

# A11. Revised guidance on GC C1 contract requirements June 2022

- A11.1 This annex sets out our revised guidance on contract requirements for GC C1 to align with the modifications we are making to implement the provisions of the EECC that will come into effect in June 2022.
- A11.2 It incorporates new guidance on providing contract information and a contract summary<sup>1</sup> and revised guidance on contract modifications.<sup>2</sup>

## Purpose of this document

- A11.3 This document sets out Ofcom's guidance under General Condition C1 (Condition C1) in the following areas:
- a) Identifying Microenterprise or Small Enterprise Customers, and Not-for-Profit Customers;
  - b) Contract Information and the Contract Summary;
  - c) Conditions and procedures for contract termination;
  - d) Non-coterminous linked contracts;
  - e) Automatically renewable contracts;
  - f) Contractual modifications; and
  - g) End-of-contract and annual best tariff notifications.
- A11.4 This guidance does not form part of Condition C1. Its purpose is to assist Communications Providers (providers) to comply with the minimum requirements of Condition C1 by outlining Ofcom's likely approach to investigating compliance.
- A11.5 This guidance is not binding on Ofcom, and while we will take it into account, we will determine compliance with Condition C1 on the basis of the individual circumstances of any given case. However, where we decide to depart from the guidance, we expect to give reasons for doing so. Words and expressions used in Condition C1 shall have the same meaning when used in this guidance, unless otherwise indicated.

## Identifying Microenterprise or Small Enterprise Customers, and Not-for-Profit Customers

- A11.6 We recognise that it may, at times, be difficult for providers to identify whether a business customer would fall within the categories of Microenterprise or Small Enterprise Customer,

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<sup>1</sup> As set out at Annex 7 of our October Statement and Consultation.

<sup>2</sup> As set out at Annex 10 of our October Statement and Consultation.

or Not-For-Profit Customer. Providers have informed us that they do not routinely collect or hold information about the number of employees of their business customers. Furthermore, employee numbers can fluctuate over short timescales.

- A11.7 We will take a pragmatic and flexible approach to compliance monitoring and enforcement. In assessing compliance, we will consider whether providers have taken reasonable steps to identify the different categories of customers to which the requirements apply.
- A11.8 For example, providers might request headcount information from customers at the point of sale and use that information for the duration of the contract or until that contract is renegotiated. Other factors providers may use (but are not limited to) might include the annual communications spend of the customer and/or the number of lines taken by the customer.

## Conditions C1.3-C1.7 – Contract Information and Summary

- A11.9 Conditions C1.3 to C1.7 set out requirements for providers in relation to the information they must provide to Consumers and other relevant customers<sup>3</sup> before they enter into a contract for Electronic Communication Services (ECS). These conditions apply to all providers of ECSs, except in so far as they provide Machine-to-Machine Transmission Services, as defined in the Conditions.
- A11.10 The provisions specifically provide for two sets of information to be provided to customers before they are bound by a contract: the specified Contract Information and a Contract Summary. Additional information requirements also apply to providers of certain types of services, such as Internet Access Services (as specified in the Annex to Condition C1).
- A11.11 This part of the guidance outlines Ofcom’s expectations as to how the Contract Information in the Annex to Condition C1 and the Contract Summary should be provided, as well as further specifics on the information that should be provided in compliance with those conditions. This guidance is not exhaustive, and the full list of information which needs to be provided before a customer is bound by a contract under these Conditions is set out in the Annex to Condition C1 and in the Contract Summary Implementing Regulation.<sup>4</sup>

## How the Contract Information and Contract Summary are provided

### Format and timing for the Contract Information document

- A11.12 Under Conditions C1.3-1.4, the **Contract Information** needs to be provided “*Before a Relevant Customer is bound by a contract*” in a “*clear and comprehensible manner*” and on

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<sup>3</sup> These conditions apply to Consumers, Microenterprise or Small Enterprise Customers, and Not-for-Profit Customers. We refer to these customers throughout this guidance as ‘relevant customers’. Conditions C1.5-C1.7 relating to Contract Summaries also apply to Bundles provided to relevant customers.

<sup>4</sup> [Commission Implementing Regulation \(EU\) 2019/2243 of 17 December 2019](#) (‘the Contract Summary Implementing Regulation’).

a Durable Medium. A Durable Medium is defined in the Conditions as: “*paper or email, or any other medium that:*

- a) *allows information to be addressed personally to the recipient;*
- b) *enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information; and*
- c) *allows the unchanged reproduction of the information to be stored.”*

A11.13 Where it is not feasible for a provider to supply the Contract Information on a Durable Medium, they also have an option to make it available “*in an easily downloadable document*”. If a provider uses this option, the document would not need to be personally addressed to the recipient but there is a requirement on providers (as indicated in Condition C1.4) to expressly draw the document to the customer’s attention with a message which makes clear the importance of downloading the document for the customer’s future records.

A11.14 The broad definition of a Durable Medium, combined with the alternative option of providing a ‘downloadable document’, means there is a range of different formats available to providers for supplying the Contract Information to customers for different sales channels. In complying with this requirement, we expect providers to ensure in particular that:

- a) the format they are using allows the customer to store the information so that it can be reproduced in an unchanged format at a later point in time; and
- b) where the information is not personally addressed to the recipient, it has been prominently drawn to the customer’s attention with a clear message advising them that they need to download the document for their future records.

A11.15 In addition to the email and letter examples referred to in the definition of Durable Medium, other examples of formats which could satisfy the requirements of Condition C1.4 therefore include (but are not limited to): a print-out of the information (e.g. for customers purchasing services in-store) or a link to a downloadable document made available via email, a customer’s online account, or sent via SMS.

A11.16 The Contract Information can be provided to customers at any point during the sales process, so long as it is before the point at which a customer agrees to enter into a contract (i.e. before the customer is ‘bound by’ that contract). In practice this means that providers can choose to provide the Contract Information before, or at the same time as, the Contract Summary.

### **Format and process for providing the Contract Summary document**

A11.17 Under Condition C1.5 the Contract Summary needs to be provided before the customer enters into a contract. Under Condition C1.6, a customer’s contract can only become effective “*once the Relevant Customer has given their Express Consent to enter into the contract after receiving the **Contract Summary***”.

A11.18 The Contract Summary Implementing Regulation<sup>5</sup> does not specify a particular medium in which the Contract Summary must be sent, but it does set out a number of requirements for the format of the document, including:

- a) the overall length should not exceed one single-sided A4 page, or three single-sided A4 pages for bundled services, when printed. Providers may, however, extend this length, provided they have reasonable justification for doing so (for example where providing the document in an accessible format for disabled customers);
- b) the information in the document must be presented in portrait format, and in the order of the headings specified in the Implementing Regulation; and
- c) the information must be set out with a font size of at least 10 points. Again, providers may reduce this font size if they have reasonable justification for doing so (for example for pre-pay services where a smaller font may be needed to fit on packaging),<sup>6</sup> however, in such cases it should be possible for the customer to enlarge the text (e.g. where they are viewing an electronic version of the document) or the customer should be able to make a request to see the document with a font size of 10 points or more.

A11.19 When assessing compliance with the above requirements, and whether to take enforcement action, we expect to focus our assessment on whether the format used for the Contract Summary is clear and easily readable, and the extent to which it has therefore achieved the objective of these requirements (to support customers in making an informed decision about the services they are choosing to buy).

A11.20 Similarly, when considering the approach a provider has used to ensure the customer has received the Contract Summary before providing their Express Consent to enter into the contract, we would be more likely to be concerned if the processes put in place by providers failed to support customers in making informed choices. For example, during a sales phone call, a provider may choose to comply with this requirement by sending the Contract Summary by email during the call and advising the customer that they may review it before deciding whether to enter into the contract offered to them. Where a customer chooses to pause the sales process to review their Contract Summary, we expect providers to ensure that customers are clearly advised of any time-limit that might apply to the offer set out in the Contract Summary.

