

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Protecting consumers from mis-selling of fixed-line telephony

To (Ofcom contact): Gavin Daykin

Name of respondent: Aileen Boyd

Representing (self or organisation/s): Scottish and Southern Energy plc

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing	No	Name/address/contact Details/job title	No
Whole response	No	Organisation	No

Part of the response **Yes** If there is no separate annex, which parts?

Appendix 3 is confidential and provided separately

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☐

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Dear Gavin

Consultation on protecting consumers from mis-selling of fixed-line telephony

We welcome the opportunity to comment on Ofcom's proposals for protecting customers from mis-selling of fixed-line telephony services.

We have set out our main points on Ofcom's proposed approach below and have added 3 appendices as follows:

- Appendix 1 provides our response to the specific consultation questions;
- Appendix 2 contains detailed comments on the proposed wording of the new General Condition (GC) 24 and the associated guidelines; and
- Confidential Appendix 3 contains an update on our view of the likely costs associated with Ofcom's proposal.

Overall comments on the main elements of Ofcom's proposals

We support Ofcom's proposals to move away from the current detailed mandatory code of practice approach to guarding against mis-selling and instead put in place a high-level obligation not to engage in mis-selling along with associated non-mandatory guidelines. We do have some suggestions on the exact wording of the obligation, which we believe should concentrate on the management of processes to avoid mis-selling – and these are set out in our detailed comments in Appendix 2.

However, we are totally against the proposal to require the high levels of retention of sales records, including recordings of voice calls, that the wording of the proposed GC and guidelines currently sets out. With the wording proposed for this obligation, we believe that the new GC would impose significant costs on SSE. Rather than targeting compliance costs at those providers who do not have adequate record keeping processes and whose selling behaviour gives cause for concern, this aspect of Ofcom's proposals seem likely to increase compliance costs across the industry,

including for companies such as ourselves who already have systems and processes in place to successfully manage retail sales activity and avoid mis-selling.

Ofcom also proposes to bring the industry “Cancel Other” process within the scope of GC24. We support the equalising of proposed obligations around the use of Cancel Other between BT and the rest of the industry in the manner proposed. We believe there is scope to develop industry involvement in clarifying and streamlining the use of cancel codes through consensus built in industry fora such as the Commercial Group – as envisaged in the proposed GC wording. However, as above, we do believe that the associated proposed requirement for suppliers to create and retain 100% recordings of customer requests for cancellation is unreasonable.

Finally, in the proposed text of GC24, some new requirements have been added in relation to post-sales information, which do not appear in the current framework of mandatory guidelines. These new requirements would also bring costs to implement and we discuss this in Appendix 2 of our response.

In the rest of this letter, we consider firstly the specific areas of additional cost that the current wording of the proposal on record keeping entails. We then highlight our concerns with Ofcom’s overall approach and finally, set out our proposal for progressing protection against mis-selling both within and beyond the framework that Ofcom has set out in the consultation.

Costs of record keeping

In confidential Appendix 3, we provide an update to the costs for telephone call recording already provided to Ofcom as part of our response to the information request at the end of last year. Some changes have arisen as a result of more detailed review of the proposed requirements.

Here, we consider the 3 elements of the Ofcom proposals on record keeping that would give rise to significant costs:

- i) the percentage of records to be achieved;
- ii) the scope of calls to be recorded; and
- iii) the length of time that records have to be retained.

Percentage of Recordings

Ofcom’s current proposed wording is “reasonable endeavours” to create and maintain all relevant records for both sales and discussions leading to the use of Cancel Other. This is clarified in the guidelines to mean between 90% and 100% with an explanation to be available for any level less than 100%. While this wording recognises that 100% recording might not be possible, we believe that in practice there is little that can be saved in terms of resilience costs in setting an expectation that call recording levels will always be above 90%. As discussed in confidential Appendix 3, there are substantial costs in setting up a high availability, resilient call-recording system. Without this resilience, it is possible that operational system failures could result in no recording for up to a few days. It is not clear that such an event would still allow the proposed 90% threshold to be met.

In order to remove the significant level of additional cost associated with securing a high availability recording system, we believe that a lower threshold of tolerance would be appropriate, together with an explicit recognition by Ofcom in the guidelines that high availability systems are not required. We consider that a “reasonable endeavours” obligation to capture direct records of “a substantial majority” of customer contacts would be a more proportionate regulatory requirement and we develop this in the section below on “SSE Proposal”.

Scope

Ofcom currently proposes that all telephone discussions that result in a sale of fixed-line telephony should be recorded. For a company such as SSE, which has a large customer base in non-communications products, we have calculated that in the order of 0.1% of inbound calls to our customer contact numbers result in a sale of fixed-line telephony. It is therefore, in our view, a completely disproportionate requirement for all these inbound calls to be recorded and stored. It is also a cost that would be likely to increase over time as our customer base in non-communications products continues to grow; we have discussed the costs further in confidential Appendix 3. We suggest that the costs of establishing recording of all inbound calls would represent a barrier to entry into the fixed-line telephony market for companies who already have a large base of customers in other markets. It may also be a significant overhead for established fixed-line suppliers who are diversifying their product base into other areas and who wish to provide a “one-stop shop” for customer contact on a variety of products.

