



# Protecting consumers from mis-selling of fixed-line telecommunications services

Statement

Publication date: 18 December 2009



# Contents

Section		Page
1	Summary	1
2	Introduction, background and approach	3
3	Responses to the consultation on implementation and withdrawal periods and Ofcom's comments	10
4	Other comments and Ofcom's responses	15
Annex		Page
1	List of respondents	18
2	Background to the regulations	19
3	Notification of modification under section 48(2) of the Communications Act 2003	25
4	Notification under Section 49 of the Communications Act 2003	56
5	Notification of modification under section 48(1) of the Communications Act 2003	58
6	Guidelines in respect of General Condition 24	66
7	Detailed comments on the proposed General Conditions	77
8	Table of changes	82
9	Glossary	89

## Section 1

# Summary

## Background

- 1.1 Mis-selling of telecommunications services results in harm and distress to consumers. It also undermines both the development of effective competition and consumers' trust in the industry. For this reason, reducing the level of mis-selling remains an important priority for Ofcom.
- 1.2 Since 2005, Ofcom has imposed obligations on providers of fixed-line telecommunications to prevent consumers from having their services switched without their express knowledge or consent. These obligations also require communications providers to conduct themselves in an appropriate manner when contacting consumers regarding sales and marketing in line with a Code of Practice. Nonetheless, the level of mis-selling remains high.
- 1.3 Through our enforcement work, we have investigated allegations of mis-selling and taken action against those providers who do not comply with the rules. However, based on the current rules, the enforcement process is lengthy, resulting in further harm and frustration for consumers.

## Review and Consultation

- 1.4 As we continue to receive a high level of complaints about mis-selling of fixed-line telecommunications, we have been reviewing the current safeguards designed to protect consumers from this risk. We published a consultation document in March 2009 in which we consulted on the following options:
  - clarifying the regulations to make them easier to understand;
  - simplifying the regulations by moving away from an approach requiring all providers to establish, and comply with, a Code of Practice, to one of prohibiting inappropriate sales and marketing activity;
  - enabling better information for consumers on the potential consequences of switching by requiring providers to alert consumers at the point of sale, and through letters, they may have contractual liabilities with their existing provider(s);
  - extending 'Cancel Other' rules in respect of the circumstances that providers are able to apply Cancel Other to cover all providers supplying fixed-line telecommunications services – at present the rules that are in place apply only to BT; and
  - clarifying existing general record-keeping requirements for sales and marketing activities, together with a proposal requiring providers to make, and retain, voice recordings of all relevant telephone contact.
- 1.5 In light of responses received, we published a subsequent consultation document in September 2009 in which we proposed to follow a two-staged approach in order to

progress some of our proposals more quickly than others. We proposed to implement the following proposals first:

- clarifying and simplifying the regulations, particularly by moving away from an approach requiring all providers to establish, and comply with, a Code of Practice, to a new General Condition ('GC24') which prohibits inappropriate sales and marketing activity;
- extending Cancel Other rules in respect of the circumstances that providers are able to apply Cancel Other to cover all providers supplying fixed-line telecommunications services and withdrawing the Cancel Other direction which applies only to BT; and
- clarifying existing general record-keeping requirements for sales and marketing activities.

1.6 For these proposals, we confirmed the approach on which we consulted, and invited comments on the draft Notification. We also consulted on the implementation periods for these options which we proposed should be one month from the date of publication of the statement. We also consulted on the withdrawal of the Direction concerning BT's use of Cancel Other and invited comments on the draft Notification and implementation period which we also proposed should be one month from the date of publication of the statement.

1.7 A number of concerns were raised in relation to our preferred options on call recording requirements for sales and Cancel Other as well as on information to consumers of the potential consequences of switching. In light of this, we proposed to revisit these proposals subsequently as part of our Stage Two work, following further work, including assessment of the costs and benefits of the options.

## Conclusions

1.8 We received 13 responses to the September Consultation and have evaluated our preferred option in light of responses. We have concluded that an implementation period of three months provides the best balance between timely implementation of the changes, allowing industry to adjust to the new regulations and allowing providers to carry out any systems and process changes within an appropriate and reasonable period. We are therefore confirming an implementation period of three months from the date of publication of this statement. We intend to co-ordinate the withdrawal of BT's Cancel Other Direction with the introduction of the new GC24 to ensure seamless and consistent regulation.

## Subsequent work

1.9 Taking into account the views expressed about the remaining proposals which we have not progressed in this Statement, we now intend to consider them as part of a major review of consumer switching which we have recently started. The aim of that work is to ensure there are no undue barriers to switching now or in the future.

1.10 We do not intend, however, to consider the issue of providing protection to larger business customers as part of our subsequent work. We requested further information and evidence on the extent to which this was a problem. Having taken into account the views and evidence submitted, we have not been sufficiently persuaded that there is a problem in this regard.

## Section 2

# Introduction, background and approach

- 2.1 Ofcom exists to further the interests of citizens and consumers through a regulatory regime which, where appropriate, encourages competition. Effective competition delivers choice and lower prices, better quality of service, and product and service innovation to consumers, as well as opportunities for new services and communications providers ('providers'). However, competition alone may not always deliver appropriate results and consumers may need protection from inappropriate and unacceptable behaviour that may undermine confidence in the market as well as causing individual harm.
- 2.2 An example of such unacceptable behaviour concerns irresponsible sales and marketing activity, specifically the mis-selling of telecommunications services. This has the effect of undermining consumer confidence in the transfer and switching process, and causing consequential damage to the industry as a whole.
- 2.3 The term 'mis-selling' covers a range of sales and marketing activities that can work against the interests of both consumers and competition and undermines confidence in the industry as a whole. It can include:
- the provision of false and/or misleading information (for example, about potential savings or promising offers or gifts which do not actually exist);
  - applying unacceptable pressure to change providers, such as refusing to leave until the customer signs, or using threatening or otherwise intimidating behaviour; and
  - 'slamming', an extreme form of mis-selling, where customers are simply switched from one company to another without their knowledge or consent. Forms of slamming can include, for example, passing off (i.e. where representatives claim to represent a different company from the company they are actually working for), customers being told they are merely signing for information and then being switched from one provider to another, or forging of customers' signatures on contracts without the customer being aware.
- 2.4 Ofcom considers that there are various aspects of detriment arising from irresponsible sales and marketing activity. These include, amongst others:
- where consumers find themselves switched to a different provider without their knowledge or consent. This will typically cause significant distress and anxiety (as well as substantial inconvenience) to consumers, particularly where transfers are not stopped in time;
  - where there is likely to be financial harm involved, such as where transfers go ahead and consumers find themselves on higher tariffs with the new provider. This financial harm can be compounded where consumers find themselves potentially subject to termination fees from their previous provider for transferring before their minimum contract periods have elapsed;

- the risk that consumers lose confidence in the market due to inappropriate sales and marketing activity. This has the effect of discouraging consumers from switching, thereby restricting them from making any savings by moving between providers and/or products or both. By making competition less effective, it may limit the benefits to consumers as a whole that accrue from well-functioning markets; and
- if switching is discouraged then this could potentially raise supply side barriers, where new entrants are deterred from entering in the knowledge that it will be difficult to persuade consumers to switch from their existing provider. Again, this will diminish the effectiveness of competition and therefore limit the benefits that consumers would otherwise derive from it.

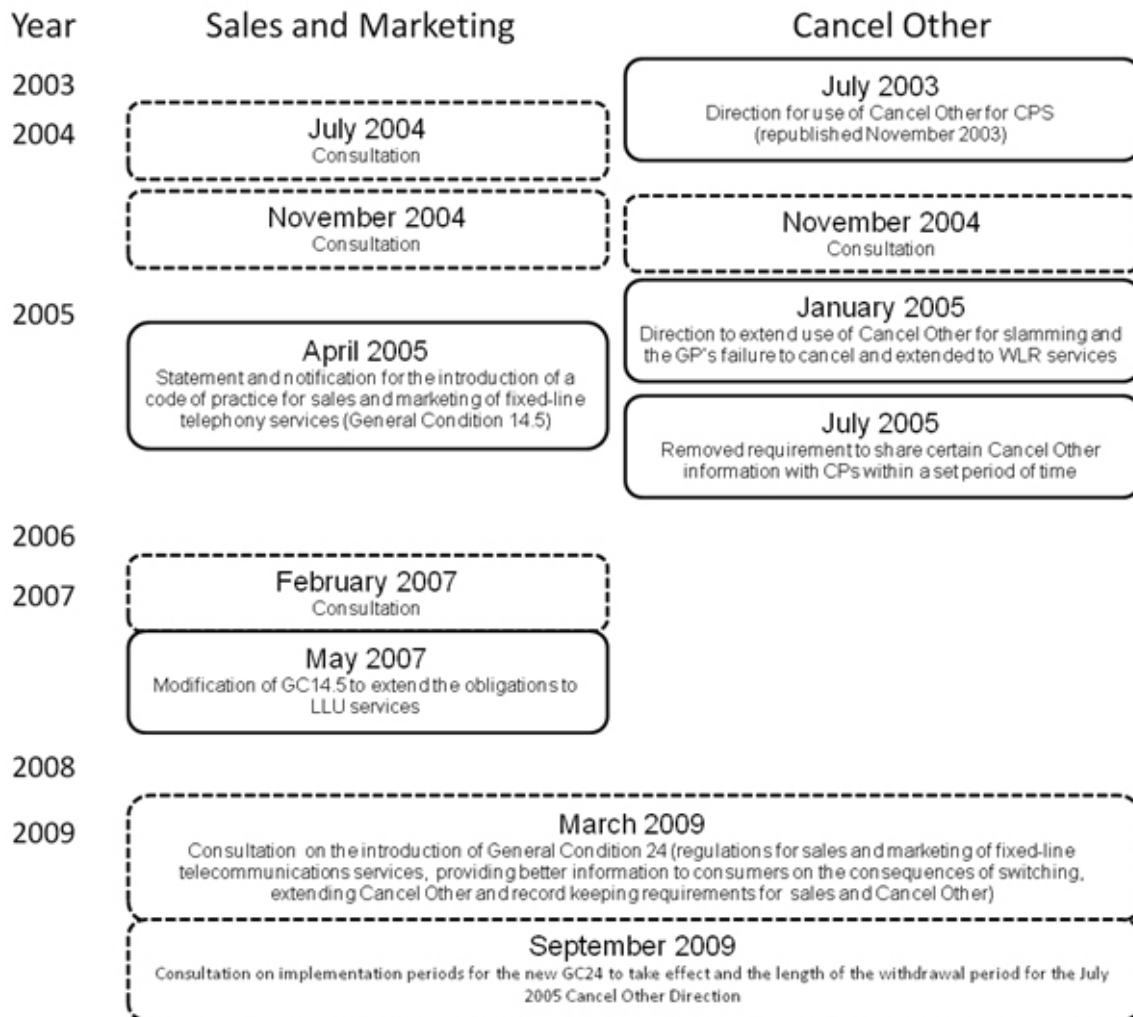
## **Ofcom's policy objectives and aims**

- 2.5 Our overall policy objective is that switching processes should promote switching and competition, whilst protecting consumers. This reflects our principal duty in section 3(1) of the Communications Act 2003 ('the Act'). This objective aims to achieve the following:
- a good customer experience of switching;
  - protection against inappropriate sales and marketing activity;
  - well-informed consumers able to discipline providers by making informed and considered choices, based on timely, objective and reliable information; and
  - that competition is supported in retail and wholesale markets to the benefit of consumers, particularly by minimising obstacles to switching.
- 2.6 If we find continuing consumer harm in relation to switching, any proposed solution must be targeted at those activities causing this detriment, be objectively justifiable non-discriminatory and proportionate.

## **Background**

- 2.7 Ofcom is committed to preventing problems with mis-selling of telecommunications services. Since 2005, we have imposed obligations on providers of fixed-line telecommunications services in relation to sales and marketing activity through General Condition 14.5 ('GC14.5'). In addition to these rules, Ofcom has also published a Direction on BT specifying the circumstances in which BT is permitted to use Cancel Other and what information it is required to provide to its competitors about its use of Cancel Other.
- 2.8 The background to the regulations is summarised in Figure 1 below. A more detailed summary of the background to the regulations is set out at Annex 2.

**Figure 1: Background to the regulations**



## Ofcom's current review and approach

2.9 Ofcom's March 2009 consultation document set out a number of proposals aimed at strengthening existing safeguards which have been designed to protect consumers from the risks of mis-selling of fixed-line voice services. In the consultation we set out options on:

- clarifying the regulations to make them easier to understand;
- simplifying the regulations by moving away from an approach requiring all providers to establish, and comply with, a Code of Practice, to one of prohibiting inappropriate sales and marketing activity;
- enabling better information for consumers on the potential consequences of switching by requiring providers to alert consumers at the point of sale, and through letters, that they may have contractual liabilities with their existing provider(s);



- extending Cancel Other rules to in respect of the circumstances that providers are able to apply Cancel Other to cover all providers supplying fixed-line telecommunications services – at present the rules that are in place apply only to BT; and
  - clarifying existing general record-keeping requirements for sales and marketing activities, together with a proposal requiring providers to make, and retain, voice recordings of all relevant telephone contact.
- 2.10 Having reviewed responses received to the consultation, we noted there was broad support for our proposals to clarify and simplify the regulations, extending Cancel Other rules to all providers and clarifying existing record keeping obligations. However, there was a mixed response in relation to our proposals on call recording requirements and to providing further specific information at the point of sale. In light of this, and having further evaluated our preferred options in light of responses received and further analysis of the available evidence, we decided to split out the proposals into two stages.
- 2.11 Accordingly, our September 2009 consultation document only progressed the following areas:
- i) clarifying and simplifying the regulations, particularly by moving away from an approach requiring all providers to establish, and comply with, a Code of Practice, to a new GC24 which prohibits inappropriate sales and marketing activity
  - ii) extending Cancel Other rules in respect in respect of the circumstances that providers are able to apply Cancel Other to cover all providers supplying fixed-line telecommunications services and withdrawing the Cancel Other direction which applies only to BT; and
  - iii) clarifying existing general record-keeping requirements for sales and marketing activities.
- 2.12 Specifically, we confirmed our proposals on which we consulted for those areas set out in paragraph 2.11 above and invited comments on the draft Notification and implementation periods for our proposals. We also consulted on the withdrawal of the Direction concerning BT's use of Cancel Other ('the July 2005 Direction'), including inviting comments on the draft Notification on withdrawal and implementation period.
- 2.13 We received responses from 13 stakeholders. These responses are available on the Ofcom website at:  
[http://www.ofcom.org.uk/consult/condocs/protecting\\_consumers/responses/](http://www.ofcom.org.uk/consult/condocs/protecting_consumers/responses/)

## **Progressing the Stage Two Proposals**

- 2.14 In the September 2009 Consultation, we set out our decision to revisit the other areas we consulted on in the March 2009 Consultation in a subsequent document, following further examination of the issues and options involved, including further assessment of the costs and benefits. These proposals were:
- i) information to consumers on the potential consequences of switching;
  - ii) mandatory call recording obligations;

- iii) extending Cancel Other use for other purposes, including for reasons to do with change of mind, mis-selling and internal mis-communication; and
  - iv) extending the regulations to provide protection to larger business customers.
- 2.15 Taking into account the views expressed by stakeholders about the remaining proposals which we have not decided on in this statement, we now intend to consider them as part of a major review of consumer switching which we have recently started. The aim of that work is to ensure there are no undue barriers to switching now or in the future. As part of this review, we will be looking at the current approach towards switching processes and, amongst others things, the strengths and weaknesses of different switching process(es). This will include an evaluation of the case for greater harmonisation of switching processes.
- 2.16 We do not, however, intend to consider whether there is a case for extending the regulations to provide protection to larger business customers as part of our subsequent work. We requested additional evidence from providers on this issue through a Section 135 information request. In light of the response to this information request, we have not been persuaded that there is a sufficiently strong case at this time to take this forward.
- 2.17 Notwithstanding, Ofcom has commenced a broader piece of work to promote the interests of business consumers. As part of this we are undertaking a number of initiatives to ensure that business consumers are able to obtain better outcomes in terms of choice, quality and value for money. Our key activities in this area are set out in our Draft Annual Plan for 2010/11, on which we are currently consulting. We believe that issues relating to protection of business customers would be more usefully considered through this initiative.

### **Ofcom's general duties**

- 2.18 Section 3(1) of the Act states that:
- “it shall be the principal duty of Ofcom, in carrying out their functions:-
- a) to further the interests of citizens in relation to communication matters; and
  - b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.”
- 2.19 Section 3(2) of the Act states that Ofcom is required, when carrying out its functions, amongst other things, to secure the availability throughout the UK of a wide range of electronic communications services.
- 2.20 Section 3(3) of the Act requires Ofcom, when performing its duties, to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and any other principles appearing to Ofcom to represent best regulatory practice.
- 2.21 Section 3(4) of the Act states that in performing its duties, Ofcom must also have regard to a number of matters as appear to Ofcom to be relevant in the circumstances. In the current context we consider these matters to include, in particular:

- the desirability of promoting competition in relevant markets;
- the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- the desirability of encouraging investment and innovation in relevant markets;
- the needs of persons with disabilities, of the elderly and of those on low incomes; and
- the opinions of consumers in relevant markets and of members of the public generally.

### **European Community requirements for regulation**

2.22 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements. In summary these requirements are to:

- promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
- contribute to the development of the European internal market;
- promote the interests of all persons who are citizens of the European Union;
- not favour one form of or means of providing electronic communications networks or services, i.e. to be technologically neutral;
- encourage the provision of network access and service interoperability for the purpose of securing:
  - efficient and sustainable competition; and
  - the maximum benefit for customers of providers; and
  - encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of providers.

2.23 In doing so, Ofcom has to read these requirements in accordance with the requirements of Art. 8 of the Framework Directive. These include, in particular, the obligation to:

- ensure that users, including disabled users, derive maximum benefit in terms of choice, price and quality (Art. 8(2) (a));
- ensure a high level of protection for consumers in their dealings with suppliers (Art. 8(4)(b)); and
- promote the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services (Art 8(4)(d)).

## **Outline of the remainder of this document**

2.24 The rest of this document is divided into the following sections:

- Section 3 provides a summary of the comments from stakeholders about implementation and withdrawal periods and our response to these comments
- Section 4 provides a summary of other comments received from stakeholders and our response to these comments.

## Section 3

# Responses to the consultation on implementation and withdrawal periods and Ofcom's comments

## Introduction

- 3.1 In this section, we provide an overview of comments received in relation to appropriate implementation periods for the new GC24 to take effect and the withdrawal of the July 2005 Cancel Other Direction (questions 1 and 2 of the September 2009 Consultation). We summarise the comments received and set out our responses to those comments.