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<sup>5</sup> [Commission Implementing Regulation \(EU\) 2019/2243 of 17 December 2019](#). In particular the Annex to this regulation specifies the template that must be used (in Part A of the Annex), along with instructions for completing the template (in Part B of the Annex).

<sup>6</sup> Recital (6) of the Implementing Regulation.

## Guidance on elements of the Contract Information

A11.21 The Annex to Condition C1 sets out the full list of Contract Information providers are required to set out before a customer is bound by their contract. Below we provide guidance on certain elements of that list.

### Core subscription prices

A11.22 In all cases, the Contract Information must include the Core Subscription Price.<sup>7</sup> In some contracts, that Core Subscription Price is structured so that it is £X for part of the contract period and £X + a measure determined by an inflation index (e.g. £X + the retail price index ('RPI') or £X + the consumer price index ('CPI')) for a later part of that period. In accordance with the guidance on contract modifications,<sup>8</sup> specifying the price this way in their contracts, and at the point of sale, means that providers are not required to give customers a right to exit their contract without additional charge when the price uplift takes effect. The guidance in paragraphs A11.23-A11.26 below sets out how we expect providers to tell customers about these sorts of prices in the Contract Information for the purposes of Condition C1.3.

A11.23 Table A, clause 3(a)(i) in the Annex to Condition C1 requires providers to set out "*the Core Subscription Price*". In complying with this requirement, where a provider is offering a package in which the Core Subscription Price is set out on the basis described in the paragraph above, an estimate of the price, including any increment for inflation, should be included, in an accessible way, such that the customer has an indication of how the relevant inflation index might affect the price they will pay.

A11.24 This means that stating that there will be an (unspecified) uplift to the Core Subscription Price in line with a particular inflation index is unlikely to be sufficient. For example, text which states "*In April 2020 your price will increase by an amount equal to the RPI rate published in March of that year*" does not make clear to the customer what the impact on their Core Subscription Price will be.

A11.25 Instead, we expect providers to provide an example to the customer of how such a price term is likely to affect the price they will pay. If the increase is by reference to an inflation index, then providers should use the most recent value of that index.

A11.26 As an example, this additional clarification could read:

*"For example, using last year's RPI value of 2%, this would mean your monthly price of £40 would increase to £40.80 from April next year".*

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<sup>7</sup> Core Subscription Price' is defined in the Conditions as: "*the sum (however expressed in the contract) that the Subscriber is bound to pay to a Communications Provider at regular intervals for services and/or facilities the Communications Provider is bound to provide in return for that sum. It does not include sums payable for additional services or facilities (or the additional use of services or facilities) that the Subscriber is only liable to pay for if the additional service or facility is used*";

<sup>8</sup> Paragraph A11.102.

- A11.27 In setting out the Core Subscription Price (however structured), as well as stating the price the customer will pay during any Commitment Period, we also expect providers to set out:
- a) the expected price (or a cross-reference to the relevant ‘list’ price) the customer would pay after the end of the Commitment Period (where there is a change); or
  - b) that the customer will continue to pay the same Core Subscription Price after the Commitment Period has ended.

### **Arrangements for provisioning of the service**

- A11.28 Table A, clause 4(b) in the Annex to Condition C1 requires providers to set out the arrangements for the provision of the service, including “*as accurately as possible, the likely date of provision of the service(s)*”. In complying with this requirement, we expect that, in most cases, providers should be able to give the customer an exact date for when their service will start and, for customers that are switching, this should be the Migration Date.<sup>9</sup>
- A11.29 Where there are objective technical or practical reasons why it is not possible for providers to specify an exact date or Migration Date in the Contract Information, providers should instead set out, as accurately as possible, the latest date by which they undertake to deliver the customer’s service. In these circumstances, providers should ensure they subsequently inform a customer, prior to the provision of their services, the exact date or Migration Date on which their service will be provided.

### **The price of individual elements of the bundle**

- A11.30 Table B, clause 3(a) in the Annex to Condition C1 requires providers to set out “*the price of the individual elements of the Bundle to the extent they are also marketed separately*”.
- A11.31 In complying with this requirement, a provider should set out these prices where it makes individual elements of a particular Bundle (including any terminal equipment) available for separate, stand-alone, purchase. The provider need only set out these prices for those parts of the Bundle it sells separately. If the provider does not sell individual elements of the Bundle on a stand-alone basis, it does not need to set out the price of those particular elements.
- A11.32 For example, where a provider sells a bundled contract comprising a handset and airtime contract, but also makes handsets and/or airtime contracts (SIM-only) available for individual purchase, it must set out:
- a) the total price of the handset if it were to be purchased separately from that provider; and

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<sup>9</sup> Where setting out the Migration Date providers also need to comply with the requirements of Condition C7.3, including ensuring that this date is, where technically possible, one requested by the customer or, where not the date requested by the customer, it is as soon as possible.

- b) the monthly price of the airtime contract if it were to be purchased separately from the handset as a SIM-only deal.

A11.33 Providers should use a SIM-only deal which is as closely equivalent as possible to the airtime service included as part of the bundled mobile contract. In adopting a method for identifying this equivalent service, providers should ensure they take a reasonable, and objectively justifiable approach. In particular, providers could:

- a) where possible, use a package with at least the same allowance of minutes, text and data;
- b) where an exact match is not possible, match to the closest available allowance. This could either mean increasing or decreasing one or more elements of the package to whatever is the nearest closest allowance available.

### **Contract duration and conditions for renewal / termination for bundles**

A11.34 This requirement is particularly relevant for non-coterminous linked contracts i.e. linked contracts with Commitment Periods that do not align. Linked contracts refers to two or more contracts which contain dependencies such that termination of one contract triggers an impact on the other. We refer to linked contracts because this is the most common form of non-coterminous Bundles. We would also, however, apply the same approach in this part of the guidance to Bundles of services and Terminal Equipment that are on the same contract but where the commitment periods do not align.

A11.35 In complying with their obligations, we would expect providers of non-coterminous linked contracts to:

- a) make clear to customers that the linked contracts have Commitment Periods that will end on different dates (where there is a material difference between those end dates); and
- b) set out what would happen to the different contracts if one contract expired or was cancelled or renewed by customers. Specifically, we would expect providers to explain whether cancelling one contract will affect the functionality, price or contract terms of a linked contract.

A11.36 We would expect providers to provide the above information to customers:

- a) when they enter into non-coterminous linked contracts at the same point in time; and
- b) when they enter a contract for the provision of an additional service or Terminal Equipment with a different end date to their existing contract with the same provider, such that they become bound by non-coterminous linked contracts.<sup>10</sup>

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<sup>10</sup> Condition C1.12 specifies that providers shall not extend the duration of a contract for the provision of a service where the customer subsequently purchases an additional service or terminal equipment from the same provider, unless that provider has obtained the customer's Express Consent. In these circumstances, in order to comply with their obligation,

## Information on conditions on Terminal Equipment

A11.37 Table B, clause 2(a) in Annex 1 to Condition C1 requires providers to give the customer information on “any conditions, including fees, imposed by the Regulated Provider on the use of Terminal Equipment, such as any Handset Locking Restrictions”. In complying with this requirement, if a provider sells or provides locked Terminal Equipment, such as a locked handset, where that equipment cannot be used on another network, then the provider would be required to tell the customer that their device is locked before they purchase it.<sup>11</sup> We would also expect the provider to clearly set out what this means, when the customer can unlock the device (or when it will be automatically unlocked), and any fees that would need to be paid to unlock it.

## Guidance on information in the Contract Summary

A11.38 The Contract Summary Implementing Regulation sets out detailed requirements on what information should be included. In complying with these requirements, we would expect providers to consider in particular:

- a) the extent to which the information required is relevant to their customers;
- b) what elements of that information are key to a customer’s understanding of the contract and their decision about whether to sign-up to the contract; and
- c) how they can present those key elements in clear language that is understandable to a UK customer.

A11.39 Our priority in assessing compliance, and considering whether to take enforcement action, will be the extent to which a provider has taken account of these factors, such that the information presented in the Contract Summary achieves the objective of helping the customer to make an informed decision about the services they are buying.