We propose that the level of concern about any mis-selling resulting from customers initiating contact with a fixed-line supplier must be lower than for contacts that the supplier has initiated. Some of the worst categories of mis-selling such as “slamming” (where the customer has no knowledge of who has applied to transfer their phone service) and “passing off” (where the customer is deliberately misled into thinking they are signing up with a different telephony provider) would not be applicable in the circumstance where the customer has initiated the contact leading to the proposed transfer. Furthermore, the customer would know who to contact if they had any concerns about the sales discussion or the resulting sale. It is also probable that the customer has an existing retail relationship with the supplier that they contacted on many of these types of call. We therefore strongly believe that Ofcom should reflect the reduced risk and disproportionate cost to record these types of calls by excluding them from the scope of the contacts to be recorded.

Records Retention Period

This is defined in the proposed GC as not less than six months. Where large volumes of telephone contacts are required to be recorded and stored for at least six months, the IT costs of dedicated storage space become significant, as shown in our confidential Appendix 3. Any reduction in this period would lead to the possibility of reduced costs. On the other hand, for the retention of signed contracts obtained during a doorstep sales visit, we are able to retain these for six months without any significant cost implications.

Concerns with Ofcom’s approach

We understand that Ofcom would like to ensure that sufficient records to demonstrate mis-selling (if this has indeed occurred) are available from all suppliers for a historic

period in case Ofcom needs to proceed to enforcement activity for any particular supplier, whose behaviour or statistics are giving Ofcom cause for concern.

We accept that suppliers should be monitoring and reviewing their sales processes in order to identify any issues. Keeping adequate records for a reasonable period of time in order to allow for that review process is a necessary part of managing sales processes, in our view. We could therefore support a high level requirement for suppliers to have systems and processes in place to manage their sales activity such that mis-selling is avoided and, as part of this, to maintain direct records for a reasonable proportion of sales for a reasonable period.

However, as we have discussed with Ofcom, we are very concerned that Ofcom's approach to developing GC24 with respect to record keeping and retention is too prescriptive. We believe that, if confirmed, this would drive significant costs across many players in the industry, as discussed in the section above. This would be despite the fact that, as we understand it, it is the mis-selling issues associated with relatively few individual suppliers that give Ofcom continuing cause for concern in this area. We are firmly of the view that Ofcom should seek a way to require these few suppliers to improve their recording levels and selling behaviour rather than increasing prescriptive regulation in a blanket fashion across all suppliers in the market. This would be consistent with Ofcom's principle of targeting regulatory action only at cases where action is needed.

Rather than develop prescriptive regulation for all suppliers in the fixed-line market, we believe Ofcom should focus on bolstering its ability to act quickly if concerns develop about a particular supplier. As has been discussed recently within the Commercial Forum, management of the "RID codes" (reseller identification codes) which suppliers use to identify themselves for the purpose of initiating transfers of fixed-line services on the Openreach gateway could be improved. We believe these existing centralised processes could be readily developed to provide useful statistics on cancellations giving clear evidence of suppliers causing issues. These particular suppliers could then be asked to provide available sales records - month by month if necessary - using Ofcom's existing information gathering powers in order to develop a case for enforcement action, if this proves to be necessary.

We develop our ideas further in the section below on the use of industry mechanisms to promote a market framework where mis-selling is discouraged.

SSE proposal for progressing protection against mis-selling

Within the framework of the proposed new GC24 plus guidelines that Ofcom has put forward, we believe that relatively few changes to wording would be required to make the proposed record-keeping obligations less prescriptive, more flexible and thus less costly overall. We believe that this could be achieved while preserving the expectation of an adequate level of records retention that Ofcom could rely on if it acted quickly to seek information from suppliers whose selling activities were giving rise to concerns about possible mis-selling.

Our proposal is that:

- Suppliers would be required to have systems and processes in place to create and retain for a reasonable period direct evidence of a “significant majority of customer contacts” leading to the sale of fixed line telephony;
- The “significant majority of customer contacts” would be defined not to require duplicated, high availability systems, which drive particularly high costs for voice recording;
- The guidelines would be used to set the expectation that around 70-75% of fixed line telephony sales could be supported by direct evidence – this could be either by means of signed contracts, voice recordings, direct records of internet sales or a mixture of these as appropriate to the sales channels used by the supplier;
- The scope of contacts would be defined to exclude inbound calls, which for many organisations could cover a range of products other than fixed-line telephony;
- The “reasonable period” for record retention could be up to six months for copies of contracts and internet records but, reflecting the costs involved in blanket storage of telephone calls, should not be greater than one month in our view for voice recordings – we have found that this is a sufficient period for investigation of any immediate complaint following a tele-sales call; and
- For use of Cancel Other, as above, we advocate that the high availability 90-100% of records (which are likely to be mainly telephone calls) requirement is relaxed towards a “significant majority” level defined as 70-75% of Cancels placed.

