



Citizens Advice's response to
Ofcom's consultation on
*'Protecting consumers from
mis-selling of fixed-line
telecommunications services'*

May 2009

Introduction

1. In 2008-9 the CAB service in England and Wales helped just under two million clients with about six million problems. Debt and welfare benefits were the two largest topics on which advice was given, with 663,000 clients advised about 1.7 million benefit problems or entitlements and 575,000 clients helped with approximately 1.9 million debt problems.
2. The CAB service also dealt with over 98,000 utilities and communications problems, which represented a 3 per cent increase on 2007-8. Of these, 14,151 problems were about fixed-line telephones, a figure which has barely changed from the preceding year when bureaux dealt with 14,129 fixed-line telephone problems.
3. We can break down the figures for fixed-line telephones into specific types of problems. This enables us to focus on the two categories which are likely to capture cases of mis-selling or slamming, namely 'selling methods and techniques' and 'switching supplier (including unwanted switching)'. This greater level of detail from our statistics reveals that:
 - a. problems about 'selling methods and techniques' accounted for almost five per cent of the problems dealt with in 2008-9; and
 - b. problems relating to 'switching supplier (including unwanted switching)' accounted for just under six per cent of the problems dealt with in 2008-9.
4. Like the headline figures for fixed-line telephone problems, these more detailed categories are almost unchanged from the preceding year, as shown in the table below:

Table 1:
Problems reported by CABx in England and Wales about 'selling methods and techniques' and 'switching supplier (including unwanted switching)' for fixed-line telephones 2007-8 and 2008-9

	2007-8	As % of all fixed-line telephone problems reported by CABX in 2007-8	2008-9	As % of all fixed-line telephone problems reported by CABX in 2008-9
Selling methods and techniques	613	4%	659	5%
Switching supplier (including unwanted)	920	7%	833	6%
TOTAL	1,533	11%	1,492	11%

5. The fact that the two categories relating to fixed-line mis-selling and slamming have remained broadly static over the last two years is a cause for concern. Moreover, the level of these problems seems to mirror the stubbornly persistent numbers reported by Ofcom in relation fixed-line telecommunications complaints and cancel other (slam) volumes.¹ As such, it is right that Ofcom is currently considering whether the current rules are sufficient to prevent such unwelcome practices.
6. The detail of individual cases separately reported by bureaux used throughout this consultation response provides useful contextual information in relation to the figures reported above. Those used in this response represent a small proportion of those that bureaux have reported to us, and we would be happy to share additional cases with Ofcom.

General comments

7. We are pleased that Ofcom is looking again at the subject of fixed-line mis-selling. Like Ofcom, Citizens Advice Bureaux have seen no recent reduction in the number of problems about mis-selling or slamming that they have had to deal with.
8. As the cases reported by Citizens Advice Bureaux quoted in our response reveal, mis-selling can cause people significant distress as well as financial detriment. This can hit more vulnerable groups particularly hard, not just causing them considerable anxiety but prompting them to view any suggestion of switching suppliers with deep suspicion. Cleaning up mis-selling is therefore imperative on two levels: firstly, to minimise harm caused to individuals, but also to ensure that the positive aspects of competition are not unduly sullied.
9. The key challenge here is to protect consumers from mis-selling whilst not restricting their ability to switch communications provider. At present, the correct balance between these two objectives has not been found.
10. The 'Introduction and Background' section from Ofcom's consultation paper sets out in exhaustive detail the repeated efforts to sort out the problem of mis-selling in the fixed line market. That such efforts have singularly failed to reduce the level of complaints suggests that, at the very least, further strengthening of the rules is required. However, it also leads us to question whether amending existing rules will reduce significantly the number of consumers affected, or whether we will be participating in yet another consultation exercise on this subject in the near future. More broadly, we question the incremental approach to tightening regulation where a problem has persisted and openly wonder how many consumers have been adversely affected – and at what cost - by the failure of Ofcom to take more decisive action.
11. We are perplexed as to why such short shrift is given to the exploration of other options to address the problem of mis-selling in the fixed-line market, which accounts for fewer than two pages of Ofcom's lengthy consultation document. We are aware that the switching process used in the broadband sector has previously experienced problems, and indeed Ofcom's own recent statistics reveal that only 74% of consumers found

¹ *Protecting consumers from mis-selling of fixed-line telecommunications services*, Ofcom, March 2009, p.15

switching broadband supplier very or fairly easy compared to 88% in the fixed-line market.² Yet Ofcom also report that “since the beginning of 2007 there has been a decrease in the number of complaints to Ofcom about broadband migration in general”.³ The crucial factor is that it would appear that mis-selling does not appear so prevalent in the broadband market⁴ and, equally importantly, the protections put in place to protect against mis-selling do not appear to have adversely affected levels of switching to any significant degree, with 10% of broadband customers having switched supplier in 2008 and 12% of fixed-line customers having done so.⁵ In our view it would seem sensible to consider learning lessons from other communications markets to protect consumers from continued mis-selling. We would be interested to learn from Ofcom why such approaches have been rejected.