A11.40 With respect to presenting prices in the Contract Summary:

- a) where the Implementing Regulation refers to “recurring prices” we expect providers to include the Core Subscription Price, as well as any other recurring prices (such as add-ons) which appear automatically on a customer’s bill each month;
- b) it is likely to be helpful to customers if they are presented with these prices in a consistent way across both the Contract Summary and Contract Information and therefore providers may want to set out the Core Subscription Price, and any other recurring or consumption-related prices, in a consistent way with the Contract Information (as set out in paragraphs A11.22-A11.27 above);

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providers will have to ensure that they have adequately informed the customer about the extension of the duration of the original contract and that the customer has agreed to it.

<sup>11</sup> With effect from December 2021, under Condition C1.9 the sale of locked mobile handsets will be prohibited for Consumers. This paragraph of the guidance will, however, continue to apply to all other sales of locked terminal equipment, including mobile handsets sold to Microenterprise or Small Enterprise Customers and Not-For-Profit Customers.



- c) providers only need to include taxes in these prices where the Contract Summary is being provided to customers who are Consumers (i.e. prices for business customers can be stated exclusive of VAT); and
- d) providers may indicate that information about tariffs for additional services is available separately, for example by providing a link to where that information is published.

A11.41 The Contract Summary also includes a heading entitled “*Other relevant information*”. Providers may choose to include here any other relevant information which they consider will be important in helping a customer make an informed decision.

## **Condition C1.8 - Conditions and procedures for contract termination**

A11.42 This part of the guidance outlines Ofcom’s likely approach to investigating whether certain conditions or procedures for contract termination comply with Condition C1.8. It is not an exhaustive list of the types of conditions or procedures that Ofcom may consider under Condition C1.8.

A11.43 We have also included some examples of what we consider to be good practice, identified through our monitoring and enforcement work. Providers may choose to adopt these, or similar, practices.

A11.44 Customers should be able to exercise choice and take advantage of competition in communications markets by being able to switch provider easily. Unnecessary difficulties can give rise to consumers suffering harm, making switching difficult or preventing it entirely in some cases.

A11.45 To ensure that customers are able to change providers without being hindered by legal, technical or practical obstacles, Condition C1.8, says:

*“Without prejudice to any Commitment Period, Regulated Providers shall ensure that conditions or procedures for contract termination do not act as disincentives for Relevant Customers against changing their Communications Provider”.*

A11.46 For the purposes of Condition C1.8, “Relevant Customers” are Consumers (i.e. residential customers), Microenterprise or Small Enterprise Customers and Not-For-Profit Customers. We refer to these as “customers” for this part of the guidance dealing with conditions and procedures for contract termination. “Regulated Providers” are providers of Public Electronic Communications Services.

A11.47 The rules in Condition C1.8 also apply to Bundles.<sup>12</sup>

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<sup>12</sup> GC C1.1(f).

## Conditions or procedures for contract termination acting as a disincentive for customers against changing their provider

- A11.48 We consider that “*conditions or procedures for contract termination*” should be interpreted broadly. In particular, we consider that, as well as covering industry practices and a provider’s contractual conditions, a provider’s internal processes may also be procedures that potentially provide a disincentive to switch providers. Such internal processes need not necessarily be in writing, as it is their effect that is relevant, rather than their form. In addition, we consider that behaviour of individual customer service agents that is inconsistent with a provider’s written or established conditions or procedures could itself amount to a breach of Condition C1.8 in certain circumstances; for example, if it demonstrated a failure by the provider to have sufficient procedures in place to ensure agents are properly trained, or for monitoring their compliance with the internal procedures.
- A11.49 We consider that to act as a “*disincentive*” a condition or procedure does not necessarily have to prevent a customer from terminating (although it may do so). A condition or procedure could cause unreasonable effort, hassle or undue difficulty when seeking to terminate a contract such that it acts as a disincentive for a customer even if that customer ultimately still completes a switch of provider.
- A11.50 We recognise that some customers contacting providers about ending their services will have chosen to do so in order to have a conversation about any offers or options available to them and to take advantage of any discounts that the provider might provide as a result of those conversations. This can be beneficial to the customers concerned, and we are not seeking to prevent these conversations for those customers who wish to have them. However, we are also aware that other customers want to terminate their services without having these conversations and in those circumstances prolonged retention activity may act as a disincentive. Providers should consider the needs of these customers within their conditions and procedures to ensure that they do not act as a disincentive against changing provider.

## Contractual conditions and procedures for ending a contract

### Communication options and accessibility of contract termination procedures

- A11.51 Providers should offer a range of communication options for customers to terminate their contracts.
- A11.52 The full range of communication options should be clearly and prominently displayed on a provider’s website, along with information about the steps required to end a contract.

*Good practice in this area includes:*

- (a) To reflect different customers' preferences and needs, offering options to customers to terminate contracts which include both 'real-time' and 'non-real-time' communication options. For example, by phone and/or webchat, where the customer would speak directly in real-time to a customer service agent or using non-real-time options, such as by letter, email or via an online account, where they do not need to speak directly to the provider.*
- (b) Details of each communication option (i.e. phone number, email address, link to online accounts etc.) and how and when these can be accessed could be listed on a dedicated "terminations" page on a provider's website.*

### **Identification and verification procedures**

A11.53 Where providers need to verify the identity of a customer prior to their contract being terminated, these verification procedures should not themselves act as a disincentive to switch providers.

*Good practice in this area includes:*

- (a) making customers aware if they will need to provide information to verify their identity before their termination request will be processed.*
- (b) being clear about the types of identification information that the customer will need to provide before their contract will be terminated.*
- (c) ensuring that any verification procedure relating to contract termination is the same as required to make any other substantive change to a customer's account (e.g. a change requiring an additional financial commitment, such as an upgrade or contract renewal).*
- (d) adopting identification and verification procedures that are consistent with the communication option that the customer has selected to make their termination request. For example, if a customer has made a non-real-time request, then the provider could have procedures in place to verify the customer's identity in the same way or obtain the customer's consent to verification via a different method.*

### **Maximum notice periods**

A11.54 Subject to any maximum technical limits or other regulatory requirements,<sup>13</sup> providers should allow customers to reasonably give more than the minimum period of notice.

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<sup>13</sup> The changes introduced in our Mobile Switching Statement prohibited the charging of notice periods beyond the day on which the switch occurs (with effect from 1 July 2019). See Ofcom, [Consumer Switching: Decision on reforming the switching of mobile communications services](#), 19 December 2017.

A11.55 Providers' conditions or procedures should not suggest that exact notice must be given by customers.

*Good practice in this area includes providers clearly referencing any maximum notice period and the ability of customers to be able to give more than the minimum notice period in their internal guidelines for customer service agents.*

### **Internal processes for customer service agents handling termination requests**

A11.56 As noted above, we recognise that providers are likely to wish to seek to retain customers that express an intention to switch providers, usually through a conversation (referred to throughout this guidance as "a retention conversation"). We note that some customers will welcome a retention conversation, while others will not.

A11.57 Where the retention conversation occurs, we expect providers to have procedures in place to ensure that:

- i) customer service agents' incentive schemes do not encourage poor agent behaviour that constitutes or otherwise gives rise to a disincentive for the customer to switch.
- ii) customers' intentions are recorded and actioned correctly.
- iii) customer service agents understand what retention activity is appropriate, particularly in circumstances where it is evident that a customer does not want to have a retention conversation.

