

Ofcom's consultation on switching

Ombudsman Services Consultation
response to Ofcom on switching

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Response of Ombudsman Service Ltd (Ombudsman Services)

Summary

The Ombudsman Service Ltd is a company limited by guarantee (not-for-profit) that provides ombudsman services for the energy, telecommunications and property sectors, by appointment or approval from the relevant regulators. We provide dispute resolution and redress to domestic consumers and micro-businesses.

Ombudsman Services: Communications (“OS:C”) welcomes the opportunity to comment on Ofcom’s consultation on consumer switching. Over the past few years there have been a number of technological developments in the provision of telecommunications services which have enabled service providers to make a wider range of services available to a larger number of consumers. The different means of service delivery have led to a situation where consumers, who may have no particular interest in how their service is provided, have become increasingly dependent on a range of switching mechanisms to ensure that when they do decide to switch, or move house, the switch can be made smoothly and without avoidable loss of service.

1. Ombudsman Services’ competence

1. 1 The Ombudsman Service Ltd is a company limited by guarantee (not-for-profit) that provides ombudsman services for the energy, telecommunications and property sectors, by appointment or approval from the relevant regulators. We provide dispute resolution and redress to domestic consumers and micro-businesses.

1.2 Established in 2002, Ombudsman Services now has over 8,500 participating companies and last year sent out over 20,300 complaint forms. The company employs over 170 people and has a turnover in the region of £6.4 million.

1.3 Ombudsman Services is appointed by Ofcom and Ofgem to be the redress scheme for the communications and energy sectors respectively. In the energy sector we have recently taken on the responsibility for complaints about feed-in tariffs, in addition to our existing role providing the alternative dispute resolution scheme for both energy suppliers and networks. The redress service we provide in property developed from appointment by the Royal Institution of Chartered Surveyors, followed by approval from the UK Office of Fair Trading to provide alternative dispute resolution services for estate agents.

1.4 The most recent sector we provide alternative dispute resolution for is copyright licensing. With our sustainable funding model, independence and considerable experience we have the capacity to undertake further work.

1.5 To help 'level the playing field' between consumers and companies, we have a contact centre which provides information and helps those who have difficulty in making a complaint. Ombudsman Services achieves proportionality by providing alternative dispute resolution through different processes, from informal resolution and telephone negotiation to in-depth investigation. Ombudsman Services decisions are enforceable through the courts.

1.6 Ombudsman Services complaints resolution service is free to consumers and paid for by the participating companies under our jurisdiction by a combination of subscription and case fee. While Ombudsman Services discusses our annual budget and business plan with the sector participants, the participating companies do not and should not exercise financial control over the company. Ombudsman Services' governance ensures that we are entirely independent from the companies that fall under our jurisdiction. The more complaints there are about a company, the more the company pays, thus ensuring an incentive for the company to improve their customer service.

2. Ombudsman Services' response

2.1 Ombudsman Services: Communications ("OS:C") welcomes the opportunity to comment on Ofcom's consultation on consumer switching. Over the past few years there have been a number of technological developments in the provision of telecommunications services which have enabled service providers to make a wider range of services available to a larger number of consumers. The different means of service delivery have led to a situation where consumers, who may have no particular interest in how their service is provided, have become increasingly dependent on a range of switching mechanisms to ensure that when they do decide to switch, or move house, the switch can be made smoothly and without avoidable loss of service.

2.2 We have received, and continue to receive, a significant number of complaints about things that have gone wrong during the switching process, or about switches or service losses where the consumer had no intention of switching. The consequences either of a switch which has not gone smoothly, or a switch which was not wanted or requested, can be significant, especially for small businesses. In some cases, the number is lost and can on rare occasions not be recovered. The growing dependence on broadband and the Internet, both for consumers and small businesses, increasingly means that where a service is lost, if only for a short period of time, the consequences can be serious and, on occasion, disastrous.

2.3 When consumers bring their complaints to us, the technological complexities, and the lack of clear information about how the switch or loss of service occurred, can make it extremely difficult to diagnose what went wrong and reach an appropriate resolution. In some cases it is not clear which provider should have taken responsibility for sorting out the difficulties, and on some occasions we see complaints where both service providers insist that the responsibility for resolving the problem lies with the other.