## Implementation and withdrawal periods

- 3.2 In the September 2009 Consultation, we set out that we were minded to provide for an implementation period of one month from the date of publication of the statement for the Stage One proposals.
- 3.3 In proposing to provide for a one month implementation period, we did consider responses to the March 2009 Consultation which supported longer implementation periods of 6 and 12 months. However, we noted that these submissions were predominantly focused on those areas which we proposed to consider subsequently as part of our Stage Two work. We also noted that a one month period would be consistent with previous implementation periods used for changes to GC14.5 in the past.
- 3.4 We invited comments from stakeholders on the September 2009 Consultation and asked for any further evidence which may suggest that a longer period for implementation may be necessary.

## Consultation Question

***Question 1: Do respondents agree that there should be an implementation period of one month for the new General Condition 24 to take effect?***

## Stakeholder comments:

- 3.5 Ofcom received 13 comments from stakeholders in relation to implementation periods for the new GC24 to take effect. Of those, seven respondents agreed that a one month implementation period was appropriate for the new GC24 to take effect. These were BT, Federation of Communication Services ('FCS'), Scottish and Southern Energy ('SSE'), Tesco, Thus, Unicom and a consumer. Both the FCS and SSE stated that their view, however, was based on the assumption that there would be no substantial changes to the wording of GC24.
- 3.6 Consumer Focus, while not specifically addressing the question, nevertheless expressed concern that the longer it takes to implement these proposals, the longer consumers will face detriment under the current system.

- 3.7 Five respondents objected to the proposals for a one month implementation period for the new GC24 to take effect. These were the KCOM, the Post Office, Sky, Talk Talk and Virgin Media.
- 3.8 KCOM, while generally supportive towards Ofcom's proposals, had some concerns on the one month implementation period on account of the need to ensure all staff were appropriately trained in order to ensure compliance. For this reason, KCOM recommended a three month implementation period.
- 3.9 The Post Office argued that if the new regulations required significant systems development, then 12-18 months would offer a more reasonable timeframe. While it supported clarification and simplification of regulations, it nevertheless believed that clear guidelines and appropriate training would be necessary before they could implement.
- 3.10 Talk Talk noted that while changes were not substantial, providers would still need to satisfy themselves that their sales and marketing processes were compliant with the new GC24. Talk Talk also noted that in the case of large organisations with many different brands, this was not an exercise that could be carried out within a month. In light of these concerns, Talk Talk recommended an implementation period of three months.
- 3.11 Sky commented that in order to comply with the GC24 requirements, it would need to make some process changes and also carry out a comprehensive training programme across its call centre estate. This would require a minimum of four but preferably six months to fully implement the changes. In addition, Sky noted that it did not currently have an automated process for Cancel Other requests, and that if this changes as a result of the new GC24, it would then require a minimum of six to eight months to carry out this work.
- 3.12 Virgin Media argued for longer implementation periods and argued that a two month implementation period was more realistic. It argued that while moving from a Code of Practice approach to one of absolute prohibitions may seem minor, new training requirements would need to be introduced for call centre staff.

### **Ofcom's response:**

- 3.13 Ofcom notes there were mixed views in relation to the length of the implementation period for the new GC24.
- 3.14 In particular, we note that providers have taken different positions on whether one month would provide a sufficient time to make any necessary changes. Five providers and the FCS all agreed that one month provided an appropriate period to make the changes. Conversely, five providers argued that a one month implementation period would not provide sufficient opportunity to make the necessary changes and that a longer implementation period was required. Consumer Focus expressed concern that the longer it takes to implement these proposals, the longer consumers will face detriment.
- 3.15 We have further evaluated those responses that argued for longer implementation, and we note that these providers have made reference to likely changes to systems and processes, including the need to roll out awareness and training initiatives of the incoming regulations to all customer service staff. In order to better understand the

likely scale and impact of any changes, we have had further discussions with those providers who wanted longer implementation periods.

- 3.16 In light of our evaluation of responses received, together with further discussions with providers, we have been persuaded that a one month implementation period may not provide an appropriate period for all providers to implement the new GC24. In particular, while most providers accepted that changes were unlikely to be substantial in nature, it was suggested that there may still be necessary changes to systems, and processes as providers may want to take the opportunity to review their current processes and make changes to align with the new guidelines. Providers also argued that it would be necessary to ensure that all relevant customer service staff were made aware of the new GC24 and its accompanying guidelines. Training programmes would need to be established and rolled out in order to do this. It was also noted that this was particularly an issue for larger organisations with large scale operations where awareness and training initiatives would need to be rolled out across multiple sites.
- 3.17 The outcome of these discussions was broad acceptance from most of these providers that three months represented an appropriate period of time to implement the changes. Only Sky believed that a longer period was necessary, arguing that four but preferably six months was needed to implement the necessary changes to comply with the new requirements set out in GC24. In addition, Sky argued for six to eight months in order to automate their current Cancel Other processes.
- 3.18 On balance, and taking account of all views expressed by stakeholders, we accept that a longer implementation period is justified. We are, however, not persuaded that it is necessary to exceed three months. This, in our view, represents an appropriate and reasonable period to make any changes which providers choose to put in place to either their sales and marketing activities or their Cancel Other processes. We have considered Sky's argument for six to eight months in order to automate their Cancel Other processes. However, we do not believe that this particular implementation issue is directly linked to the new GC24 as the incoming regulations do not require changes to the way that providers are currently using Cancel Other.

## Consultation Question

***Question 2: Do respondents agree that there should be a withdrawal period of one month for the July 2005 Cancel Other Direction from the date of publication of the statement?***

## Stakeholder comments

- 3.19 Ofcom received 12 comments on the period for withdrawal of the July 2005 Cancel Other Direction. Of those, BT, Talk Talk and a consumer supported Ofcom's proposal that the period of withdrawal should be one month. BT, in particular, welcomed the removal of the July 2005 Cancel Other Direction on the basis it wanted this 'asymmetric' regulation removed as soon as legally possible. BT stated that it had no intention of changing the way it currently uses Cancel Other, which it stated is in compliance with the July 2005 Cancel Other Direction.
- 3.20 A number of respondents argued that the withdrawal of the July 2005 Cancel Other Direction must be co-ordinated with the introduction of the new GC24 to ensure seamless and consistent regulation. This included Consumer Focus, FCS, KCOM, Sky, SSE, Unicom and a consumer. A number of respondents, specifically, raised

concern relating to the need to ensure that there was no break in relation to Cancel Other rules applying to BT. Unicom, in particular, did not agree with the one month withdrawal period, and said that the July 2005 Cancel Other Direction should only be withdrawn at the same time as BT is bound by new Cancel Other record keeping obligations which are due to be considered within the wider consumer switching project. Unicom expressed concerns relating to BT's unique position in the market, and that without obligations to retain records and provide audit trails, it would go unchecked in its application of the Cancel Other function.

### Ofcom's response:

- 3.21 We note that the majority of comments focussed on the need to ensure that there was co-ordination between the withdrawal of the July 2005 Cancel Other Direction and the introduction of the new GC24 in order to ensure seamless and consistent regulation. Ofcom agrees with this point and, as we stated in the September 2009 Consultation (see paragraph 8.9 of that document), we fully intend to co-ordinate these two activities to ensure there is no break in regulation as it applies to BT in respect of the circumstances it is permitted to use Cancel Other.
- 3.22 We note that Unicom did not believe that the July 2005 Cancel Other Direction should be withdrawn until new Cancel Other record keeping obligations were introduced. We do not agree with this comment for the reasons set out in the March 2009 Consultation (see paragraphs 7.35 to 7.37 of that document). Specifically, we stated that, based on our analysis of the evidence on use of Cancel Other, it is no longer legitimate to require BT to adhere to rules on Cancel Other that other providers should not be subject to. Our view was based on the following considerations:
- analysis of industry data relating to the use of Cancel Other, together with the findings of the Schema study, showing that Cancel Other use has changed significantly over recent years. Specifically, this shows that while, historically, BT was the primary user of Cancel Other, this is no longer the case, with Cancel Other usage widespread across the industry (see Figure 7, '*Volume of CPs cancelling orders through Cancel Other: BT vs the rest*', page 40 of the March 2009 Consultation); and
  - our enforcement experience to date, together with the findings of the Schema study, highlighting evidence of misuse of the Cancel Other process by other providers where Cancel Other would appear to have been used primarily to prevent customers from moving to another provider rather than to protect from slamming.
- 3.23 In light of this, we remain of the view that it is no longer appropriate for BT to be subject to asymmetric obligations relating to use of Cancel Other, and that obligations should be equivalent, and applicable to all providers of fixed-line telecommunications services.
- 3.24 We note that Unicom specifically expressed concerns relating to the lack of obligations to retain records and provide audit trails. As above, we do not believe that this concern applies uniquely to BT. In any event, as noted above, BT has again stated that they have no intention of changing the way they currently use Cancel Other, which it stated is in compliance with the July 2005 Cancel Other Direction.



- 3.25 Nevertheless, given that Cancel Other record keeping obligations will be considered within the wider consumer switching project, there will be a transitional period during which there will be no obligations relating to record keeping for Cancel Other use.
- 3.26 Responses to our Section 135 letter on costs relating to record keeping obligations for sales and Cancel Other sent out in September 2008 show that providers do currently make, and retain, records where Cancel Other is used. Records kept include call recordings, written correspondence from customers (letter/e-mail) and written notes of any customer contact (amongst others). We would expect providers to continue to keep the same records they are currently keeping once the new rules take effect.
- 3.24 Furthermore, we consider it is in the interests of providers to keep good records particularly in the event of a dispute with a competing provider. In such a case, Ofcom would reach a decision based on the evidence before it; including evidence from consumers directly, the competing provider and the provider in question. In these circumstances, it is in the interests of both providers to keep good records to demonstrate their compliance with the new GC24 provisions during any transitional period. We expect providers' records to provide sufficient information to validate that the customer provided positive consent for providers to apply Cancel Other, and that the provider has used Cancel Other in line with the permitted circumstances listed at paragraph 24.14 of GC24. We consider that it would be best practise for providers to keep information regarding the name of the customer who consented to the application of Cancel Other, how any consent was provided, the nature of the actual slamming allegation and the date the Cancel Other was applied.
- 3.25 Accordingly, based on analysis of all responses received, we are confirming our intention to co-ordinate the withdrawal of the July 2005 Cancel Other Direction with the introduction of the new GC24. This means there will be seamless and consistent regulation, including no break in regulation as it applies to BT in respect of the circumstances that BT is able to apply Cancel Other. In line with our conclusions on Question 1 above, the July 2005 Cancel Other Direction will be withdrawn three months from the date of publication of this statement.

## Section 4

# Other comments and Ofcom's responses

## Introduction

- 4.1 In this section we provide an overview of other comments received in response to the September 2009 Consultation and set out our responses to those comments.

## Stakeholder comments

- 4.2 BT argued that the increasing volume of 'erroneous transfers' was a continuing cause for concern and that, in particular, the challenge of restoring service after an erroneous transfer is likely to produce even greater levels of consumer harm than mis-selling. BT therefore urged Ofcom to focus its energies on addressing the harm caused by erroneous transfers.
- 4.3 BT also expressed disappointment that Ofcom had not taken the opportunity to mandate the use of Cancel Other. BT believed that this meant that there was a greater chance of customers being transferred against their wishes as a result of mis-selling or other erroneous transfers.
- 4.4 In addition, BT did not agree with Ofcom's decision not to expressly link GC24 to current end to end processes/process handbooks. It argued that in order to move away from a process-based approach to one of outcome-based regulations, there needed to be clear, non contradictory rules. It noted that the industry processes were meant to govern the actions and processes operated by providers and that, therefore, it would seem sensible to make a formal link between GC24 and the industry processes/process handbooks.
- 4.5 Consumer Focus believed that it would be beneficial for Ofcom to consider sales and transfer activity across other sectors, including the gas and electricity markets. Consumer Focus specifically highlighted the introduction of self-regulation initiatives which have delivered a Code of Practice on face-to-face marketing, the Erroneous Transfer Charter and a switching guarantee.
- 4.6 Consumer Focus also expressed concern about the introduction of 'rollover contracts' and that such contracts were likely to become an inhibitor to switching.
- 4.7 KCOM would like to see a section of the Ofcom website with dedicated information about mis-selling and slamming. KCOM would also like to see a plain English version of the GC.

## Ofcom comments

- 4.8 In response to BT's comments on the increasing volume of erroneous transfers, we note that this is an issue we are already aware of, and are taking steps to better understand underlying causes behind these erroneous transfers and what actions are required to resolve them. We have agreed a priority project plan with the Office of the Telecommunications Adjudicator ('OTA') to work with the industry to investigate the problem of erroneous transfers and to understand how best to resolve (looking at both short-term and long-term actions). This is being taken forward as a matter of

urgency. In parallel, we have also asked OTA to work with industry to develop and implement an effective recovery process when an erroneous transfer occurs. This would enable consumers to be quickly restored to the provider of their choice where erroneous transfers (and malicious slams) occur.

- 4.9 On the question of mandating the Cancel Other process, as we set out in the September 2009 Consultation, we are not sufficiently persuaded that there is a case for this at this stage as we anticipate that the majority of providers will use Cancel Other as it protects their customers from being slammed against their wishes. We will nevertheless continue to monitor this and may revisit this issue if there is evidence of increasing numbers of providers not using Cancel Other, and that this is resulting in consumer harm.
- 4.10 We have also considered BT's view that we should seek to formally link GC24 to current end to end processes/process handbooks. We remain of the view that this is unnecessary in the context of the new GC. GC24 will require providers to carry out their sales and marketing activity in a responsible and honest manner. In this context, we are not persuaded that we need a GC to cover end to end processes. This would be a new requirement under the regulations, and we are not aware of any evidence to suggest that the regulations need to be extended to mandate proper use of industry end to end processes. We note, however, that to the extent there is any overlap between industry processes and sales and marketing activities, this will be covered within GC24 e.g. requirement to send out letters.
- 4.11 We also agree with Consumer Focus' comments in relation to consideration of transfer activity across other sectors. This is something we intend to take forward through the wider consumer switching project, as part of which we intend to consider approaches to switching from other sectors as well as internationally.
- 4.12 We note that Consumer Focus raised concerns in relation to the existence of rollover contracts. Automatically renewable contracts ('ARCs'), sometimes referred to as rollover contracts, are being used increasingly in fixed line communications markets. Under ARCs, consumers sign up to a minimum contract period that is automatically renewed unless the consumer explicitly tells the provider they do not want this to happen. If a consumer wants to leave during an the minimum contract period, they may have to pay an early termination charge under the terms of their contract.
- 4.13 A number of stakeholders have expressed concern to Ofcom about ARCs. We have undertaken research this year to understand the impact of ARCs in residential markets. We are continuing this research and plan to publish a document setting out our approach to ARCs early in 2010.
- 4.14 In terms of KCOM's comments, we currently include a range of information relating to mis-selling and slamming on our website, including dedicated FAQs and a 'Consumer Advice' section<sup>1</sup>. We have also published consumer guides with practical advice on a range of issues in the communications sector including slamming<sup>2</sup>. We intend to have discussions with stakeholders during the implementation period about how we can build on and potentially improve the existing information relating to mis-selling and slamming on our website.

---

<sup>1</sup> See <http://www.ofcom.org.uk/?redirect=0>

<sup>2</sup> See <http://www.ofcom.org.uk/consumer/tag/mis-selling/>

- 4.15 We also note that KCOM requested a plain English version of GC24. However, we are not persuaded that this is necessary, and believe that the redrafted GC24 together with the accompanying guidelines is sufficiently clear.

#### **Detailed stakeholder comments on the wording of the General Condition**

- 4.16 A number of respondents took the opportunity to put forward suggestions on where the guidelines could be simplified or clarified further or where they did not agree that the provisions had been appropriately drafted. We agree with a number of the suggestions made and have modified the wording of GC24 to reflect these.
- 4.17 A list of the detailed comments and suggestions to the wording of GC24, together with our response, is attached at Annex 7. In addition, we include at Annex 8 a table of changes to the proposed wording of GC24 on which we consulted in the September 2009 Consultation.

## Annex 1

# List of respondents

We received 13 responses to this consultation. The responses can be found at: [http://www.ofcom.org.uk/consult/condocs/protecting\\_consumers/responses/](http://www.ofcom.org.uk/consult/condocs/protecting_consumers/responses/)

Of these, the following responses were non-confidential:

- Adams, Elizabeth
- BT
- Consumer Focus
- Federation of Communications Services
- KCOM
- The Post Office Ltd
- Scottish and Southern Energy
- Sky
- Talk Talk
- Tesco
- THUS
- Unicom
- Virgin Media

## Annex 2

# Background to the regulations

## Review of consumer safeguards designed to protect consumers from mis-selling of fixed-line telecommunications services

A2.1 Ofcom is committed to preventing problems with mis-selling of telecommunications services. In light of evidence that mis-selling was growing as a problem as well as strong views from stakeholders, Ofcom commenced a review during 2004 considering whether current safeguards designed to protect consumers from mis-selling of fixed-line telecommunications services were effective, or whether it was appropriate for Ofcom to impose different rules.

### The April 2004 Consultation

A2.2 In April 2004, Ofcom published a consultation document<sup>3</sup> on the effectiveness of current consumer safeguards which were designed to protect consumers from mis-selling of fixed-line telecommunications services. We proposed that consumers were not adequately protected, and there was a need for additional regulation in the form of mandatory guidelines for sales and marketing codes of practice. In addition we also sought views in relation to the need for clarification of certain provisions contained within the existing guidelines for sales and marketing codes of practice for fixed-line telecommunications services.

### The November 2004 Consultation

A2.3 In light of stakeholder responses to the April 2004 consultation document, Ofcom considered that the balance of arguments supported the conclusion that the current consumer safeguards did not provide adequate consumer protection against the mis-selling of fixed-line telecommunications services. We concluded that there should be a requirement on providers who engage in sales and marketing activity for fixed-line telecommunications services to establish codes of practice on sales and marketing in accordance with published guidelines, and to comply with the provisions of those codes. We proposed that the obligation should be subject to a 'sunset' clause, such that it would lapse two years after the date of introduction unless a positive need could be demonstrated to reinstate the obligation.

A2.4 In order to impose this obligation, it was necessary to modify the then existing GC14 in accordance with the procedure for setting, modifying or revoking conditions in section 48 of the Act. This required the publication of a notification of the proposed modification. The November 2004 consultation document<sup>4</sup> included a notification of a proposed modification of this GC.