*Good practice in this area includes:*

- (a) incentive schemes that do not: (i) penalise customer service agents for terminating contracts in response to a customer's request or for correctly identifying that a customer does not want to have a retention conversation; nor (ii) reward customer service agents for failing to process termination requests.*
- (b) sending written confirmation to customers once a termination request is processed.*
- (c) ensuring customer service agents make clear notes on a customer's file about any retention conversation or offers made so that they can be accessed, and taken account of, by other agents.*
- (e) clear internal guidance, regular briefings and ongoing training for agents about how to identify if a customer making a termination request wants to do so without having a retention conversation, and what is appropriate retention activity in these circumstances. For example, making clear that in circumstances where a customer does not want to have a retention conversation, the agents understand it is not appropriate to engage in any further retention activity and that they should instead promptly process the request.*
- (f) specific procedures in place for customers who have made non-real-time requests as, given their preferred communication option, these customers may be more likely to not want to have a retention conversation.*
- (g) monitoring and quality assurance processes in place to ensure that their conditions or procedures do not act as a disincentive to switching. Advisors who fall short of the behaviours required of them are subject to an appropriate disciplinary process.*
- (h) clear written internal policies and processes for customer service agents handling termination requests (e.g. training and briefings) and regular reviews of these to ensure changes are made as required. For example, if a pattern of poor behaviour is identified via monitoring procedures, providers then take steps to ensure that it does not occur in the future, and any necessary changes are made to their internal policies and processes, including guidance, training and quality assurance procedures.*

## Condition C1.8: non-coterminous linked contracts

- A11.58 This part of the guidance outlines the approach that Ofcom would expect to take when assessing the application and impact of certain types of bundled contracts with Commitment Periods that do not align under Condition C1.8.
- A11.59 It sets out when we consider such contracts may act as a disincentive to switch and, where we identify such contracts, the factors we would take into account in assessing whether to open an investigation under Condition C1.8. The factors identified below should not be seen as exhaustive and any decision to open an investigation would depend on the specific circumstances of each case and the matters we would generally consider as set out in our enforcement guidelines.<sup>14</sup>
- A11.60 The guidance does not amend or replace rules nor does it constitute legal advice on how to comply with Condition C1.8. Providers should take their own advice on compliance.

### Non-coterminous linked contracts

- A11.61 This guidance is concerned with Bundles that have the following characteristics (we refer to these as ‘**non-coterminous linked contracts**’):
- the contracts concerned are linked contracts, i.e. they present dependencies such that termination of one contract triggers an impact on another contract;
  - the Commitment Periods for the relevant contracts do not align (regardless of whether the contracts were taken up at the same or at different points in time); and
  - the contracts include the provision of at least one Internet Access Service or Number-Based Interpersonal Communications Service and the relevant dependency exists between one of these services and another element of the Bundle.
- A11.62 We focus on contracts that are separate but linked, because this is the most common form of non-coterminous Bundles that we see. But we would apply the same approach to Bundles of services and Terminal Equipment that are on the same contract, where the Commitment Periods do not align.
- A11.63 The following are examples of dependencies between different elements of a Bundle:
- **A technical dependency** where a customer would lose, or be impaired in using, one element of the Bundle when terminating a contract for another. For example, if a customer has a broadband service which only works if they also take a landline service from the same provider, this would mean that if the customer cancelled their landline service, they would no longer be able to use the broadband service.
  - **A contractual dependency** where there are links between the rights or obligations for the provision of different elements of the Bundle. One example would be where a customer might purchase both airtime and a mobile handset at the same time from the

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<sup>14</sup> Ofcom, June 2017, [Enforcement guidelines for regulatory investigations](#), paragraph 2.5.

same provider under two different contracts but with terms that link those contracts.<sup>15</sup> Another would be a customer purchasing landline, broadband and pay TV in a Bundle (triple play Bundle) under terms that link those contracts.

- **A financial dependency** where any prices, tariffs or charges for the provision of one element of the Bundle are contingent on taking another element, e.g. a monthly discount for mobile customers who also take fixed broadband from the same provider, which is then removed if the broadband contract is cancelled.

A11.64 These examples are non-exhaustive and more than one dependency might exist in the same Bundle. There might be other types of dependencies that exist; and new types of dependencies may appear in the future as communications markets evolve.

A11.65 This guidance applies to non-coterminous linked contracts for residential customers. It also applies in relation to other groups of customers who are likely to have similar bargaining positions, such as Microenterprise or Small Enterprise Customers, and Not-For-Profit Customers which purchase such services on standard terms and conditions (as opposed to bespoke negotiated contracts).

### **Assessing whether non-coterminous linked contracts may act as a disincentive to switch**

A11.66 Non-coterminous linked contracts can take many different forms and the likely impact of these contracts will vary. Some customers might value the flexibility of having different elements of a Bundle with Commitment Periods that end at different points in time. Under some circumstances however, non-coterminous linked contracts may act to disincentivise customers from switching provider.

A11.67 The likelihood and extent to which this disincentive might arise will depend on the specific circumstances in question. We set out below two key factors that we would expect to take into account in any assessment of whether there is a disincentive to switch:

- The **strength of dependencies**. Examples of strong dependencies include:
  - if the customer is not able to use one element of the Bundle without the other because of a technical dependency; and/or
  - if the customer is faced with a material financial impact, such as losing a discount or Early Termination Charges, if they switched to another provider for one of the elements in their Bundle before the end of the Commitment Period for another element of the Bundle.
- The **differences in the end of the Commitment Periods** between different elements of the Bundle. A significant difference between the end of the Commitment Periods for different elements of a Bundle with strong dependencies is more likely to cause harm because it is likely to raise switching costs compared to a situation where the

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<sup>15</sup> For mobile bundles for example, these terms may include a requirement that if the customer ends their airtime contract, they must also pay the remaining balance due under their handset contract in full as a lump-sum. There would also be a financial interdependency here too. We refer to these as 'linked split mobile contracts'.

difference in the Commitment Periods is minimal. For example, if a customer wanted to switch the whole Bundle while one element is still in its Commitment Period, they would have to pay higher Early Termination Charges the further they are from the end of that Commitment Period. This may raise the likelihood they would be disincentivised from switching the whole Bundle to an alternative provider.

A11.68 If non-coterminous linked contracts do not have both strong dependencies and significant differences between the end of the Commitment Periods, we consider they are less likely to act as a disincentive to switch.

### **Approach to potential enforcement action**

A11.69 Where the factors at paragraph A11.67 apply, we would then consider the case for taking enforcement action by assessing the potential for, and extent of, any customer harm, taking into account the factors below.

A11.70 Our assessment would include consideration of the **conditions that arise when the customer reaches the end of the first Commitment Period for an element of their Bundle**. In particular, we are more likely to be concerned if:

- i) *customers are significantly worse off at the end of the first Commitment Period if they stay with their current provider* because, for example, they are moved onto a higher out-of-contract price. This will be particularly the case, for example, if the difference between the end-dates of the Commitment Periods for different elements of the Bundle is significant (such that customers would need to pay the higher out-of-contract price for a long period of time); and/or
- i) *customers face limited options and are more likely to be 'locked-in' to their current provider for a material length of time*. For example, if a customer reaches the end of one Commitment Period, but is still tied into a Commitment Period on another service, two situations are possible. First, if the customer signs-up for a new Commitment Period and is unable to align the two contracts, this will extend the period of lock-in with their existing provider. Alternatively, where it is possible to align the Commitment Periods when re-contracting, this extended lock-in is avoided. The first situation is more likely to impede future switching than the second.

A11.71 We would also consider **whether the complexity of the non-coterminous linked contracts makes it harder for customers to compare deals** adding costs to the process of searching for a deal and increasing the risk that customers select a deal that is not good for them. We would consider the complexity both when the non-coterminous linked contracts were entered into and also the complexity facing customers at the end of the first Commitment Period.

A11.72 In addition, we would take into account **any other factors which might reduce the potential for harm from non-coterminous linked contracts**, for example:



- i) *whether the contractual arrangements provided efficiencies or other benefits for customers.* We would, however, expect providers to be able to evidence that there were such efficiencies or other benefits to customers. We would also consider whether a provider could deliver those efficiencies or other benefits without the factors described at A11.36.
- ii) *whether, when customers originally entered into non-coterminous linked contracts, they chose to take such contracts even though they were offered the option to take contracts with aligned Commitment Periods; and*
- iii) *whether customers were well-informed about the arrangements and their implications, when they entered into them.* We would take account of the level of support providers give to customers to help them understand the implications of entering into these agreements, including what happens to prices at the end of the different Commitment Periods. However, even if customers were well-informed about non-coterminous linked contracts at the point of sale, this is unlikely to be sufficient on its own to allay potential concerns if there were no efficiencies or other benefits for customers.

