

## **Citizens Advice response to Ofcom's review of additional charges (including non-direct debit charges and early termination charges)**

**May 2008**

## Summary

- Citizens Advice is pleased that Ofcom has investigated the issue of additional charges imposed by telecommunication suppliers and we welcome the guidance which it proposes to issue about the application of the Unfair Terms in Consumer Contracts to this area.
- We are disappointed that Ofcom does not consider that it is appropriate to take decisive action to prevent telecoms suppliers from levying such charges. However, we consider that Ofcom's proposals to force telecoms suppliers to be more transparent about such additional charges and, where this does not occur, to consider whether the charges are 'fair' under the Unfair Terms in Consumer Contracts is a reasonably practical way forward.
- In our view, increasing transparency should help to address and alleviate some of the problems about low levels of awareness of additional charges, which can all too often be buried in the small print of a contract or simply not mentioned at the point of sale.
- As well as forcing suppliers to be upfront about such additional charges, we also consider that Ofcom itself must do much more to provide comprehensive comparative information to consumers about prices and additional charges.
- While increasing levels of transparency will help to alert many consumers to additional charges, it will do little to mitigate the impact of such charges – notably the non-direct debit charge – on low income consumers. We are therefore disappointed that Ofcom has chosen not to take further action on this matter.
- A critical factor in muting the impact of non-direct debit charges on some low income households will be the introduction of BT Basic, BT's new social telephony scheme which will not apply such charges. The introduction of the new scheme has been subject to many delays and some significant changes so we stress that the waiving of the non-direct debit payment fee must not be altered.

## **Introduction**

The Citizens Advice Bureaux (CAB) network is the largest independent network of free advice centres in Europe, providing advice from over 3,200 outlets throughout Wales, England and Northern Ireland. We provide advice from a range of outlets, including GPs' surgeries, hospitals, community centres, county courts and magistrates courts, and mobile services both in rural areas and to serve particular dispersed groups.

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination.

The service aims:

- to provide the advice people need for the problems they face; and
- to improve the policies and practices that affect people's lives.

In 2006-2007 the CAB service in England and Wales dealt with 5.7 million enquiries in total. Of these 8,458 concerned mobile phone problems, 9,523 were enquiries about fixed line telephones and an additional 52,298 were about telecoms debt. Breaking down these figures further, 24.1% of the enquiries about mobile phones related to complaints / redress, 19.4% to cancellation / withdrawal and 19.1% to costs / billing. Meanwhile, 26.4% of the enquiries about fixed line telephones related to costs / billing, 20.5% to complaints / redress and 14.6% to cancellation / withdrawal.

## **General comments**

Citizens Advice is pleased that Ofcom has investigated the issue of additional charges imposed by telecommunication suppliers and we welcome the guidance which it proposes to issue about the application of the Unfair Terms in Consumer Contracts to this area. In our previous submission to Ofcom's industry wide review of additional charges we reported that Citizens Advice Bureaux have received many complaints from consumers, largely about charges for non-direct debit payments and cancellation charges.

These complaints led us to make a number of general observations about these additional charges, many of which have been confirmed by Ofcom's review. Specifically, we stated that:

- they appear to disproportionately affect people on low incomes and those people who do not have a bank account, many of whom may have no history of failing to pay their bills in a timely manner;
- by actively seeking to persuade people to opt to pay their bills by direct debit, some suppliers are effectively pushing customers towards using a

- payment method which may not be appropriate for them (e.g. due to the imposition of bank default charges for missed payments);
- information about the charges does not seem to be immediately obvious to the consumer, prompting questions about (i) transparency; (ii) competition; and (iii) their potential role in subsidising eye-catching headline rates (e.g. for monthly charges) by generating alternative streams of revenue;
- attempts by consumers to query such charges with a customer services adviser can often be frustrated by extremely poor levels of customer service, meaning that people who are penalised through non-direct debit charges or late payment fees are then punished again by having to pay for lengthy calls to their communications supplier; and
- the level of charges imposed for non-direct debit payments by some companies appears to have increased dramatically recently although it is not apparent why this should be the case.

Citizens Advice Bureaux have continued to report significant numbers of cases where clients – many of whom are on low income or are in some way marginalised or vulnerable - have come to their local CAB because they were upset, outraged or confused at the imposition of additional charges, specifically charges imposed for payment by non-direct debit or cancellation charges.