Assuming that no other costs are generated for suppliers by the proposed wording of GC24, as discussed in Appendix 2, we believe these adjustments to Ofcom’s proposals would result in lower compliance costs while preserving Ofcom’s intended ability to ask for representative sales or Cancel Other records if it develops concerns about a particular supplier. We consider that it would be difficult for any supplier to systematically avoid providing Ofcom with representative sales records against a requirement to be able to provide records supporting the “significant majority” of sales or cancels.

As discussed above, we also suggest that Ofcom focuses on developing existing industry mechanisms to provide it with prompt indications that particular suppliers may be engaging in practices harmful to customers or to competition in the market. Taking this idea further, in the medium term, we advocate that Ofcom works with the industry to build on the existing Openreach switching systems for fixed-line services based on BT wholesale products to develop a comprehensive switching mechanism across all mass-market infrastructures providing fixed-line telephony. We believe that a consensus is developing within the industry, as represented at Commercial Group discussions, about the benefits of such a development. Such a comprehensive framework could, we believe, provide further benefits for Ofcom and for customers.

For example, it could:

- allow for industry management of the RID database;
- provide independent industry statistics;
- allow an “erroneous transfer process” (i.e. a fast transfer back to his previous supplier for a customer who did not want to switch) to be developed;

- allow Ofcom to have less day-to-day involvement in mis-selling issues; and
- provide for independent investigation of individual mis-selling complaints if this was felt to be desirable.

Such a development has already been recognised by Ofcom in its recent statement on co- and self-regulation¹ as meriting consideration as a potential co-regulatory arrangement. We would be happy to discuss this concept further with Ofcom and believe that it represents an opportunity to develop an industry framework that, amongst other benefits, addresses the potential for mis-selling in a pragmatic manner that avoids the need for Ofcom to develop or continue prescriptive regulation in this area.

Conclusion

In summary, we support Ofcom's proposals to establish a high level GC that requires mis-selling to be avoided rather than rely on detailed prescriptive mandatory code of practice guidelines. However, we urge Ofcom to avoid introducing the prescriptive and costly obligations on record keeping and retention that currently form part of the proposed GC and associated (non-mandatory) guidelines.

As they stand, the proposals would result in significant additional costs for SSE. This is despite the fact that SSE already has systems and processes in place to monitor its sales activity, including an existing level of call recording sufficient for this purpose. Our systems and processes for managing sales have resulted in SSE establishing an excellent record in avoiding mis-selling in our main retail market of energy supply. Similarly, we are not aware of any concerns about our selling activity for fixed-line telephony. We would therefore strongly object to becoming subject to further regulatory burdens that drove additional costs into our sales and customer service operations.

I hope these comments are helpful and would be pleased to discuss them further.

Yours sincerely

Aileen Boyd
Regulation Manager

¹ "Identifying appropriate regulatory solutions: principles for analysing self- and co-regulation" issued 10 December 2008

Appendix 1

Consultation Questions

Q1: 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.

From Ofcom's analysis, we can see that there are still significant complaints about mis-selling of fixed line services. We believe it is useful to show these figures as a percentage of transfers to understand the relative scale of the problem and aid comparison with complaint levels in other industries. However, we believe that Ofcom should establish and target further action at those companies who are giving rise to the complaints – not pursue a blanket approach of further prescriptive regulation on all suppliers offering fixed line telephony as part of their product portfolio. In the energy industry, for example, the consumer body energywatch used to collect statistics on the levels of complaints in different categories for major suppliers. Although consumer-related arrangements have changed, summaries of these assessments are still available at http://collections.europarchive.org/tna/20080922203044/http://www.energywatch.org.uk/help_and_advice/supplier_performance/displaygraph.asp?bar=directselling and show clearly where supplier performance is outwith the norm.

Q2: 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? Please provide an explanation to support your response.

We are opposed to the imposition of significant regulatory burdens on all suppliers in order to tackle the shortcomings Ofcom has identified. We believe it should be possible to design a more proportionate regulatory response that, for example in the case of sales records, seeks a moderate level of record-keeping across the industry coupled with more pro-active enforcement action targeted specifically at those suppliers whose levels of cancellations and complaints are giving cause for concern. Further to this example, we consider that Ofcom should seek to review available records from such suppliers in a timely fashion and, if necessary, through successive information requests over a number of months.

Q3: 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? Please provide an explanation to support your response.