## **Condition C1.10 - Automatically renewable contracts**

A11.73 This part of the guidance sets out how we are likely to apply Condition C1.10 which prohibits the use of Automatically Renewable Contracts (ARCs) – these are contracts which automatically roll over into a new Commitment Period following the expiry of an initial or subsequent Commitment Period.

A11.74 Condition C1.10 says:

*“Without limiting the extent of Condition C1.8, Regulated Providers must not, at the end of any Commitment Period, renew their contract with a Relevant Customer for a further Commitment Period unless they have first obtained the Relevant Customer’s Express Consent. Such Express Consent must be obtained in relation to each new Commitment Period.”*

### **Method and timing for obtaining Express Consent**

A11.75 Where Express Consent is given for a Commitment Period initiated by a customer, we think it is likely to be reasonable for it to be given at any time in the process.

A11.76 In all other circumstances, providers should ensure that customers have sufficient time to properly consider the deal they are being offered (including, for example, allowing them time to consider the market more generally) before setting deadlines requiring them to opt in to a further Commitment Period.

A11.77 We have not set out specific time frames with which providers must comply, however, there are certain types of behaviour that are unlikely to satisfy the requirements of Condition C1.10. These include (but are not limited to) the following examples where:

- a) A provider has asked a customer to provide a “one off” consent which purports to cover all Commitment Periods that that Consumer, Microenterprise or Small Enterprise Customer, or Not-for-Profit Customer may subsequently enter into (“stacking”);
- b) Consent is sought at a time which is too far in advance of the ending of the Commitment Period for a customer to reasonably know what other offers may be available at that time;
- c) A provider contacts a customer either on the day that their Commitment Period is due to expire, or very shortly before that day, and requests their consent to enter into a further Commitment Period in circumstances where that customer has not been given an opportunity to consider what other offers may be available.

A11.78 We expect providers to have reasonable steps in place to prevent stacking and to ensure reasonable and appropriate timing for obtaining Express Consent. Therefore, other things being equal, it is generally likely to be reasonable for Express Consent to be obtained by providers no sooner than six months before the end of each Commitment Period.

#### **Approach to assessing compliance**

A11.79 In assessing compliance, we will expect providers to take reasonable steps to inform staff of the regulations in Condition C1.10. For example, providers may:

- a) ensure that sales staff are comprehensively briefed on the regulations;
- b) provide clear information to customers about the regulations on ARCs; and
- c) ensure that sales scripts and contract negotiations include necessary information about, for example, key dates and charges, and any termination procedures.

A11.80 We also expect that providers will take a reasonable approach to redress in cases where a Microenterprise or Small Enterprise Customer, or Not-for-Profit Customer has been sold an ARC inadvertently. While Condition C1.22 requires providers to ensure that customers have the right to exit the contract with a maximum one month notice period when a contract is automatically prolonged, in circumstances where a customer has been inadvertently sold an ARC, we would expect the provider to proactively alert the customer of their right to exit the contract and allow them to exit the contract after a maximum one month notice period.

### **Conditions C1.14 – C1.20 – contractual modifications**

A11.81 This part of the guidance sets out our expectations as to how providers should apply Conditions C1.14-C1.20 in practice and provides guidance on contractual modifications that would trigger the obligation to give a customer the right to exit, and how we would expect providers to notify customers of such modifications.

A11.82 Condition C1.14 says:

*“Regulated Providers shall:*

*(a) give their Relevant Customers notice not shorter than one month of any contractual modifications relating to a Relevant Communications Service, or a Bundle or any elements thereof, that is provided by them, unless the proposed modification is exclusively to the benefit of that Relevant Customer, is of a purely administrative nature and has no negative effect on the Relevant Customer, or is directly imposed by law; and*

*(b) give their Relevant Customers the notice in Condition C1.14(a) in a clear and comprehensible manner on a Durable Medium.*

A11.83 Condition C1.15 says:

*“At the same time as notifying a contractual modification pursuant to Condition C1.14, Regulated Providers shall:*

*(a) inform the Relevant Customer of their right to terminate the contract(s) in accordance with Condition C1.15(b), at no additional cost other than the charges set out in Condition C1.16, if the proposed modifications are not acceptable to them; and*

*(b) allow the Relevant Customer to terminate the contract(s) subject to the contractual modification and to terminate any contract(s) forming part of a Bundle with that contract (those contracts), within one month after notification.”*

A11.84 Condition C1.16 says:

*“Regulated Providers shall ensure that where a Relevant Customer exercises their right to terminate a contract or contracts in accordance with Condition C1.15, such Relevant Customer is not required to pay any additional charges other than:*

*(a) the Service Fee(s) for the period ending on the day on which the relevant contract is terminated pursuant to Condition C1.20; and*

*(b) where the Relevant Customer exercises the right to terminate a Bundle which includes Terminal Equipment that the Relevant Customer chooses to retain:*

*(i) where the Bundle consists of Linked Split Mobile Contracts, the principal amount due under the Mobile Device Loan Agreement; or*

*(ii) in all other cases, the smaller of:*

*a. the remaining value of the Terminal Equipment on the day on which the contract is terminated in accordance with Condition C1.20, calculated in accordance with Condition C1.18; or*

*b. the Terminal Equipment Fee for the period from the day on which the contract is terminated pursuant to Condition C1.20 until the end of the Commitment Period.”*

A11.85 Condition C1.17 says:

*“Without limiting the extent of Condition C1.16, where a Relevant Customer exercises their right to terminate a contract or contracts pursuant to Condition C1.15, they shall not be required to pay any Early Termination Charges.”*

A11.86 Condition C1.18 says:

*“For the purposes of Condition C1.16, the remaining value of the Terminal Equipment refers to an amount calculated in accordance with the terms set out in the contract and which should reflect the value of the equipment, taking into account any depreciation in its value considering the length of time for which it was used, minus any payments already made towards the cost of the equipment.”*

A11.87 Condition C1.19 says:

*“Where a Relevant Customer exercises their right to terminate a Bundle which includes Terminal Equipment, or any elements thereof, pursuant to Condition C1.15, Regulated Providers shall take all necessary steps to ensure that any restriction on the use of that Terminal Equipment on the Electronic Communications Network of another Communications Provider (including but not limited to Handset Locking Restrictions) can be lifted, free of charge, on or before the day on which the contract(s) is(are) terminated pursuant to Condition C1.20.”*

A11.88 Condition C1.20 says:

*“Subject to Condition C7.7(a), where a Relevant Customer exercises the right to terminate a contract or contracts pursuant to Condition C1.15, unless the Relevant Customer expressly agrees otherwise, the contract(s) shall be terminated:*

- (a) on the day before the proposed modification comes into effect; or*
- (b) if it is not feasible for the contract to be terminated in accordance with Condition C1.20(a), and provided that the relevant modification is not applied to the Relevant Customer, as soon as reasonably possible after that date.”*

A11.89 This guidance is likely to be most relevant to modifications made to standard contracts for Consumers, Microenterprise or Small Enterprise Customers, and Not-For Profit Customers. Business customers on bespoke contracts may have specific arrangements in place regarding contractual modifications and termination rights, and where this is the case, this guidance may be less relevant.

## **Contractual modifications that would trigger the obligation to give a customer the right to exit**

A11.90 The right to exit in Condition C1.15 applies where a provider decides to make a modification to a customer’s contract, unless that modification is one or more of the following:

- a) exclusively to the customer’s benefit (for example, a speed upgrade),
- b) is purely administrative and has no negative effect on the customer (for example, a change in the address or bank details of the provider), or

c) is directly imposed by law (for example, a change in the rate of VAT).

