



**Gavin Daykin
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Dear Gavin,

Response by UKCTA to Ofcom's consultation Protecting consumers from mis-selling of fixed-line telecommunications services

UKCTA is pleased to respond to Ofcom's consultation on protecting consumers from mis-selling of fixed-line telecommunications services.

Essentially, Ofcom is proposing four key changes to the current rules:

- i. simplifying the regulations by moving away from an approach requiring all CPs to establish, and comply with, Codes of Practice, to one of prohibiting inappropriate sales and marketing activity;
- ii. better information for consumers on the potential consequences of switching by requiring CPs to alert consumers at the point of sale, and through letters, that they may have existing contractual liabilities with their existing CP;
- iii. extending Cancel Other rules to cover all CPs providing fixed-line telecommunications services – at present the rules that are in place apply only to BT; and
- iv. clarifying existing general record-keeping requirements, together with a proposal requiring CPs to make, and retain, voice recordings of all relevant telephone contact.

UKCTA's position in relation to each of these proposed changes is set out in the following.

Prohibition on inappropriate sales and marketing activity

UKCTA fully supports Ofcom's proposals to move away from detailed mandatory codes of practice in this area towards more high-level obligations supported by non-mandatory guidelines. UKCTA believes that it is important that Ofcom is able to take swift action to curb and prevent mis-selling in the fixed-line industry and this change will give Ofcom more effective tools to do so.

Obligation to remind customers of potential contractual liabilities with their current provider



UKCTA does not support this proposal. Whilst we naturally support the notion that customers need to be made aware of their contractual obligations, we do not believe it is reasonable to impose a specific requirement on the gaining provider to remind customers on what they effectively should have been told by their existing provider.

Ofcom has recently issued specific guidelines which are intended to increase the transparency and general fairness of additional charges on customers' bills. It is the legal obligation of any provider to ensure that their consumer terms and conditions are fair in compliance with the Unfair Terms in Consumer Contract Regulations. This includes an obligation to ensure that any charges are sufficiently transparent to customers. Imposing an additional obligation on gaining providers goes beyond what should reasonably be expected of them.

In addition, the gaining provider would only be in a position to provide a blanket warning to customers about potential contract liabilities. If the customer asks any questions at the point of sale (e.g. "Well do you have any idea how much that would be?"), the gaining provider would not be able to help further which can only leave a customer in a state of confusion and, quite possibly, irritation. This would reflect poorly on the gaining provider who would only try and help the customer. We believe that such an obligation would actually act as deterrent for customers wanting to switch (and having decided to switch) because there is a distinct risk that most customers would take the safe route and decline to switch at the point of sale. This "chilling effect" would potentially reduce overall customer switching levels in the market.

UKCTA would also note that Ofcom has not imposed any similar obligation on mobile providers in the recently published rules around mis-selling in that sector despite the fact that minimum contract terms and early termination charges are an equally strong feature in that sector.

Extending Cancel Other rules to all CPs

UKCTA generally supports the extension of Cancel Other rules to all CPs. The Cancel Other functionality is key to being able to assist customers who have been the subject of a slamming attempt. However, the same functionality can also be used by less than reputable operators to frustrate a customer who is endeavouring to switch.

The obligation in proposed GC24.19 to provide copies of records and voice recordings to Ofcom should be linked to a reasonable suspicion by Ofcom that the CP is engaging in an abuse of Cancel Other.

Additionally, any enforcement activities by Ofcom should focus on the objective of tackling the abuse of Cancel Other and not making sure that a CPs classifies Cancel Other instances in the correct manner.



Requirement to make, and retain, call recordings

UKCTA supports Ofcom's efforts to protect consumers from mis-selling activities and appreciate that its proposals to require call recordings is a means of facilitating its enforcement activities. However, we do not believe that it would be proportionate or indeed necessary to impose a blanket obligation to record 100% of all calls.

It is in the interest of every CP to make sure they have adequate compliance controls in place on their sales and marketing activities. Call recordings should normally form part of such controls since they are a very useful way of establishing the precise circumstances of a sale (in particular when there is no written contract trail). There is therefore a very strong existing incentive on CPs to record calls. With this in mind, we believe it would be proportionate to impose a general record keeping obligation but one that does not require every call to be recorded. For instance, we would suggest that an obligation to make and retain direct records of, say, two thirds of all sales, including call recordings where appropriate, would be more proportionate in serving Ofcom's objective. Access to such call recording data should still allow Ofcom to carry out its enforcement activities in an effective manner whilst avoiding an undue cost and compliance burden on the industry as a whole.

Separately, UKCTA would also like to clarify that Ofcom's ability to demand copies of call recordings should not be unfettered; that is, it should clearly be subject to the same constraints as apply to Ofcom when requiring the provision of information under section 135 of the Communications Act 2003.

Yours sincerely,

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UKCTA Secretariat