---

<sup>3</sup> [http://www.ofcom.org.uk/consult/condocs/mis\\_selling/mis\\_selling.pdf](http://www.ofcom.org.uk/consult/condocs/mis_selling/mis_selling.pdf)

<sup>4</sup> <http://www.ofcom.org.uk/consult/condocs/mis-selling/mis-selling.pdf>

## **The April 2005 Explanatory Statement and Notification under section 48(1) of the Communications Act 2003**

A2.5 Ofcom's explanatory Statement and Notification<sup>5</sup>, published on 13 April 2005, gave effect, with modification, to the proposals set out in the November 2004 consultation document. The Notification and Schedule to the Notification set out the following:

- that there was to be an obligation upon all providers who engage in sales and marketing of fixed-line telecommunications services to establish, under set guidelines, codes of practice, and to comply with the provisions set out in those codes;
- that the requirement to establish, under set guidelines, codes of practice on sales and marketing, and to comply with the provisions set out in those codes, should be subject to a 'sunset' clause. The effect of this clause was that the requirement would lapse two years after the date of introduction unless a positive need was demonstrated to reinstate the requirement;
- the guidelines for sales and marketing codes of practice for fixed-line telecommunications services; and
- that there would be an obligation to provide codes of practice on sales and marketing on request, and free of charge, to customers.

A2.6 The revised GC14.5, which came into effect on 26 May 2005, meant that Ofcom could enforce the requirement to have in place codes of practice for sales and marketing under its enforcement powers in sections 94 to 104 of the Act against providers who fail to establish and thereafter maintain a Code which conforms with our guidelines and/or fail to comply with the provisions of their Code. This included ultimately being able to impose a financial penalty on the relevant provider for non-compliance.

A2.7 The obligations were only applicable to providers who provided fixed-line telecommunications services. Ofcom did consider whether to extend these obligations to other services such as cable services, Local Loop Unbundling and other new voice services. However, in the absence of clear evidence that mis-selling was a problem for these services, Ofcom did not consider that the obligation should be extended to those services at that time. Ofcom pointed out that it remained open for such classes of providers to adopt similar guidelines for sales and marketing on a voluntary basis.

## **The February 2007 consultation**

A2.8 Under the sunset clause, the obligations were due to end on 25 May 2007. In light of this, Ofcom published a consultation<sup>6</sup> in February 2007 on whether mis-selling of fixed-line telecoms services had been satisfactorily addressed to such an extent that it was appropriate to remove the regulatory obligations. In addition, we also considered whether, if mis-selling had not been satisfactorily addressed, the obligations should only apply to fixed-line telecommunications services or whether

---

<sup>5</sup> <http://www.ofcom.org.uk/consult/condocs/mis-selling/statement.pdf>

<sup>6</sup> <http://www.ofcom.org.uk/consult/condocs/mis-sellingprotection/mis-selling.pdf>

they should be extended to cover other services, such as, broadband, cable, LLU and/or mobile services.

### **The May 2007 Explanatory Statement and Notifications under section 48(1) of the Communications Act 2003**

A2.9 Ofcom's Explanatory Statement and Notification<sup>7</sup>, published on 21 May 2007, gave effect, with modification, to the proposals set out in the February 2007 consultation. The Notification and Schedule to the Notification set out the following:

- that there should remain an obligation upon all providers who engage in sales and marketing of fixed-line telecommunications services to establish, under set guidelines, codes of practice and to comply with the provisions set out in those codes;
- that the requirement to establish, under set guidelines, codes of practice, and to comply with the provisions set out in those codes, would no longer be subject to a sunset clause;
- that the obligation should be extended to providers offering services based on full LLU;
- amended guidelines for sales and marketing codes of practice for fixed-line telecommunications services;
- that there would be an obligation to provide codes of practice on sales and marketing on request, and free of charge, to customers; and
- that these requirements would enter into force on 26 May 2007 save for services based on full LLU which entered into force four weeks from the date of publication of the final statement and Notification.

### **The March 2009 Consultation**

A2.10 On March 17 2009, Ofcom published a consultation document on proposals to strengthen existing safeguards which have been designed to protect consumers from the risks of mis-selling of fixed-line voice services<sup>8</sup>. In the consultation we set out options on:

- clarifying and simplifying the regulations on sales and marketing of fixed-line telecommunications services;
- providing better information to consumers on the potential consequences of switching;
- extending Cancel Other rules to apply to all providers who use Cancel Other; and
- record keeping requirements for sales and Cancel Other.

---

<sup>7</sup> <http://www.ofcom.org.uk/consult/condocs/misellingprotection/statement/statement.pdf>

<sup>8</sup> [http://www.ofcom.org.uk/consult/condocs/protecting\\_consumers/protectingconsumers.pdf](http://www.ofcom.org.uk/consult/condocs/protecting_consumers/protectingconsumers.pdf)



- A2.11 We received responses from 22 stakeholders. The non-confidential responses are published on our website

## **The September 2009 Consultation**

- A2.12 On 10 September 2009, Ofcom published a consultation document confirming our proposals to strengthen existing safeguards in the following ways:
- clarification and simplification of regulations and, particularly, moving away from a Code of Practice approach to absolute prohibitions within GCs;
  - extending Cancel Other rules to all providers and withdrawing BT's Cancel Other Direction; and
  - clarifying record keeping obligations.
- A2.13 We invited comments on the draft Notification and implementation periods for these options. We also consulted on the withdrawal of the Direction concerning BT's use of Cancel Other and invited comments on the draft Notification and implementation period.
- A2.14 We also set out our intention to revisit those proposals we were not progressing within the September consultation document in a subsequent document following further work, including assessment of the costs and benefits of the options. These proposals included:
- information to consumers on the potential consequences of switching; and
  - mandatory call recording obligations.

## **Background and history of Cancel Other**

### **The July 2003 Direction**

- A2.15 On 8 July 2003, following an own initiative investigation prompted by industry concern surrounding BT's use of Cancel Other, the Office of Telecommunications ('Of tel'), one of Ofcom's predecessor regulators, published a Direction specifying in what circumstances BT was permitted to use Cancel Other to cancel orders for Carrier-Pre Selection (CPS) This Direction allowed BT to use Cancel Other to cancel orders for CPS only in certain circumstances, and also imposed a number of further conditions on BT's use of Cancel Other to cancel orders for CPS.
- A2.16 Although the Direction applied to CPS only, BT and the rest of the industry designed equivalent processes for Wholesale Line Rental (WLR) in order to be consistent with the existing processes for CPS.

### **The November 2003 Direction**

- A2.17 On 23 November 2003 Of tel published its review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets ('the Wholesale Fixed Markets Review'). In it, Of tel concluded that BT had significant market power (SMP) in a number of wholesale markets in the UK excluding the Hull area and imposed a number of SMP conditions on BT, including:

- a requirement to provide network access on reasonable request (SMP condition AA1(a));
- a requirement to provide CPS (SMP Condition AA8); and
- a requirement to provide wholesale analogue line rental (SMP Condition AA10).

A2.18 The wholesale fixed narrowband market review resulted in a Direction setting out the circumstances in which BT was permitted to use Cancel Other, mirroring the provisions of the July 2003 Cancel Other Direction described above.

### **The November 2004 Consultation**

A2.19 Following publication of the July 2003 Cancel Other Direction, BT and the industry discussed, at BT's initiative, the possible introduction of a new process for managing customer complaints and cancellations during the transfer period which would replace the current process, including BT's ability to use Cancel Other.

A2.20 The industry, including BT, considered the current process could be improved. BT's competitors considered the current process, and specifically Cancel Other, enabled BT to cancel their CPS and WLR Cancel Other orders inappropriately. They also argued that the current process did not enable them to address allegations of slamming, because customers who believed they had been slammed could simply ask BT to cancel their order, and did not have to contact their gaining provider directly.

A2.21 On 26 August 2004, following a dispute between BT and the industry, the referring parties asked Ofcom to resolve a dispute about the process for managing customer complaints during the CPS and WLR transfer process. Having considered the information provided by the parties, Ofcom published a consultation on a draft Direction and draft Determination for resolving the dispute.

### **The January 2005 Direction**

A2.22 Having considered the responses to the 2004 Consultation, Ofcom published a final Direction on 21 January 2005<sup>9</sup>, which specified when BT was permitted to use Cancel Other and what information it was required to provide to its competitors about its use of Cancel Other.

A2.23 As set out in the January 2005 Direction, BT was permitted to use Cancel Other in cases of slamming, described as a provider's attempts to transfer some or all of a customer's calls and /or telephone line without that customer's express knowledge and consent. In the Direction, Ofcom provided further detail on the definition of slamming and clarified the types of behaviour covered by the definition.

A2.24 As well as being able to use Cancel Other in cases of slamming, BT was also permitted to use Cancel Other in order to prevent a customer from being transferred as a result of another provider's failure to action a customer's request to cancel a transfer. In addition, BT was also permitted to use Cancel Other where a BT account was closed before a CPS or WLR order had matured ('line cease').

---

<sup>9</sup> <http://www.ofcom.org.uk/consult/condocs/cancel-other/codir/codir.pdf>

- A2.25 In order to make BT's use of Cancel Other more transparent, and to give confidence that it was only using Cancel Other in accordance with the permitted reasons set out in the Direction, BT was required to provide full records of contact between individual customers and BT, on reasonable request, relating to the transfer associated with the provider making the request, where BT had applied Cancel Other.

**The July 2005 Direction amending the Direction of 21 January 2005 regarding BT's use of Cancel Other**

- A2.26 On July 28 2005, Ofcom published a Direction amending the January 2005 Direction regarding BT's use of Cancel Other<sup>10</sup>. The effect of this amendment was to remove the obligation on BT to pass certain Cancel Other information to providers within a set period of time. This was because the CPS Process Group and WLR Process Group agreed that the requirement for BT to "on a fortnightly basis...pass this information to the gaining provider, where the gaining provider was not also the CPS operator or WLR Service Provider" was unnecessary. It was agreed that this information would be passed to the gaining CP by the CPS Operator or WLR provider in the standard course of business, and that as long as BT was passing the information to the CPS Operator or WLR provider as required in the first sub-paragraph of paragraph 6 of the Direction, then the second sub-paragraph requiring the sharing of information was not necessary.
- A2.27 In addition, as BT had already implemented the processes and systems to comply with all aspects of the January Direction with the exception of the second sub-paragraph of paragraph 6, Ofcom considered that paragraph 7 of the January 2005 Direction (which required BT to do the necessary work to implement paragraph 6 within three months of the January Direction coming into force) was unnecessary.

---

10

[http://www.ofcom.org.uk/consult/condocs/cancelother/amendment2direction/amending\\_direction.pdf](http://www.ofcom.org.uk/consult/condocs/cancelother/amendment2direction/amending_direction.pdf)

## Annex 3

# Notification of modification under section 48(2) of the Communications Act 2003

### **Modification of General Condition 14 on Codes of Practice and Dispute Resolution under section 48(1) of the Act published by the Director General of Telecommunications on 22 July 2003**

A. The Director General of Telecommunications (the 'Director') issued on 22 July 2003 the General Conditions Notification, which took effect on 25 July 2003 by way of publication of a notification pursuant to section 48(1) of the Communications Act 2003 (the 'Act');

B. Ofcom issued an initial notification ('the Initial Notification') on 17 March 2009 and a further notification ('the Final Notification') on 10 September 2009, both pursuant to section 48 (2) of the Act, setting out their proposals for the modification of General Condition 14

C. A copy of the Initial Notification and the Final Notification were sent to the Secretary of State in accordance with section 50 (1) (a) of the Act;

D. In the Initial Notification, the Final Notification and the accompanying explanatory statements, Ofcom invited representations about any of the proposals set out therein by 27 May 2009 and 9 October 2009 respectively;

E. By virtue of section 48(5) of the Act, Ofcom may give effect to any proposals to modify conditions as set out in the Final Notification, with or without modifications, where:

(i) they have considered every representation about the proposals made to them within the period specified in the Final Notification; and

(ii) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;

F. Ofcom received 20 non-confidential and 2 confidential responses to the Initial Consultation and 13 non-confidential responses to the Final Notification and have considered every such representation made to them in respect of the proposals set out in both the Initial Notification and the Final Notification and the accompanying explanatory statements; and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose;

G. For the reasons set out in the explanatory statement accompanying this Notification, Ofcom are satisfied that, in accordance with section 47 (2) of the Act, this modification is:

(i) objectively justifiable in relation to the matters to which it relates;

- (ii) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (iii) proportionate to what it is intended to achieve; and
- (iv) in relation to what it is intended to achieve, transparent;

**NOW, THEREFORE, OFCOM MAKES THE FOLLOWING DECISION**

1. Ofcom in accordance with section 48(1) of the Act hereby makes the following modification to General Condition 14 on Codes of Practice and Dispute Resolution.
2. The modification is set out in the Schedule to this Notification.
3. The effect of, and Ofcom's reasons for making, the modifications referred to in paragraph 1 above are set out in the accompanying explanatory statement.
4. Ofcom considers that the modifications referred to in paragraph 1 above comply with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the modifications.
5. In making the modifications set out in this Notification, Ofcom has considered and acted in accordance with the six Community requirements in section 4 of the Act and the general duties in section 3 of the Act.
6. The modification shall enter into force on 18 March 2010.
7. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1) (a) of the Act.
8. In this Notification:
  - 'Act' means the Communications Act 2003;
  - 'Ofcom' means the Office of Communications.
9. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them, otherwise any word or expression shall have the meaning it has in the Act.
10. The Interpretation Act 1978 shall apply as if this modification were an Act of Parliament.
11. Headings and titles shall be disregarded.
12. The schedule to this Notification shall form part of this Notification.

Claudio Pollack.

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

18 December 2009

## Schedule

The General Condition and Guidelines shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference).

### Basic Code of Practice regarding provision of Public Electronic Communications Services

- 14.1 The Communications Provider shall produce a basic Code of Practice for its Domestic and Small Business Customers which sets out at least where such customers may avail themselves of the information required to be published under Condition 10.2, as relevant to the provision of Public Electronic Communications Services. The Code of Practice shall be drafted in plain English which is easy to understand, and copies of the Code of Practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

### Codes of Practice for Premium Rate Services, NTS Calls,<sup>11</sup> calls to 0870 numbers<sup>12</sup> and calls to Personal Numbers<sup>13</sup>

- 14.2 Within two months of this Condition entering into force, all Originating Communications Providers who provide Premium Rate Services, NTS calls, calls to 0870 numbers [or calls to Personal Numbers], as appropriate shall:
- (a) establish and thereafter maintain a Code of Practice for the provision of information relating to Premium Rate Services for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 1 to this Condition;
  - (b) establish and thereafter maintain a Code of Practice for NTS Calls, calls to 0870 calls [and calls to Personal Numbers] for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 2 to this Condition; and
  - (c) comply with the provisions of the Codes of Practice referred to at 14.2 (a) and (b) above.
- 14.3 The codes of practice referred to in Condition 14.2 shall be drafted in plain English which is easy to understand, and copies of the codes of practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

---

<sup>11</sup> Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.

<sup>12</sup> Changes to 0870, Statement and notification, 23 April 2009, replacing condition 14.2 with effect from 1 August 2009.

<sup>13</sup> Review of the 070 personal numbering range, Statement and notification (and correction), 27 February 2009, inserting references to calls to Personal Numbers (shown in square brackets), to take effect on 28 August 2009.

## Codes of Practice for Complaints

- 14.4 Within one month of this Condition entering into force, the Communications Provider shall establish and thereafter maintain procedures that conform with any applicable Code of Practice for Complaints for the handling of complaints made by its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

## Codes of Practice for Sales and Marketing<sup>14,15</sup>

- 14.5 Those Communications Providers who provide Fixed-line Telecommunications Services shall:

- (a) establish and thereafter maintain a Code of Practice for Sales and Marketing for dealing with its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 3 to this Condition; and
- (b) comply with the provisions of the Code of Practice for Sales and Marketing established according to Condition 14.5(a) above.

- 14.6 The Code of Practice for Sales and Marketing shall be drafted in plain English which is easy to understand, and copies of it shall be provided on request and free of charge to any Domestic and Small Business Customer, and be prominently available on the Communications Provider's public website.

## Dispute Resolution

- 14.75 The Communications Provider shall implement and comply with a Dispute Resolution Scheme, including any final decision of the Dispute Resolution Body made in accordance with that Scheme, for the resolution of disputes between the Communications Provider and its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

## Code on the provision by Service Providers of consumer protection information for the provision of Services<sup>16</sup>

- 14.86 Within two months of this Condition entering into force, all Service Providers shall:

---

<sup>14</sup> Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005.

<sup>15</sup> Protecting consumers from mis-selling of telecommunications services, Notification, 22 May 2007 – deleting text in 14.5 and adding text in 14.6.

<sup>16</sup> Regulation of VoIP Services, Notification, 29 March 2007, obligations in Annex 4 in force from 29 May 2007.

(a) comply with the requirements set out in the Code at Annex 4.

14.97 In this Condition<sup>17</sup>:

~~(a) — “Cable Network” means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;~~

~~(b)~~ (a) “**Communications Provider**” means a person who provides Public Electronic Communication Services to Domestic and Small Business Customers;

~~(c)~~ (b) “**Code of Practice for Complaints**” means a Code of Practice approved from time to time by the Director for the purpose of this Condition in accordance with sections 52 and 53 of the Act;

~~(d) — “Code of Practice for Sales and Marketing” means a Code of Practice established in accordance with Condition 14.5(a);~~

~~(e)~~ (c) “**Dispute Resolution Body**” means the body of persons responsible for administering a relevant Dispute Resolution Scheme;

~~(f)~~ (d) “**Dispute Resolution Scheme**” means procedures approved or established from time to time by the Director for the purpose of this Condition in accordance with sections 52, 54 or 55 of the Act;

---

<sup>17</sup> Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005 – applies to insertion of definitions (a), (d), (h), (j), (m) – (p), and (s) – (v), Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006 – applies to insertion of definitions (i), (k) and (l), Regulation of VoIP Services, Notification, 29 March 2007 - applies to insertion of definitions (q) and (r), Protecting consumers from mis-selling of telecommunications services, Notification, 22 May 2007 – applies to insertion of definitions (a) “Cable Network” and (j) “Narrowband”, modification of definition (h) “Fixed-line Telecommunications Services” and deletion of definitions (a) “Carrier Pre-selection”, (j) “Indirect Access”, (o) “Pre-selected Provider”, (p) “Relevant Period”, (s) “Subscriber”, (t) “Wholesale Calls”, (u) “Wholesale Inputs”, (v) “Wholesale Line Rental”.

Review of the 070 personal numbering range, Statement and notification (and correction), 27 February 2009 – applies to insertion of (k) “Mobile Number”, (n) “Personal Number”, (o) “Personal Numbering Service”, (p) “Personal Numbering Service Provider” to take effect on 28 August 2009.