A11.91 We recognise that providers will need to identify which customers need to be notified of a particular change to the contractual terms and conditions, as not all customers will necessarily be affected by every change. For example:

- a) Under the terms of a contract, a provider may enable customers to take ancillary services or facilities for which it levies an additional charge.<sup>16</sup> If the provider were to increase the charge for such ancillary services, for example paper billing, only customers who have opted to take that ancillary service would need to be notified of the change and offered the right to exit.
- b) However, in contrast, just because a customer has never been late paying their bill, providers cannot assume that they will never be late making payment in the future. Therefore, providers would need to notify all customers of an increase in their late payment charge.

A11.92 The above will also be subject to any contractual terms that set out specified variations to the prices charged, or services offered, during the contract period (see below at A11.102).

A11.93 In addition, where a customer chooses to take an additional service offered by a third party under separate terms and conditions that apply between the customer and the third party, the communications provider would not be expected to notify the customer of changes made by the third party to those additional services.

A11.94 This would include where a third party markets directory enquiries or other premium rate call services, for which it sets a service charge that does not form part of the contract between the provider and their customer. Where there is an increase in the service charge set by the third party, the communications provider would not need to offer the customer the right to exit the contract for the communications service.

A11.95 In contrast, where an access charge for calling a premium rate service is levied by a communications provider, and forms part of the communications provider's contract with its customer, an increase in the access charge would trigger the right to exit (unless the increase was in line with a price variation clause, see below at A10.29).

A11.96 Providers should be able to demonstrate that they have mechanisms and processes in place to comply with the requirements of this GC and ensure affected customers are notified when they make changes to those customers' contractual terms and conditions.

## **Contractual modifications and the right to exit bundles**

A11.97 Where a customer has the right to exit a bundle of services and/or terminal equipment (where applicable) as a result of a contractual modification falling under

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<sup>16</sup>See paragraphs A11.98-A11.101 for add-on services provided as part of a bundle, where those add-ons do not have a Commitment Period.

Conditions C1.14 and C1.15, they should have the choice to exit the whole bundle, retain the whole bundle or retain the elements that are not subject to the contractual modification (where those elements are offered by the provider separately to the service that is subject to the contractual modification), if they so wish.

### Optional add-on services

A11.98 Where a contractual modification is made to an optional add-on service, the right to exit does not apply to the rest of the bundle, as long as the optional add-on service is:

- a) not, in practice, part of the core service<sup>17</sup> provided by the communications provider; and
- b) offered on a short-term basis (i.e. a contract period of no more than 30 days including one which may be automatically renewed for further periods of time unless the customer gives notice to terminate) or is not subject to a commitment period (for example is offered with no minimum contract period and may be terminated on notice of no more than 30 days).

A11.99 Therefore, when contractual modifications are made to an optional add-on service provided without a commitment period, we expect providers to assess whether that service is genuinely an optional add-on to the customer's core service(s).

A11.100 For example, a provider may provide a customer with a landline bundle which has an 18 month commitment period for the line rental service and a call package on a 30 day rolling basis (this could vary from basic options covering calls to UK landline and mobile numbers to more expensive options which might include larger allowances or international calls). Faced with a price increase for the call package, the customer could move to a different call package on 30 days' notice, however, their provider might not be able to offer them a different call package that meets their needs. Once a customer has entered a commitment period for a line rental service, they are in effect tied to that provider for landline calls for the duration of the commitment period for the line rental contract. Therefore, in practice, the call package is part of the core service taken by the customer. If there was a change in the terms of the call package that was not exclusively to the benefit of the customer, and the customer wished to terminate that element of their bundle, the customer would not be able to switch to a landline call package from another provider unless they also take line rental with that other provider.

A11.101 In this example, if a contractual modification falling within the scope of Condition C1.14 is made to the call package, the customer should also be given the right to exit the line rental for which they are tied into a commitment period, as well as any other bundled services, in accordance with Condition C1.15.

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<sup>17</sup> For example, an add-on might be considered to be part of the core service if a customer is likely to consider it central to the service that is being provided and if a recurring charge for that add-on appears on the customer's bill each month.

## Variation clauses in contracts

A11.102 Where a provider's contract contains a price variation clause, which has the effect of binding a customer to pay different prices at different times during their commitment period, the requirements in Conditions C1.14 and C1.15 will not apply, provided that, at the time the customer signed the contract:

- a) those terms were sufficiently prominent and transparent; and
- b) the provider ensured the customer was fully informed about the different amounts they would have to pay at different times, such that the customer can be said to have agreed to those terms.

A11.103 Price variation clauses should only be used where there is reasonable justification on practical grounds, and where the two criteria set out in the paragraph above are met.

A11.104 Our guidance on Contract Information and Contract Summary provides examples of how information on Core Subscription Price could be set out in clear and useful terms for customers. We would however expect providers to adopt a clear and transparent approach in setting out all price variation terms as part of the Contract Information, regardless of whether the service and/or facility constitutes part of the Core Subscription Price and regardless of whether the price variation is linked to a particular price index.

A11.105 Similar considerations would also apply for non-price variation terms where there are aspects of the provision of a service that might vary in accordance with the contractual terms and conditions in a way that does not involve a modification of those contractual terms and conditions.

## Notification of contractual modifications and the right to exit

A11.106 Notifications of proposed contractual modifications and the customer's right to exit should be set out in a clear and comprehensible manner on a Durable Medium.<sup>18</sup>

A11.107 Notifications should make the customer aware of the nature of the contractual modification, the likely impact on the customer, and set out clearly that they have the right to exit the contract without incurring additional costs, such as early termination charges.

A11.108 We consider that it is particularly important for these notifications to be set out with due prominence and in a form that customers can reasonably be expected to read. Key information, such as the customer's right to exit, should be contained upfront and in the main body of the notification rather than via a link in the message. This is to ensure that the customer is made aware of such changes and also of their right to exit

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<sup>18</sup> This is defined in the GCs as "paper or email or any other medium that: (a) allows information to be addressed personally to the recipient; (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information; and (c) allows the unchanged reproduction of the information to be stored".

their contract to avoid those changes. Some examples of how providers could do this are below.

A11.109 Letters and emails (if that is the preferred means of communication chosen by the customer) are the most obvious examples of notifications:

- a) Hard copy notifications should be on the front page of the letter and clearly marked as such in a prominent manner e.g. on the front of the envelope/communication material/the customer's bill, and possibly in more than one place to attract the customer's attention.
- b) Providers should issue the modification notification on a separate piece of paper from any marketing material. This is to ensure that the notification does not get lost in other communications that the customer receives from the provider but may not necessarily read.
- c) Email notifications of contractual modifications should be contained in the main body of the email and clearly marked as such in the subject line of the email.
- d) We do not consider that asking customers to regularly check their provider's website for possible changes to their contract is acceptable.

A11.110 Notifications may also be sent by SMS (text message). We are aware of the need to keep SMS relatively simple and concise in the interest of effective messaging. If a provider wishes to send notifications by SMS, it should ensure that key pieces of information, such as the customer's right to exit, are effectively conveyed in the main body of the SMS rather than via a link in the message. Any notifications sent by SMS should also include a link to a copy of the full notification which is in a durable medium.

A11.111 The notification should set out any fees payable by the customer on termination in accordance with Conditions C1.16 to C1.18. This would include fees for using the service in the period before the contract is terminated and fees for any retained terminal equipment.

A11.112 Providers must allow customers to exercise their right to terminate the relevant contract(s) within one month of notification of the contractual modification – we expect providers to give customers at least **30 days'** notice in order to comply with this requirement. We would expect providers to make clear in the notification the deadline by which the customer is able to exercise their right to terminate, i.e. it should specify the date by when the customer can terminate without incurring an early termination charge. Providers may give their customers a period of more than 30 days in which to exercise their right to terminate their contract if they wish to do so.

A11.113 If a customer gives the provider notice that they wish to exercise their right to terminate, providers should, where possible, ensure the contract is terminated the day before the modification comes into effect, unless the customer agrees an alternative termination date with the provider.