**We are disappointed that Ofcom does not consider that it is appropriate to take decisive action to prevent telecoms suppliers from levying such charges. However, we consider that Ofcom's proposals to force telecoms suppliers to be more transparent about such additional charges and, where this does not occur, to consider whether the charges are 'fair' under the Unfair Terms in Consumer Contracts is a reasonably practical way forward.** It will be essential that Ofcom undertakes an active programme of enforcement to make sure that this approach works in practice.

In our view, increasing transparency should help to address and alleviate some of the problems about low levels of awareness of additional charges, which can all too often be buried in the small print of a contract or simply not mentioned at the point of sale. Lamentably, once again the telecoms regulator has been forced to intervene to make sure that customers receive a level of service that should be taken for granted, namely that customers are treated fairly and are given information in an upfront and transparent manner.

As well as forcing suppliers to be upfront about such additional charges, **we also consider that Ofcom itself must do much more to provide comprehensive comparative information to consumers about prices and additional charges.** The 'consumer checklist' which Ofcom proposes to publish which will set out criteria which consumers should be aware of before signing a contract (paragraph 2.68 in the consultation document) is a helpful step in the right direction. **However, Citizens Advice believes that OFCOM should look at the more extensive consumer information provided by other regulators.** For

example the Financial Services Authority (FSA) provides detailed information in the form of its comparative tables<sup>1</sup>.

We consider that Ofcom must to provide consumers with this type of information, given that Ofcom asserts that “markets function best when consumers are fully aware of the nature of the product they are purchasing, including all additional charges associated with it”<sup>2</sup>. **We therefore recommend that Ofcom should make it a priority to develop its consumer information further, via TopComm.**

While increasing levels of transparency will help to alert many consumers to additional charges, it will do little to mitigate the impact of such charges – notably the non-direct debit charge – on low income consumers. While we acknowledge that low income consumers being penalised for the way pay their bills is an issue which is prevalent across a number of industries, we do not think this in itself justifies the imposition of higher charges. Government has recently signalled its commitment to tackle some of the differences attributable to different payment methods in the fuel sector, stating in the recent Budget report that

*“the Government believes that the time is now right to tackle this issue and is looking to Ofgem and the suppliers to bring forward proposals for treating prepayment customers more fairly. However, if sufficient progress is not made by next winter, the Secretary of State for Business, Enterprise and Regulatory Reform is prepared to use his statutory powers with a view to reducing the differential between prepayment and other forms of payment.”<sup>3</sup>*

In this context, we are disappointed that Ofcom has chosen not to take further action since “the added cost is not so high that it is likely to exclude [low income consumers] from phone services”<sup>4</sup>. However, we do recognize that this is an area where it may be more appropriate for government to take the lead and consider the drivers and consequences of this issue in a wider context.

A critical factor in muting the impact of non-direct debit charges on some low income households will be the introduction of BT Basic, BT’s new social telephony scheme. As we currently understand it, the new scheme is due to be launched in mid-June 2008 and will be available to people in receipt of certain government benefits and, crucially, customers will not have to pay an additional fee for non-direct debit payment. **The introduction of the new scheme has been subject to many delays and some significant changes so we would stress that the waiving of the non-direct debit payment fee is one feature of the scheme that must not be altered.**

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<sup>1</sup> <http://www.fsa.gov.uk/tables/>

<sup>2</sup> *Ofcom review of additional charges*, Ofcom, February 2008, p.12

<sup>3</sup> *Budget 2008 - Stability and opportunity: building a strong, sustainable future*, HM Treasury, 12 March 2008, Para 4.35

<sup>4</sup> *Ofcom review of additional charges*, Ofcom, February 2008, p.6

## **Specific comments**

### **Minimum contract terms and cancellation charges**

Ofcom proposes to force suppliers to provide more information to consumers from the outset about additional charges and other contractual terms. We consider that there is a pressing need for suppliers to be much more transparent about charges that may apply – for example about the length of the contract and the cost of canceling the contract – so that consumers are able to make an informed decision about what type of contract they wish to enter into, and with which supplier.

At present CABx report a large number of cases which demonstrate that telecoms suppliers fail to make such charges clear when customers enter into contracts, sometimes even deliberately misleading customers over any cancellation charges that might apply.

