

Unicom's response to the Ofcom consultation on options to protect consumers from mis-selling of fixed-line voice service, published on 17 March 2009

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.

Further improvements are achievable and incidents of mis-selling can be reduced, but this will be difficult without making changes to the way that complaints data is collated, reported, and acted upon. If Ofcom had better and more accurate complaints data, then Ofcom would be able to target its enforcement action more effectively.

Ofcom currently monitors allegations of mis-selling using two measures:

1. Ofcom's own mis-selling data, collated by Ofcom's Advisory Team (OAT).
 - i. Complaints recorded by the OAT may not be genuine, and OAT complaints may be motivated by another CP. There is currently no process in place for any validation of OAT complaints. Therefore complaints data is likely to be inflated, and bias to particular sectors of the market, in particular where customers are more valuable to the losing provider.
 - ii. Except in certain defined circumstances, target CPs are not made aware of complaints. All OAT complaints should be forwarded to CPs so that each CP is aware of the complaints being made against it, is able to resolve the problem for the consumer, and is able to consider whether it is necessary to review its processes in light of the complaint, in order to avoid or reduce further instances of mis-selling. CPs should be able to respond to Ofcom in relation to complaints. This data should be retained by Ofcom, for future consideration.
 - iii. Ofcom may consider moving to a process where each complaint is investigated, and either upheld or not. This process is currently used in the EnergyWatch scheme within the UK energy markets. Under this process, complaint data is more reliable.
 - iv. OAT mis-selling complaints are analysed as a proportion of new sales. However, the OAT mis-selling complaints may relate to historic sales. For example, on a two year contract, mis-selling could be alleged two years after the sale was made. Due to the increasing number of consumers who have been sold to and who have transferred, it is likely that the mis-selling complaints as a proportion of new sales will increase over time for the industry as a whole, and in particular for established CPs. Total historic sales should therefore be considered within this calculation, or any analysis should exclude historic mis-selling. The OAT should record the date of sale, and mis-selling incidents should be analysed as a proportion of sales for the period during which the sale took place.
 - v. Ofcom should open a dialogue with CPs based on OAT complaints. Currently, Ofcom uses OAT and cancel other data to decide whether or not to open own-initiative investigations. Ofcom investigations are very time

consuming and expensive for all parties. As a result of this, Ofcom has the resources to conduct only a handful of investigations each year. There have been no investigations against smaller CPs (Figure 1 identifies 260 CPs generating a complaint during year ending April 2008 and there are 460 registered WLR/LLU/CPS CPs). Ofcom should introduce lower level formal and/or informal action, based on OAT data. Although existing Ofcom enforcement methods may have been appropriate in 2005, they should now be reviewed.

2. The volume of orders cancelled by CPs following allegations of slamming by customers (i.e. cancel other).
 - i. This data is unreliable due to widespread inappropriate use of cancel other. This leads to this data being inflated. Levels of inappropriate use of cancel other may vary widely between different sectors of market, e.g. small businesses that may be supplied on fixed term contracts by small CPs.
 - ii. Until the data is reliable it should not be used as a barometer for mis-selling.

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?
Please provide an explanation to support your response.

The regulations should be further strengthened in order to better meet Ofcom's policy objectives and aims. However, when considering changes, Ofcom should always consider its objectives of promoting competition and minimising obstacles to switching and ensure that regulations do not limit customer choice, do not prevent consumers switching, and do not act as a barrier to trade for new entrants.

So that CPs are aware of obligations, Ofcom should maintain and publish a register of CPs, and should dispatch periodic communications to the CPs on this register, so that all CPs have a clear understanding of what is being regulated and how it is being regulated. The register should also include all sales agent organisations and introducer organisations that are conducting sales on behalf of CPs. For each organisation conducting sales, the register should show the name and address of the organisation, and the telephone number and email address of the person responsible for compliance. It would appear that there are about 460 registered WLR/LLU/CPS CPs, but some of these CPs have hundreds of sales agent organisations and introducer organisations that are conducting sales on their behalf. The actual number of organisations selling telecommunication services in the UK today will extend to at least several thousand. CPs should have an obligation to ensure that all entities conducting sales on their behalf are included on the register. The identity of the CP (and the sales organisation for transfers) should also be shown on all transfer and cancel other orders, so that CPs are able (and should be encouraged) to communicate with each other in relation to individual consumers.