A11.114 Where a provider has practical difficulties terminating a contract the day before the proposed modification takes effect because the customer exercises their right to cancel at the end of the notice period, the provider should terminate the contract as soon as reasonably possible after that date and ensure that, in the meantime, the modification is not applied to that customer. The customer should not be subject to the contractual modification in the period between notifying their provider that they wish to exit their contract and the date on which the provider terminates the contract.

## Further considerations

A11.115 The terms and conditions or other practices providers apply (whether in contracts for bundled services and/or terminal equipment or other contracts relating to that in respect of which a relevant contractual modification occurs) in respect of contract termination are also important considerations. Terms and/or practices which frustrate the practical effect of Conditions C1.14 and C1.15 are liable to attract suspicion of non-compliance with the relevant rules.<sup>19</sup>

A11.116 Neither Condition C1.15 itself nor this guidance requires that a customer must exercise their rights under that Condition by contacting their *existing* provider. One way the provider making contract modifications that are not exclusively to the benefit of the customer could meet its obligations in a relevant case is by telling the customer that they can exercise their termination rights by authorising their new provider to do this following a regulated switching process.

## Conditions C1.23 – C1.36 - End-of-Contract and Annual Best Tariff Notifications

A11.117 This part of the guidance outlines Ofcom's expectations as to what information should be included in the notifications sent to Consumers in compliance with Conditions C1.23-C1.36, and how those notifications should be sent. This guidance does not contain an exhaustive list of the information to be included in notifications for Consumers (this is set out in Conditions C1.24 and C1.33).

A11.118 This guidance only applies to notifications sent to Relevant Customers who are Consumers in accordance with Conditions C1.23 - C1.36.

## Conditions C1.24 and C1.33 – Content of End-of-Contract and Annual Best Tariff Notifications

### Details of services provided under the contract

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<sup>19</sup> In this regard, Condition C1.8 is also relevant.

A11.119 Conditions C1.24(b) and C1.33(c) require End-of-Contract and Annual Best Tariff Notifications, respectively, to include *“details of the services provided by the Regulated Provider to the Relevant Customer under that contract.”*

A11.120 In complying with these requirements, we expect the provider to give the Subscriber a comprehensive list of all services and Terminal Equipment which form part of the contract subject to the notification. This would include:

- a) all ancillary services currently provided under that contract; and
- b) any service supplied by a third party, if the provision of that service to the subscriber forms part of that contract.

A11.121 The full list of all services does not need to be listed in the notification itself, provided that:

- a) the Subscriber’s main services, and aspects of those services, are listed in the notification itself;
- b) the full list of all services is provided in a single location;
- c) that location is easily accessible to the Subscriber; and
- d) a reference to the location of that list is included in the notification.

A11.122 For example, mobile and broadband providers provide call, SMS and data services, with associated connection speeds and allowances. We consider these to be the main services which, combined with the associated aspects of those services, form the service package the Subscriber receives from their provider. They must be listed in the notification itself.

A11.123 The provider may also provide other services to the Subscriber as part of the contract, for example over-the-top content services for music and video streaming or cloud storage, but we would not consider these to be the Subscriber’s main services. These services can be listed in another location provided that the conditions above are met. The other location could be, for example, an annex to the notification. The annex should then be referenced in the main part of the notification. Alternatively, the provider could provide the full list of services in an online location and provide a link to that location in the notification.

A11.124 Where a provider is required to list Terminal Equipment, it should consider whether this forms part of the Subscriber’s main services under the contract. This may differ depending on the type of contract and the importance which Subscribers attach to the Terminal Equipment. For example, a mobile handset is likely to form part of the Subscriber’s main services and should be listed in the notification itself.

**Details of any changes to services provided under the contract because the Commitment Period is ending**

A11.125 Condition C1.24(j) requires an End-of-Contract Notification to include *“details of any changes to the services referred to in [Condition C1.24](b) that will come into effect because the Commitment Period for that contract is ending.”*

A11.126 In complying with this requirement, providers should apply the principles described above in paragraphs A11.120-A11.124 to set out the changes to the listed services that will come

into effect because the Commitment Period is ending. Any changes to the main services provided under the contract, and the associated aspects of those services, should be included in the notification itself. A full list of changes to the services provided under the contract may be listed elsewhere (subject to compliance with the requirements described above).

#### **Details of other contracts taken with the same provider and/or as part of a Bundle**

A11.127 Conditions C1.24(e) and C1.33(e) require End-of-Contract and Annual Best Tariff Notifications, respectively, to include “*details of other contracts for Public Electronic Communications Services between the Regulated Provider and the Relevant Customer.*”

A11.128 Conditions C1.24(f) and C1.33(f) require End-of-Contract and Annual Best Tariff Notifications, respectively, to include “*details of other contracts between the Regulated Provider and the Relevant Customer which form part of a Bundle with the contract for the Relevant Communications Service.*”

A11.129 We expect the “details of other contracts” to comprise a list of the following contracts:

- a) in relation to C1.24(e) and C1.33(e), linked contracts for Public Electronic Communications Services (i.e. linked to the contract subject to the notification); and
- b) in relation to C1.24(f) and C1.33(f), contracts that form part of a Bundle with the contract subject to the notification.

A11.130 By “linked contracts”, we mean two or more contracts which present a dependency such that:

- a) termination of a contract (the “primary contract”) triggers an impact on another contract (the “secondary contract”); and/or
- b) termination of a secondary contract triggers an impact on the primary contract.

A11.131 We consider the following types of dependencies to be relevant in this context:

- a) **Technical dependency** – where a customer would lose, or be impaired in using, an element of one contract when terminating the other contract.
- b) **Contractual dependency** – where there are links between the rights or obligations in the primary and secondary contracts.
- c) **Financial dependency** – where any prices, tariffs or charges for the provision of one contract are contingent on taking the other contract.

A11.132 This is not an exhaustive list and there may be other types of dependency that would fall within the definition of a “linked contract”.

#### **How to terminate that contract**

A11.133 Condition C1.24(g) requires an End-of-Contract Notification to include information on “*how the Relevant Customer may terminate that contract*”.

A11.134 In complying with this requirement, we expect providers to take account of our guidance in relation to Condition C1.8 on conditions and procedures for contract termination.<sup>20</sup>

### **Options available to the Relevant Customer**

A11.135 Condition C1.24(l) requires an End-of-Contract Notification to include “*details of the options available to the Relevant Customer at the end of the Commitment Period for that contract*”.

A11.136 Condition C1.33(h) requires an Annual Best Tariff Notification to include “*details of the options available to the Relevant Customer*”.

A11.137 We expect “*details of the options available*” in both contexts to include advice to Subscribers that they can:

- a) stay on their existing contract;
- b) switch to a new contract with the same provider (including but not limited to those referred to as part of the provider’s best tariffs);
- c) switch to a new contract with a different provider; and
- d) for Subscribers on handset and airtime mobile contracts that form part of a Bundle, switch to a SIM-only deal.

A11.138 The advice should also inform Subscribers that some providers may offer new customers better deals and that they may get a better deal if they purchase multiple services together from that or any other provider.

### **The Provider’s best tariffs**

A11.139 Conditions C1.24(m) and C1.33(i) require End-of-Contract and Annual Best Tariff Notifications, respectively, to include “*the Regulated Provider’s best tariffs*.”

A11.140 For Subscribers who are Consumers, we expect this to consist of the following tariffs, where applicable:

- a) a tariff, based on the services the Subscriber receives, that is the cheapest available to that Subscriber;
- b) a tariff, based on the services the Subscriber receives, that is the cheapest tariff available to any Subscriber (if not the same as in (a));
- c) unless the provider can demonstrate that it is not relevant to the Subscriber’s service(s), a tariff based on the Subscriber’s usage, that is the cheapest available to that Subscriber (if not the same as (a));
- d) where the Subscriber has mobile handset and airtime contracts that form part of a Bundle, the cheapest available SIM-only tariff based on the services the Subscriber currently receives; and

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<sup>20</sup> Paragraphs A11.42-A11.57 above.

e) where a provider chooses to include one, an upgrade tariff.