A CAB in Gloucestershire reported that their client originally entered into a contract for landline phone services in April 2007. In August 2007, he moved house and kept his number. In October the client transferred his landline phone to another provider since they offered a better and cheaper service. The client then received a bill from his previous supplier £161.14, of which only £7.24 is for calls. The client had been charged for line rental up to August 2008 and a £70 early termination 'one-off' fee, and charges for line rental up until the scheduled termination date. The client contacted the previous supplier who stated that he had a minimum 12 month contract running from August 16th when he moved and he has incurred a charge for leaving this contract early. The client was not aware that he had entered into any minimum contract. The CAB adviser noted that the policy of creating new minimum contracts for number portability is oppressive and effectively reduces choice for clients if they feel they have to pay a large amount to get out of their contract. The £70 fee is set and seems to bear no resemblance to actual loss.

A CAB in Derbyshire reported that their client moved to a new property which had previously been connected to supplier A. The client wanted to take out a contract with another supplier but was told by the incumbent supplier that they would have to reconnect and stay with them for one month after which they could switch to another supplier. The client signed no contract and was not made aware of any terms and conditions yet after he transferred to another supplier he received a bill from supplier A which included £97 cancellation charges. The client has not paid this fee so far as he was unaware he had a 'contract' with the incumbent supplier. Since the client's wife is disabled it is important they have a phone so this episode has caused a great deal of stress and worry.

A CAB in Cambridgeshire reported that their client entered into a contract for cable broadband internet access with a telecoms supplier in July 2007. The contract included £25 for installation cost and £10 per month for 1 year. The client asked what would happen if she moved house and wasn't able to receive a cable broadband connection. The client was told by the salesman that under these circumstances her contract would expire. The client moved on 9 November and was told that she couldn't benefit from her existing Internet contract because there was no cable connection to her new accommodation. The client has now been issued with £80 default notice for breach of contract and also has had 2 payments at £10 each taken out of her bank account. The client attempted to resolve the matter by calling the telecoms supplier but had the customer services adviser hung up on her.

A CAB in Nottinghamshire reported that their client was a customer of her telecoms supplier for several years. When she moved house previously she even moved contract with her. In April 2008 she moved again but her telecoms supplier informed her that they do not operate in the new area. The client is unable to cancel the contract as she has been told that she is in a 12 month contract. The client feels very angry that she was not made aware of this clause at the time the contract was renewed.

Such cases tally with the findings of Ofcom's quantitative and qualitative research undertaken for the review of additional charges – namely low levels of awareness and understanding of such additional charges. **We therefore welcome Ofcom's recommendation that minimum contract period and early termination charges should be fully transparent at the point of sale and in terms of conditions.** This is particularly important for contracts entered into by phone where such features of the contract may not be immediately obvious.

A CAB in North West Wales reported that their client had a contract with for land line phone and wireless internet. As the client was returning to Poland at the beginning of March he wanted to cancel this contract. He phoned the telecoms supplier and was told that he had to pay the full year's cost of the contract. The client was not sent a written copy of the contract when he entered into it and had no other details. However, he was told that the terms and conditions were available on the supplier's website. To exacerbate the problem, the client found it extremely difficult to contact the supplier by telephone – he had to wait for more than 20 minutes on the phone to speak to someone who was unable to provide any assistance.

**We strongly urge Ofcom to make it a condition for suppliers to send written terms and conditions to customers entering into contracts over the phone or on the internet.** This should be done in a timely manner to enable customers to cancel within the cooling off period should they decide that the detailed conditions mean that the contract is not appropriate for them. It is certainly not

enough to refer customers to a website for further details of the additional terms and conditions that may apply.

Of course, such protections must be offered in conjunction with a simple process for cancelling contracts. Unfortunately, in too many cases CABx clients face incredible difficulties in attempting to cancel contracts within cooling-off periods and can then end up battling suppliers over the imposition of hefty cancellation charges:

A CAB in Hampshire reported that their client responded to an offer from a telecoms supplier to sign up for a new service. However, within the seven day cancellation period he changed his mind and tried to telephone the supplier to cancel the contract. He spent at least one hour on two occasions trying to cancel with no success. His original provider agreed to cancel the new contract on his behalf but he then received a bill from the new supplier for a one-off cancellation charge of £348. The client wrote to the new supplier's complaints department but received no reply. He therefore wrote again to the complaints department and sent this by special delivery – but again he received no reply.