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?
Please provide an explanation to support your response.

No comments.

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?

Please provide an explanation to support your response

On the additional costs of call recording and storage, Ofcom has collected and considered data from 12 of the largest CPs. As stated above, under Question 2, there are thousands of organisations selling telecommunications services in the UK today. Many of these organisations sell these services as agents or introducers of CPs, alongside their sales of other products and services. Many of these organisations will produce only a very small number of telecommunications sales each month, and the additional costs and efforts of making and recording all calls that may result in a telecom sale has not been considered by Ofcom. The cost of call recording and storage for the 12 largest CPs, from whom Ofcom has collected data, will be proportionally very different than for the thousands of smaller organisations selling telecom services, and this has not been considered by Ofcom. These small organisations may not have the telecom systems that can be adapted to record calls, and the introduction of new systems for this purpose may not be cost effective.

The introduction of an obligation to record all sales calls would have one of the following two results:

1. Small organisations conducting telecom sales would stop selling these services.
2. Small organisations conducting telecom sales would ignore the obligation to record sales calls, and would never be brought to task over this, due to Ofcom's limited resources.

Neither of these results is good, or is what Ofcom is setting out to achieve through these obligations.

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?

Please provide an explanation to support your response.

Any modification or removal of the 2005 Direction should take effect at the end of the implementation period for the new general condition.

The 2005 Direction was imposed upon BT as a result of its previous save activity and of its significant market power. As shown in Figure 7, BT's use of cancel other has reduced significantly since the introduction of the 2005 Direction. Although use of cancel other is now widespread across the industry, the use of cancel other by CPs other than BT remained reasonably constant or slightly reduced over the year ending December 2008. It would appear that the reduction in BT's use of cancel other has occurred as a direct result of its obligations under the 2005 Direction. Although BT generally endeavours to adhere to its regulatory obligations, it has a history of pushing the boundaries where its obligations are ambiguous.

BT still has significant market power. If Ofcom were to release BT from its obligations under the 2005 Direction before it had obligations under the new general condition, then there would be a danger that BT would revert to its activities prior to it having obligations under the 2005 Direction.

If it were possible for BT to be released from its 2005 Direction obligations that relate to the provision of information to other CPs, but retain the obligations relating to BT's use of cancel other, and impose upon BT the obligations envisaged by the new general condition relating to call recording and retaining, then this may be a reasonable alternative.

A further alternative may be for BT to forego the implementation period and be immediately bound by the new general condition, at the same time as being released from its obligations under the 2005 Direction.

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?

Please provide an explanation to support your response.

It is always desirable to clarify and simplify the obligations that are imposed on CPs, so long as these obligations are properly communicated to all CPs and all organisations that conduct sales, or are involved in the use of cancel other, on behalf of those CPs.

Annex 7 of the consultation document states at 24.9 that customers may terminate a contract without cost within 10 days of entering into that contract. This customer right should extend until the transfer takes place, or until it is too late for the transfer to be cancelled.

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.

CPs are required to keep records of sales made. There should be an obligation to provide these records to customers, on request. CPs should not be able to enforce the terms of a customer contract, if they are not able to provide these records to a customer, and demonstrate the basis upon which they are claiming the customer to be bound by such terms (see Question 12 below).

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

There is a danger that the introduction of Ofcom's preferred Option 4 will reduce transfer activity. Ofcom is committed to promoting competition and minimising obstacles to switching and ensuring that regulations do not limit customer choice, do not prevent consumers switching, and do not act as a barrier to trade for new entrants. A significant proportion of customers are not currently in contracts where ETCs apply. For CPs to be obliged to warn these customers about the existence of ETCs may encourage these customers to communicate with their existing CPs before committing to a sale. This will allow existing CPs to engage in save activity and will reduce the effectiveness of the gaining CP's sale and marketing. This could be considered as an obstacle to switching, will act as a barrier to trade for new entrants and, over time, will limit customer choice.