~~(g)~~ (e) **“Domestic and Small Business Customer”** means, in relation to a Communications Provider, a Customer of that Provider who is neither-

- (i) himself a Communications Provider; nor
- (ii) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);

~~(h)~~ **“Fixed-line Telecommunications Services”** means Narrowband call and/or line rental services provided to Domestic and Small Business Customers;

~~(f)~~ (f) **“Guidelines”** mean the guidelines as set out in either Annex 1, 2 or 3 to this Condition;

~~(j)~~ **“Narrowband”** means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network;

~~(k)~~ (g) **“Mobile Number”** means a Telephone Number, from a range of numbers in the National Telephone Numbering Plan, that is Adopted or otherwise used to identify Apparatus designed or adapted to be capable of being used while in motion;]

~~(l)~~ (h) **“NTS Calls”** means calls to numbers identified in the National Telephone Numbering Plan as Special Services operating on the 08 number range and including calls to 0500 freephone numbers, but excluding calls to 0844 04 numbers for Surftime internet access services, calls to 0808 99 numbers for flat rate internet access call origination and calls to 0870 numbers<sup>18</sup>;

~~(m)~~ (i) **“Originating Communications Provider”** means any Communications Provider that provides call origination services to Domestic and Small Business Customers but excluding Payphone Service Providers;<sup>19</sup>

---

<sup>18</sup> Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009, inserting the last 5 words to end of the definition of NTS calls.

<sup>19</sup> Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009, inserting new definition of Originating Communications Provider.

~~(n)~~ (j) **“Personal Number”** means a Telephone Number, from a range of numbers in the National Telephone Numbering Plan, assigned by a Personal Numbering Service Provider, which allows a Subscriber to receive calls or other communications at almost any Telephone Number, including a Mobile Number;

~~(e)~~ (k) **“Personal Numbering Service”** means a service based on number translation that enables End-Users to be called or otherwise contacted, using a single Personal Number, and to receive those calls or other communications at almost any Telephone Number, including Mobile Numbers;

~~(p)~~ (l) **“Personal Numbering Service Provider”** means a provider of Personal Numbering Services;]<sup>20</sup>

~~(q)~~ (m) **“Publicly Available Telephone Services”** means a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for End-Users with disabilities or with special social needs and/or the provision of non-geographic services;

~~(r)~~ (n) **“Public Telephone Network”** means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data;

~~(s)~~ (o) **“Service”** means a Public Electronic Communication Service, but only to the extent it comprises the conveyance of speech, music or sounds;

~~(t)~~ (p) **“Service Provider”** means a provider of a Service.

---

<sup>20</sup> Review of the 070 personal numbering range, Statement and notification (and correction), 27 February 2009, to take effect on 28 August 2009.

## **Annex 1 to General Condition 14<sup>21</sup>**

### **Guidelines for codes of practice for handling customer enquiries and complaints about Premium Rate Services**

#### **1. Introduction and overview**

- 1.1 The key objective of these Guidelines is to ensure that Originating Communications Providers provide their domestic and small business customers with readily accessible and accurate information relating to Premium Rate Service ("PRS") calls;
- 1.2 These Guidelines seek to ensure that there is a clear framework within which Originating Communications Providers should be working, providing reassurance to customers and consumer representatives as to what constitutes good practice in the provision of information to customers in relation to complaints and enquiries about PRS calls.

#### **2. Status of code**

- 2.1 All Originating Communications Providers who provide PRS are required under General Condition 14.2 to establish a Code of Practice for PRS Calls for their domestic and small business customers (the "Code"), which conforms with these Guidelines, and to comply with the provisions of the Code.
- 2.2 Compliance with the Code does not guarantee compliance with any other legal requirements.
- 2.3 Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.

#### **3. Customer information and advice**

- 3.1 The Originating Communications Provider that is responsible for the retail billing of PRS Calls to the end-user shall publish the usage charges required to be published under General Condition 10.2(d)(ii) for PRS Calls on its website.<sup>22</sup>
- 3.2 Originating Communications Providers shall provide the following information and advice to their customers:
  - (i) information about the role of Originating Communications Providers in relation to:
    - a. general PRS enquiries and requests for number checks via the number-checker facilities provided by PhonepayPlus<sup>23</sup> on the PhonepayPlus website ([www.phonepayplus.org.uk](http://www.phonepayplus.org.uk));

---

<sup>21</sup> Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.

<sup>22</sup> Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009, inserting new paragraph 3.1.

- b. dealing with formal complaints about abuses of service content, the PhonepayPlus Code of Practice and alleged scams.

3.3 In so doing Originating Communications Providers shall provide:

- (i) information about the role and remit of PhonepayPlus in dealing with complaints and how to go about making a formal complaint to PhonepayPlus via the website, helpline or by in writing;
- (ii) information about the tariffs that apply on their network for calls to any PRS number range;
- (iii) basic information about how PRS services work including whether the call(s) in question were routed to service providers (SPs) hosted on the Originating Communications Provider's own network or on the network of a Terminating Communications Provider (TCP), together with a basic explanation of how revenue sharing with SPs operates;
- (iv) information about how consumers can bar access from their telephone to all or specific PRS number ranges for reasons of cost or content;
- (v) information about the purpose of the Telephone Preference Service ("TPS") and Fax Preference Service ("FPS") and how to go about registering with such services;
- (vi) information about how internet diallers operate and how consumers can identify and take action, such as improving their computer's security, to avoid further instances of these or similar scams;
- (vii) in the case of mobiles, in addition to the above, information about how premium rate SMS/MMS/WAP billed services operate and how consumers can unsubscribe from these;
- (viii) information on the role of the Telecoms Ombudsman schemes in resolving disputes concerning PRS calls;
- (ix) information on other options available to consumers for seeking refunds in cases of abuse or scams involving PRS calls;
- (x) contact details of individual SPs or the TCPs which host them; and where available – typically via PhonepayPlus's website at ([www.phonepayplus.org.uk](http://www.phonepayplus.org.uk));
- (xi) SPs customer service contact details where consumers can obtain further information about services provided on the PRS numbers found on their bills.

4. **Processes and Procedures**

---

<sup>23</sup> Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009, replacing all references to the Independent Committee for the Supervision of Telephone Information Services or ICSTIS in paragraphs 3.2 and 3.3 with PhonepayPlus.

- 4.1 Procedures should be in place for Originating Communications Providers' enquiry and helpdesk staff to know of the existence and content of the Code in order for them to be able respond to complaints and enquiries about PRS calls and to monitor their compliance with the Code.
- 4.2 There should be fully documented procedures in place to make customers and advice agencies aware of the existence and content of the Code, for example by referring to the Code in sales and marketing literature and by making the Code available through Originating Communications Providers' websites.
- 4.3 The Code shall be drafted in plain English, which is easy to understand, and copies of the Code are to be provided on request, and free of charge, to customers.
- 4.4 The Code shall include the name and contact details (including e-mail address) of the Originating Communications Provider's representative who is responsible for the Originating Communications Provider's compliance with the Code.
5. **Terms used in these Guidelines**
- 5.1 Terms used in these Guidelines shall have the same meaning, if any, as set out in Condition 14.

## **Annex 2 to General Condition 14<sup>24</sup>**

### **Guidelines for codes of practice for the publication of prices of calls to Number Translation Services, 0870 calls<sup>25</sup> [and Personal Numbers]<sup>26</sup>**

- 1.1 The key objective of these Guidelines is to ensure that Originating Communications Providers provide their Domestic and Small Business Customers with readily accessible and accurate information relating to the usage charges for NTS Calls, 0870 calls [and calls to Personal Numbers] on their networks.
- 1.2 These Guidelines seek to ensure that there is a clear framework within which Originating Communications Providers should be operating in relation to the publication and provision of information to domestic and small business customers about usage charges for NTS Calls, 0870 calls [and calls to Personal Numbers].
2. **Status of code**
  - 2.1 All Originating Communications Providers who provide NTS Calls, 0870 calls [and calls to Personal Numbers] are required under General Condition 14.2 to establish a Code of Practice for their domestic and small business customers (the “Code”), which conforms with these Guidelines and to comply with the provisions of the Code.
  - 2.2 Compliance with the Code does not guarantee compliance with any other legal requirements.
  - 2.3 Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.
3. **Customer information and advice: published price lists and websites**
  - 3.1 The Originating Communications Provider that is responsible for the retail billing of NTS Calls, 0870 calls [and calls to Personal Numbers] to the end-user shall publish the usage charges required to be published under General Condition 10.2(d)(ii) for NTS Calls, 0870 calls [and calls to Personal Numbers] on its website and in published price lists in a way that gives those charges the same prominence in terms of location and format given to charges for geographic calls, calls to mobiles and call packages, including bundles.

---

<sup>24</sup> Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.

Review of the 070 personal numbering range, Statement and notification, 27 February 2009 – added reference to “calls to Personal numbers”, paragraph 3.2(iii) on usage charges for calls to Personal Numbers and paragraph 4.3 on prominence – to take effect on 28 August 2009.

<sup>25</sup> Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009 – added reference to 0870 calls in paragraphs 1.1, 1.2, 2.1, 3.1 and 4.1 – 4.2 and 5.1, and new publication requirements in paragraphs 3.2(iii), 4.3 and 4.4.

<sup>26</sup> Review of the 070 personal numbering range, Statement and notification (and correction), 27 February 2009, to take effect on 28 August 2009 – added reference to “calls to Personal numbers” in paragraphs 1.1, 1.2, 2.1, 3.1 4.1 – 4.3 and 5.1, and new publication requirement in paragraph 3.2(iv) on usage charges for calls to Personal Numbers, all shown in square brackets.

- 3.2 Without prejudice to the generality of paragraph 3.1, Originating Communications Providers shall give prominence to the following, in particular:
- (i) any usage charges that apply for calls to freephone numbers including details of when those charges will apply;
  - (ii) usage charges for NTS Calls which include variations by time of day. For example, "08xx calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax";
  - (iii) except where these are charged at the Originating Communications Provider's geographic price including discounts and packages, usage charges for 0870 calls which include variations by time of day. For example, "0870 calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax";
  - (iv) usage charges for calls to Personal Numbers which include variations by time of day. For example, "070 calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax";
  - (v) whether or not any special offers, discount schemes or call bundling arrangements apply to NTS Calls, 0870 calls [and calls to Personal Numbers], including details of which of those arrangements apply to which number range;
4. **Customer information and advice: advertising, promotional material and new customers**
- 4.1 Originating Communications providers shall publish in their advertising and promotional material which refer to call pricing, alongside maximum prices applying to NTS Calls[,calls to 0870 numbers] [and calls to Personal Numbers], a clear reference as to where on websites and published price lists the complete set of charges, as specified in paragraph 3.2, can be found.
- 4.2 When a new customer signs up for the provider's service, Originating Communications Providers shall provide, alongside maximum prices applying to NTS Calls, calls to 0870 numbers [and calls to Personal Numbers] in the relevant correspondence, a clear reference as to where on websites and published price lists the complete set of NTS Call, 0870 call [and Personal Numbers call] charges, as specified in paragraph 3.2, can be found.
- 4.3 Wherever an Originating Communications Provider states in their advertising or promotional material a price for a call package or bundle which includes geographic calls the Originating Communications Provider must include in that advertising or promotional material a prominent statement indicating whether or not this price includes 0870 calls [and calls to Personal Numbers.]
- 4.4 Originating Communications Providers should only describe calls to 0870 numbers as national calls or priced at the national rate in advertising, promotional material and consumers' retail bills, where their prices for calls to 0870 numbers are the same as their prices for geographic calls.<sup>5</sup>

## **Processes and Procedures**

- 5.1 Procedures should be in place for Originating Communications Providers' enquiry and helpdesk staff to know of the existence and content of the Code in order for them to be able respond to complaints and enquiries about NTS<sup>27</sup> calls, calls to 0870 numbers [and calls to Personal Numbers] and to monitor their compliance with the Code.
- 5.2 There should be fully documented procedures in place to make customers and advice agencies aware of the existence and content of the Code, for example by referring to the Code in sales and marketing literature and by making the Code available through Originating Communications Providers' websites.
- 5.3 The Code shall be drafted in plain English, which is easy to understand, and copies of the Code are to be provided on request, and free of charge, to customers.
- 5.4 The Code shall include the name and contact details (including e-mail address) of the Originating Communications Provider's representative who is responsible for the Originating Communications Provider's compliance with the Code.
- 6. **Terms used in these Guidelines**
- 6.1 Terms used in these Guidelines shall have the same meaning, if any, as set out in Condition 14.

---

<sup>27</sup> Changes to 0870, Statement and modification, 23 April 2009, correction of original text.



## **Annex 3 to General Condition 14**<sup>28,29</sup>

### **Guidelines for sales and marketing codes of practice for Fixed-Line Telecommunications Services**

The following elements to be included within sales and marketing codes of practice

#### **1. Introduction and overview**

##### **1.1 Objectives to be outlined:**

- to provide Domestic and Small Business Customers (“Customers”) with protection from harmful conduct arising from irresponsible sales and marketing activity;
- to ensure good practice and responsible selling in the marketing of Fixed-line Telecommunications Services, and to help Customers understand the service and behaviour to be expected;
- to provide a clear framework within which responsible Communications Providers (“Providers”) should be working, providing reassurance to Customers and consumer representatives as to what constitutes good practice in the sales and marketing of Fixed-line Telecommunications Services.

1.2 The code to deal primarily with issues arising before, during and at the point of sale, with particular emphasis on the avoidance of mis-selling and misrepresentation, and ensuring customer understanding of the services offered and the key terms of any contracts they are entering into.

1.3 Procedures to be in place for sales and marketing staff, and agents, to be informed of the Codes of Practice for Sales and Marketing (“the Code”) and its contents, and for monitoring their compliance with it.

1.4 Procedures to be in place, and fully documented, for Customers and advice agencies to be made aware of the Code and its contents such as, for example, making reference to the Code in sales and marketing literature, as part of the Providers’ “notification of transfer” letter (referred to in paragraphs 6.11 and 6.12).

---

<sup>28</sup> Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005.

<sup>29</sup> Protecting consumers from mis-selling of telecommunications services, Notification, 22 May 2007 – amended paragraphs 1.1, 1.2, 1.5, 1.6, 2.1, 2.2, 2.3, 4.2, 5.5, 6.1, 6.3, 6.9, 10.1 and deleted paragraph 10.2 (address of Citizens Advice Bureau) and item 4 in the table (Telecommunications (Open Network Provision)(Voice Telephony) Regulations 1998 SI 1998 No. 1580).

1.5 — Codes to be drafted in plain English, and to be made available on public websites, and copies of it to be provided on request, and free of charge, to Customers.

1.6 — A named person, responsible for compliance, with relevant contact details, including an e-mail address, to be provided.

## **2. — Status of code**

2.1 — Codes to explain that Providers who engage in sales and marketing for Fixed-line Telecoms Services are required under General Condition 14.5 to establish the Code in accordance with these Guidelines, and comply with the provisions of the Code.

2.2 — Codes to explain that compliance with the Code does not guarantee compliance with any legal requirement.

2.3 — Codes to explain that non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.

## **3. — Sales, marketing advertising and promotion**

3.1 — Customer approaches may occur in a wide range of ways e.g. by TV, radio or press advertising, promotions in shops or shopping centres, post, fax, electronic mail, telephone or in person. Regardless of the way in which sales and marketing activities are conducted, Providers to act responsibly and compliantly.

3.2 — Customers' legal rights and wishes to be respected where they have registered with any relevant preference service, including the Mailing Preference Service, the Telephone Preference Service, the Fax Preference Service and the E-mail Preference Service.

3.3 — Advertising and promotion to comply with the British Codes of Advertising and Sales Promotion and all other applicable advertising codes. In addition, advertising and promotional literature to be clear, unambiguous, accurate and fair, containing no false or misleading information about price, value or service and, in particular, must not denigrate other Providers.

#### 4. — Recruitment and sales training

4.1 — Appropriate procedures to be set up for the selection of staff involved with direct contact with customers for the purposes of sales and marketing activity.

4.2 — Providers to be responsible for ensuring that sub-contractors (third party agencies) also set up equivalent selection procedures. Third party agencies shall not include resellers to whom telephony services are sold on a wholesale basis.

4.3 — Whilst operating within current employment legislation, recruitment of sales staff to have regard to:

- behaviour and appearance, recognising that the sales person may be seen as the “public face” of the industry;
- security — references and relevant convictions for criminal offences to be checked and taken into account;
- evidence of mis-selling or lack of integrity in any previous selling employment.

4.4 — The following requirements related to sales staff based in the UK to be observed:

- the applicant must provide proof of National Insurance number, proof of address and two references;
- referees cannot be related to the applicant;
- business referees must not both be from the same company;
- if a sales person leaves for any reason a copy of his or her sales records (including all recordings and notes on sales) will be retained for a minimum period of six months;
- reasonable endeavours to be made to retrieve the identification badges of staff leaving the company.

4.5 — For sales staff not based in the UK, equivalent procedures to be applied, and documented.

4.6 — Providers to satisfy themselves that they have taken reasonable steps to ensure that every such person is trained so as to have a sufficient understanding that any relevant advice given by such person is not misleading. Topics covered to include:

- arrangements for competition in the supply of telecommunications in the UK;
- the different telephone options provided by the company and how these differ from other competitive telecoms products (which may or may not be offered by the company); for example, Indirect Access, Carrier-Pre Selection, Wholesale Line Rental or Wholesale Calls;
- the process for ordering the telephone service;
- the relevant principles of consumer protection law;
- the prices charged by the employing company and its other terms and conditions of service and, in particular, methods of payment, duration of contract and any termination fees;
- the nature, and cost, of any additional services on offer;
- the process for cancelling the contract both during the cooling-off period and at any time following commencement of the service;
- the existence of the sales and marketing Code of Practice and the benefits provided; and
- the procedure for handling customer complaints.

4.7 — Responsibility for compliance with the Code by representatives, and any sales agency acting on their behalf, to lie with the Provider. The Provider to identify the title of the person accountable for ensuring that the company and its agents observe the Code, and the title of the person responsible for handling complaints relevant to the code.

4.8 — Remuneration systems, to be documented, and not to be such as to encourage misleading or exploitative sales practices. The Provider to be kept informed of incentive schemes used by any agencies it employs for sales and marketing.

## 5. — Customer contact

- 5.1 Discretion to be used when visiting consumers' homes, particularly during the hours of darkness. No face to face contact to be made outside the hours of 08.00 to 20.00, and no telephone calls to be made outside the hours of 08.00 to 21.00, unless at the customer's request
- 5.2 Representatives involved in face-to-face sales and marketing to be issued with identity badges that clearly display the name of the Provider they represent and a unique identification number for that representative. The identity badge to also display the representative's name, a photograph of the representative and an expiry date for validity of the card. The information on the card to be presented in such a way that does not require close examination. Identity cards must also be made available with key information in Braille, on request
- 5.3 All representatives to immediately identify themselves, the company they represent and the purpose of the call and the expected call duration. If visiting or meeting in person, they should draw the Customers' attention to their identity card.
- 5.4 Reasonable steps to be taken to keep informed of local authority initiatives, password schemes etc, such as the Local Distraction Burglary Initiative.
- 5.5 All representatives to be courteous, use appropriate language and offer clear and straightforward explanations. All information should be factual and accurate. Representatives should not misrepresent the services being offered by the Provider nor those of other Providers. Representatives should not engage in conduct that misleads or deceives or is likely to mislead or deceive Customers. Representatives to ensure that Customers entering into contracts understand, and intend to enter into them.
- 5.6 Representatives to cease contact with any person who indicates that the contact is inconvenient, unwelcome, inappropriate or too long. If the Customer requests it, the discussion to be ended immediately and, if making a doorstep call, the premises to be left immediately.
- 5.7 Representatives not to abuse the trust of vulnerable Customers e.g. those who are elderly or whose first language is not English, or who have special needs. Providers should have a policy regarding such Customers, including that their representatives

do not pursue sales presentations to Customers whom they believe may be vulnerable.

