NCC's response to the Ofcom review of additional charges

About the NCC
The National Consumer Council makes a practical difference to the lives of consumers around the UK, using its insight into consumer needs to advocate change.

We work with public service providers, businesses and regulators, and our relationship with the Department for Business Enterprise and Regulatory Reform – our main funder- gives us a strong connection with government.

We conduct rigorous research and policy analysis to investigate key consumer issues, and use this to influence organisations and people that make change happen.

Introduction
Much of NCC's advocacy work and expertise lies in helping make markets work for consumers and ensuring that disadvantaged and vulnerable consumers get a fair deal. These are two of our four strategic objectives. The National Consumer Council (NCC) has undertaken in-depth research into the attitudes and needs of low income and financially excluded consumers, including their approach to managing their money and paying their household bills. NCC therefore welcomes the opportunity to respond to this consultation on proposals for fairer and clearer additional charges for consumers of communication services.

Summary and recommendations

The National Consumer Council agrees that it is helpful and appropriate for Ofcom to complement OFT guidance on the Unfair Terms in Consumer Contract Regulations and to issue sector-specific Guidance on their application to consumer contracts for communications services. Encouraging communications providers to be more transparent and upfront about additional charges in their marketing and point of sale information for consumers, is a welcome step.

However, reliance on the Guidance alone won't ensure that consumers are adequately informed about extra charges that impact some time after their decision to sign up to a communications service (late payment and non-direct debit charges for instance), when a timely alert could help them avoid the charge. Nor will reliance on the proposed Guidance ensure that low-income consumers are treated fairly.

Key points
On protecting low-income consumers

- NCC is disappointed in Ofcom's approach on non-direct debit (non-DD) charges.
  Additional charges for paying bills other than by direct debit (non-DD charges) are unfair to low-income consumers because they are more likely to incur these charges than better off consumers; they can least afford to pay the extra; and they often have no real choice in how they pay if they want to stay in control of their budget.

- Ofcom's proposals for improved transparency and marketing information on fixed line non-DD charges will not benefit consumers who can't pay by direct debt (because their Post Office Card Account has no direct debit facility) or those who need to pay in cash as part of remaining in control of their budgeting strategy (see pages 7 & 8).

- NCC welcomes the decision that the new BT tariff for low income consumers (BT Basic) should not attract non-DD charges. NCC strongly advocated this change and are pleased to see it has been taken on board to benefit many vulnerable consumers on the tariff. However, this tariff is only available to people in receipt of certain benefits. It is not available to all low-income consumers and may not be suitable for all those eligible for it, leaving many people on low incomes exposed to non-DD charges from mainstream tariffs.

- NCC is concerned that Ofcom's consultation document does not address the impact on low-income consumers of non-DD charges in other communications markets – mobile, broadband and Pay TV.

- NCC recommends that Ofcom should explore ways of ensuring that consumers can pay their bills to communications providers in a range of ways – payment method and location– without incurring additional charges. Providers could spread the costs of different payment methods across all customers – in much the same way as costs of supply are spread across the customer base.

On ensuring the Guidance is effective
NCC recommends that Ofcom:
- o undertakes regular reviews of the Guidance to ensure it is up-to-date and continues to protect consumers.
- o publishes the Guidance compliance monitoring results and including firm specific data.
- o monitors companies' standard terms for any contractual changes that need to be covered by revisions to the Guidance to ensure it keeps abreast of developments in the market.

On Ofcom's planned 'consumer checklist'
NCC welcomes Ofcom's intention to support the planned Guidance for suppliers by publishing a 'consumer checklist' to alert consumers to key contract criteria they should look for before signing up to a communications service. This should help consumers make a more informed choice and promote competition.

It is vital that the checklist includes information on differential charges according to payment method; is kept up-to- date with developments in the market; and is accessible across all groups of consumers through a range of communication channels and formats. Simply posting the checklist on the Ofcom website will not reach all consumers – especially low income consumers and older people.

On protecting consumers in post-contractual situations
NCC recommends that Ofcom:
- o improves transparency of post-contractual information (customer alerts on default charges, cease charges, non-DD charges, minimum notice periods etc) by reviewing and amending the general conditions of entitlement on suppliers on transparency (GC10) and itemised bills (GC12). Relying on the regulator's best practice advice to achieve greater transparency in post-contractual circumstances lacks the required incentive to ensure that suppliers comply.
- o reviews its general conditions on suppliers for itemised bills and lays down specific requirements on suppliers – including clarity on non-DD charges. The requirements for

itemised billing should be based on research with consumers to develop the most useful content and the clearest, most understandable format. The review should cover all billing for communications services – not only fixed line services.