If Ofcom decides to introduce obligations on the gaining provider to warn customers about potential ETCs at the point of sale and within the gaining provider's letter, then Ofcom should introduce standard wording to be used, so that all CPs are playing on a level playing field. This would enable Ofcom to easily identify any breaches of this obligation.

Ofcom should also consider how the disclosure is made for different methods of sale including face-to-face sales where a customer signs a contract, verbal sales where the customer agrees by telephone, and online sales where the customer does not speak to a sales person. Ofcom should ensure that obligations to disclose are consistent for each method of sale, and that records are retained of this disclosure.

If Ofcom decides to introduce such obligations, there is a danger that some CPs, and in particular the smallest CPs and the small organisations that conduct sales on behalf of CPs, will ignore these obligations. As detailed above, it is important that any such obligations are properly communicated to all organisations selling telecommunications services, and that Ofcom enforces these obligations through open communication with, and low level enforcement on, these CPs and other sales organisations. For example, following the implementation period of these obligations, Ofcom should request that all CPs provide copies of their standard losing letters and sales scripts to Ofcom.

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?

The current cancel other process is not working, as follows:

1. Many CPs use cancel other without customer consent, as a tool to frustrate the transfer process. Ofcom's priority, through regulation, communication, and enforcement, must be to stop this happening.
2. Some CPs use cancel other where a customer has changed their mind. This should be a permitted use of cancel other and a new code should be introduced to facilitate this. This should replace the 9X80 failure to cancel code.
3. Cancel other is currently not a good barometer of mis-selling. With the introduction of a new code for a customer's change of mind, CPs will no longer use a mis-selling code in these circumstances and the cancel others placed for mis-selling, rather than for change of mind, may then become a useful barometer of mis-selling.

A cancel other code should be introduced for a customer change of mind. There is no good reason why such a code should not be introduced. Ofcom is committed to promoting a good customer experience of switching, which must include a good customer experience of not switching. If a customer wishes the losing provider to cancel a transfer order, then this should be allowed. Customers should not then be required to contact the gaining provider to cancel the order, and, where the order is not cancelled, the losing provider should not be required to make a further telephone call to the customer. These additional telephone calls are unnecessary for the customer and the losing provider. If the gaining provider chooses to contact the customer after receipt of a cancel other, then it is able to do so. If the customer informs the gaining provider that they did not authorise the cancellation of the transfer, the customer should be advised to contact the losing provider and demand the records that demonstrate that authority was given (see Question 13 below).

GC1.2 allows CPs to use the transfer notification to facilitate the transfer and to take such reasonable steps as may be necessary for consumer protection. If a customer changes their mind, and thereby withdraws their authority for the transfer to take place, then the cancellation of the transfer order is a reasonable step for a CP to take for consumer protection.

Paragraph 7.27 of the consultation document provides a conclusion on the evidence of consumer harm caused by misuse of cancel other. The consumer harm identified is where misuse of cancel other effectively prevents consumers from switching between CPs where they wish to do so. The introduction of a cancel other code for change of mind would not increase this customer harm. If a customer wishes a losing provider to cancel a transfer order, then the customer's wishes should be carried out.

The introduction of a code for change of mind would lead to the mis-selling cancel other codes only being used where mis-selling has actually occurred. This would lead to Ofcom being able to use this information as an accurate barometer of mis-selling.

Under the current codes, if a customer changes their mind, the losing CP should refer the customer back to the gaining provider. If the losing provider does not receive notification of a self cancellation order, then it must contact the customer again, later in the transfer window, to check that the customer has cancelled, or attempted to cancel, with the gaining provider, before placing a 9X80 cancel other order. If, for any reason, the losing provider is not able to speak to its customer to confirm this, then it must allow the transfer to take place. If the customer did wish to cancel the transfer, this will then lead to an erroneous transfer, which will give the customer a bad experience of the switching process, particularly if the transfer was to an LLU network, where there may be costs to return to the losing provider. A new cancel other code for a customer change of mind would resolve this problem.

Annex 7 of the consultation document states at 24.21 that during conversations with its customers during the transfer window, losing providers should not make any statements that may induce customers to either terminate their contacts with the gaining provider and/or remain in their contracts with the losing provider. This would effectively prevent any statements relating to termination charges, and any correction of incorrect information that the gaining provider may have provided to the customer. The intended benefit of this clause is in fact already covered by GC1.2. This clause should be removed.