2.4 Understandably, Ofcom does not conclude that its proposals, if adopted, will be likely to make switching problems a thing of the past. On the basis of our experience it is unlikely that such problems can be eradicated, but our view is that the proposals would effectively tackle a number of the main issues which lead to switching problems.

Question 1: Do providers support (i) each of the different order type processes (ii) Linked Orders (iii) Parallel Orders processes? Where providers do not support each of these individual processes, please explain why you think this is the case? Please provide evidence to support your view.

OS:C has no comment to make in response to Question 1.

Question 2: Are gaining providers currently able to correctly advise consumers at the point of sale on the correct switching process to follow (e.g. do agents have access to and the ability to use Dialogue Services and have access to information on which technology will be used to supply the service to the customer)? Please provide any evidence you have to support your views.

OS:C receives complaints from customers who have moved their service to a new CP which, on investigation, show that the GP has incorrectly advised them on the switching process. The numbers of complaints are low, but they do indicate a lack of understanding by some GPs (and indeed some LPs) about the switching process. A typical example is a customer who asks for a MAC and gives it to a GP to provide an LLU service, but the GP does not explain that the MAC is not necessary and that the LP service may not be ceased automatically. It may be several months or more before the customer notices that they are still being charged for the LP service even though they are not using it.

It would not be reasonable to expect customers to understand the MAC process, and where and when it is needed, but it is reasonable to expect CPs to know. In our experience, even though the numbers of complaints are low, it is evidence that both LPs and GPs do not always correctly advise customers about the switching process. When we do receive complaints it is often difficult to know whether we should accept a complaint against the LP or the GP because the customer's evidence is insufficient to enable us to conclude with any degree of certainty where the problem may be.

Question 3: Do you agree it will become more difficult for Gaining Providers to advise consumers at the point of sale on the correct switching process to follow as new technologies or new combinations of existing technologies are rolled out? Please provide any evidence you have to support your views.

Given that in some situations LPs and GPs do not (or are not able to) provide correct advice it seems to us that it is inevitable that it will become more difficult for GPs to advise customers of the correct switching process. We envisage that the increasing number of means of providing a service, and in particular the take-up of superfast

broadband (for example via FTTC), will be likely to lead to an increasing number of migration options and a growing incidence of problems during or following migration.

Question 4: Do you agree there is lack of competitive neutrality from having multiple processes? Please provide any evidence you have to support your views. OS:C has no comment to make in response to Question 1.

OS:C has no comment to make in response to Question 4.

Question 5: Do you agree with our assessment of Problem 1: Multiple switching processes? If not, please explain why you disagree.

OS:C has no comments to make on the issues of whether unnecessary costs are incurred, and whether there is a lack of competitive neutrality. On all of the other points our view, based on our caseload, is that over the past few years the growing number of service options and resultant increased complexity of migration, coupled with the increased volume of migration, has led to a growth in the number of complaints about problems arising from service switching.

Question 6: Do you agree that the current switching processes are likely to become less reliable in the future? Please explain your answer and provide any evidence you have to support your views.

There is no intrinsic reason why the current switching processes could not be adapted to cope with a growing number of means of service delivery. However, the reliable implementation of the current processes is heavily dependent on the availability of clear information, both to CPs and their customers, which in turn places stringent demands on IT systems, as well as the level of knowledge and training of the CPs' advisors. The scope for errors, whether for example through lack of available information, or advisors not fully understanding the processes, is likely to increase.

We see only a very small proportion of the complaints made to CPs, but our view is that over the past few years the current switching processes have been less able to cope with the increasing range of service delivery options as well as the increasing number of migrations, and we do not see this trend being likely to be reversed.

Question 7: Do you agree with our assessment of Problem 2: Back end system deficiencies? If not, please state why you disagree.

In the consultation document Ofcom has commented on the number of switching processes, and issues arising from this such as breaks in service and the fact that

consumers sometimes end up paying for two services for a period of time. It has also commented on the fact that not all MPF providers support the relevant MPF migrate order type.

While the number of complaints we get about such matters is not particularly high, we do get a fairly significant number of complaints where the problems are compounded by the difficulty of moving to a new provider.