Our views on the potential implementation periods for Ofcom's proposed measures are as follows:

- Section 5 discusses clarifying and simplifying existing regulations – as discussed in Appendix 2 of our response, we have some concerns that additional requirements have been introduced in Ofcom's proposals for re-wording of the existing requirements – particularly with respect to notification letters. If these additions are intended, a significant period would be needed to change systems and processes. However, if it was not intended to introduce such changes, we do not believe that there would

need to be a material implementation period for this aspect of Ofcom's proposed changes.

- Section 6 discusses providing information to customers in sales scripts and notification letters about the possibility of existing contractual liabilities – although these are relatively small changes, time needs to be allowed for ensuring that training is developed and rolled out and for IT changes to affect the wording of the relevant transfer letters. We consider that 6 months should be allowed for this aspect.
- Section 7 discusses formalising the Cancel Other rules and implementing a common approach through the GC wording – we do not believe that this would require significant implementation across the industry, except for the recording aspects associated with requests for use of the Cancel Other facility, which we discuss in response to question 13 and in our covering letter.
- Section 8 discusses record keeping – as Ofcom's proposal stands, we believe significant systems and IT changes would be required and that at least 12 months would be necessary for implementation. Where companies need to spend significant sums on implementation of these requirements, the timing of Ofcom's final statement with respect to the annual budgeting cycle would be relevant. This consideration leads us to suggest that additional months might be required to cater for the planning and authorisation of expenditure before implementation can commence.

Q4: 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?

Please provide an explanation to support your response

Overall NPV for any project is dependent on the timing of costs and benefits - implementation periods are therefore relevant. To the extent that costs are incurred by suppliers who do not engage in mis-selling or mis-use of Cancel Other, there will be no benefits to offset these. For suppliers who are mis-selling or abusing the Cancel Other process, benefits will be incurred as soon as they establish acceptable practices irrespective of the timing of any specific costs entailed in adhering to Ofcom's proposals.

Q5: 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? Please provide an explanation to support your response.

We believe that Ofcom should consider carefully whether it would be appropriate to remove existing Cancel Other obligations from BT, ahead of the implementation of the current Cancel Other proposals via the GC. While BT's use of Cancel Other has been falling, they are likely to remain a significant individual user of the facility and one that Ofcom's recent narrowband market review has established as retaining 66% of the residential access market.

We believe it would be useful for best practice in the use of Cancel Other to be developed and owned by the industry – perhaps via the industry Commercial Group. Apart from the actual use of correct Cancel Other codes, there are other

aspects to the use of Cancel Other – for example, the scripts used to establish that a customer’s wish to cancel the transfer is a valid reason to use Cancel Other – that are relevant in considering “best practice” and fair use of the facility.

Q6: 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?*

Please provide an explanation to support your response.

Yes, we support this development in principle and believe that a number of the GCs could be improved in this manner. We would welcome Ofcom considering this approach with respect to a number of other GCs that currently entail mandatory codes of practice, such as some of the numbering obligations. In general, we believe that care should be taken that the “simplification” of the regulations does not introduce any additional requirements. In the current instance, we believe that some additional requirements for transfer letters have been introduced and we discuss this in more detail in Appendix 2 of this response.

Q7: 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.

As discussed in Appendix 2 of this response, we believe that additional requirements have been introduced for the transfer letters in the proposed GC. This may be due to inadequate separation of the requirements for statutory cooling off and for the transfer letters themselves. We would hope that further clarification of these separate requirements would remove the apparently additional requirements for the transfer letter. On a further matter related to the transfer letter, we believe it may be helpful to clarify what the “list of services affected/unaffected” is intended to convey – while this could be interpreted in a number of ways, our belief is that should refer to high level descriptions of the particular services (i.e. calls, line rental) that are involved in the transfer.

Q8: 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.

Our initial comment on this point would be that the fact that Ofcom finds a significant number of complaints relating to fixed-line customers not being aware of contract terms and associated early termination charges (ETCs) points to shortcomings in the selling processes of those suppliers who have tied-in contracts with ETCs. As Ofcom is aware, not all suppliers of fixed line telephony tie customers in like this – SSE, for example, does not. As with our overall comments on sales records, therefore, we believe that the regulatory focus should be on the practices of suppliers who seek to tie customers in rather than in applying blanket regulation across all suppliers with respect to the information to be provided at the time a customer is switching.

We do not support Ofcom's proposals becoming a regulatory requirement, with the compliance overhead that this entails, particularly for the discussion at the point of sale. We note Ofcom's recent work on guidelines for additional charges and subsequent enforcement programme and suggest that future sales of fixed-line telephony should therefore be clearer on contract periods and ETCs such that, going forward, customer confusion on this point should be less of an issue.

Q9: 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?

Yes, we agree that use of Cancel Other should be used sparingly to deal with clear cases of mis-selling. We believe there is scope to develop industry involvement in clarifying and streamlining the use of cancel codes through consensus built in industry fora such as the Commercial Group – as envisaged in the proposed GC wording. As noted in our response to question 5 above, there are a number of aspects of the use of Cancel Other that industry parties have a legitimate interest in discussing and clarifying. On this basis, we advocate that it is considered as a candidate for developing a form of co-regulatory governance, subsidiary to the GC, on the detailed aspects of this part of customer switching mechanisms.