5.8 — Where there is sheltered housing, nursing homes or residential care facilities contact to be made with the warden or other person in authority before any approach is made to the Customer.

5.9 — No sales or marketing activity to be conducted that is directed to those who are under the legal age for entering into contracts.

5.10 — Sales and marketing campaign records to be maintained for six months, including the date and the approximate time of the contact with the Customer. Records to be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

## **6. — Entering into a contract — information, order forms and contracts**

6.1 — All reasonable steps to be taken to ensure that the person entering into a contract is authorised to enter into the contract for the Fixed-line Telecommunications Services/bills at the premises, and that the person entering into a contract understands, and intends to enter into the contract (i.e. explicit consent of the Customer is obtained before transferring a line).

6.2 — Order forms and contract forms to be designed such that the contractual nature of the document is clear to the Customer, and it contains a statement of the contractual nature of the document immediately adjacent to where the Customer signs the document so the statement cannot easily be obscured or concealed. Customers to sign over the word "contract".

6.3 — The Customer to be given the information set out in this paragraph, in writing, and during the sales call, in a clear, comprehensible, prominent and accurate manner.

- essential information including the identity of the company, its address, telephone, fax and e-mail contact details, as appropriate;
- a description of the telephone service sufficient to enable the customer to understand the option that the customer has chosen, and how it works;

- information about the major elements of the service, including the cost of any standing charges, the payment terms, line rental, key call types and details of “protected or special support” arrangements;
- the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision. Where there may be significant delay in the likely date of provision, the Customer to be informed;
- the existence of a right of cancellation, the duration of the switchover period during which time that right may be exercised and the process for exercising it;
- the period for which the charges remain valid; and
- any minimum period of contract, minimum contract charges, and any early termination charges, if applicable.

6.4 — Customers to be made aware of the existence of the Code, and preferably provided with a summary. Copies of it to be provided on request, and free of charge, to Customers.

6.5 — At the Customers request, full written information about tariffs to be made available.

6.6 — If a Customer signs an order form following face to face contact, or enters into a written contract, the customer must be given a copy of the order form or contract, as well as the following details in writing either at the same time or within 5 working days, unless previously supplied in writing prior to contract:

- Information about any after-sales services or guarantees; and
- Arrangements for the termination of the contract.

6.7 — Orders placed by distance selling means to comply with Distance Selling Regulations, which are set out in the table below.

6.8 — In the case of internet orders, a well sign-posted hyperlink to this information which is easily visible to the web site visitor to be prominently displayed with the information being capable of being easily downloaded and printed.

6.9 — During the switchover period (i.e. the period before a Customer’s order can be activated) there should be “no cost” cancellation for Customers where they change their mind. Customers to be made aware that they have the right to change their mind during the switchover period.

6.10 — Customers to be permitted to cancel orders and terminate contracts by telephone, in writing, by fax or by e-mail.

6.11 — Providers to send a mandatory letter in accordance with the industry-agreed process informing the customer of the details of the transfer, and the following to be clearly communicated:

- date of notification;
- CLI(s) affected;
- list of services affected/unaffected, e.g. IA call barring;
- date of switchover;
- the sender's contacts details for any queries.

6.12 — The notification will be by letter although may be sent electronically where Customers have initiated contact by applying online, and have confirmed online that they wish all future correspondence to be sent electronically. Otherwise Customers would need to positively request by written correspondence that information be sent electronically.

6.13 — Providers to keep under review the procedures by which contracts are agreed and to take appropriate steps to prevent recurrence of any problem identified.

6.14 — In all cases, Customers to be contacted along similar timescales to the industry-agreed process described in paragraph 6.11 to confirm that the Customer understands that they have entered into an agreement, are happy to proceed with the agreement and are content with the way in which the sales and marketing activity was conducted.

6.15 — Such Customer contact to be either part of the mandatory Customer "notification of transfer" letter referred to in paragraph 6.11 or through a separate process. This contact to be made by a person not engaged directly in activities leading to the promotion of sales contracts.



6.16 — If it is found that the contract was not understood or intended, or if the order matured before the expiry of the switchover period, and the Customer wishes to cancel, Providers to terminate the contract without charge or other penalty to the Customer.

## 7. — Consumer protection and other legal requirements

7.1 — Procedures to comply with all applicable legislation and appropriate amendments (see table below for examples).

## 8. — Audit

8.1 — Providers to carry out regular audits of systems, procedures and documentation to ensure that they are acting compliantly with all aspects of the Code.

## 9. — Customer complaints procedure

9.1 — Providers' internal procedures for handling Customer complaints to also include those relating to their sales and marketing activities. Providers to ensure that all their staff and representatives who deal directly with Customers are made aware of this procedure, and that they should inform Customers of the existence of their complaints procedure in accordance with their current obligations.

9.2 — The complaints procedure to set out how Customers may complain about the company's sales and marketing activity and what further steps are available if they believe their complaint has not been dealt with satisfactorily.

9.3 — In addition, Customers also to be made aware of any dispute resolution arrangements as recognised by Ofcom. Currently Ofcom has approved two schemes: the Office of the Telecommunications Ombudsman ("Otele") and the Communications and Internet Services Adjudication Scheme ("CISAS").

9.4 — Providers to liaise regularly with Ofcom and the relevant consumer groups to monitor the number and nature of complaints under its code.

**10. Distributing the code: creating awareness**

10.1 The Code to be available to Customers on request, free of charge and in a reasonable range of formats, and to be made available on the Provider's public website.

### **Legislation of particular relevance to sales and marketing of particular telephony products**

Particular attention is drawn to the following regulations (as amended, where appropriate), in addition to all other appropriate consumer protection law and advertising Codes of Practice

	Title	Comment
1.	The Unfair Terms in Consumer Contracts Regulations 1999 SI 1999 No 2083	<ul style="list-style-type: none"> <li>introduces controls over unfair standard terms in contracts with consumers</li> <li>requires written contracts with consumers to be in plain, intelligible language</li> </ul>
2.	The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 SI 1987 No 2117	<ul style="list-style-type: none"> <li>requires that written notice of cancellation rights (min 7 days) in prescribed form is given to consumers entering into contracts at their homes or in other places (e.g. shopping precincts)</li> </ul>
3.	The Consumer Protection (Distance Selling) Regulations 2000 SI 2000 No 2334	<ul style="list-style-type: none"> <li>requires extensive information to consumers before and after consumers enter into contracts using channels of marketing such as direct response press or TV adverts, telemarketing, mail order, etc</li> <li>requires cancellation rights (min 7 working days) to be given to consumers, starting from the date of delivery of prescribed information</li> <li>provides that making demands for payment for services not ordered by consumer is a criminal offence</li> </ul>
4.	Various Misleading Advertising Regulations	
5.	Consumer Protection Act 1987 (Part III)	

6.	Consumer protection legislation	<p>Civil responsibilities</p> <ul style="list-style-type: none"> <li>• Misrepresentation Act 1967</li> <li>• Unfair Contract Terms 1977</li> <li>• Sales of Goods Act</li> <li>• Supply of Goods and Services Act 1982</li> <li>• Consumer Protection 1987</li> <li>• Sale and Supply of Goods Act 1994</li> <li>• Control of Misleading Advertising Regulations 1988 SI 1988 No 915</li> <li>• Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 SI 1987 No 2117</li> <li>• Unfair Terms in Consumer Contracts Regulation SI 1999 No 2083</li> </ul> <p>Criminal liabilities</p> <ul style="list-style-type: none"> <li>• Trade Descriptions Acts 1968</li> <li>• Administration of Justice Act 1970</li> <li>• Fair Trading Act 1973</li> <li>• Price Act 1974</li> <li>• Consumer Protection Act 1987 (Parts II, III, IV and V)</li> <li>• Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 SI 1987 No 2117</li> <li>• Consumer Protection (Distance Selling) Regulations 2000 SI No 2334</li> </ul>
----	---------------------------------	--

## **Annex 43 to General Condition 14<sup>30</sup>**

### **Code on the provision by Service Providers of consumer information to Domestic and Small Business Customers for the provision of Services**

#### **Provision**

1. This code (the 'Code') sets out the minimum requirements for all Service Providers to ensure that their Domestic and Small Business Customers are provided with information about any feature and/or limitation in that Service Provider's Service that differs from a Publicly Available Telephony Service provided over the Public Telephone Network, in the ways set out in paragraph 4 below.
2. Different sections of the Code may be applicable to different Service Providers, depending on what Services the Service Provider is providing.
3. These requirements are in addition to the information required to be made available by the Service Provider under the General Conditions of Entitlement and any Codes of Practice set under the General Conditions of Entitlement.

#### **Scope**

4. The Code requires the Service Provider to provide information to its Domestic and Small Business Customers on:
  - a) service reliability;
  - b) Emergency Calls;
  - c) the ability to Port Numbers; and,
  - d) Other information for Domestic and Small Business Customers.

#### **Service Reliability**

5. Each Service Provider shall provide to its Domestic and Small Business Customers clear and readily accessible information regarding whether its Service may cease to function if there is a power cut or power failure, or a failure of the Broadband Connection.
6. The information in paragraph 5 above shall be provided during the Sales Process, within the Terms and Conditions of Use, and in any User Guide issued by the Service Provider.
7. The following text is an indicative example of the information to be provided in paragraph 5 above, that can be adapted to the specific requirements of Service Providers:

"IMPORTANT INFORMATION: If your Broadband Connection fails, your voice service will also fail. Your service may cease to function if there is a power cut or failure. These failures may be caused by reasons outside our control."

---

<sup>30</sup> Regulation of VoIP Services, Notification, 29 March 2007.

## Emergency Calls

8. Some Services may not offer any access to Emergency Calls or access to Emergency Calls may be offered by the Service Provider over its Service but the reliability of this access may be affected by a power cut or power failure, or by failure of the Customer's Broadband Connection.
9. This section is intended to ensure that Service Providers provide their Domestic and Small Business Customers with relevant information about their ability to make Emergency Calls.

## No Access to Emergency Calls

10. Where the Service provided by the Service Provider does not provide access to Emergency Calls, the Service Provider shall:
  - a) provide the Domestic and Small Business Customers, clear and readily accessible information at the Point of Signature, in the Terms and Conditions of Use and in any User Guide; that its Service does not provide access to Emergency Calls. The same information must also be provided to prospective Domestic and Small Business Customers as part of the Sales Process;
  - b) take reasonable steps to ensure that Domestic and Small Business Customers acknowledge in the form of a signature (or online equivalent), at the Point of Signature, that they understand that the Service will not provide any access to Emergency Calls, (the following text is an example of the wording that could be used):

a) "I understand that this service does not allow calls to the emergency services numbers 999 and 112."
  - c) provide evidence to Ofcom of the acknowledgement in paragraph 10 (b) above, within five working days; following a written request from Ofcom;
  - d) as part of the Terms and Conditions of Use, supply its Domestic and Small Business Customer with a clear and readily accessible printed statement, or an on-screen statement that the Domestic and Small Business Customer is encouraged to print out, that Emergency Calls cannot be made using the Service;
  - e) during the Sales Process, give the Domestic and Small Business Customer the choice whether to receive Labels (at no charge, other than reasonable postage and packaging if applicable) which state that Emergency Calls cannot be made using the Service, and recommend that the Domestic and Small Business Customer use these Labels on or near the relevant Service Access Terminal;
    - where a screen or display is used with the Service, a Label could be an on-screen message or display using a clear and readily accessible graphic, words or icon that Emergency Calls cannot be made using the Service; or

- in these and other circumstances a Label could be (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file).
- f) if Emergency Calls are made from the Service Access Terminal, provide a network announcement stating (for example):

"Calls to Emergency Services cannot be made from this handset; please hang up and call from an alternative telephone service such as a traditional landline or mobile phone."

- g) This announcement shall be interspersed with a Number Unavailable Tone for the benefit of hearing-impaired users.

### **Reliability of Access to Emergency Calls**

11. Where the Service Provider provides access to Emergency Calls but the Service may cease to function if there is a power cut or failure or a failure of the Broadband Connection the Service Provider shall:

- a) provide its Domestic and Small Business Customers with clear and readily accessible information, during the Sales Process, in the Terms and Conditions of Use and in any User Guide; that, although access to Emergency Calls is provided, the Service may cease to function if there is a power cut or failure, or a failure of the Broadband Connection;
- b) take reasonable steps to ensure that Domestic and Small Business Customers acknowledge in the form of a signature (or online equivalent), at the Point of Signature, that they understand that Emergency Calls will fail if there is a power cut or failure, or a failure of the Broadband Connection, (the following text is an example of the wording that could be used):

"I understand that this service allows calls to the emergency services numbers 999 and 112. However I understand that calls will fail if there is a power cut or my broadband connection fails."

- c) provide evidence to Ofcom of the acknowledgement in paragraph 11 (b) above, within five working days; following a written request from Ofcom;
- d) during the sales process, give the Domestic and Small Business Customer the choice whether to receive (at no charge other than reasonable postage and packaging if applicable), Labels which state that Emergency Calls may fail:
  - where a screen or display is used with the Service, a Label would normally be an on-screen message or display using a clear and readily accessible graphic, words or icon that Emergency Calls cannot be made using the Service; and
  - in other circumstances a Label would normally be (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file).

## **Emergency Location Information**

12. In respect of Emergency Location Information:

- a) where the Service provided by the Service Provider does provide access to Emergency Calls and the Service is to be used principally at a single fixed location, the Service Provider shall require its Domestic and Small Business Customers to register with it the address of the place where the Service is going to be used prior to activation of the Service (the location information), so that up-to-date location information can be used for Emergency Location Information;
- b) where the Service Provider has reasonable expectation that, or has been informed that, the service is to be accessed from several locations, the Service Provider shall recommend that its Domestic and Small Business Customers register and update the location information with it, whenever accessing the Service from a new location, so that up-to-date information can be used for Emergency Location Information;
- c) the Service Provider shall advise its Domestic and Small Business Customer at the Point of Signature, in any User Guide, and in any Terms and Conditions of Use of any limitations on the location information that will be provided to the Emergency Services as Emergency Location Information, if the location information they have provided is not up-to-date. This advice shall be clear and readily accessible;
- d) where the Service Provider does not provide Emergency Location Information, it shall provide clear and easily accessible information to this effect to all Domestic and Small Business Customers at the Point of Signature, in any User Guide, and in any Terms and Conditions of Use. The same information shall also be made available to prospective Domestic and Small Business Customers as part of the Sales Process.

## **Ability to Port Numbers**

13. Where the Service Provider does not offer Number Portability, the Service Provider shall provide clear and readily accessible information to its Domestic and Small Business Customers in any User Guide and the Terms and Conditions of Use to this effect. The same information shall also be provided to prospective Domestic and Small Business Customers as part of the Sales Process.

## **Other information for Customers**

14. In addition to the requirements set out above, the information describing the Service made available by a Service Provider to a prospective Domestic and Small Business Customer shall make it clear and readily accessible as part of the Sales Process if any of the following facilities or features are not available by means of the Service:

- access to a Directory Enquiry Facility;
- access to operator assistance services (as described in General Condition 8.1);
- Calling Line Identification Facilities;
- provision of a Directory on request;



- special measures for end users with disabilities (as described in General Condition 15); and
  - the non-itemisation of calls which are made from a Subscriber's telephone which are free of charge.
15. The Service Provider shall also make clear and readily accessible, any restrictions on the Number Ranges or Country Codes that may be called using the Service. Where such numbers cannot be dialled, it is recommended that dialling such numbers should produce the standard Number Unavailable Tone.

## DEFINITIONS

For the purposes of the Code, the definition of the following terms is:

**'Broadband Connection'** means the Domestic or Small Business Customer's broadband service which provides speeds which are higher than those attainable over a dial up connection which are 56kbit/s over an analogue line; 64kbit/s over an ISDN2 digital channel and 128kbit/s over the two bonded channels of an ISDN2 line;

**'Calling Line Identification Facilities'** means facilities by which the Telephone Number of a calling party is presented to the called party prior to the call being established;

**'Country Codes'** means the international dialling code e.g. 44 for the UK;

**'Emergency Calls'** means calls to 999 or 112 or its equivalent;

**'Emergency Location Information'** means information concerning the location from where a call to the Emergency Organisations can be made, that is provided by Service Providers to Emergency Organisation's Operators as part of the handling of such a call;

**'Internet Protocol'** means the method by which data is sent over the internet or intranet;

**'Label'** means a mechanism for annotating a Service Access Terminal with a brief message. A Label can consist of an electronic notice that is displayed whenever the Service is used or (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file);

**‘Number Portability’** the facility by which a Domestic and Small Business

Customer can transfer their Telephone Number when switching between Service Providers;

**‘Number Ranges’** means a set of contiguous numbers of a specified or unspecified size;

**‘Number Unavailable Tone’** means a continuous tone which differs from dial tone and indicates a dialled number is unavailable or out of service;

**‘Point of Signature’** means the point in the process of concluding a contract immediately before the Domestic and Small Business Customer indicates his/her agreement to enter into the contract;

**‘Port Numbers’** means the process to transfer Telephone Numbers to a new Service Provider;

**‘Sales Process’** means the process of providing information to the prospective Domestic and Small Business Customer about the Service and of establishing the Domestic and Small Business Customer’s requirements for the Service before the making of the contract to provide that Service. This includes leaflets and marketing material. It does not include advertisements;

**‘Service Access Terminal’** means the equipment used to access the Service;

**‘Terms and Conditions of Use’** means the contract agreed by the Domestic and Small Business Customer for the provision of the Service;

**‘User Guide’** means the document giving the Domestic and Small Business Customer information about how to use the Service. This does not include any document concerned solely with the operation of a Service Access Terminal.

## Annex 4

# Notification under Section 49 of the Communications Act 2003

**Withdrawal of a Direction under SMP Condition AA1(a) imposed on British Telecommunications plc ('BT') as a result of the market power determinations made by the Director General of Telecommunications ('the Director') that BT has significant market power**

### WHEREAS:

A. On 27 July 2005 the Director imposed a Direction on BT under SMP Services Conditions AA1(a) in Schedule 1 to the Notification of the market review as a result of which BT was designated as having Significant Market Power in, inter alia, the markets for wholesale residential analogue exchange line services, and wholesale call origination on fixed public narrowband networks (the 'Direction').