Where problems do occur in migration (whether intended or otherwise, such as in slamming) the multiplicity and complexity of switching processes frequently leads to a situation where a service or a number cannot be retrieved, or where a service cannot be reinstated immediately. In most cases the consequences are not serious, and can be remedied without significant loss to the customer, but the growing dependence on broadband services, in particular for small businesses, does mean that where problems do occur the consequences can be serious.

Question 8: Do you have evidence to suggest that the incidence of slamming has changed significantly? Please provide any evidence you have to support your views.

As we have already stated, the proportion of complaints made to CPs which eventually reach us is small. We see relatively few complaints where it is obvious that a slam has occurred, and the numbers we do see are too low for us to be able to reach any statistically supportable conclusions about trends.

Question 9: Is there further action you think could be taken to help tackle slamming (e.g. preventative measures to stop it from occurring or enforcement activities after it has happened to act as a deterrent) under the existing processes? Please explain your answer.

The number of complaints that we see is too few for us to reach any conclusions about the level of harm from slamming, or what measures would be likely to reduce its incidence. Our view is that this is in any case a matter best dealt with by Ofcom and the CPs.

Question 10: Do you think it would be more appropriate to introduce stronger upfront consumer protections within the switching process or continue with the current reliance on enforcement to tackle slamming? Please explain your answer.

Whether to introduce stronger upfront protections will depend on the costs and likely effectiveness of any such protections, as well as the benefits arising from a reduced incidence of slamming. Our view is that this is a regulatory matter.

Question 11: Do you agree with our assessment of Problem 3: Insufficient customer consent? If not, please explain why you disagree.

We have nothing to add to our response to Question 11.

Question 12: Do you agree with our assessment of Problem 4: Lack of awareness of the implications of switching? If not, please explain why you disagree.

One of the most common problems that we see when consumers switch services is that they are charged ETCs when they did not expect them to be charged, or that the ETC is higher than they expected. Although it applies more to small businesses, we also see cases where the customer has said that the GP told them that it would pay the ETC, but doesn't include it in the contract and doesn't honour what the customers says is its commitment. However, this is a matter which cannot reasonably be dealt with via the switching process.

Question 13: Do you agree with our assessment of Problem 5 Unnecessary switching costs/hassle? If not, please explain why.

Insofar as it relates to the outcomes where customers aims are achieved, the level of difficulty in switching is principally a matter for the regulator and the industry, because it may have an effect on competition and pricing. We do see abuse of the Cancel Other process, and while the number of complaints we get is fairly low, they are often made by small businesses about smaller CPs, and the detriment is often very high.

Question 14: Are there any other key problems with the existing Notification of Transfer and Migration Authorisation Code processes that we have not identified? Please provide evidence to support your answer.

Another implication of switching, to which Ofcom has not referred, but in our experience sometimes leads to significant consumer detriment, is the loss of a Carrier Pre-Selection ("CPS") service when switching a service or moving house. There is an document called the "Industry End to End Process Description"

(http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/pre/cps_e2e_process.pdf) which describes the correct processes to be used by each of the parties.

In our experience the process is sometimes little understood, and a failure to follow the correct process, or to inform customer of what to do about any CPS service when switching, can lead to significant consumer detriment. The most serious examples we have seen are where a customer switches, believing or understanding that the CPS service will be transferred to their new service but is not. If the customer is billed quarterly it can be three months before they realise that they are no longer getting the calls package they thought they were on. We have seen cases where customers have incurred bills of several hundred pounds, but which would have been significantly less on their CPS package. Our view is that Ofcom's review of switching should at least consider whether the continuity of CPS services is an issue which should be included in a discussion about the implications of switching.

Question 15: Do you agree with our assessment that a prohibition on reactive save activity under the LPL process would be difficult to enforce effectively? Can you suggest how enforcement of a prohibition on reactive save may be made effective?

OS:C has no comment to make in response to Question 15.

Question 16: Are there other enhancements that you think should be included in the Enhanced NoT specification to help protect consumers both now and in the future? Please explain your answer and provide any supporting evidence.

OS:C has no comment to make in response to Question 16.

Question 17: Do you think strengthening record keeping obligations for consent validation would increase protection against slamming? Would this be adequate to safeguard consumers now and in the future? Please explain your answer and provide any supporting evidence.