12. Many of the issues discussed in Ofcom’s consultation paper are obviously of great interest and importance to consumers and the groups representing them. While the consultation paper must necessarily deal with complex technical matters, we do question how accessible the consultation is to both consumers and many consumer groups, and the efforts made by Ofcom to elicit responses from them. In the absence of significant consumer input it is often left to Ofcom to put itself in the place of consumers but as an organisation it is ill-suited to do this, other than through extensive research programmes. We note that Ofcom has been at the forefront of regulators’ attempts to engage actively with consumers and their representatives but in this instance we consider that more could have been done.

Specific comments / responses to questions

Question 1 Based on our analysis of Ofcom’s mis-selling complaints data, do you agree that further improvements are achievable, and that both absolute and relative numbers of mis-selling incidences can be reduced? Please provide an explanation to support your response.

We strongly agree that further improvements are not just achievable but also absolutely necessary. As we state above, the number of problems relating to fixed-line mis-selling dealt with by CABx shows no signs of falling and, as the following cases demonstrate, they can cause significant detriment – both financially and emotionally - particularly to more vulnerable consumers:

A CAB in Wales reported that their client’s husband was cold-called and asked to change his landline supplier. To get rid of the caller the client’s husband agreed for the company to send him some information. However, rather than the promised information, he received the Terms and Conditions of a contract he was alleged to have verbally entered into. The ‘gaining supplier’ refused to engage in correspondence with him or supply any evidence of the alleged agreement. Then in October 2008 the client’s telephone was cut off, together with his internet connection. The client and her husband are self employed farmers, living in a remote rural area, with no near neighbours and no mobile signal so a landline connection is extremely important for them. The client’s husband then had a stroke in December 2008 and

² *The Consumer Experience 2008*, Ofcom, November 2008, p.99

³ *ibid.*, p.117

⁴ *ibid.*, p.113

⁵ *ibid.*, p.85

was hospitalised 20 miles away, which meant that the client had no means of calling or receiving calls from the hospital in case of emergency. The client's former supplier was unable to reconnect the line as they stated that the gaining supplier now owned the line, and no spare lines were available. The client has been further frustrated in her efforts to resolve the matter as the gaining supplier refused to discuss the matter with anyone other than the client's husband, who is in hospital recovering from a stroke.

A CAB in Devon reported that their client, a 79 year old woman who lives alone, received an unsolicited phone call from a fixed-line telephone supplier. The client reported that the phone call was "oppressive" and, under pressure, she asked for information about the offer from the new telephone company to be sent to her. Unfortunately the client had given her bank details as she was feeling so pressured, so the company acted as if the client had agreed to enter into a contract with them. The 'gaining supplier' also gave incorrect information about the client's cooling-off period and claimed that the client was too late to cancel the contract which they allege she agreed to enter into. They are now demanding a £352 cancellation fee for cancelling the 12 month contract. The client came to the CAB because she was extremely anxious and confused.

An Oxfordshire CAB reported a case in which their client received a telephone call advising him of a call plan which would give him cheaper calls than his current arrangement. The client agreed to this, not realising that the call was not from his communications supplier but from a different fixed-line telephone company. When he realised his mistake, the client informed his existing supplier that he didn't want to change and they wrote and confirmed that the changeover was cancelled and that his contract would continue as before. However the client is now receiving bills from the company that attempted to transfer him. This company informed the client that there was a seven day window to cancel, and as the client had not acted within this he would have to pay a £150 cancellation fee. Amid the confusion the client has also received a red reminder for the final bill from his former supplier.