Q10: Do you have any other suggestions for improvements to the reliability of the Cancel Other data and, in particular, the existing reason codes?

See comments in response to question 9 above.

Q11: 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.

Yes. We consider there would be data protection issues associated with widespread requirements for suppliers to share call recordings leading to the use of Cancel Other. We also agree with Ofcom that such requirements are not likely to be workable or proportionate across multiple suppliers of telephony services.

Q12: Do you agree with our preferred option on record keeping for sales? Please provide an explanation to support your response.

No. See covering letter.

Q13: Do you agree with our preferred option on record keeping where Cancel Other is used? Please provide an explanation to support your response.

No. As with recording sales, and as set out in our covering letter, we do not believe it is proportionate to require a recording level of 100%/90%, which would appear to us to require duplicated high availability call recording systems. We would support a proposal for a significant majority of uses of Cancel Other to be supported by direct records such as voice recordings, which is more tolerant of technical system failures. In terms of cost/benefit for this individual requirement, we note that Ofcom's own comment for this element in its impact assessment (paragraph A5.146) is that it "could be finely balanced in terms of the NPV", which in our view hardly supports a stringent and costly record-keeping requirement.

Q14: What are your views in relation to consideration of other options described in section 9? Please provide an explanation to support your response.

Other options set out in the document are:

(1) ex-ante validation (including customer validation or third party verification): we do not support these options as we believe they will add significantly to the overall cost of the switching process and in some cases reduce the efficiency of the process, where further action from the customer is required to confirm the sale.

(2) ex-post validation (including automatic compensation or a third party complaints validation body): we do not believe that either of the sub-options put forward would be easily workable, although investigation of complaints could form part of a coordinated approach to switching arrangements that we have advocated be put in place for the mass-market communications products, as discussed below.

Such coordinated and centralised arrangements are in place in energy supply markets, where dataflows and agreed processes have been documented and are then developed as required by market participants. These type of arrangements have the further benefit of providing transparency (via supplier identities) of who is causing any problems in executing transfers or indeed, in generating any customer complaints. “Erroneous transfer” processes have also been developed to return a customer swiftly to their previous supplier in the event that the customer did not wish to be transferred. These allow the customer to see no break in the usual billing arrangements with his existing supplier.

Thus, while we do not believe that the setting up of the various validation bodies mentioned in the consultation document would be cost-effective, we do consider that the development of coordinated arrangements for switching, administered by a body responsible to the market as a whole, would allow the development of transparency, monitoring and the promotion of good customer experiences of switching. It could also provide a first line response to investigate customer complaints and is likely to be most effective if set up on a co-regulatory basis so that Ofcom has input to the development of the organisation. Our comments in response to question 9 are also relevant.

Question A5.1: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option [on clarifying obligations] ? If not, please provide an explanation and evidence to support your response.

In relation to option 3 under Ofcom’s heading of simplifying and clarifying the requirements relating to mis-selling, we agree that there are likely to be some benefits and that costs are likely to be minimal – always provided that Ofcom does not introduce any extra requirements in “clarifying” the existing obligations. We do have some concerns on this as discussed in Appendix 2.

Question A5.2: To what extent is it possible to assess the impact that this option [on providing information about possible contractual liabilities] might have on the current level of mis-selling in its own right? Please provide an explanation and evidence to support your response.

This option (number 3 under this heading) relates to requiring consumers to be informed at the point of sale by the gaining supplier of the potential for contractual liabilities with their existing supplier.

We agree that it is difficult to assess what positive impact this measure on its own would have on levels of mis-selling. Arguably, omitting to ask a customer to consider the implications of their existing contract is not a form of mis-selling in any case, whereas the fact that the customer has not been properly informed by his existing supplier might give rise to regulatory concerns in that area. On the other hand, it would have costs – both initial and ongoing compliance costs. We would therefore not support the introduction of this measure.

Question A5.3: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option [on providing information about possible contractual liabilities]? Please provide an explanation and evidence to support your response.

Ofcom's preferred option for customer information is option 4 – a combination of option 3 discussed above and option 2 - that of informing the customer within the notification of transfer letters.

We believe the benefits of this option are somewhat subjective. Ofcom itself notes that the option is finely balanced as the net welfare is in a range from -£1m to +£2m. Any specific regulatory requirement entails ongoing regulatory cost and risk. We therefore do not believe that it is justified to impose the higher cost levels associated with option 3 (i.e. informing customers at point of sale) on to suppliers.

Question A5.4: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option [on Cancel Other rules]? Please provide an explanation and evidence to support your response.

We agree there are not likely to be any immediate costs for suppliers in incorporating the Cancel Other requirements into the General Condition on the reduced basis proposed. However, we do consider that there will be costs associated with the proposed record-keeping obligations and discuss this in our covering letter and in response to question 13 above.