- A11.141 Where a tariff is based on the services the Subscriber receives, providers should give a tariff consisting of a package of services that, in relation to the Subscriber's main services and the associated aspects of those services,<sup>21</sup> are most similar to the services the Subscriber currently receives.
- A11.142 Where a tariff is based on the Subscriber's usage, providers should give a tariff consisting of a package of services that takes into account the Subscriber's likely usage of their main services and the associated aspects of those services.
- A11.143 The cheapest available tariff means that at the lowest cost published by that provider and generally available to the public, for example on its website or in its stores. However, the provider may choose instead to present an alternative tariff to the Subscriber as the cheapest available, provided that it is lower cost than the cheapest generally available tariff.
- A11.144 Tariffs presented as available to a Subscriber must be available to them as of the date of the notification. In relation to End-of-Contract Notifications, they should remain available at least until the end of the Subscriber's Commitment Period. In relation to Annual Best Tariff Notifications, they should remain available for at least 30 days from the date of the notification.
- A11.145 Providers should state clearly if a Subscriber is not eligible for a tariff, explain why they are not eligible and why the tariff is being shown to them.
- A11.146 If providers choose to include an upgrade tariff, it should be one which, with reasonable objective justification, they consider to represent a Subscriber's best tariff.
- A11.147 If multiple Public Electronic Communications Services are provided under the contract subject to the notification (e.g. a dual or triple play contract), the provider should consider all of those services when determining its best tariffs in accordance with paragraph A11.140.
- A11.148 Where:
- a) the provider provides multiple Public Electronic Communications Services to the Subscriber, but some are provided under the contract subject to the notification and some under other linked contract(s)<sup>22</sup>; or
  - b) the contract subject to the notification forms part of a Bundle with another contract(s),

the provider should consider the services / Terminal Equipment provided or sold under all of the contracts when determining its best tariffs in accordance with paragraph A11.140 in the following circumstances:

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<sup>21</sup> We discuss at paragraphs A11.122-A11.124 what we mean by a Subscriber's main services, and the associated aspects of those services.

<sup>22</sup> See paragraphs A11.130-A11.131 for an explanation of this term.

- a) in an End-of-Contract Notification, if either:
  - i) the 31-day window<sup>23</sup> for the contract subject to the notification overlaps with the 31-day window for the other contract(s); or
  - ii) the other contract(s) is (are) not subject to a Commitment Period when the notification is sent,
- b) in an Annual Best Tariff Notification, if the other contract(s) is (are) not subject to a Commitment Period when the notification is sent.

## Conditions C1.27 and C1.28 – how to send End-of-Contract Notifications

### Timing

A11.149 Condition C1.27 requires providers to send End-of-Contract Notifications in “*a timely manner, before the end of the Relevant Customer’s Commitment Period.*”

A11.150 In complying with this requirement in relation to Subscribers who are Consumers, we expect providers to send notifications between 10 and 40 days before the end of the Commitment Period (we refer to this time period elsewhere in this guidance as the “31-day window”).<sup>24</sup>

A11.151 Where a Consumer is approaching the end of the Commitment Period of more than one contract, we expect providers to aggregate the End-of-Contract Notifications into a single message if:

- a) the contracts subject to the notifications are linked contracts;<sup>25</sup> and
- b) the 31-day windows for those contracts overlap.<sup>26</sup>

A11.152 The aggregated notification should then be sent within the earlier of the 31-day windows.

### Prominence

A11.153 Condition C1.28 requires providers to send End-of-Contract Notifications in “*a prominent manner.*”

A11.154 In complying with this requirement in relation to Subscribers who are Consumers, we expect providers to provide information in an End-of-Contract Notification with the following given first:

- a) the date on which the Commitment Period for that contract will end;

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<sup>23</sup> See paragraph A11.150 for an explanation of this term.

<sup>24</sup> This is subject to an exception in relation to aggregated notifications, as set out in paragraph A11.152.

<sup>25</sup> See paragraphs A11.130-A11.131 for an explanation of this term.

<sup>26</sup> Providers may also choose to aggregate notifications (including aggregating an End-of-Contract and Annual Best Tariff Notification) in other circumstances, subject to compliance with the General Conditions and the remainder of this guidance.

- b) the current monthly subscription price paid by the subscriber and the monthly subscription price that will come into effect once the Commitment Period ends.

A11.155 The provider's best tariffs should come at the end of the notification and should be given equal prominence to one another.

A11.156 Where an End-of-Contract Notification is sent via an SMS, we expect the following information to appear in the SMS message:

- a) the date on which the Commitment Period for that contract will end;
- b) the monthly subscription price currently paid by the Subscriber;
- c) the monthly subscription price that will come into effect once the Commitment Period ends;
- d) details of the options available at the end of the Commitment Period; and
- e) a message that further information is available, including tariffs that the provider is required to tell the Subscriber about, and an indication of where that information is available.

A11.157 The remaining information required by Condition C1.24 should be made available to the Subscriber in a single location, which is referred to in paragraph A11.156e).

A11.158 Condition C1.28 also requires that “[i]f the Relevant Customer is a Consumer, the End-of-Contract Notification must also be separate and distinct from any other communication”. This does not prevent a provider from aggregating notifications in line with this guidance.

## **Condition C1.34 and C1.35 – how to send Annual Best Tariff Notifications**

### **Timing**

A11.159 Condition C1.34 requires providers to send an Annual Best Tariff Notification to a Subscriber who is a Consumer “at least once in every 12-month period”.

A11.160 We expect providers to comply with this requirement as follows:

- a) For contracts that were already in force at 15 February 2020 (i.e. the date of entry into force of Condition C1.34), the first Annual Best Tariff Notification should be sent within 12 months of that date. An exception to this is where the contract was subject to a Commitment Period on 15 February 2020. The Subscriber will in this case receive an End-of-Contract Notification prior to the end of their Commitment Period. The first Annual Best Tariff Notification should then be sent within 12 months following the date on which the End-of-Contract Notification was sent.
- b) For contracts entered into after 15 February 2020, the first Annual Best Tariff Notification must be sent within 12 months of the date on which the provider has sent an End-of-Contract Notification in relation to that contract.

- c) Second and subsequent Annual Best Tariff Notifications should then be sent within 12 months of the previous one.
- d) If a Subscriber has two or more contracts that are not subject to a Commitment Period and those contracts are linked contracts<sup>27</sup>, the provider should aggregate the Annual Best Tariff Notifications for those contracts into a single communication (we would still expect the provider in these circumstances to observe the guidance at a) to c) above).<sup>28</sup>

## Prominence

A11.161 Condition C1.35 requires providers to send Annual Best Tariff Notifications to Subscribers who are Consumers in *“a prominent manner.”*

A11.162 In complying with this requirement, we expect providers to provide information in the Annual Best Tariff Notifications with the following given first:

- a) the message that the contract is not subject to a Commitment Period; and
- b) the current monthly subscription price under that contract.

A11.163 The provider’s best tariffs should come at the end of the notification and should be given equal prominence to one another.

A11.164 Where an annual best tariff notification is sent via an SMS, we expect the following information to appear in the SMS message:

- a) a message that the Commitment Period for that contract has ended;
- b) the current monthly subscription price paid by the Subscriber under that contract;
- c) details of the options available to the Subscriber;
- d) a message that further information is available, including tariffs that the provider is required to tell the Subscriber about, and an indication of where that information is available.

A11.165 The remaining information required by Condition C1.33 should be made available to the Subscriber in a single location, which is referred to in paragraph A11.164d).

A11.166 Condition C1.35 also requires providers to send Annual Best Tariff Notifications to Subscribers who are Consumers via a Durable Medium *“that is separate and distinct from any other communication”*. This does not prevent providers from aggregating notifications in line with this guidance.

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<sup>27</sup> See paragraphs A11.130-A11.131 for an explanation of this term.

<sup>28</sup> Providers may also choose to aggregate notifications (including aggregating an End-of-Contract and Annual Best Tariff Notifications) in other circumstances, subject to compliance with the General Conditions and the remainder of this guidance.