A CAB in Devon reported that their client's husband received a cold call from a fixed-line telephone supplier. They wanted him to sign up for their telephone services but he refused, though he did agree that they could send him some information. The client realised that something untoward had occurred when she got a dial tone when she picked up her phone - they currently have a phone line that accepts incoming calls only and did not want a normal telephone line. The client telephoned her telephone supplier who told her that another company had contacted them and told them that the client was switching companies. The client told them that this was untrue and arranged for her line to be transferred back, though this would take several weeks. The 'gaining supplier' informed the client and her husband that they should have cancelled the contract when they received the 'Welcome Pack' and since they had not done so then they would have to pay a cancellation fee of £150. The client stated categorically that they had never received this or any details on how to cancel the 'agreement'. The client is now back with their original supplier but as well as coping with all the stress and trauma of trying to sort out the fraudulent transfer, they now find themselves in a much worse financial predicament – at the time of their unrequested switch they owed approximately £400 to their telephone supplier and were repaying it at the rate of £100 per month but the supplier now insists that it is all paid at once because the client is now a 'new' customer.

A CAB in Wales reported that their client received a telephone call from someone she assumed to be from her current fixed-line phone supplier, offering her a cheaper package (£17.50 per month as opposed to the £19 per month she was paying). The client agreed to this but then received a letter from her existing supplier expressing their sorrow that she was leaving them. The client rang them and stated that she knew nothing about this, but it was apparently too late to stop it. In February the client received a bill from the new company for a sum of £48.37. Of this, £17.50 was for the package but there were also a series of additional charges which had not been flagged previously: £3 for non direct debit charge, £1 for sending out the bill, £9 for phone calls and £5 for a letter (which the client had not received). The client was then cut off for non-payment of a January bill which was not even mentioned in the February bill. The client cannot afford this package, which has turned out to be much more expensive than the rate she was originally quoted, yet she needs her phone because of ill health. The client's daughter rang up the 'gaining supplier' to attempt to stop this but was told that client had agreed to a 12 month contract and that all the details were in the welcome pack (which the client had never received). She was told that the client would therefore have to pay over £100 to get out of the contract.

A London CAB's client had been with his existing fixed-line telephone supplier for 30 years. On 27 July he received a letter from the supplier but he put it to one side and failed to open it until 7 August. When he got round to opening it he found that it was dated 23 July and gave him until 6 August to raise any objection to the termination of his contract because another company had applied to take over his phone. The client called his supplier immediately and explained that he had not been in contact with any other telephone company and had made no agreement for his phone to be transferred. He asked for his phone line to be retained with the same number but he was told that as the period for him to raise an objection had elapsed his telephone number had been withdrawn and he would have to sign a new agreement to have his telephone line restored with a new number. To avoid being without a phone the client agreed to do this but he was told that his line could not be restored until 26 August. The client was very anxious to get his old telephone number back and not to have to wait 18 days before he had a home phone to use. However, although he was told that his former supplier had managed to retrieve his old phone number for him to use again because he had already signed the agreement for his line to be restored with a new number this would have to be implemented before the old number could be brought back.

Question 2 Based on our experience of our enforcement activities, do you agree that the regulations should be further strengthened in order to better meet Ofcom's policy objectives and aims?

We agree that, at the very least, the regulation governing this area should be further strengthened. We have a number of specific points to raise in connection with this:

- we are staggered that the **Code of Practice approach** previously adopted by Ofcom may have actually incentivised suppliers not to comply with rules in this area, since "where CPs have not established Codes [Ofcom] are unable to remedy the consequences of actual mis-selling activity – and we can only require CPs to establish a code of practice"⁶ Clearly, it would be preferable to move away from this and to an approach which outlaws inappropriate sales and marketing activity.

⁶ *Protecting consumers from mis-selling of fixed-line telecommunications services*, Ofcom, March 2009, p.20

- we have previously mentioned our frustration with the lax requirements placed on communications providers to retain detailed records of the way they handle complaints.⁷ The same grave concerns apply to **Ofcom's current requirements on communications providers to retain records of sales**. It is deeply dispiriting to learn that Ofcom admits that "in the past we have found it difficult to enforce against CPs where bad practices have been alleged but we have been unable to obtain good quality records of the alleged instances".⁸ As above, it would seem as though the current framework may actually encourage fixed-line suppliers to consciously opt for poorer levels of service / compliance since this would seem to protect them against enforcement action. From a consumer protection angle, this arrangement makes no sense and screams out for radical revision, one which demands compliance with stringent conditions to enable Ofcom to take enforcement action and which, if not complied with, automatically results in Ofcom penalising the supplier and finding in favour of the consumer.
- we have received many cases from bureaux where **clients have agreed to switch from their current supplier without realising that they would have to pay a cancellation charge to do so**. A selection of these cases are provided below, and these would indicate that it is important for greater prominence to be given to consumers considering switching supplier.