Worryingly, a number of bureaux also report a number of cases where it is apparent that one telecoms supplier is using underhand tactics and inertia selling to sign customers up to expensive packages which they do not want and then charging them exorbitant amounts for cancelling these contracts. **We would be happy to share details of these cases with Ofcom on a confidential basis and urge them to take forceful and immediate action against the perpetrators.**

A CAB in the West Midlands reported that their client was cold-called by a telecoms supplier purporting to be agents of another telecoms supplier. He was offered a telephone service at £15 per month which he accepted and was happy with for approximately two years. The client then received a letter from his existing telecoms supplier in the form of an advertisement informing him of special services he could have for an added charge which included Broadband and cheap overseas calls. The client ignored the letter as he had no need of broadband or cheap overseas calls. He was then charged £46 per month for these special services. The client then realized that he had failed to notice the small print on the letter which stated that if he failed to reply to the letter then he would be automatically enrolled on the much more expensive service. The client has refused to pay this larger amount because he did not sign up for the services. He has tried to cancel his contract with this supplier but received an invoice of £329.97 for breaching his contract with them. The telecoms supplier has now disconnected his phone and will not reinstate it until a fee of £99 plus VAT is paid.

A CAB in Lancashire reported that in September their client received a letter from his telecoms supplier about a new service they were offering which include broadband. Since the client did not want this he binned the



letter. In November he then received a letter from the telecoms supplier with details of his new contract - apparently the previous letter stated that if he didn't reject the new contract he would be deemed to have asked to be signed up. Understandably the client was very angry about this, and applied to another telecoms supplier to switch his contract. This triggered a message from the prospective new supplier to the existing supplier, who in turn told the client that he was liable for a substantial 'early termination' charge of £1,500 if he switched.

### **Charges for not paying by direct debit**

While increasing levels of transparency should help many consumers become more aware of additional charges that will apply, it will do little to mitigate the impact of such charges – notably the non-direct debit charge – on low income consumers. While we acknowledge that low income consumers being penalised for the way they pay their bills is an issue which is prevalent across a number of industries, we do not think this in itself justifies the imposition of higher charges.

In this context, we are disappointed that Ofcom has chosen not to take further action, simply stating rather dismissively that “the added cost is not so high that it is likely to exclude [low income consumers] from phone services”<sup>5</sup>.

It is important to note that additional charges can often have a substantial impact on the stability of someone's finances who lives on a low fixed income. They are unlikely to have surplus income to meet such charges. For example, the personal allowance for income support for an individual who is 25 or over is just £57.45 per week so they are likely to face real difficulty in finding additional money to pay supplementary charges. Evidence reported by bureaux demonstrates that these charges can quickly snowball and therefore have a significant detrimental impact on some of the poorest members of society.

A CAB in Devon reported a case in which their client, a single parent in her twenties who has been living independently for less than a year after moving from supported accommodation and whose income consists of state benefits only, experienced difficulties in paying for her telecoms bills due to the imposition of additional charges. The client had entered into a telephone and broadband contract which was to be paid for by direct debit at £30 per month. The client ran into difficulties making direct debit payments because the monthly payments did not coincide with her benefits payments which were paid fortnightly. To avoid incurring bank charges for unpaid direct debits the client stopped the direct debit payments, and missed one month's payment. The charges on her telecoms account began to multiply: she was then charged £5 per month for non-direct debit payment, and £10 per month for 'late payment' - even though the statement did not state clearly a due date for payment. After 4 or 5 months the outstanding bill had increased to £123 and the client's service has been reduced to an incoming telephone line only.

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<sup>5</sup> *Ofcom review of additional charges*, Ofcom, February 2008, p.6

A CAB in Hampshire reported a case in which their client has had a longstanding contract with his telecoms supplier. His most recent bill contained an additional charge for £4.50 because he does not pay by direct debit. The client does not wish to pay his bill by direct debit but will be forced to pay an extra £4.50 for not doing so. The client is on a low wage and cannot afford these extra costs but he is unable to switch supplier as is tied into a contract for several more months.

A CAB in the West Midlands reported that their client had a contract with a telecoms supplier for his broadband. The client is in receipt of jobseekers allowance and receives payment fortnightly. He makes payment directly to the telecoms company in cash. He is charged £5 extra each month for not paying by direct debit and these extra charges have made it impossible for him to keep up with payment thus leaving him in debt and threatened with disconnection.

A critical factor in muting the impact of non-direct debit charges on some low income households will be the introduction of BT Basic, BT's new social telephony scheme. As we currently understand it, the new scheme will be available to people in receipt of certain government benefits and, crucially, customers will not have to pay an additional fee for non-direct debit payment. **The introduction of the new scheme has been subject to many delays and some significant changes so we stress that the waiving of the non-direct debit payment fee must not be altered.**

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