B. Ofcom issued a notification pursuant to section 49(4) of the Act on 10 September 2009 setting out their proposal to withdraw the Direction (the 'Notification')

C. A copy of the Notification was sent to the Secretary of State in accordance with section 50 of the Communications Act 2003 (the 'Act');

D. In the Notification and its accompanying explanatory statement, Ofcom invited representation about any of the proposals set out therein by 9 October 2009;

E. By virtue of section 49(9) of the Act, Ofcom may give effect, with or without modifications, to any proposals with respect to which a notification has been given under s49(4) of the Act only if,

(i) they have considered every representation about the proposals made to them within the period specified in the Consultation Notification; and

(ii) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;

F. Ofcom received 13 non-confidential responses to the Notification and have considered every such representation made to them in respect of the proposals set out in the Notification and its accompanying explanatory statement; and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose;

G. For the reasons set out in the explanatory statement accompanying this Notification, Ofcom are satisfied that, in accordance with section 49 (2) of the Act, this modification is:

(i) objectively justifiable in relation to the matters to which it relates;

(ii) not such as to discriminate unduly against particular persons or against a particular description of persons;

- (iii) proportionate to what it is intended to achieve; and
- (iv) in relation to what it is intended to achieve, transparent;

**NOW, THEREFORE, OFCOM MAKES THE FOLLOWING DECISION**

1. Ofcom hereby decides to withdraw the Direction.
2. The reasons for making the withdrawal of the Direction are set out in the accompanying explanatory statement to this Notification.
3. Ofcom considers that the withdrawal referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant
4. In making the withdrawal set out in this Notification, Ofcom has considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
5. In accordance with section 50 of the Act, copies of this Notification have been sent to the Secretary of State, the European Commission and to the regulatory authorities of every other Member State.
6. The withdrawal of the Direction shall enter into force on 18 March 2010.

**Claudio Pollack**

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

18 December 2009

## Annex 5

# Notification of modification under section 48(1) of the Communications Act 2003

### **The modification of the General Conditions to introduce General Condition 24 on Sales and Marketing of Fixed-Line Telecommunications Services.**

A. The Director General of Telecommunications (the 'Director') issued on 22 July 2003 the General Conditions Notification, which took effect on 25 July 2003 by way of publication of a notification pursuant to section 48(1) of the Communications Act 2003 (the 'Act');

B. Ofcom issued an initial notification ('the Initial Notification') on 17 March 2009 and a further notification ('the Final Notification') on 10 September 2009, both pursuant to section 48(2) of the Act, setting out their proposals for the insertion of a new General Condition 24;

C. A copy of the Initial Notification and the Final Notification were sent to the Secretary of State in accordance with section 50 (1) (a) of the Act;

D. In the Initial Notification, the Final Notification and the accompanying explanatory statements, Ofcom invited representations about any of the proposals set out therein by 27 May 2009 and 9 October 2009;

E. By virtue of section 48(5) of the Act, Ofcom may give effect to any proposals to set conditions as set out in the Final Notification, with or without modifications, where:

(i) they have considered every representation about the proposals made to them within the period specified in the Consultation Notification; and

(ii) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;

F. Ofcom received 20 non-confidential and 2 confidential responses to the Initial Consultation and 13 non-confidential responses to the Final Notification and have considered every such representation made to them in respect of the proposals set out in both the Initial Notification and the Final Notification and the accompanying explanatory statements; and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose;

G. For the reasons set out in the explanatory statement accompanying this Notification, Ofcom are satisfied that, in accordance with section 47 (2) of the Act, this modification is:

- (i) objectively justifiable in relation to the matters to which it relates;
- (ii) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (iii) proportionate to what it is intended to achieve; and
- (iv) in relation to what it is intended to achieve, transparent;

**NOW, THEREFORE, OFCOM MAKES THE FOLLOWING DECISION**

1. Ofcom, in accordance with section 48(1) of the Act, hereby make the following modification to the General Conditions Notification to insert new General Condition 24 on the Sales and Marketing of Fixed Line Telecommunications Services as set out in the Schedule to this Notification;
2. The effect of, and Ofcom's reasons for making, the modification referred to in section 1 above is set out in the accompanying explanatory statement to this Notification;
3. Ofcom considers that the modification referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the modifications;
4. In making the modification set out in this Notification, OFCOM has considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act;
5. The General Condition 24 set out in the Schedule to this Notification shall enter into force on 18 March 2010;
6. Copies of this Notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with section 50 (1) (a) of the Act;
7. In this Notification "Ofcom" means the Office of Communications;
8. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification (including the Schedule to this Notification) and otherwise any word or expression shall have the same meaning as it has in the Act.
9. For the purpose of interpreting this Notification:
  - (i) headings and titles shall be disregarded; and
  - (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
10. The Schedule to this Notification shall form part of this Notification.

Claudio Pollack

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

18 December 2009

## General Condition 24 on Sales and Marketing of Fixed-Line Telephony Services

### Scope

- 24.1 A Communications Provider who provides a Fixed-Line Telecommunications Service to Domestic and Small Business Customers ('the Customer') must comply with this General Condition with respect to such Customers.
- 24.2 This General Condition is only applicable where the Customer is transferring a Fixed-Line Telecommunications Service between Communication Providers.

### Mis-selling prohibition

- 24.3 When selling or marketing Fixed-Line Telecommunications Services, the Gaining Communications Provider must not:
- (a) engage in dishonest, misleading or deceptive conduct;
  - (b) engage in aggressive conduct;
  - (c) contact the Customer in an inappropriate manner; or
  - (d) engage in Slamming.

### Responsibility

- 24.4 Where the Communications Provider engages representatives, such as any sales agency, to act on its behalf in the sale and marketing of Fixed-Line Telecommunications Services, the Communications Provider shall procure that such representatives comply with the requirements of this General Condition.

## **Publication of relevant obligations**

24.5 The Communications Provider must:

- a) publish a copy of this General Condition, or a link to a copy of this General Condition, published on Ofcom's website, in an easily accessible and reasonably prominent manner on its website or, where there is no such website, by making it available in its registered office during normal office hours for inspection free of charge by members of the general public; and
- b) provide a copy of this General Condition to a Customer free of charge upon reasonable request.

## **Information at Point of sale**

24.6 The Gaining Communications Provider must take all reasonable steps to ensure that before entering into a contract for a Fixed-Line Telecommunications Service the Customer who is transferring the line:

- a) is authorised to do so;
- b) intends to enter into the contract; and
- c) is provided with the information set out below in a clear, comprehensible, prominent and accurate manner, in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:
  - (i) the identity of the legal entity the Customer is contracting with and its telephone, website and/or e-mail contact details;
  - (ii) a description of the Fixed-Line Telecommunications Service requested; the key charges, including minimum contract charges, and any early termination charges, if applicable; payment terms; the existence of any termination right, termination procedures and the Customer's right to cancel at no cost from the point of sale to the completion of the Transfer Period; the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision of the service and any minimum period of contract.

## **Post-sales information**

24.7 Where the Customer enters into a contract for a Fixed-Line Telecommunications Service, the Gaining Communications Provider and the Losing Communications Provider must each send the Customer a letter, in accordance with the industry-agreed process, stating that the Customer is transferring their Fixed-Line Telecommunications Service, in paper or another Durable Medium, which clearly sets out, as appropriate:



- (i) the date of the letter;
- (ii) the Calling Line Identification of all Electronic Communications Services which are affected;
- (iii) the list of services affected/unaffected;
- (iv) the proposed switchover date;
- (v) relevant contact details; and
- (vi) the right to terminate the contract, the means by which the right to terminate from the point of sale to the completion of the Transfer Period can be exercised and the date by which the right to terminate must be exercised;

24.8 The letter must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.

### **Customer's termination rights**

- 24.9 When the Customer enters into a contract to transfer a Fixed Line Telecommunications Service the Gaining Communications Provider must allow the Customer to terminate the contract from the point of sale to the completion of the Transfer Period without charge or any other form of compensation being required to be given by the Customer to the Gaining Communications Provider.
- 24.10 The Gaining Communications Provider must have procedures in place to enable the Customer to exercise their right to terminate their contract pursuant to General Condition 24.9 without unreasonable effort. These procedures must include the ability to contact the Gaining Communications Provider to terminate the contract by any of the following contact methods:
- (i) telephone;
  - (ii) e-mail; and
  - (iii) post.

### **Records retention**

- 24.11 The Gaining Communications Provider must use reasonable endeavours to create and keep all records regarding the sale of its Fixed-Line Telecommunications

Service, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place where the Contract was entered into, where relevant, and be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

### **Training**

- 24.12 The Communications Provider must ensure that all its staff or any representatives of any sales agency engaged by it, involved in direct contact with Customers for the purpose of sales and marketing activity and/or Cancel Other are appropriately trained to comply with this General Condition.

### **Monitoring**

- 24.13 The Communications Provider must monitor, including conducting regular audits, its compliance with this General Condition, including compliance on its behalf by any representatives or sales agency engaged by it, and take appropriate steps to prevent the recurrence of any problem(s) identified.

### **Cancel Other process**

- 24.14 The Losing Communications Provider shall only be permitted to use Cancel Other in the following circumstances:

- (a) where Slamming has occurred;
- (b) at the Customer's request, where the Gaining Communications Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");
- (c) where the telephone line is or will be, ceased during the Transfer Period ("Line Cease");
- (d) for other specified reasons not related to a Customer's request to cancel a transfer, and agreed by the relevant industry forum and approved by Ofcom; and
- (e) in such other circumstances as defined by Ofcom.

- 24.15 Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Communications Provider shall take reasonable steps to establish that Slamming and/or Failure to Cancel has actually taken place.

- 24.16 After using Cancel Other, the Losing Communications Provider shall confirm the cancellation of the order by Durable Medium to the Customer, unless this is not possible or appropriate, including where the customer is deceased.
- 24.17 The Losing Communications Provider shall record its reasons for using Cancel Other in each case, selecting the appropriate reason code from a list corresponding to permitted use of Cancel Other and consistent with GC24.19(m)(i) to (iv), as agreed by the industry, and approved by Ofcom.
- 24.18 Where the Losing Communications Provider communicates with the Customer in order to comply with this General Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Communications Provider and/or remain in a contract with the Losing Communications Provider.

## Definitions

24.19 For the purpose of this Condition:

- a) “**Cable Network**” means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;
- b) “**Cancel Other**” means the industry term for a functionality that enables the Losing Communications Provider to cancel wholesale orders (during the Transfer Period) placed by the Gaining Communications Provider which can only be used in the circumstances set out in 24.14;
- c) “**Communications Provider**” means the provider of an Electronic Communications Network and/or Electronic Communications Service, both as defined in section 32 of the Act;
- d) “**CPS**” means Carrier Pre-Selection, a facility which allows a customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a telephone number;
- e) “**Domestic and Small Business Customer**” has the meaning set out in section 52 (6) of the Act;
- f) “**Durable Medium**” means any instrument which enables the Customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- g) “**Failure to Cancel**” means where the Gaining Communications Provider has not cancelled a transfer, after a request from the Customer during the Transfer Period;
- h) “**Fixed-Line Telecommunications Services**” means Narrowband call and/or line rental services provided to Domestic and Small Business Customer;
- i) “**Gaining Communications Provider**” means the Communications Provider to whom the customer is transferring;

- j) **“LLU”** means Local Loop Unbundling, the process by which a dominant provider's local loops are physically disconnected from its network and connected to a competing provider's network.
- k) **“Losing Communications Provider”** means the Communications Provider from whom the customer is transferring;
- l) **“Narrowband”** means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network;
- m) **“Slamming”** means where a request for CPS, WLR and/or LLU has been made without the Customer's express knowledge and/or consent; that is in the following circumstances:
  - (i) where the Customer has never been contacted by the Gaining Communications Provider;
  - (ii) where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;
  - (iii) where the Customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or
  - (iv) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider;
- n) **“Transfer Period”** means the period of 10 Working Days from before a customer's order can be activated;
- o) **“WLR”** means Wholesale Line Rental, a facility which BT provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) on the BT line; and
- p) **“Working Days”** means the hours between 09.00 – 17.00 on Monday to Friday with the exception of bank holidays.

## Annex 6

# Guidelines in respect of General Condition 24

## Guidelines to General Condition 24: Sales and Marketing of Fixed-Line Telecommunications Services

### Introduction

- A6.1 General Condition 24 ('GC24') sets out a number of provisions in respect of the sales and marketing of Fixed-Line Telecommunications Services<sup>31</sup> with which the relevant Communications Provider providing a Fixed-Line Telecommunications Service ('the Gaining Communications Provider') must comply.
- A6.2 GC24 also comprises provisions relating to the use of Cancel Other with which the relevant Communications Provider providing a Fixed-Line Telecommunications Service ('Losing Communications Provider') must comply. Cancel Other is a consumer protection mechanism designed to ensure that Customers are not switched between Communications Providers without their permission. Therefore, Cancel Other should only be used in certain circumstances, in particular, where the Customer believes they are a victim of slamming.

### Purpose of these guidelines

- A6.3 These guidelines are produced by Ofcom to help Communications Providers and Customers understand their rights and obligations under GC24 and are intended to assist Communication Providers in achieving compliance.
- A6.4 The guidelines set out some useful summaries, examples and guidance on the approach Ofcom is likely to take to enforcing GC 24. In particular, these guidelines:
- seek to provide clarity on the meaning of some of the terms and concepts used in GC24 so as to inform Communications Providers and stakeholders of Ofcom's general view on them; and
  - describe factors that Ofcom might consider when applying the relevant requirements or obligations set out in GC24.

### Disclaimer

- A6.5 For the avoidance of doubt, where the guidelines set out examples of the way in which Ofcom considers a Communications Provider may comply with a GC, Ofcom is not bound by this and Ofcom will at all times determine compliance on the basis of individual circumstances whilst having regard to these guidelines. If in any given situation we decide to depart from the principles set out in these guidelines we will normally set out our reasons for doing so.

---

<sup>31</sup> means narrowband calls and/or line rental services provided to Domestic and Small Business Customers, including Carrier-Pre Selection, Wholesale Line Rental and services provided over full LLU.

- A6.6 These guidelines are not in any way incorporated into the GCs set by Ofcom. The obligations which apply to a Communications Provider will be determined solely according to the GCs. However, when applying GC24, as stated in A6.5 above, Ofcom will have regard to these guidelines and will normally set out its reasons when departing from the principles set out therein. Ofcom advises Communications Providers to seek independent legal advice if they are unsure of their obligations under the GCs.

### **Scope of General Condition 24**

- A6.7 GC 24.1 specifies that this GC is applicable to all Communications Providers which offer a Fixed-Line Telecommunications Service to Domestic and Small Business Customers (who are referred to in this document as 'Customers').
- A6.8 GC24.2 specifies that this GC is only applicable where the Customer is transferring to, from or between Fixed-Line Telecommunications Providers for the relevant service in question. For the avoidance of doubt, therefore, it does not cover situations where there is an existing relationship between the Communications Provider and the Customer for the relevant Fixed-Line Telecommunications Service in question.

### **Mis-selling prohibition**

- A6.9 GC 24.3 sets out prohibitions on the Gaining Communications Provider regarding inappropriate types of sales and marketing behaviour (generally described as 'mis-selling'). Such prohibited mis-selling behaviour includes, but is not limited to:
- the omission of relevant information (for example, the terms and conditions attached to a specific offer including any restrictions on, or limitations of the offer).
  - the provision of false and/or misleading information (for example, about tariffs, potential savings or promising offers or gifts which do not actually materialise). Misleading conduct includes deceiving a customer or providing the customer with misinformation which is likely to affect a customer's purchase decision;
  - aggressive conduct, such as harassment, coercion, or applying unacceptable pressure on a Customer to enter into a contract, such as threatening or intimidating behaviour or refusal to leave (in case of doorstep selling); and
  - as set out in GC24.19(m), 'Slamming', means where a request for CPS, WLR, and/or LLU has been made without the Customer's express knowledge and/or consent; that is in the following circumstances:
    - where the Customer has never been contacted by the Gaining Communications Provider;
    - where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;

- where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead by submitting a request for a different product or service which the Customer has not agreed to purchase; or
- where the Customer has agreed to transfer some of all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider.

A6.10 Below we have included means of approaching Customers that Ofcom considers to be inappropriate:

- current or prospective Customers should not be approached at an inappropriate time of day. For example, we would not expect any outbound Customer contact, including doorstep selling and telesales to take place at an unreasonable time of day, say before 8.00am and after 8.00pm, unless the Customer requests otherwise;
- where sales representatives do not introduce themselves clearly and fully and state the purpose of the contact at the start of any sales and marketing activity to current or prospective Customers. The representatives should clearly state the name of the Communications Provider they represent.
- where sales representatives are discourteous, use inappropriate language (for example aggressive and/or intimidating language) and do not offer clear and straightforward explanations;
- where sales representatives do not cease contact with any person who indicates that the contact is inconvenient, unwelcome, inappropriate or too long. If the Customer requests it, the discussion should be ended immediately and, if making a doorstep call, the sales representative should leave the premises immediately; and
- where sales representatives with direct Customer contact take advantage of vulnerable Customers; e.g. those who are elderly or whose first language is not English.

## Responsibility

A6.11 GC24.4 states that the Communications Provider, where it engages representatives, such as any sales agency, to act on its behalf, must procure that such representatives comply with the requirements of GC24.

A6.12 In other words:

- the Communications Provider may engage representatives or agents to act on its behalf; but
- the obligations under the GC are always the Communications Provider's;

- the Communications Provider is responsible for the actions of those it engages to sell and market its services; and
  - the Communications Provider is liable where it, or those it engages on its behalf, act in breach of the GC.
- A6.13 Accordingly, the Communications Provider must ensure that it and its staff, sales representatives and agents who are involved in sales and/or cancellations of Fixed-Line Telecommunications Services to Customers on behalf of the Communications Provider:
- are aware of GC 24; and
  - are required to comply with the obligations therein.
- A6.14 The Communications Provider must also monitor its and its representatives' and agents' compliance with those obligations. And, it is responsible for the creation and retention of records in accordance with the GC, even where the relevant contact with the Customer is by its representative or agent on its behalf and even if the relevant records are created and/or retained by the representative or agent on its behalf.
- A6.15 There are a number of ways in which Communications Providers could seek to ensure they comply with the GC and, in particular, where they engage representatives or agents to act on their behalf. Ofcom does not intend to prescribe exactly how the requirements are to be met. However, there are a number of practical steps a Communications Provider could take, in Ofcom's view, to assist it in meeting its obligations under GC 24.4 (although taking them would not necessarily amount to compliance with the GC). Such steps include:
- in order to ensure awareness of the GC amongst its representatives and agents, the Communications Provider could communicate the GC through account managers, in print through sales bulletins or newsletters, or on websites dedicated to its representatives' or agents' sales and cancellation channels;
  - in order to put provisions in place which require representatives and agents to comply with the behavioural obligations, the Communications Provider could include such requirements in contracts with those representatives and agents; and
  - in order to ensure appropriate compliance monitoring, the Communications Provider could carry out spot checks and mystery shopping and conduct sample checks of its representatives' and agents' sales and marketing and cancellations material. In addition to its own complaints data, the Communications Provider could also put provisions in place which allow it to collect complaints data made directly to its representatives and agents.