Question A5.5: Do you agree that this option [to clarify existing obligations on record keeping for sales] will not result in incremental costs to CPs? Please provide an explanation and evidence to support your response.

We agree that this option has no costs and may have some benefits in the long run. On the other hand, if there were to be changes to the current obligations, we believe that costs would be incurred across the industry.

Question A5.6: Do you agree with this proposal [to incorporate call recording requirements for Cancel Other into the proposed GC] in the light of the NPV estimate? Please provide an explanation and evidence to support your response.

No, we do not agree with this proposals as it stands and have discussed this in our response to question 13 above.

Question A5.7: Do you agree that orders are an appropriate proxy for sales? Please provide an explanation and evidence to support your response.

This approach seems reasonable.

Question A5.8: Do you agree with our assumption that volume of sales is a key driver of costs? If not, please provide an explanation and evidence to support your response.

No. We believe that the cost of introducing the form of record keeping that Ofcom proposes depends critically on each fixed-line provider's existing business model. A "cost per sale" basis for the estimate of costs incurred across the industry appears to be an undue simplification of the likely pattern of costs to achieve a resilient level of call recording across the industry.

In this regard, it should be noted that while Ofcom comments at paragraph A5.113 that it is open to suppliers not to pursue [outbound] telesales as a channel to market, suppliers cannot avoid customers and potential customers calling them. It would seem particularly intrusive for Ofcom to put financial barriers in the way of suppliers selling their products on inbound calls and we have advocated that such calls are clearly placed outside the scope of any call recording requirements. "Telesales", as a channel to market, is traditionally seen as an outbound dialling activity that a supplier has a choice of undertaking.

Question A5.9: Do you agree that it is reasonable to use a 5-year time period for our NPV analysis? Please provide an explanation and evidence to support your response.

No comment

Question A5.10: Do you consider that costs attributed to changing sales scripts are likely to be one-off in nature? Please provide an explanation and evidence to support your response.

We consider these costs would be largely one-off although additional regulatory requirements for sales scripts naturally generate an additional compliance burden and risk.

Question A5.11: Do you consider that the options to clarify and simplify the existing regulations and to provide information at the point of sales would each reduce levels of mis-selling by around 1 percent per annum? Please provide an explanation and evidence to support any alternative assumptions.

We consider that Ofcom's proposed benefits on these points are very subjective, particularly for the information provided at the point of sale. Please see also our comments in response to questions A5.2 and A5.3 on the costs and implications of this option.

Question A5.12: Do you consider that the options on call recording for telesales and Cancel Other could reduce mis-selling and Cancel Other requests by 30% in Year 1 and by 50% in Year 2? Please provide an explanation and evidence to support any alternative assumptions.

These assumptions again seem somewhat subjective. Linking in to our response to questions 2 and 4 above, we consider it is likely that a significant benefit in terms of reduced mis-selling would be seen if all suppliers of fixed-line services were required to have reasonably comprehensive record-keeping systems in place, which could capture direct records for 70-75% of their fixed-line sales.

This requirement would place some costs on suppliers who currently have very little or no record-keeping arrangements. For any of these suppliers who are generating mis-selling complaints, adhering to the requirements would either cause them to improve their sales processes or have records that demonstrated their mis-selling, which Ofcom could use in enforcement action. Considering the “80/20” rule on the achievement of benefits, we believe it is likely that Ofcom could achieve “80%” of their expected benefits in terms of reductions in mis-selling with a somewhat reduced record-keeping obligation. On the other hand, achieving the further “20%” of these benefits is very likely to incur significant (i.e. a further “80%”) costs across the industry - including for compliant suppliers - as discussed elsewhere in this response. These considerations should, in our view, recommend to Ofcom a precautionary approach to setting regulatory requirements in this area, which initially seeks to bring record-keeping across the industry up to a “reasonable” level in the first instance.

Question A5.13: Do you agree that it is reasonable to assume that adding such a sales prompt would increase the call length by an additional 20 seconds? Please provide an explanation and evidence to support your response.

We do not believe that the length of a telesales call would be significantly affected by adding the prompt that Ofcom proposes.

Question A5.14: Do you feel these assumptions [to extrapolate costs of telesales recording] are appropriate? If not, please provide an explanation and evidence to support any alternative assumptions.

See our comments in response to question A5.8. We would also note that some suppliers who currently record “all” tele-sales and may not have expected any additional costs from Ofcom’s proposals at the time of the information request, might now consider that additional costs in terms of resilience of call recording systems would actually be required to meet the exact nature of Ofcom’s proposed recording requirements in the text of the GC and guidelines. A re-evaluation of costs by some of the suppliers would naturally affect Ofcom’s cost benefit analysis and impact assessment. We have also provided an update on our expected costs in this regard in confidential Appendix 3.