A CAB in Hampshire reported a case in which their client was cold-called by a fixed-line telephone supplier offering a cheaper deal for telephone calls compared with his current supplier. The client had a domestic account and a business account with his existing supplier and was interested in saving money so agreed to go ahead with the transfer, which the caller assured him would be hassle-free since they would undertake all the arrangements. The gaining supplier did this, and the losing supplier then called the client to inform him that he would have to pay £600 to be released from his contract with them. Unsurprisingly, the client decided that he did not want to pay this so opted to stay with his existing supplier. Unfortunately when he tried to cancel the new agreement with the gaining supplier he was over the seven day cancellation period and they told him he would have to pay them £450 in accordance with their terms and conditions. The client was unaware of these terms and conditions, and only became aware of them under much closer inspection since they were on the back of a letter from the company in very pale print, and there was nothing in the body of the letter drawing the reader's attention to their existence.

A Gloucestershire CAB reported that their client, an 85 year old widow, received a cold call from a telecoms company offering a discount on her line rental and discounted calls. The client did not fully understand what the call was about and was unaware she had entered into a 12 month contract. When the first bill arrived the client asked her daughter to cancel the arrangement for her as she was worried about it. Also, there had been a problem setting up the direct debit for £54 and the client had received a letter from a debt collection agency within a very short time. Following the client's daughter's intervention, the client received a letter noting that her 12 month contract had been cancelled and billing her for £300 plus VAT as a cancellation charge. The client was never told in writing that the contract was for 12 months and she felt that the company took advantage of her age and vulnerability to sell to her when it was clear she did not wholly understand what she was signing up to.

⁷ *Citizens Advice response to Ofcom's consultation on 'Review of Alternative Dispute Resolution and Complaints Handling Procedures'*, October 2008, p.4-5

⁸ *Protecting consumers from mis-selling of fixed-line telecommunications services*, Ofcom, March 2009, p.21

A CAB in West Yorkshire reported a case in which their client, a Somali refugee in receipt of jobseekers allowance, was encouraged to transfer her land-line supplier by a high-street retailer. Her final bill with the losing supplier was for £216.08 and included a cancellation charge of £155.69. The losing supplier said that it would only waive cancellation charges if the client transferred back to them, but if she did this she would then incur cancellation charges from the gaining supplier. The adviser noted that telecommunications suppliers should spell out their contractual terms and conditions in a clearer manner, especially to refugees from overseas and others for whom English may not be a first language. It was also observed that the high street retailer seemed to have persuaded the client to switch without spelling out all the implications of the transfer.

Question 3 What are your views on appropriate implementation periods for each of the proposed measures we are consulting on as set out in sections, 5, 6, 7 and 8?

While we do not have the technical expertise to input to the detail of this question, we would point out that the problem of mis-selling in fixed-line telecoms has dragged on for some time and shows no signs of reducing. In this context, we would state that there is a need for swift action to address the prolonged shortcomings, albeit within sensible limits that do not impose excessive and counter-productive costs on communications providers, which would end up adding to consumers' bills.

Question 4 To what extent do you consider our assessment of the potential costs and benefits outlined in the IA at Annex 5 is dependent on the implementation periods for each of the proposed measures we are consulting on as set out in sections, 5, 6, 7 and 8?

Question 5 Do you agree that it is appropriate to modify, or remove, the July 2005 Cancel Other Direction (or any provision saving in effect this Direction) so that any changes take effect before the end of the implementation period for modifications to the General Conditions?

No comment.

Question 6 Do you agree with our preferred option on clarifying and simplifying the regulations, namely that we should:

- (i) improve clarity of the regulations by redrafting in order to aid understanding and***
- (ii) simplify the regulations by moving away from a code of practice (process-based) approach to an outcome driven approach based on absolute prohibitions of mis-selling?***

If Ofcom decides against more fundamental reform of this area, then we would agree with these proposals. Certainly, we would agree that it would be indefensible to retain the existing *status quo*.

Question 7 Do you consider there are other parts of the existing GC14.5 obligations where we could clarify and simplify the regulations, but have not proposed to do so? If so, please explain and set out the reasons for this.

No comment

Question 8 Do you agree with our preferred option to provide better information to consumers on the potential consequences of switching? Please provide an explanation to support your response

In our response to Question 2 above we provided details of a number of cases in which CAB clients incurred sizeable cancellation charges when switching fixed-line supplier which they were not previously aware of.