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?

Under the proposed new general condition, CPs would be required to retain call recordings for all cancel other orders placed. CPs should be obliged to provide copies of these recordings to customers upon request.

Transfer orders and cancel others should show the identity of the CP placing the order, and communication between CPs should be encouraged. As stated under Question 2 above, Ofcom should maintain and publish a register of CPs' and other telecommunication sales organisations' identities. If a CP, after speaking to its customer, does not appreciate why a transfer or cancel other order has been placed, then it should be encouraged to contact the CP that has placed the order, and communication between the two CPs should be encouraged. This will enhance the customer's experience of switching, and prevent a large number of repeat transfer and cancel other orders

being placed. Issues such as different contacts at the customers' premises, and genuine errors in the telephone lines being transferred could easily be resolved by such communication. This communication between CPs would be beneficial to CPs, customers, and the industry in general.

The 9X60 code should be extended to cover all material mis-selling. For example, if a gaining provider has informed a customer that the losing provider has gone bankrupt, then a cancel other order should be appropriate to prevent the transfer. Under the current guidelines, the placing of a cancel other in these circumstances would be regarded as inappropriate, which cannot be right.

Unless Ofcom decides to introduce a code for change of mind (see Question 9 above), the 9X80 code should be split, as envisaged within paragraph 7.48 of the consultation document.

Ofcom should ensure that the documents outlining the obligations of CPs and the explanation for each of the reason codes are fully explained, with examples of when each should and should not be used. This information should be properly communicated to all CPs.

Ofcom should ensure that any concessions or agreement to vary the cancel other rules should be published and should apply to all CPs. If Ofcom's communications with individual CPs, or the meetings of industry groups, agree that cancel other is appropriate in certain limited circumstances, then this should be properly communicated to all CPs. For example, Ofcom has agreed with BT that it is appropriate to use cancel other for multi-site customers where the CP has been issued with a long-standing request to use cancel other. Any such acknowledgements of the appropriate use of cancel other, or any agreements to vary or limit the appropriate use of cancel other should be communicated to all CPs.

Annex 8 of the consultation document refers at A8.40(d) to cancel other being appropriate for other specified reasons not related to a customer's request to cancel a transfer, and agreed by the service providers forum. These other specified reasons should be published and communicated to all CPs.

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.

CPs should not be obliged to provide cancel other call recordings to other CPs. However, as detailed under question 10 above, CPs should be obliged to provide cancel other call recordings to customers, upon request, and CPs should be encouraged to communicate with each other in relation to cancel other orders (and transfer orders) placed.

Question 12

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

Ofcom wishes to introduce an obligation to record and retain sales calls only so that its investigations are more likely to be successful. Paragraph 8.6 of the consultation document states that Ofcom has found it difficult to enforce against CPs where bad practices have been alleged but the records have been poor. An analysis of the 14 mis-selling investigations conducted by Ofcom since 2005 shows that Ofcom has had no problems enforcing against such CPs. To introduce call recording for this reason alone is not proportionate. The cost to CPs and other organisations selling telecommunication services has not been properly considered by Ofcom (see Question 4 above), and

the introduction of obligations to record and retain all sales calls would not promote competition, would act as a barrier to trade for new entrants and, over time, would limit customer choice.

If Ofcom decides to introduce an obligation to record and retain sales calls, then there should be an obligation to provide these recordings to customers, upon request. Customers should be entitled to receive evidence that they have entered into an agreement to transfer.

For Ofcom to introduce an obligation to record and retain all sales calls is too onerous. Some sales organisations may have sales referrals or enquiries passed to them by a different organisation, where that organisation has spoken to the customer about the telecom services (and possibly other services), and it would be inappropriate for those calls to be recorded and retained. Some organisations may have a telesales operation that asks potential customers a series of questions, the answers to which would define whether or not a further sales call is made, and it would be inappropriate for these initial sales calls to be recorded and retained. Other organisations may sell a number of products and services, including fixed line telecommunications, and during routine customer service calls on other products and services, they may attempt to sell fixed line telecom services, and it would be inappropriate to record all calls from that organisation, just in case a call resulted in a telecom sale. If there are to be obligations to record and retain sales calls, then the calls to be retained would need to be precisely defined.