Question A5.15: Do you agree that these other indirect costs [of storing calls] are not significant? If not, please provide an explanation and evidence to support your response.

We are not aware that other indirect costs of call storage and retrieval – such as data protection related costs – are likely to be significant.

Question A5.16: Do you consider that one-off incremental costs per sale of £4.4 and ongoing incremental costs per sale of £0.6 are reasonable assumptions for the rest of the industry? Please provide an explanation and evidence to support any alternative assumptions.

As noted in our response to questions A5.8 and A5.14 above, we are not convinced that Ofcom’s analysis actually reflects the cost of establishing resilient call recording systems for the 12 suppliers who provided information to Ofcom as a result of the information request or for the rest of the industry. However, it is difficult to suggest alternative analysis when Ofcom holds all the prime data on

a confidential basis. We believe that concern about the costs of voice recording above the 100/90% threshold set out in Ofcom's proposed guidance is widespread in the industry and suggest that Ofcom re-evaluates its cost benefit analysis and impact assessment on this point once the consultation has closed.

Question A5.17: Do you agree that this option [to clarify existing record keeping obligations for use of Cancel Other] will not result in incremental costs to CPs? If not, please provide an explanation and evidence to support your response.

We agree with this.

Question A5.18: Do you consider that these estimates are reasonable? If not, please provide an explanation and evidence to support your response.

No. As discussed in our covering letter and response to other questions in the consultation, we believe that Ofcom has under-estimated the cost to the industry of providing record-keeping to the stringent level that appears to be entailed in the wording of the GC and its associated guidelines. We also believe that the majority of the expected benefits in terms of reductions in mis-selling (or the greater ability of Ofcom to take enforcement action against suppliers who continue to mis-sell) would still be seen if a more relaxed requirement on record-keeping, as advocated in our covering letter, was applied. We have made similar comments with respect to record keeping obligations for Cancel Other and have doubts about whether information provided at point of sale about potential existing contractual obligations would have any effect on mis-selling at all.

Appendix 2

Detailed Comments on Proposed GC24 and Guidelines

In this Appendix, we provide detailed comments on the proposed wording of GC24 and the associated non-mandatory guidelines.

Comments on proposed GC wording

Overall prohibition on mis-selling

While we support Ofcom's intention to introduce a high-level obligation to avoid mis-selling, we suggest that the wording of paragraph 24.3 is amended to avoid an absolute prohibition, which is in practical terms very difficult to meet, towards an emphasis on suppliers having systems and processes in place that avoid mis-selling and follow up if it occurs. Thus we would suggest the following alternative wording for the key requirement of the condition in paragraph 24.3

When selling or marketing Fixed-Line Telecommunications Services, the Gaining Communications Provider must take reasonable steps to establish management arrangements that seek to ensure that it does not:

- (a) engage in dishonest, misleading or deceptive conduct;*
- (b) engage in aggressive conduct; or*
- (c) contact the Customer in an inappropriate manner.*

Records Retention

We have discussed our most significant concern relating to creation and retention of direct sales records and cancellations in our covering letter. The parts of the proposal relating to this are paragraphs 24.11 and 24.18 of the GC and 8.28 to 8.33 of the guidelines.

To remedy our concerns while preserving an expectation that a reasonable proportion of direct records will be retained, we propose the following alternative wording for paragraph 24.11

The Gaining Communications Provider must use reasonable endeavours to have systems and processes in place to create records of a significant majority of sales of its Fixed-Line Telecommunications Service and to keep these for a reasonable period of time in order to assist in dealing with any complaint or query. The records should include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place the Contract was entered into, where relevant, and be such as to allow the subsequent identification of the salesperson(s) involved.

With similar amendments to paragraph 24.18 on Cancel Other records retention.

Consistent with our covering letter, we would urge Ofcom to amend the guidance to provide clarity that, with respect to telephone recording systems, resilient high-availability systems are not required such that operational outages of recording equipment would be tolerated. To take this into account and provide a more

reasonable regulatory burden on suppliers, we advocate that “significant majority” is clarified to mean around 70–75% of sales, excluding inbound telephone discussions. Similarly, we would propose 70-75% for the proportion of Cancel Other direct evidence that it would be reasonable for suppliers to be able to provide after the event.

With respect to retention periods, we believe that copies of contracts and records of internet sign-up could readily be stored for 6 months. However, particularly where large volumes of telephone calls need to be captured to meet the requirements of the condition, call storage can entail material IT storage costs. We advocate that the storage requirement should not be greater than a month for voice recordings. This is an adequate period for companies to investigate any immediate customer complaint and, as we have argued in our covering letter, if Ofcom develops concerns about a particular company, we believe that successive information requests for recent voice recordings could provide a developing picture of that supplier’s sales practices.