### **Publication of relevant obligations**

- A6.16 GC 24.5 sets out that the Gaining Communications Provider has to provide a copy of this GC, or a link to a copy of this GC, published on Ofcom's website, on its website or, where there is no such website, make it available in its registered office. Upon reasonable request, a copy of the GC should be provided to customers, free



of charge. The Communications Provider could do this by providing the customer with a paper copy of the GC in their shops, by sending a hard or soft copy to the customer, or by making it available for download or printing on their website.

- A6.17 Ofcom considers reasonable requests to include all requests made by consumers, unless proven to be trivial or a repeat request. Free of charge means there should be no cost to the consumer other than those costs incurred for the provision of the GC (i.e. postage costs).
- A6.18 In relation to the obligation to publish this information on a Communication Provider's website, Ofcom considers 'an easily accessible and reasonably prominent manner' to mean providing a clear reference to the obligations under GC24 on a consumer related part of the Communications Provider's website.

### Information at Point of Sale

- A6.19 GC 24.6 contains a number of provisions relating to information requirements that the Gaining Communications Provider must comply with at the point of sale, when the Customer expresses a positive intention to transfer their service to a new Communication Provider.
- A6.20 Ofcom requires that the Gaining Communications Provider must use reasonable endeavours to ensure these requirements are met. There are a number of ways for the Gaining Communications Provider to achieve this goal and we do not intend to prescribe exactly how these requirements are met. However, there are some practical steps that Gaining Communications Providers could take, in Ofcom's view, to assist them in meeting their obligations (although, again, taking them may not necessarily amount to compliance), including the following:
- in order to ensure Customers are authorised to take out a contract, the Gaining Communications Provider may wish to consider whether to require sales records to include an explicit check of the Customer's identity, age and/or address (for example, utility bills, a copy of a passport or driving licence);
  - in respect of the provision of information to the Customer, Gaining Communications Providers may wish to ensure there is a check list available or include such a checklist in their training material for their sales representatives which ensures that Customers are provided with all the key relevant information about a service as part of their decision making. In essence, Customers must be able to make an informed choice as to whether or not to enter into a new contract;
  - any claims, offers or incentives to attract customers must not mislead them by stating an untruth or half-truth or through failing to state or not make sufficiently prominent an important term or condition likely to affect their decision;
  - order forms and contract forms may be designed such that the contractual nature of the document is clear to the Customer such as by containing a statement of the contractual nature of the document immediately adjacent to where the Customer signs the document so that the statement cannot easily be obscured or concealed. Alternatively Customers to sign over the word contract; and
  - take all reasonable steps to ensure that before entering into relevant contracts Customers are authorised, and intend to enter into, a new contract. This includes

obtaining Customers' explicit consent to enter into contracts. Getting Customers to enter into contracts through negative opt-out means should therefore be avoided. Ofcom considers this to mean that Customers have been informed that they are entering into a contract and have given positive consent, either verbally or in writing.

A6.21 The information must be provided in one of two ways.

- first, in paper or another Durable Medium which is available or accessible to the Customer. This is likely to mean the information must be provided in written format, to be handed over to the Customer at the point of sale (including, but not restricted to leaflets, letters etc.); and
- second, where the Customer enters the contract by telephone, the information must be provided in the sales call. The information must also then be sent to the Customer in paper or another Durable Medium within three Working Days of the sales call. What this is likely to require is described above.

### Post sales information

A6.22 GC24.7 contains provisions relating to the sending out of mandatory 'Notification of Transfer' letters from both the Gaining and Losing Communications Providers which are to be sent out according to the industry agreed process that the customer is transferring their Fixed-Line Telecommunications Service.

A6.23 The post sales information requirements set out at GC24.7 (i) to (vi) specify a number of pieces of information that must be provided to the Customer by the Communications Providers as part of the mandatory 'Notification of Transfer' letters. For GC24.7 (iii), the Communications Provider should warn the Customer of the services which may be disrupted as a result of the transfer, such as ancillary services, alarm care systems, hardware that was provided specifically for that service and online services which may be provided as a part of the broadband package (such as e-mail and online files storage).

A6.24 Under GC 24.8 the notification must be by letter unless the Customer has explicitly agreed to receive correspondence electronically. Ofcom considers this to mean that the letter may be sent electronically where Customers have initiated contact by applying online, and have confirmed online that they wish the information to be sent electronically. Ofcom also considers that such agreement must only be given on an opt-in basis (i.e. 'please tick this box to receive notification electronically') rather than opt-out (i.e. 'please untick this box if you do not wish to receive notification electronically'). Otherwise, Customers would need to positively request by written correspondence that information be sent electronically.

### Customer's termination rights

A6.25 GC24.9 sets out that there should be "no cost" cancellation for Customers where they change their mind at any point from the point of sale to the completion of the Transfer Period. Ofcom considers "no cost" to mean that there should be no charge to the Customer. In Ofcom's view, the only legitimate costs should be those costs incurred for using the means of cancellation (e.g. the price of a stamp or non-premium rate phone call).

- A6.26 GC24.10 contains provisions relating to the need for Gaining Communications Providers to have procedures in place so that Customers are able to terminate contracts without unreasonable effort in the termination procedure such as where the consumer is required to take unreasonable steps to terminate e.g. reliance on letters/faxes.
- A6.27 At a minimum, Ofcom would expect that Customers should be able to terminate using the three prescribed contact methods set out in GC24.10 (i) to (iii). Ofcom would also expect that there should be no onerous or expensive administrative steps or conditions to be followed, such as onerous validation requirements or complex IVR systems.

## Records retention

- A6.28 GC 24.11 requires the Gaining Communications Provider to use reasonable endeavours to produce and keep all records regarding the sale of its Fixed-Line Telecommunications Service for a period of not less than six months from the date the record was created.
- A6.29 Ofcom considers examples of records in this respect to include (but not be limited to) signed copies of contracts, either in electronic or paper form, check lists intended to confirm that the consumers agrees, and understands, what they are signing up to, copies of emails and correspondence, notes of a conversation with the Customer or the Customer's internet confirmation to buy a certain service and where, telesales are used, voice recordings.
- A6.30 By "the means through which the contract was entered into", we mean retail outlets, telesales or websales. In the event a Contract was entered into at a retail outlet, the records should contain sufficient information to be able to identify the outlet, for instance by providing the address of the outlet.
- A6.31 Ofcom considers that records should be such as to provide sufficient information to validate that the Customer provided positive consent for the purpose of the transaction and all its terms, as well as information about the type of Contract, the date the Contract was entered into or amended and the sales representative involved in case the Customer questions having entered into a Contract, or has complaints or queries regarding their Contract.

## Training

- A6.32 GC 24.12 requires Communications Providers to ensure that any person selling their service ('involved in direct contact with Customers') is 'appropriately trained' to comply with GC 24 as well as consumer protection law. Direct contact includes telesales and marketing as well as face to face contact.
- A6.33 There are a number of ways for the Communications Provider to achieve this goal and we do not propose to prescribe exactly how this requirement is to be met. However, there are some practical steps that Communications Providers can take to assist with meeting their obligations (although, again, taking them may not necessarily amount to compliance), including where they engage sales representatives and agents:
- putting contractual provisions in place in respect of mandatory training;

- providing all their staff, representatives and agents with training courses, manuals and product information regarding the Fixed-Line Telecommunications Service;
- providing all their staff, representatives and agents with training courses and manuals on using sales related systems;
- providing all their staff, representatives and agents with information on new products; and
- providing all their staff, representatives and agents with training and information on processes, such as ordering a new phone or Customer credit checking.

A6.34 In respect of ensuring there is appropriate training, Ofcom considers 'appropriately trained' to include that all staff, sales representatives, and any sales agencies, acting on the Communications Provider's behalf have been made familiar with and gained sufficient understanding of:

- arrangements for competition in the supply of telecommunication in the UK;
- the different telephone options provided by the Gaining Communications Provider and how these differ from other competitive telecoms products (which may or may not be offered by the Communications Provider (e.g. IA, CPS, WLR, LLU);
- the process for ordering the telephone service;
- the major elements of the Communications Provider's services;
- the key terms and conditions of the Communications Provider's contracts including information listed at GC24.6 (c)(i) and (ii);
- the nature, and cost, of any additional services on offer;
- the process for cancelling the Contract both during the cooling-off period and at any time following commencement of the service;
- the relevant principles of consumer protection law; and
- the relevant obligations under GC24.

## Monitoring

A6.35 GC24.13 requires that Communications Providers ensure that they have procedures in place to monitor compliance with GC24, including compliance by any representatives or sales agencies engaged by it, and to take appropriate steps to prevent the recurrence of any problem(s) identified.

A6.36 There are a number of ways for the Communications Provider to achieve this goal and we do not propose to prescribe exactly how this requirement is to be met. However, there are some practical steps that Communications Providers can take to assist them to meet their obligations (although, again, taking them may not necessarily amount to compliance). These include the following:

- on discovery of an instance of non-compliance with the regulations, Communications Providers will vigorously pursue the matter and will ensure that the complaint is properly investigated within reasonable timeframes (e.g. no more than ten working days) and identify an appropriate explanation for any apparent breach of the Code;
- in the case of serious or repetitive breaches of the regulations by its staff or sales representatives and agents who are involved in sales and cancellations of Fixed-Line Telecommunications Services on its behalf, Communications Providers should send a written warning to the offending party. The written warning will include details of sanction(s) that will be imposed on that party should that party continue to be in breach of the regulations; and
- providing always that it acts proportionately, a Communications Provider may wish to invoke contractual penalties, including termination of that party's contract, if it fails to cease and desist its non-compliant behaviour after a written warning.

## Cancel Other

- A6.37 Cancel Other is a consumer protection mechanism designed to ensure that Customers are not switched – transferred between Communications Providers - without their express knowledge and/or consent. Therefore, Cancel Other should only be used in certain circumstances, in particular, where the Customer believes they are a victim of slamming.
- A6.38 To ensure compliance with GC24 Ofcom expects all Losing Communications Providers to apply Cancel Other only in the circumstances set out in GC24.14.
- A6.39 Ofcom considers that the primary purpose of Cancel Other is to protect consumers from slamming, and the Losing Communications Provider must take reasonable steps to ensure that slamming has actually taken place before cancelling the order.
- A6.40 The Losing Communications Provider is not permitted to use Cancel Other where a Customer has placed the order, but wants to change their mind, for e.g. because the information he has received from the service provider does not seem consistent with what they were told at the time of the sale, or because they felt pressured by the sales agent into placing an order. In such cases, the Losing Communications Provider should direct the consumer back to the Gaining Communications Provider to cancel the order.
- A6.41 In respect of 'Passing off', Ofcom considers that this constitutes Slamming because the customer has no knowledge of, and has not consented to, a transfer to the Gaining Communications Provider which placed the order. In this case, they are likely to believe, for e.g., that they have ordered a new service or payment method from the Losing Communications Provider. Ofcom considers that this is qualitatively different from other types of mis-selling where the service provider correctly identifies itself, but gives misleading information about the products or services that it is providing.
- A6.42 Other permitted instances of Cancel Other by the Losing Communications Provider include the following:
- in cases of Failure to Cancel, i.e. where a Gaining Communications Provider has failed to cancel a transfer after the customer has requested this. While the

Gaining Communications Provider is required to cancel a transfer if the Customer asks it to do so during the transfer period, Ofcom considers that Customers also need a “safety net” mechanism that enables them to cancel a transfer when a Gaining Communications Provider has failed to do so.

Losing Communications Providers will therefore be permitted to use Cancel Other where a Gaining Communications Provider has failed to cancel a transfer when the Customer has requested this. However, Ofcom considers that this safety net should be implemented in such a way that it will only be used where a Gaining Communications Provider fails to cancel a transfer, and not simply because a Customer has contacted the Losing Communications Provider for peace of mind and asked it to ensure that the transfer has been cancelled.

Before it uses Cancel Other in cases of Failure to Cancel, the Losing Communications Provider must, therefore, take reasonable steps to ensure that Failure to Cancel has, in fact, taken place. Ofcom considers that the Losing Communications Provider should only use Cancel Other if the customer would otherwise be transferred to the Gaining Communications Provider against their wishes. In practice, where the Losing Communications Provider submits a Cancel Other in response to a Customer’s allegation that the Gaining Communications Provider has failed to cancel the transfer, this Cancel Other will not be actioned unless no instruction to cancel has been received from the Gaining Communications Provider by day 9 of the Transfer Period (or day 8 for WLR orders). If the Gaining Communications Provider submits a cancellation before day 9 (or day 8 for WLR orders), this cancellation order will take precedence and no Cancel Other will be recorded.

- In cases of Line Cease and other cases not related to slamming or failure to cancel. Unlike the category discussed above (slamming) the Losing Communications Provider’s use of Cancel Other in cases of Line Cease does not follow a conversation with a customer about an order. When the Losing Communications Provider places an order to cease a line, a consequence of this is that any pending orders relating to that line are cancelled automatically. Such cancellations are recorded as Cancel Other.

Ofcom considers that the Losing Communications Provider’s ability to use Cancel Other where the line is going to be, or has been, ceased is a necessary administrative mechanism.

A6.43 To give Customers certainty and transparency, Ofcom proposes that Losing Communications Providers should be required to confirm the cancellation of the order wherever it uses Cancel Other, unless this is not possible.

A6.44 Cancel Other should not be used by the Losing Communications Provider in the following circumstances:

- to frustrate the transfer process, particularly in situations where, for example, the Customer has not yet paid their bill, the notice period has not been served or where disconnection or termination of charges apply. These charges should be included in the final bill, and settled in accordance with standard payment terms;

- in cases of internal miscommunication which is where a request for service has been or may have been made by a person other than the person named on the bill but who may have identified themselves as an authorised decision maker.

In many cases, where a Customer contacts a Losing Communications Provider following internal customer miscommunication, it will appear to the Customer that slamming has occurred. However, Ofcom considers that this is not an appropriate use of Cancel Other given that the named account holder may not be the only authorised decision maker in a household or business, where decisions about fixed-line telecoms services are often made jointly. In such circumstances, Ofcom considers that where the named account holder disagrees with this decision, it is up to those individuals, and not the Losing Communications Provider to resolve. Similarly, in the case of businesses, Ofcom considers that if an individual takes a decision they are not authorised to make, this is a matter for the organisation concerned, and should not be for the Losing Communications Provider to resolve. Where internal customer miscommunication has occurred, the customer can cancel the transfer by contacting the service provider within the Transfer Period, if the household or organisation has decided it does not want it.

Accordingly, Ofcom believes that it is therefore necessary for the Losing Communications Provider to investigate the possibility that such apparent slams are, in fact, the result of internal customer miscommunication, by asking questions, for example whether anyone else in the household or organisation or business could have placed the order. Losing Communications Providers should therefore ensure that there are adequate procedures in place which enable individuals other than the named account holder to make decisions on an account, subject to a verification process which requires those individuals to provide information that would only be available to an authorised decision maker.

## Reason codes

- A6.45 Each time the Losing Communications Provider uses Cancel Other, it must record the reason, selecting the appropriate “reason code” from a list corresponding to the permitted uses of Cancel Other and consistent with GC24.19(m)(i) to (iv), as agreed by the industry, and approved by Ofcom.



## Annex 7

# Detailed comments on the proposed General Conditions

In the tables below we have set out, for each provision of the proposed GC, the detailed comments made by stakeholders and Ofcom's response. Where we have made changes, we have also set out the appropriate action taken.

### *Scope of the General Condition 24.2 and 24.3*

Comment	Organisation	Ofcom Response and Action
Were uncertain about the context and title of the new GC. Whilst the title suggests that the rules apply across the fixed-line industry, GC 24.2 states that they only apply when transferring between providers, and yet GC 24.3 is applicable behaviour in all cases, not just for transfers. Either GC 24.2 needs to be reworded or the title needs to be adjusted to reflect its limitations.	THUS	We do not agree that this clause needs rewording or the title adjusting to reflect its limitations. Our view is that the scope is already clearly set out within GC24.1 & GC24.2 in that it only encompasses transfers between providers. While we agree that GC24.3 is applicable behaviour in all cases, GC24 seeks to only put in place regulatory obligations for transfers between providers. Additional guidance on this is provided in the Guidelines.

### *Publication of relevant obligations 24.5*

Comment	Organisation	Ofcom Response and Action
Note that Ofcom is proposing to require providers to publish a link to a copy of the GC on Ofcom's website. Notice, however, that paragraph 16 of the guidelines states that providers could fulfil their obligations to provide a copy of the GC free of charge upon reasonable request by making it available on their own website. Therefore suggest only requiring a link to Ofcom's version of the GC if not already set out in full on the provider's own website.	SSE	This paragraph has been amended in line with SSE's comments.
Note the requirement in GC24. 5 for providers to provide a link from their websites to a copy of the GC published on Ofcom's website. Assume therefore that the GC will be made available on Ofcom's website in an area that provides general information for consumers about mis-selling and slamming.	KCOM	We will ensure that a copy of the GC will be made available and easily accessible on the Ofcom website.



Believe GC 24.5 to be overly prescriptive. Also argue that the wording of the GC is not user friendly and is drafted as a generic instruction to providers rather than advice to consumers. FCS suggest that Ofcom should allow, as an alternative to the provision of a copy of the GC itself, the publication of a code of practice which includes all the requirements and information contained in the GC and incorporates specific references to the GC and how a copy may be obtained. Clearly the requirement to provide a copy of the GC on request should be retained.	FCS	We are not persuaded that this is necessary in the context of the new GC and, in particular, our conclusions to move away from a Code of Practice approach to high level prohibitions on mis-selling and slamming.
---	-----	--

*Information at point of sale 24.6*

Comment	Organisation	Ofcom Response and Action
Comment that clause 24.6 (c)(i) obliges providers to inform customers of the identity of the legal entity that they are contracting with. Argue that many providers use trading names that are different to the name of their legal entity. Accordingly, to avoid customer confusion, suggest that " <i>or the trading name</i> " is inserted after " <i>the identity</i> ".	Unicom	It is important that consumers are aware of the legal entity they are contracting with. We are not persuaded that it is necessary to make reference to trading names as an alternative to the legal entity.
Suggest that the Customer should be provided with the address of the company at the point of sale as well as the telephone number, website or email.	BT	In line with comments received to the March 2009 Consultation, and specifically that previous proposed requirements on provision of information relating to the identity of the legal entity were overly-prescriptive, we removed the need to provide address and fax details. We do not agree that it is necessary to reinstate this requirement.
State that clause 24.6 (c)(ii) defines transfer period as 10 working days before a customer's order can be activated and that the provider should inform the Customer about the Customer's right to cancel at no cost during the "transfer period". This means that there is no obligation to inform the Customer that they are able to cancel at no cost after the point of sale but before a transfer order is placed, or in the case of an order with a delayed start date of up to 6 months after the order is placed, during all but the last 10 days of the transfer period. Therefore suggest that it may be	Unicom & FCS	This paragraph has been amended in line with Unicom's & FCS's comment to make clear that the Customer's termination rights are from the point of sale through to completion of the transfer period.

preferable to use the phrase “No Cost Cancellation Period” instead of “Transfer Period” in this clause, clause 24.7 (vi) and clause 24.9. “		
---	--	--

*Post sales information 24.7*

Comment	Organisation	Ofcom Response and Action
Make a similar point to that made in relation to at 24.6(c)(ii) above regarding the use of the term ‘transfer period’	Unicom	As above.