On tackling anti-competitive practices – minimum contract periods

We are not confident that proposed measures around Minimum Contract Periods (MCPs) and Early Termination Charges (ETCs) will be sufficient on their own to ensure a fully competitive market. We also remain concerned over the length of MCPs and the size of ETCs. We urge Ofcom to look closely at whether this aspect of the market is operating as competitively as it should and to consider what further action is needed.

On itemised billing

NCC considers that Ofcom's overall approach to charges for fully itemised paper billing fails to take sufficient account of the consumer interest. NCC argues that fully itemised billing is so fundamental a part of the contract between communications service suppliers and their customers, that a choice of fully itemised bills – either electronic or paper – should be part of the service supplied, and free of charge.

NCC recommends that free itemised billing (paper and electronic) should be part of Ofcom's General Conditions of entitlement for communications providers.

NCC's detailed response

Consultation Q 1: Ofcom's intention to publish guidance on Unfair Terms in Consumer Contract Regulations

Complementing OFT guidance on consumer contracts

The National Consumer Council agrees that it is helpful and appropriate for Ofcom to complement OFT guidance on the Unfair Terms in Consumer Contract Regulations and to issue sector-specific guidance on their application to consumer contracts for communications providers.

Ofcom's principle duty is to further the interests of consumers and citizens. Communications technology is developing rapidly and the products and services available to consumers are multiplying and changing apace. Ensuring fairness and greater transparency between providers and consumers in a way that is specifically geared to common contractual situations in this increasingly complex market is vital to further consumer interests.

We support the adoption of a principles-based approach based around concepts of transparency and fairness. A highly prescriptive approach would leave open the risk that the industry will invent new charges or seek to exploit loopholes in the regulations. Industry practice around additional charges is manifestly unfair. Building the guidance around these two principles is more future-proof and represents a welcome attempt to change market culture. However, activity to improve industry practice pre-contract must be supported by enhanced post-contractual information when these charges become more relevant to consumers. Ofcom must also adopt an active enforcement approach, not least since consumers are unlikely to challenge unfair contract terms in court by themselves.

It is also vital that the Guidance is informed by research into consumer attitudes to bill-paying and managing their money, and by the impact on consumers of the various forms of additional charge to be covered. In particular, the attitudes of, and impact on, low-income consumers must drive the Guidance. Additional charges are least affordable for low-income consumers and their preferred payment methods are tightly bound up with the day-to-day management of their tight budgets. Any inaccurate assumptions about low-income consumers risks undermining the potential benefits of the Guidance.

Updating, monitoring and enforcement

While NCC welcomes Ofcom's use of the Regulations as a tool to ensure fairness and transparency for consumers of communications services, the Guidance is likely to need updating from time to time as new contractual situations emerge that give rise to consumer or regulatory concerns.

NCC recommends that Ofcom undertakes regular reviews of the Guidance to ensure they are up-to-date and continue to protect consumers.

The consultation document points out that Ofcom expects to take an active role in enforcing the principles set out in the Guidance – monitoring complaint levels and examining providers' standard terms to ensure compliance. NCC welcomes this assurance. Only with independent and proactive monitoring and enforcement is it possible to ensure the principles set out in the Guidance are up-to-date, upheld by the industry, and that providers who flout the guidance should be penalised.

In addition, NCC recommends that Ofcom:

- **publishes the Guidance compliance monitoring results including firm specific data. Publicity is a powerful tool for encouraging companies to comply and for informing consumers of those companies that haven't taken their responsibilities for fair and transparent dealing with customers seriously enough.**

- **monitors companies' standard terms for any new contractual changes that need to be included in revisions to the Guidance to ensure it keeps abreast of developments in the market.**

Revisions to Ofcom's general conditions

Reliance on the Guidance alone will not be sufficient to ensure that consumers are alerted to important information about additional charges at the time they need it most. Ofcom itself acknowledges that some information considered important for consumer protection – such as warnings on customer bills that late payment will incur default charges and the level of those charges – are post-contractual and outside the requirements of the Regulations. Ofcom therefore proposes to issue best practice advice to suppliers to ensure they alert consumers appropriately.