Ofcom has not considered what calls would need to be recorded and retained for face-to-face paper contract sales. Such a sale may have involved a telesales person making an appointment, somebody confirming that appointment, calls between the customer and the organisation whilst the sales person was at the customer's premises, calls between the customer and the sales person in between visits to the customer's premises, and verification calls made to the customer after the customer has signed the contract. It would probably not be appropriate to record any of these calls, with the possible exception of a verification call to the customer, which may be required to cover certain aspects of the sale. However, it may be the case that some organisations do not make such a verification call.

For verbal sales, where a customer has agreed to a transfer over the telephone, there could be a dozen or more telephone conversations with the customer between first contact and the transfer taking place. There could be a number of telephone calls made by the first contact where various aspects of the telecom services are discussed, there may then be a number of conversations between the customer and a person who is attempting to make a sale (during which information may be exchanged by fax, email, or post, relating to the customers existing arrangements or the services being offered), there could be a verification call, and there could then be a number of telephone conversations during the transfer window, where the customer has queries, or arrangements need making with engineers or system re-programmers.

Ofcom's preferred option 4 would introduce new requirements to keep recordings of the actual sales, plus any subsequent calls that were made as part of the sales process, where telesales are used by CPs as a channel to market. It would appear that Ofcom does not intend to introduce any obligations to record calls for face-to-face paper contract sales, even those calls that are made subsequent to the contract being signed, even if those calls are part of the sales process. The obligations to retain records should be applied equally whether the sale is a face-to-face paper sale, or a verbal sale, and there should be no obligation to record calls made after the sale and during the transfer window for verbal sales, if there is no obligation to do the same for paper sales.

For verbal sales, there should be an obligation to record and retain the telephone conversation during which the customer agrees to the transfer. There should be an obligation to include within

this recorded call the key points of the sale, which should mirror those identified within paragraph 6.3 of the *Guidelines for sales and marketing codes of practice for Fixed-line Telecommunications Services*, as follows:

6.3 Where a direct approach to the Customer takes place, the Customer to be given the information set out in this paragraph, in writing, in a clear and comprehensible 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 and the process for exercising it;*
- the period for which the charges remain valid; and*
- the minimum period of contract, and minimum contract charges, if any.*

If these points are covered within the recorded and retained telephone call, then the existence of this recording for verbal sales replaces the existence of a signed contract for face-to-face sales. If the customer has any queries relating to these key points, or feels that information provided previously is not consistent with what is being said on this call, then it is very likely that the customer will raise these issues on this call, which is to be recorded and retained. If obligations are introduced for this information to be included on the calls to be recorded and retained for each verbal sale where a transfer order is placed, then there should be no need for any other calls to be recorded and retained.

The draft guidelines for GC24, which are shown at Annex 8 of the consultation document, covers these obligations, as follows:

A8.28 GC24.11 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. This includes a requirement to retain voice recordings of all relevant telephone contact with the Customer.

A8.31 We consider “relevant telephone contact” to include all contact made with the Customer as part of the sales call, including the sales call(s) as well as any follow-up sales calls/verification calls.

These guidelines need to be more specific, and need to detail exactly which calls need to be recorded and retained, and what needs to be included on those calls.

On Ofcom’s enforcement of these new obligations, please refer to the comments made under Questions 1 and 2 above.

Please also refer to the comments under Question 4 above, which relate to the cost of call recording and retention.

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.

As with the record keeping for sales calls, it would appear that Ofcom wishes to introduce an obligation to record and retain cancel other calls so that its investigations are more likely to be successful. If obligations are introduced for CPs to retain and record such calls, then there should be an obligation to provide these recordings to customers, upon request. Customers should be entitled to evidence that they have authorised a transfer to be cancelled.

Upon deciding that it is appropriate for cancel other to be used, a CP should be obliged to read out a statement to the customer, for which Ofcom should provide the wording, which would vary according to the cancel other code to be used. This statement should explain to the customer the reasons that the transfer is being cancelled, and the recording of this call should be retained.

On Ofcom's enforcement of these new obligations, please refer to the comments made under Questions 1 and 2 above.

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.

No comments.