



Ofcom's Review of the General Conditions of Entitlement

Response from Mobile UK

1. Mobile UK welcomes the opportunity to respond to Ofcom's consultation on the General Conditions of Entitlement (GC). We strongly support Ofcom's objective of making the rules simpler and easier to comply with; in the body of our response we are making some proposals that we believe will lead to the GCs being more successful in meeting this objective.
2. Mobile UK's starting point is that the mobile market in the UK has a long history of delivering continuous improvement, through risk taking, innovation and investment, driven by competition in the market. For the ten years or so that Ofcom have been monitoring levels of satisfaction, the sector has consistently achieved around 90%.
3. This is remarkably high, taking account of how hard the sector has had to work to maintain this, as mobile operators have invested more in coverage, in spectrum, in networks, upgrading technologies, with 4G delivering download speeds approximately 1,000 faster than was available on 2G. It is clear that operators will continue to invest in their quality of service. Competitive forces demand it.
4. Mobile UK notes Ofcom's use of bold in the title of the document, as in 'making communications work **for everyone**'. 'Mobile' coming into the market has resulted in an enormous extension of the accessibility of communications across the whole spectrum of society (the arrival of pre-paid tariffs in 1997 was a 'great leap forward, for example) and the advent of the smartphone in 2007, combined with 3G/4G/wi-fi has resulted in many many more people having access to the Internet than would otherwise be the case. Apps have also made it much easier for people, including those with disabilities, to interact with on-line services. The enormous growth in mobile data traffic is further testament to mobile communications 'working for everyone'.
5. The mobile sector has always operated on the basis of competition, which means that the market players should be given the maximum practical to scope to differentiate their service offering, whether that is on the basis of:
 - Coverage & capacity
 - Technology (3G, 4G etc)
 - Value added services (such as voice over wi-fi and wi-fi offload)
 - Content bundles
 - Roaming territories
 - Handset specifications

- Brand (recognition and trust)
 - Customer service and experience
6. The mobile operator – not the regulator or any other party - is best placed to decide where to invest its scarce capital resources to achieve the best possible outcome for its target customer base. This process also underpins the most efficient allocation of capital across the sector as a whole.
 7. Consumers’ rights are protected by general consumer law and so the regulator must operate with a heavy bias against intervention with its use of the sector specific General Conditions, so as to minimise the risk of homogenising the market and distorting the process of scarce capital allocation.

Responses on specific measures

- a) **Measures to meet the needs of vulnerable consumers and end-users with disabilities**
- b) **Calling Line Identification Facilities**

Measures to meet the needs of vulnerable consumers and end-users with disabilities

***Question 14:** Do you agree with our proposals to introduce a new requirement for communications providers to take account of, and have procedures to meet, the needs of consumers whose circumstances may make them vulnerable?*

8. The mobile operators already do a significant amount to address vulnerability in all its many forms and are very willing to continue engaging constructively with Ofcom regarding any concerns it has. The issues of end-users with disabilities who require specific services and consumers with vulnerability (which Ofcom has essentially defined as all consumers – for example, we all suffer family bereavement at some point in our lives) should not be conflated.
9. Proportionate, targeted measures to address the specific needs of consumers with disabilities, not provided by the market or general anti-discrimination laws – e.g. text relay for deaf customers, braille bills for blind customers or summarised contracts for customers with learning impairments – should be dealt with under General Condition 15.
10. Other measures to tackle vulnerability, which is a very broad and potentially complex subject should NOT be part of the General Condition regime. This is partly because Ofcom’s proposals fail their own test of being ‘simple to comply with’ (how, for example, is possible to comply with the requirement to describe simply, and bring into effect, the ‘reasonable steps that will be taken to identify consumers who may be vulnerable’?) and being proportionate – Ofcom has undertaken no impact assessment and so is not in a position to judge proportionality.
11. But it is mostly because such a complex topic is not suitable for top-down ‘command and control’ from Ofcom. The mobile operators already do a significant amount to address vulnerability in its many forms, and are willing to continue engaging constructively with Ofcom to address any systemic problems for which they have evidence.

12. If compliance with the requirement on vulnerability were to be a matter of just describing what each has currently in place, a 3-6 month compliance period would be reasonable. If Ofcom expects changes to IT systems and customer handling processes, it demonstrates a very worrying lack of understanding of the cost, time and energy that would have to be expended to effect change and to make change effective.
13. Mobile operators have to work with strict PROCESSES – otherwise new vulnerabilities are created, such as fraud and ID theft. Ofcom’s work on Nuisance Calls will inform them about the ever present threat from those that seek to prey on consumers. Processes can only be flexed so much before they are no longer processes. Many changes in processes, including some of the ones in Ofcom’s proposals on vulnerable consumers, are time consuming and complex to implement.
14. Mobile UK suggests that this element is removed from the GC15 to allow more evidence gathering, dialogue with industry and assessment of proportionality to take place.

Question 15: *Do you agree with our proposals to update regulation by extending the current protections for end-users with disabilities, which currently apply only in relation to telephony services, to cover all public electronic communications services?*

15. As a general principle and taking account of the increasing importance of data use to customers, it is reasonable to include data within GC15.
16. On a point of detail, this adjustment should not imply an extension of a CSP’s responsibility to fund text relay to video relay provided over an IP connection.

