Trials@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Consumer Policy – Trials team
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential).
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A1.10 If you want to discuss the issues and questions raised in this consultation, please contact the team by email to Trials@ofcom.org.uk.

Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A1.15 Following this consultation period, Ofcom plans to publish a statement in early 2020.
- A1.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. 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

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 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 for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

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)

A4. Consultation questions

A4.1 This Annex lists the questions we are consulting on.

Question 1: Do you agree with the proposal to make a general condition to protect end-users' interests requiring all providers to participate in trials of customer engagement remedies, as directed by Ofcom?

Question 2: Do you agree with our proposed approach for determining whether it is appropriate to conduct a trial in future cases?

Question 3: Do you agree with the proposed criteria for selecting which provider(s) we would direct to take part in a trial?

Question 4: Do you have any comments on our assessment and provisional conclusions set out in Section 5?

Question 5: Do you have any comments on the draft condition set out in Annex 5 to this document?

Question 6: Do you have any other comments on our proposals?

Please provide evidence in support of your views on each question.

A5. Notification of proposed new general conditions and modifications to the General Conditions under section 48A(3) of the Act

Proposal to set a new general condition and to modify the General Conditions

Background

1. Ofcom proposes:
 - (a) to set new general conditions; and
 - (b) to modify the General Conditions by adding a new definition to those set out in the Definitions section of the General Conditions.
2. The draft new general conditions and the new definitions to be added to those set out in the Definitions section of the General Conditions are set out in Schedules 1 and 2 to this Notification.
3. Ofcom's reasons for making these proposals, and the effect of the proposals, are set out in the accompanying consultation document.
4. Ofcom considers that the proposals comply with the requirements of sections 45 to 49C of the Act, insofar as they are applicable.
5. Ofcom considers that the proposals are not of EU significance pursuant to section 150A(2) of the Act.
6. In making these proposals, Ofcom has considered and acted in accordance with its general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
7. Representations may be made to Ofcom about the proposals until 5pm on 20 November 2019.
8. If implemented, the new general conditions and the new definitions shall enter into force at the same time that Ofcom publishes its final statement in relation to these proposals.
9. A copy of this Notification is being sent to the Secretary of State in accordance with section 48C(1) of the Act.
10. In this Notification:
 - (a) "**Act**" means the Communications Act 2003;

(b) “**General Conditions of Entitlement**” and “**General Conditions**” means the general conditions set under section 45 of the Act, effective from 1 October 2018, as amended or replaced from time to time; and

(c) “**Ofcom**” means the Office of Communications.

11. 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.

12. For the purposes of interpreting this Notification:

(a) headings and titles shall be disregarded, and

(b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

13. The Schedules to this Notification shall form part of this Notification.

Signed by

Selina Chadha

A handwritten signature in black ink, appearing to be 'Selina Chadha', with a stylized, cursive script.

Director of Consumer Policy

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

25 September 2019

SCHEDULE 1

Ofcom proposes that the following new general condition shall be inserted into Part C ('Consumer protection conditions') of the General Conditions as Condition C9:⁵³

"C9 Trials

This condition aims to ensure that Ofcom can require communications providers to participate in trials of certain measures. In particular, it requires providers to comply with directions given to them by Ofcom to take part in trials of measures which are aimed at protecting the interests of end-users and affect the ways and/or extent to which some of them engage with the markets for electronic communications services. For example, trials of remedies which aim to address barriers to effective engagement faced by certain customers.

- C9.1 This **Condition** applies to all providers of **Public Electronic Communications Services**, each of whom is a '**Regulated Provider**' for the purposes of this **Condition**.
- C9.2 **Regulated Providers** must comply with any direction which falls within **Condition** C9.3 made by **Ofcom** for any purposes connected with its consideration of any **Customer Engagement Measure**.
- C9.3 A direction falls within this **Condition** if:
- (a) it is made as part of the assessment by **Ofcom** of the need for, design or effectiveness of, measures aimed at protecting the interests of **End-Users**; and
 - (b) it requires a **Regulated Provider** to trial, test or evaluate a **Customer Engagement Measure** in the manner and time specified by **Ofcom** or a third-party agent appointed by it.
- C9.4 Measures aimed at protecting the interests of end-users within the meaning of **Condition** C9.3 include measures:
- (a) specifying requirements in relation to the provision of services to disabled **End-Users**;
 - (b) requiring the provision of specified information, or information of a specific kind, to **End-Users**;
 - (c) ensuring that conditions and procedures for the termination of a contract do not act as a disincentive to switching **Communications Providers**;
 - (d) specifying requirements in relation to arrangements that enable an **End-User** to change **Communications Provider** on request.
- C9.5 A direction under **Condition** C9.3 may include:

⁵³ Based on the numbering of the existing General Conditions as of the date of this notification. That numbering may be subject to amendment, for example if Ofcom proposes amendments to other General Conditions.

- (a) a requirement for different **Regulated Providers** to trial, test or evaluate a **Customer Engagement Measure** at different times or stages by reference to one or more of the selection criteria in **Condition C9.6**;
- (b) the imposition on different **Regulated Providers** of different requirements in connection with the trial, testing or evaluation of a **Customer Engagement Measure**, for example in relation to the size of the relevant sample, by reference to one or more of the selection criteria in **Condition C9.6**.

C9.6 The selection criteria referred to in **Condition C9.5** are:

- (a) the **Regulated Provider's** customer base and its relevance to **Ofcom's** consideration of the **Customer Engagement Measure**;
- (b) the capabilities the **Regulated Provider** has or should reasonably be expected to have in relation to the trial, test or evaluation of the **Customer Engagement Measure**, by reference to any factors that **Ofcom** may consider relevant, such as the size, resources and processes of the **Regulated Provider** and those resources and processes it should reasonably be expected to have;
- (c) the burden the trial would impose on the **Regulated Provider**, taking account of its participation at the different stages of a trial, test or evaluation of the **Customer Engagement Measure** or prior participation in the trial, testing or evaluation of other **Customer Engagement Measures**; and
- (d) any other considerations **Ofcom** may consider appropriate in relation to a direction made pursuant to **Condition C9.2**.

C9.7 A **Regulated Provider** must provide **Ofcom** (or such other person as specified by **Ofcom**) with any information specified by **Ofcom** in relation to the following matters, in the manner, form and time specified by **Ofcom**:

- (a) **Ofcom's** consideration of whether and in respect of which **Regulated Provider** to make a direction pursuant to **Condition C9.2**;
- (b) the design or development of any **Customer Engagement Measure** for the purposes of making a direction pursuant to **Condition C9.2**;
- (c) the way in which the **Regulated Provider** intends to implement any direction made by **Ofcom** pursuant to **Condition C9.2**;
- (d) the results relating to the trial, testing or evaluation of any **Customer Engagement Measure** specified in a direction pursuant to **Condition C9.2**, including any underlying data; and
- (e) any other information relating to the implementation of this **Condition C9**, as **Ofcom** may consider appropriate.

SCHEDULE 2

1. In the 'Definitions' section of the General Conditions, the following new definition shall be inserted in the appropriate alphabetical place:

“‘Customer Engagement Measure’ means any requirement, process, action, communication or behaviour which may affect Customer engagement with the markets for Electronic Communications Services and their provision by Communications Providers.”