We see very few cases which are clear examples of slamming. In many of the complaints that we see where a service has been lost or transferred against the customer's wishes it has been as a result of an error, where it is unlikely that record-keeping obligations would have been of much assistance in deciding where responsibility lay. One of the most difficult problems that we face in resolving disputes where a service has been switched or lost is the lack of evidence, and we often have to reach a decision on the basis of the balance of probabilities.

On the general point of the question, if the Third Party Verification (“TPV”) process were to be adopted, the problems of slamming would be likely to be largely reduced.

Question 18: Do you think that the introduction a requirement to include specific information about early termination charges (ETC) and/or minimum contract periods (MCPs) in bills should form part of the enhancements to the current NoT process? What are the likely costs and benefits of such an approach? Please provide any evidence to support your answer.

In our view most customers are aware of whether they are still in a minimum contract period (“MCP”). Fewer, however, are aware of the level of any ETC they may have to pay if they leave. In our experience those customers who are potentially liable for the highest ETCs are small businesses, mainly because the MCPs are in many cases much longer than for the typical residential ETC.

Question 19: Do you agree that Cancel Other call recording obligations should not form part of the Enhanced NoT model? What are the likely costs and benefits of introducing Cancel Other call recordings? Please provide any evidence to support your answer(s).

We see little evidence of the use of Cancel Other, and have no comment to make on this issue.

Question 20: How can Ofcom best address competition concerns relating to reactive save activity through enhancements to the MAC process? What are the likely costs and benefits of such an approach? Please provide any evidence to support your answer.

OS:C has no comment to make in response to Question 20.

Question 21: Are there any particular issues that you think would need to be considered in establishing the hub and database under any of the GPL options (e.g. general practicability setting up and/or ongoing operation)? Please explain your answer.

OS:C has no comment to make in response to Question 21.

Question 22: Do you agree that the GP staying on the TPV call should not be a mandated part of the TPV model? Do you think there are significant benefits from the GP closing the call with the customer after the TPV conversation? Please explain your answer(s) and provide any supporting evidence.

OS:C has no comment to make in response to Question 22.

Question 23: Are there any particular data protection and/or privacy related issues that you think would need to be considered under the GPL TxC and/or the GPL TPV options? Are these issues likely to be significantly different to the issues that need to be considered under the current processes? Please explain your answer.

OS:C has no comment to make in response to Question 23.

Question 24: Are there circumstances in which you can envisage that consumers would be likely to be distressed and/or harmed by the sharing of their personal data as required under the GPL TxC and/or the GPL TPV options? Do you think that consumers will object to the sharing of their data in this way? Please explain your answer.

We cannot envisage any circumstances in which consumers would actually be harmed by the sharing of personal data as long as the appropriate protections are put in place. There may be a perception by consumers that there would be problems associated with the sharing of personal data, but it ought to be possible to alleviate it by providing appropriate explanations. It is possible that any such perceptions may lead to reduced switching, but this is not an issue on which we have any comments to make.

Question 25: Are there any particular issues that you think would need to be considered in terms of the practicalities involved in setting up the TPV body and its ongoing operation under the GPL option? Please explain your answer.

The main benefit of a TPV system would be to avoid slams and erroneous transfers, but in order to be successful and not to restrict the level of switching it must be trusted by consumers and service providers. If it is successful then it is likely to have served its purpose largely by ensuring that switches occur only when they are specifically requested by consumers. However, if and when problems do occur it may be necessary for the TPV body to release information to a dispute resolution service. Should Ofcom decide to adopt the TPV process we would be happy to co-operate in considering such matters.

Question 26: Are there any particular issues that you think would need to be considered in terms of the practicalities involved in setting up the Transfer Code Issuing Authority and its ongoing operation under the Losing Provider Led options? Please explain your answer.

The points we raised in our response to Question 25 would equally apply for a Transfer Code Issuing Authority.

Question 27: Do you agree with the proposed specifications for each of the options? If not, please specify what changes you consider should be made to the specifications and the basis for this.

OS:C has no comment to make in response to Question 27.

Question 28: Are you able to provide an estimate of the time it would take to make the necessary changes to your systems and processes to implement each of the options? Please explain your answer.

OS:C has no comment to make in response to Question 28.

Question 29: How could the switching process options be used (or amended) to support the WLTO process to deal with the problem of ETs in the context of a homemove? Please explain your answer.