Question 16: *Are there any other modifications to the proposed revised condition on measures to meet the needs of vulnerable consumers and end-users with disabilities that you consider would be appropriate?*

17. GC15 should address the needs of end users with disabilities and not cover the much wider (as defined by Ofcom) point for customers with vulnerabilities.

Calling Line Identification Facilities

Question 17: *Do you agree with our proposal to remove the condition relating to the provision of tone dialling?*

18. Yes

Question 18: *Do you agree with the changes we are proposing to make in relation to the provision of calling line identification facilities, including the new requirements we are proposing to add? Please give reasons for your views.*

19. There is consensus among the communications industry, consumers, Government and regulators that unsolicited marketing and other unwanted calls are a nuisance, which cause distress, and occasionally financial loss, to recipients.
20. As such, Mobile UK and its members work co-operatively with several partners to combat this problem. The network operators both individually and collectively have already devoted considerable resources to combatting the issue of nuisance calls.

21. For example, mobile network operators have an MOU in place with the Information Commissioner to share intelligence about unsolicited SPAM text and calls be reported to the SPAM reporting service, via the 7726 short code. Such intelligence sharing has aided successful prosecutions by the ICO.
22. Likewise, the mobile operators are willing participants in Ofcom's nuisance calls working group and have an MoU in place with Ofcom which establishes a framework for co-operation between them. This includes intelligence sharing and information gathering to combat the nuisance calls problem. Under this MoU a roadmap has been established which sets out how and when various short and long term technical measures will be feasible and implemented by operators, on a voluntary basis, working in collaboration with existing forums/working groups.
23. Given that operators have this roadmap agreed with Ofcom and that various activities are underway within individual organisations, it is premature to include within General Conditions a requirement on Regulated Providers to block invalid and non-diallable calls, where technically feasible. There first needs to be industry consensus on what is (and will be) technically feasible. We believe the best way of achieving this is via a collaborative approach to re-drafting the CLI Guidelines. We are very concerned that the imposition of call blocking measures through a GC regime could be premature, expensive to implement in the near term and too simple to evade (see below).
24. There are a number of reasons for this:
 - a) Detecting with accuracy and reliability invalid or non-diallable calls is not simple and will need significant investment on the part of the operators to be doable with a technical solution (i.e. involving some sort of automation.) Such investment would be considerably greater if it is required solely to achieve compliance with the GCs, rather than being phased in with operators' IT and network investment cycle and other priority projects. Mobile UK notes that C7.6 only has a 'when technically feasible' qualification. There is no 'economically viable' or proportionality test, which there should be.
 - b) There is not complete certainty over what invalid and non-diallable numbers actually are and so, while requiring call blocking for invalid or non-diallable CLI would undoubtedly reduce malicious and nuisance calls, any grey areas could lead to genuine calls from reaching their destination. We believe Ofcom should set out in the CLI Guidelines differences between nuisance calls/calls associated with fraud that require Regulated Providers to block calls with specific invalid or non-diallable CLIs where technically feasible, and those where Regulated Providers have evidence to suggest that these are unwanted calls or calls associated with unlawful activity.
 - c) Mobile operators and other communications providers need to work with Ofcom to agree the Guidance that would sit alongside the GCs to set out the parameters of such numbers.
 - d) It is far from clear cut that an system based on invalid and non-diallable numbers is actually better than an intelligence led, manually reviewed system, where the numbers blocked are based on due diligence of crowd sourced and other internally generated information about the numbers that are causing a nuisance. This could be a much better way of reducing the volumes of nuisance calls, particularly when the call generators are flexible enough to take evasive action attempts to block their activities. Before proceeding with automation, the evidence should be reviewed.

- e) A further problem is that many of the nuisance calls are being generated from valid, diallable numbers which are quite often spoofed, or where a reseller has failed to do any due diligence or exercise restraint on its customer, who then goes on to make unlawful unsolicited calls. The GC does nothing to address this problem.
- f) In summary, call blocking measures could be very expensive to implement in the near term and too simple to evade. All mobile operators are committed to tackling this extremely difficult problem, where the market actors make strenuous efforts to evade detection. We believe it would much more effective to continue to collaborate with Ofcom on a voluntary basis, using tactics that can be flexed to combat a mutating threat, rather than be compelled to deploy a 'one size fits all' solution across the industry.

25. **Presentation CLI on call initiation:** Mobile UK agrees with Ofcom that it is very important that Regulated Providers who are initiating calls make it a contractual requirement on their customers that an accurate CLI is used.

26. Mobile UK seeks clarification on a couple of points:

- a) It is our understanding that originating networks require, through contractual arrangements, that an accurate CLI is used. We believe this to be sufficient and that there should be no requirement on the originating networks at this stage to test the CLI on a call-by-call basis to ensure that it is a valid diallable number that uniquely identifies the caller. It is not feasible to expect this of originating networks.
- b) 'uniquely identifies' the 'caller' is also open to misunderstanding, particularly where non-geographic numbers are involved, overriding the geographic number based on any wholesale line rental arrangement. It would be helpful if Ofcom guidance clarified what is meant by uniquely identifies the caller means (for example outgoing calls from Ofcom only identify the Ofcom switchboard number, not the extension number of the person calling.)