We therefore agree that there is a need to improve consumer awareness of the potential consequences of switching. We also concur with Ofcom's proposal that both communications suppliers should mention contractual liabilities with a customer's existing supplier within the Notice of Termination letters, as well as requiring the gaining CP to provide information at the point of sale.

The usefulness of this provision will, however, depend on how it is implemented. We would not wish to see such information relegated to the small print or hidden within reams of paper and we would expect to see Ofcom make this clear through prescriptive rules or guidance.

In addition, a significant number of the cases that bureaux have reported to us involve disputes over whether 'welcome letters' (including terms and conditions) have ever been received, and therefore whether consumers were made aware of their right to cancel a transfer within the cooling-off period. We would want to see safeguards included to protect against repetition of this cause for dispute and detriment.

Question 9 Do you agree that Cancel Other should primarily only be permitted for reasons of slamming, as defined by Ofcom, or are there other circumstances where you feel use of Cancel Other should be permissible?

Question 10 Do you have any other suggestions for improvements to the reliability of the Cancel Other data and, in particular, the existing reason codes?

Question 11 Do you agree with Ofcom's proposals not to transpose information sharing obligations relating to use of Cancel Other as part of the proposed new General Condition? Please provide an explanation to support your response.

No comment.

Question 12 - Do you agree with our preferred option on record keeping for sales? Please provide an explanation to support your response.

In our answer to Question 2 we highlighted grave concerns about Ofcom's flimsy requirements currently placed on communications providers to retain records of sales, noting that this would have seriously undermined efforts to take enforcement action against communications providers utilising underhand sales tactics.

Ensuring communication providers retain extensive records of sales calls is imperative not just to ensure a level playing field for those CPs that currently follow best practice but, more importantly, to protect consumers against rogue selling methods.

We are therefore pleased that Ofcom is proposing to take much overdue action and significantly ramp up the requirements on record-keeping of sales activities, such that CPs will have a comprehensive audit trail of the sales process. We agree with Ofcom's proposal

to clarify existing obligations relating to record keeping obligations for sales and the introduction of obligations requiring CPs to keep and retain call recordings. We recognise the arguments made by Ofcom to opt for Sub-option 4 (ii) – 100% record-keeping based on reasonable endeavours – but have some concerns about how ‘assumed tolerance levels’ may enable suppliers to side-step the requirements for cases the details of which they did not wish to share with Ofcom. We would therefore welcome assurances from Ofcom about how they would monitor this requirement.

Finally, we question the period for which sales calls should be retained. Currently the guidance states (at paragraph A8.28) that records should be kept “for a period of not less than six months from the date the record was created”. We suggest that it would be helpful if such recordings were retained for the period of the contractual term since this might be helpful if there was a dispute about cancellation charges towards the end of a contract which might be for 12 or 18 months or potentially even longer.

Question 13 Do you agree with our preferred option on record keeping where Cancel Other is used? Please provide an explanation to support your response.

No comment.

Question 14 What are your views in relation to consideration of other options described in section 9? Please provide an explanation to support your response.

As we state above in the section giving our General Comments, we are perplexed as to why such short shrift is given to the exploration of other options to address the problem of mis-selling in the fixed-line market, which accounts for fewer than two pages of Ofcom’s lengthy consultation document. Our comments bear repeating in the context of Question 14.

We are aware that the switching process used in the broadband sector has previously experienced problems, and indeed Ofcom’s own recent statistics reveal that only 74% of consumers found switching broadband supplier very or fairly easy compared to 88% in the fixed-line market.⁹ Yet Ofcom also report that “since the beginning of 2007 there has been a decrease in the number of complaints to Ofcom about broadband migration in general”.¹⁰

The crucial factor is that it would appear that mis-selling does not appear so prevalent in the broadband market¹¹ and, equally importantly, the protections put in place to protect against mis-selling do not appear to have adversely affected levels of switching to any significant degree, with 10% of broadband customers having switched supplier in 2008 and 12% of fixed-line customers having done so.¹²

In our view it would seem sensible to consider learning lessons from other communications markets to protect consumers from continued mis-selling. We would be interested to learn from Ofcom why such approaches have been rejected. An additional benefit which might be conferred by moving towards a consistent approach to switching across different communications channels would also be to reduce confusion and facilitate switching of bundled products.

⁹ *The Consumer Experience 2008*, Ofcom, November 2008, p.99

¹⁰ *ibid.*, p.117

¹¹ *ibid.*, p.113

¹² *ibid.*, p.85