*Customer’s termination rights 24.9*

Comment	Organisation	Ofcom Response and Action
Make a similar point to that made in relation to at 24.6(c)(ii) above regarding the use of the term ‘transfer period’	Unicom	As above.

*Customer’s termination rights 24.10*

Comment	Organisation	Ofcom Response and Action
Customers should be able to cancel by fax if they wish to do so. Many small businesses still use fax as form of communication. Unicom receive 1000 faxes a month.	Unicom	Following responses to the March 2009 Consultation, the requirement for contact made by fax was removed on the basis we did not believe this to be a method of contact for most Customers. However, so long as providers offer the contacts methods set out in GC2410 (i), (ii) & (iii), then it remains open to them to also accept cancellations by fax.

*Cancel Other process 24.14*

Comment	Organisation	Ofcom Response and Action
Seek clarification whether the rules relating to Cancel Other use will enable providers to cancel orders using Cancel Other based on a customer’s change of mind, during the last few days of the transfer period, where it would be too late for the consumer to cancel with their	Unicom	We do not agree that the current wording requires redrafting. Our view is that the current permitted uses of Cancel Other are clearly set out within GC24 14(a) to (e). Under the current wording, change of mind is not currently an acceptable

gaining provider. Argue that if this is the case then it should be stated within the clause. If this is not the case then the guidelines should make it clear that this is not a permitted use of cancel other.		use of Cancel Other. We nevertheless intend to revisit the scope of the current application of Cancel Other as part of our strategic review of consumer switching.
Query what the other specified reasons not related to a customer's request to cancel a transfer, and agreed by the relevant industry forum and approved by Ofcom, are.	Unicom	This provision is merely intended to future proof the regulations and enable a process for new Cancel Other reasons to be established, and approved, as appropriate.

*Cancel Other process 24.15*

Comment	Organisation	Ofcom Response and Action
<p>Concerned there may be a contradiction with GC 24.15. Argue that under GC 24.14, the losing provider will be in contravention of the GC if they use Cancel Other where they believe slamming has occurred when in fact it has not. Whether or not the CP had taken "reasonable steps" as envisaged in GC 24.15 to ensure that slamming had occurred would be irrelevant. This could mean that a provider using Cancel Other in good faith could still be in breach. Therefore suggest that GC24.15 be amended to read along the lines of:</p> <p><i>"The requirements of paragraph GC2414(a) and (b) will be deemed to have been satisfied where the losing communications provider takes reasonable steps to establish (not ensure) as the case may be, that Slamming and/or Failure to Cancel has taken place."</i></p>	BT	Paragraph 24.15 has been amended by removing the requirement to "ensure" that slamming and/or failure to cancel has taken place to "establish".

*Cancel Other process 24.17*

Comment	Organisation	Ofcom Action and Response
Argue that the wording of GC24.14(a) does not make it clear that providers when using Cancel Other for slamming reasons, should select the most appropriate slamming code as detailed in GC24.1 (m) (i) to (iv). Argue that this is suggested in A12.45 of the guidelines and that the wording at GC24.12 (a)	BT	Paragraph 24.17 has been amended to make clear that providers, when using Cancel Other for slamming reasons, should select the most appropriate slamming code as detailed in GC24.19 (m) (i) to (iv).

should therefore be changed to reflect this requirement.		
--	--	--

*Responsibility A12.12 (Now A6.12)*

Comment	Organisation	Ofcom Action and Response
The last paragraph of A12.12 appears to be missing the word “of” and we suggest that the references to paragraphs in the GC are checked – e.g. in A12.32, A12.35 A12.38.	SSE	These paragraphs have been amended to reflect SSE's comments.

*Information at point of sale A12.20 (now A6.20)*

Comment	Organisation	Ofcom Action and Response
Note that the penultimate sentence of the 2 <sup>nd</sup> Paragraph of A12.20 refers to the gaining provider providing advice to the customer at the point of sale relating to contractual liabilities. Understand that this obligation is to be considered within stage 2 of the consultation. If this is correct, then this sentence should be deleted.	FCS & Unicom	We agree with FCS' and Unicom's comments and have removed this sentence as suggested.

*Cancel Other A12.38 (now A6.38)*

Comment	Organisation	Ofcom Action and Response
This section refers to the clause of the GC explaining permitted uses of Cancel Other as GC24.1, where it should be GC24.14.	Unicom	This paragraph has been amended.

## Annex 8

# Table of changes

GC No	GC text <sup>32</sup>	Main changes from consultation
24.1	A Communications Provider who provides a Fixed-Line Telecommunications Service to Domestic and Small Business Customers ('the Customer') must comply with this General Condition with respect to such Customers.	No changes.
24.2	This General Condition is only applicable where the Customer is transferring a Fixed-Line Telecommunications Service between Communication Providers.	No changes.
24.3	When selling or marketing Fixed-Line Telecommunications Services, the Gaining Communications Provider must not: <ul style="list-style-type: none"> <li>(a) engage in dishonest, misleading or deceptive conduct;</li> <li>(b) engage in aggressive conduct;</li> <li>(c) contact the Customer in an inappropriate manner; or</li> <li>(d) engage in Slamming.</li> </ul>	No changes.
24.4	Where the Communications Provider engages representatives, such as any sales agency, to act on its behalf in the sale and marketing of Fixed-Line Telecommunications Services, the Communications Provider shall procure that such representatives comply with the requirements of this General Condition.	No changes.
24.5	The Communications Provider must: <ul style="list-style-type: none"> <li>a) publish a copy of this General Condition, or a link to a copy of this General Condition, published on Ofcom's website, in an easily accessible and reasonably prominent manner on its</li> </ul>	Requirement 24.5 (a) modified to allow providers to publish "a copy of this General Condition" on its website or a

<sup>32</sup> Please note that we re-produce the text of General Condition 24 here solely for reasons of comparison and to highlight the main changes. The text set out in this Annex does not constitute the relevant text for the purpose of establishing CPs obligations. For the latter reason please refer to the original text set out in the Schedule to the Notification in Annex 10.

	<p>website or, where there is no such website, by making it available in its registered office during normal office hours for inspection free of charge by members of the general public; and</p> <p>b) provide a copy of this General Condition to a Customer free of charge upon reasonable request.</p>	<p>link to a copy of the General Condition published on Ofcom's website.</p>
24.6	<p>The Gaining Communications Provider must take all reasonable steps to ensure that before entering into a contract for a Fixed-Line Telecommunications Service the Customer who is transferring the line:</p> <p>a) is authorised to do so;</p> <p>b) intends to enter into the contract; and</p> <p>c) is provided with the information set out below in a clear, comprehensible, prominent and accurate manner, in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:</p> <p>(i) the identity of the legal entity the Customer is contracting with and its telephone, website and/or e-mail contact details;</p> <p>(ii) a description of the Fixed-Line Telecommunications Service requested; the key charges, including minimum contract charges, and any early termination charges, if applicable; payment terms; the existence of any termination right, termination procedures and the Customer's right to cancel at no cost from the point of sale to the completion of the Transfer Period; the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision of the service; and any minimum period of contract.</p>	<p>24.6(c)(ii) has been changed to make clear that the Customer's termination rights are from the point of sale through to completion of the transfer period.</p>
24.7	<p>Where the Customer enters into a contract for a Fixed-Line Telecommunications Service, the Gaining Communications Provider and the Losing Communications Provider must each send the Customer a letter, in accordance with the industry agreed process, that the Customer is transferring their Fixed-Line Telecommunications Service, in paper or another Durable</p>	<p>In line with changes made to 24.6(c)(ii), 24.7 (vi) has been changed to make clear that the Customer's</p>

	<p>Medium, which clearly sets out, as appropriate:</p> <ul style="list-style-type: none"> <li>(i) the date of the letter;</li> <li>(ii) the Calling Line Identification of all Electronic Communications Services which are affected;</li> <li>(iii) the list of services affected/unaffected;</li> <li>(iv) the proposed switchover date;</li> <li>(v) relevant contact details; and</li> <li>(vi) the right to terminate the contract, the means by which the right to terminate from the point of sale to the completion of the Transfer Period can be exercised and the date by which the right to terminate must be exercised.</li> </ul>	<p>termination rights are from the point of sale through to completion of the transfer period.</p>
24.8	<p>The letter must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or confirmation when ordering online.</p>	<p>No changes.</p>
24.9	<p>When the Customer enters into a contract to transfer a Fixed Line Telecommunications Service the Gaining Communications Provider must allow the Customer to terminate the contract from the point of sale to the completion of the Transfer Period without charge or any other form of compensation being required to be given by the Customer to the Gaining Communications Provider.</p>	<p>In line with changes made to 24.6(c)(ii) &amp; 24.7(vi), 24.9 has been changed to make clear that the Customer's termination rights are from the point of sale through to completion of the transfer period.</p>
24.10	<p>The Gaining Communications Provider must have procedures in place to enable the Customer to exercise their right to terminate their contract pursuant to General Condition 24.9 without unreasonable effort. These procedures must include the ability to contact the Gaining Communications Provider to terminate the contract any of the following contact methods:</p> <ul style="list-style-type: none"> <li>(i) telephone;</li> <li>(ii) e-mail; and</li> <li>(iii) post.</li> </ul>	<p>No changes.</p>

24.11	The Gaining Communications Provider must use reasonable endeavours to create and keep all records regarding the sale of its Fixed-Line Telecommunications Service, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place where the Contract was entered into, where relevant, and be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.	No changes.
24.12	The Communications Provider must ensure that all its staff or representatives of any sales agency engaged by it, involved in direct contact with Customers for the purpose of sales and marketing activity and/or Cancel Other are appropriately trained to comply with this General Condition.	No changes.
24.13	The Communications Provider must monitor, including conducting regular audits, its compliance with this General Condition, including compliance on its behalf by any representatives or sales agency engaged by it, and takes appropriate steps to prevent the recurrence of any problem(s) identified.	No changes.
24.14	<p>The Losing Communications Provider shall only be permitted to use Cancel Other in the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) where Slamming has occurred;</li> <li>(b) at the Customer's request, where the Gaining Communications Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");</li> <li>(c) where the telephone line is or will be, ceased during the Transfer Period ("Line Cease");</li> <li>(d) for other specified reasons not related to a Customer's request to cancel a transfer, and agreed by the relevant industry forum and approved by Ofcom; and</li> <li>(e) in such other circumstances as defined by Ofcom.</li> </ul>	No changes.



24.15	Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Communications Provider shall take reasonable steps to establish that Slamming and/or Failure to Cancel has actually taken place.	Paragraph 24.15 has been amended by removing the requirement to “ensure” that slamming and/or failure to cancel has taken place to “establish.
24.16	After using Cancel Other, the Losing Communications Provider shall confirm the cancellation of the order by Durable Medium to the Customer, unless this is not possible or appropriate, including where the customer is deceased.	No changes.
24.17	The Losing Communications Provider shall record its reasons for using Cancel Other in each case, selecting the appropriate reason code from a list corresponding to permitted use of Cancel Other and consistent with GC24.19(m)(i) to (iv), as agreed by the industry, and approved by Ofcom.	Paragraph 24.17 has been amended to make clear that providers, when using Cancel Other for slamming reasons, should select the most appropriate slamming code as detailed in GC24.1 (m) (i) to (iv).
24.18	Where the Losing Communications Provider communicates with the Customer in order to comply with this General Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Communications Provider and/or remain in a contract with the Losing Communications Provider.	No changes.
24.19	<p><b>For the purpose of this Condition:</b></p> <p>a) “<b>Cable Network</b>” means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;</p> <p>b) “<b>Cancel Other</b>” means the industry term for a functionality that enables the Losing Communications Provider to cancel wholesale orders (during the Transfer Period) placed by the Gaining</p>	Minor drafting changes.

	<p>Communications Provider as defined in 24.14;</p> <p>c) “<b>Communications Provider</b>” means the provider of an Electronic Communications Network and/or Electronic Communications Service, both as defined in section 32 of the Act;</p> <p>d) “<b>CPS</b>” means Carrier Pre-Selection, a facility which allows a customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a telephone number;</p> <p>e) “<b>Domestic and Small Business Customer</b>” has the meaning set out in section 52 (6) of the Act;</p> <p>f) “<b>Durable Medium</b>” means any instrument which enables the Customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;</p> <p>g) “<b>Failure to Cancel</b>” means where the Gaining Communications Provider has not cancelled a transfer, after a request from the Customer during the Transfer Period;</p> <p>h) “<b>Fixed-Line Telecommunications Services</b>” means Narrowband call and/or line rental services provided to Domestic and Small Business Customer;</p> <p>i) “<b>Gaining Communications Provider</b>” means the Communications Provider to whom the customer is transferring;</p> <p>j) “<b>LLU</b>” means Local Loop Unbundling, the process by which a dominant provider’s local loops are physically disconnected from its network and connected to a competing provider’s network.</p> <p>k) “<b>Losing Communications Provider</b>” means the Communications Provider from whom the customer is transferring;</p> <p>l) “<b>Narrowband</b>” means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network;</p> <p>m) “<b>Slamming</b>” means where a request for CPS, WLR and/or LLU has been made without the Customer’s express knowledge and/or consent; that is in the following circumstances:</p>	
--	---	--

	<p>(i) where the Customer has never been contacted by the Gaining Communications Provider;</p> <p>(ii) where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;</p> <p>(iii) where the Customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or</p> <p>(iv) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider;</p> <p>n) <b>“Transfer Period”</b> means the period of 10 Working Days before a customer’s order can be activated;</p> <p>o) <b>“WLR”</b> means Wholesale Line Rental, a facility which BT provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) on the BT line; and</p> <p>p) <b>“Working Days”</b> means the hours between 09.00 – 7.00 on Monday to Friday with the exception of bank holidays.</p>	
--	--	--

## Annex 9

# Glossary

**Act:** means the Communications Act 2003

**Broadband:** a service or connection which is capable of supporting ‘always-on’ services which provide the end-user with high data transfer speeds.

**BT:** British Telecommunications plc.

**Cable Network:** means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable.

**Cancel Other:** is the industry term for a functionality that enables the Provider losing the customer to cancel wholesale orders (during the switchover period) placed by an alternative Provider where slamming has been alleged by the customer.

**Communications Provider (CP):** a person who provides an Electronic Communications Network or provides an Electronic Communications Service, as defined in the Act.

**Carrier Pre-Selection (CPS):** means a facility which allows a Subscriber to whom a Publicly Available Telephone Service is provided by means of a Public Telephone Network to select which Pre-selected Provider of such Services provided wholly or partly by means of that Network is the Pre-selected Provider he wishes to use to carry his calls by designating in advance the selection that is to apply on every occasion when there has been no selection of Provider by use of a Telephone Number.

**Early Termination Charge (ETC):** a charge for consumers who terminate their contract before the end of any Minimum Contract Period (or Subsequent Minimum Contract Period).

**Erroneous transfers:** where a customer’s service is transferred as a result of a process failure.

**Fixed-line Telecommunications Services:** means Narrowband call and/or line rental services provided to Domestic and Small Business Customers.

**Full LLU”** means services where the provision of access to the copper wires from the customer premises to a BT exchange allows a competing provider to provide the customer with both voice and data services over such copper wires.

**Gaining Communications Provider:** Provider to whom the customer is transferring.

**General Conditions of Entitlement:** a set of regulations that apply to anyone who provides an electronic communication service or an electronic communications network.

**Inappropriate save:** relates to inappropriate activity on the part of the CP to retain their customer and is contrary to General Condition 1.2.

**Local loop:** The access network connection between the customer's premises and the local serving exchange, usually comprised of two copper wires twisted together.

**Local Loop Unbundling (LLU):** a process by which a dominant provider's local loops are physically disconnected from its network and connected to a competing provider's networks. This enables Communications Providers other than the incumbent to use the local loop to provide services including broadband to end users.

**Losing Communications Provider:** Provider from whom the customer is transferring.

**Migration Authorisation Code (MAC):** a unique code that a customer obtains from the losing broadband service provider and gives to the gaining provider, that allows the service to be transferred from an existing service provider seamlessly and with little or no disruption of service.

**Minimum contract period:** a minimum (fixed-term) contractual period set at the start of a contract (often for 12 to 18 months).

**Mis-selling:** Irresponsible sales and marketing activities, such as the provision of false or misleading information, applying unacceptable pressure to change CPs and where customers are switched without their express consent.

**Narrowband:** means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network.

**Notification of Transfer ('NoT') process:** is the switching process used for fixed-line telecommunications services. It works on the basis of consumers only having to contact their gaining CP in order to switch, and being well informed of an impending switch before it happens (through receipt of letters) and a 10-day switchover period

**Ofcom:** Office of Communications. The regulator for the communications industries, created by the Office of Communications Act 2002.

**OAT (Ofcom Advisory Team):** the team within Ofcom responsible for dealing with complaints and enquiries from members of the public.

**Openreach:** BT's access services division.

**Public Telephone Network:** means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data.

**PSTN:** Public Switched Telephone Network.

**Reseller Identity (RID) Codes:** Reseller Identity Codes, which are also known as Retailer Identity Codes, are three character alphabetic codes that are used to identify the reseller when a reseller wishes to offer CPS via a wholesale provider, or when a WLR service provider wishes to transfer a line to WLR and retain the existing CPS arrangements on that line.

**Save:** means marketing activity which is undertaken by the losing Communications Provider during the switchover period in an attempt to persuade the customer not to switch to a new

Communications Provider.

**Slamming**” means where a request for CPS, WLR and/or LLU has been made without the Customer’s express knowledge and/or consent; that is in the following circumstances:

- (i) where the Customer has never been contacted by the Gaining Communications Provider;
- (ii) where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;
- (iii) where the Customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or
- (iv) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider.

**Significant Market Power (SMP):** The position of a person or company who enjoys a market position of dominance with respect to that market.

**Transfer period:** means the period of 10 Working Days from before a customer’s order can be activated.

**Wholesale Line Rental (WLR):** a facility by which BT provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) on the BT line.