OS:C has no comment to make in response to Question 29.

Question 30: Do you agree with our assessment of the options regarding multiple switching processes? If not, please explain why you disagree.

The extent to which each option would deal with the issues of competitive neutrality and the costs of running multiple switching processes are important ones, but are not matter on which it would be appropriate for OS:C to comment. On the issues of reducing consumer and provider confusion, we concur with Ofcom's assessment of the options.

Question 31: Do you agree that the Options 2b (GPL TxC) and 2d (TPV) are likely in practice to deal effectively with homemove ETs? Can you foresee any problems with adopting this process for homemoves? Please explain your answer.

OS:C has no comment to make in response to Question 31.

Question 32: Do you agree that the Option 2c USN and Options 3a-b LPL TxC and LPL ALT are unable in practice to deal with homemove ETs? If not, please explain how these options could be used to deal with homemove ETs?

OS:C has no comment to make in response to Question 32.

Question 33: Do you agree with our assessment of the options regarding back end processes? If not, please explain why you disagree. Question 34: Do you agree with our assessment of the options regarding consumer consent? If not, please explain why you disagree.

OS:C has no comment to make in response to Question 33.

Question 34: Do you agree with our assessment of the options regarding consumer consent? If not, please explain why you disagree.

We are in broad agreement with Ofcom's assessment.

Question 35: Do you agree with our assessment of the options regarding the implications of switching? If not, please explain why you disagree.

We are in broad agreement with Ofcom's assessment. A common problem in the complaints brought to us is the lack of information about the implications of switching. Our view is that whatever option is adopted should ensure that consumers are either provided with clear information about the implications of switching, in an acceptable form (whether hard copy or via email), or are clearly informed about where the information can be obtained.

Question 36: Do you agree with our assessment of the options regarding unnecessary switching costs/hassle? If not, please explain why you disagree.

OS:C has no comment to make in response to Question 36.

Question 37: Do you agree with our assessment of the options regarding reactive save activity? If not, please explain why you disagree.

OS:C has no comment to make in response to Question 37.

Question 38: Do you agree that we should discard options 1a (status quo), 1b (enhanced NoT and MAC unharmonised) and 2a (enhanced NoT harmonised) on the basis that they fail to adequately address the current and anticipated future problems? If not, please provide your reasoning.

On the evidence that Ofcom have provided OS:C agree that options 1a, 1b and 2a should be discarded as they would not be able to achieve the desired outcomes. We would prefer to have a system that is simple and easily understood by consumers and with a code of practice that can be used when considering complaints.

Question 39: Do you think that the payment of a TPV fee for each sale is likely to be a significant barrier to entry for smaller CPs? Please provide any supporting evidence.

OS:C has no comment to make in response to Question 39.

Question 40: We welcome stakeholder views on whether the additional cost of the TPV option over the GPL TxC option is justified due to the superior protection against slamming?

OS:C has no comment to make in response to Question 40.

Question 41: Do you agree with our assessment that the TPV option should be preferred to the USN option. If not, please provide your reasoning.

We have no comments about the financial benefits of each option. As a means of providing a more reliable and dependable switching process, which is less open to abuse, and in which consumers can have confidence, we concur with Ofcom's view that TPV is preferable to USN.

Question 42: Do you agree with our assessment that the TPV option is pro-competitive relative to the LPL TxC option? If not, please explain why you disagree.

OS:C has no comment to make in response to Question 42.

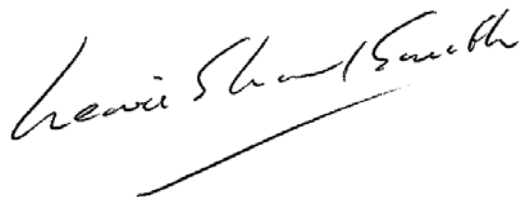
Question 43: Do you agree that the TPV is the most proportionate way to deal with the problems identified? If not, please provide your reasoning.

OS:C has no comment to make in response to Question 43.

Question 44: Do you have any other comments on our option assessment?

No.

2.5 Ombudsman Services has considerable experience in the field of dispute resolution. We would be happy to provide clarification on any point in this evidence or if there is any other way we can help, please contact me.



Lewis Shand Smith
Chief Ombudsman
8 May 2012