We note that part of Ofcom’s proposals on records retention is the requirement at paragraph 24.12 for the records to be provided to Ofcom on request. Within the consultation document, Ofcom notes that it would only seek these recordings in the event of an investigation. Given that the retention of records is proposed as a measure to help reduce mis-selling rather than as an end (and a compliance issue) in itself, we believe that it would be appropriate for Ofcom to clarify this within the text of the proposed GC and guidelines. For example, we suggest adding the phrase “*where Ofcom has grounds to suspect that mis-selling has occurred*” at the end of the existing paragraph 24.12.

Post-sales information

Paragraph 24.7 of the GC formalises requirements for the content of the notification of transfer letters – most of which is familiar from previously issued Ofcom guidelines. There is a new requirement to mention the possibility of existing contractual liabilities, which Ofcom discusses as a proposed additional requirement in the consultation. However, we are concerned that other changes have been introduced which have not been discussed in the consultation, appear to confuse the purposes of statutory cooling off communications and the notification of transfer letters and could lead to significant systems costs for SSE if they are, in fact, intended.

The first change is the inclusion of item (vi) – information about the right to terminate the contract. This does not appear as a requirement relating to the transfer letters in the existing mandatory guidelines. We recognise the requirement as associated with the statutory “cooling off” periods and provide information about this to customers separately from the notification of transfer letters since, as Ofcom is aware, we allow statutory cooling off periods to elapse before engaging with the industry transfer process that entails the further ten working day transfer period. It would be difficult for us to provide a “date” by which the right to terminate must be exercised in our early confirmation material as we would not at that time know the supply start date from the Openreach systems. On the other hand, providing this specific information again in the actual gaining transfer letter would also lead to system development costs.

While we are aware that many telephony suppliers run the industry transfer period and the statutory cooling off periods in parallel, we do not believe that Ofcom should

assume a particular process in setting the GC and add statutory requirements into the paragraph on the notification of transfer letters. We therefore believe that bullet (vi) should be removed from paragraph 24.7 and the essence of this requirement, if needed, should form a separate paragraph along the following lines:

Where the Customer enters a Contract for a Fixed-Line Telecommunications Service, the Gaining Communications Provider must promptly inform the Customer, consistent with statutory requirements, of his right to terminate the Contract; the timescales for this; and the means by which the right to terminate can be exercised.

Such a form of words would not preclude suppliers putting the information in the transfer letter, if that fitted with their business processes.

The second of these changes is the inclusion of the phrase “within three Working Days of receiving notification” in the first part of paragraph. Again, this requirement on timing does not appear in the existing mandatory guidelines and may lead to the requirement for system and process changes if it remains. It may be that it has been added due to consideration of the statutory requirements on cooling off. However, we believe that this is separate from the requirement on the notification of transfer letters, as discussed above, and that the phrase should be removed from paragraph 24.7.

Possibility of existing contractual liabilities

As discussed in response to the consultation questions in Appendix 1, we do not support there being a regulatory obligation to mention this during the sales discussion.

Other Items

24.6 some duplication between (c)(ii) and (c)(iv) on likely date of service provision

24.7 clarity on (iii) services affected/unaffected requirement – expect this to mean what type of service e.g. line rental or calls only

24.15 (a) definition of CPS, WLR and LLU – or make more general ?

24.23 g) extra “to” at the end

24.23 h) should be rewritten – does not quite make sense

24.23 j) Transfer Period may not start on entering into the contract, as discussed under Post Sales information above – perhaps this could be better defined by referring to the receipt of the notification that the customer is transferring – as in paragraph 24.7?

Is definition of Contract required as it is capitalised as though it is a defined term?

Comments on wording of the proposed Guidance

Records Retention

As argued in our covering letter, we believe that the overall costs of the level of record-keeping that Ofcom proposes are unreasonably high and we have proposed various ways in which the scope of the proposed obligation could be reduced to more manageable levels. It is important that the proposed guidance, in paragraphs 8.28 to 8.33 supports reasonably achievable interpretations of the GC requirements with

respect to expectations on the percentage of records, the scope of the requirement and the retention period. Our views on these issues are set out in our comments above on the GC wording itself and in our covering letter.

Post Sales information

At paragraphs 8.22 to 8.23, these should be amended to reflect a distinction between “cooling off” requirements and what must appear in the notification of transfer letters as discussed in the comments on the GC above.

Scope of GC 24

This is the point within the guidance where we believe there should be an exclusion of record-keeping requirements with respect to inbound calls, to the extent this is not covered in the wording of the GC itself

Other Items

A8.10 is similar to the content of part of the existing mandatory guidelines but some aspects have been changed. Although this now has the status of non-mandatory guidance, we believe that the changes may not have been intended:

- First bullet – existing guidelines allow telephone contact up to 9.00pm;
- Second bullet – existing guidelines do not require sales representatives working for an agency to identify both the agency they work for and the company on whose behalf they are selling. We consider that this could be confusing for customers and that the important information is the name of the company on whose behalf they are selling.

A8.10 missing “of” in last bullet.