However, relying on the regulator's best practice advice to achieve greater fairness in post-contractual circumstances lacks the required incentive to ensure that suppliers comply. The communications industry's track record in adhering to voluntary standards is less than exemplary. A 2007 voluntary code of practice on mobile phone mis-selling, for instance, failed to stem the tide of consumer complaints, resulting in the need for additional regulation. Furthermore it is unreasonable to expect consumers disadvantaged by suppliers not following Ofcom's advice to monitor that failure by complaining. Relying on complaints alone is not an effective way to determine detriment. Many consumers don't complain when things go wrong as they believe it has no effect – but simply avoid that supplier in future and recommend friends and family to do the same.

NCC recommends that the interests of consumers would be more effectively protected if gaps in post-contractual information were filled by relevant amendments to Ofcom's general conditions of entitlement on suppliers on transparency (GC10) and itemised bills (GC12).

Consultation Q2: Ofcom's proposed guidance regarding core terms and transparency

Ofcom proposes that three types of common contract terms that effectively impose additional charges on consumers are likely to be core terms under the Regulations and so exempt from the test of fairness, provided they are sufficiently prominent to consumers and in plain, intelligible language. The proposed Guidance spells out whether the term is likely to be core, and what Ofcom considers to be appropriate prominence and transparency for consumers. Ofcom also gives best practice advice to providers in each case to ensure transparency to consumers in post-contractual situations such as billing.

Additional charges that Ofcom proposes are likely to be core terms are:

- non-direct debit charges: where consumers who pay by any means other than by direct debit pay more – up to £5 a month more.
- initial minimum contract periods (MCP): where consumers must commit to a contract of a fixed duration – from 3 to 24 months depending on the communications service. Termination of the contract by the consumer before the MCP usually attracts an early termination charge (considered by Ofcom a non-core term).
- Itemised or paper billing by post: where some, but not all, consumers pay up to £1.50 a month extra.

NCC's comments on non-DD charges as core terms
NCC is concerned that Ofcom research shows that low-income consumers are more likely to incur non-DD charges than higher income consumers. By definition, non-DD charges are least affordable for low-income consumers.

This extract from NCC research among low-income groups[1] describes that many who have bank accounts do not to use direct debits because it would mean losing control of their budgets and risking their bills not being paid and incurring high default charges:

> *Cash-based money management and payments work for people on low incomes – including many with bank accounts – helping them stay in control of their budget. There is acute recognition among low-income consumers that making automated payments from a bank account can tip a person into debt. A default charge of up to £39 for an unpaid*

[1] Three steps to inclusive banking, National Consumer Council, November 2006
http://www.ncc.org.uk/nccpdf/poldocs/NCC140rr_three_steps.pdf

direct debit is enough to trigger a spiral of debt which it is difficult to recover from.

Some comments from the consumers who took part in the qualitative research illustrate the point:

"I have to pay my bills which I don't have any more on direct debits because it just gets too complicated, and you've only got to have one slip up and it's just like a nightmare" (Female, Somerset, 35-59)

"You end up paying more for like electric and gas, you're going to pay more, it's just a case of you know what you're actually paying, instead of having like a direct debit, where you're not entirely sure what you're using" (Female, Newcastle, 18-34)

Choosing a payment method that supports their budgeting strategy is often more important to low-income consumers than choosing a slightly cheaper, but less controllable, means of payment. This choice is entirely rational, but the impact of non-DD charges on those least able to afford higher charges is unfair.

NCC is disappointed that Ofcom considers non-DD charges for fixed line telephone services are not an issue for low-income consumers. Ofcom claims that the charges are too small to affect access to services, and that low-cost social telephony products are available to protect the most vulnerable.

While NCC welcomes the new BT social tariff for low-income consumers (BT Basic) which does not attract non-DD charges, this tariff is not available for all low-income consumers. It is only available to people in receipt of certain benefits[2] and may not be suitable for all eligible consumers. As a result, many people on low incomes will be exposed to non-DD charges of £1 to £1.50 a month from mainstream tariffs - which are certainly not irrelevant. When compounded with non-DD charges from other utility providers, and rising household bills generally, they have a significant impact on households that find making ends meet a permanent struggle.

NCC is also concerned that a recent county court case dismissed a claim that BT unlawfully penalises its cash-paying customers. The Judge ruled that cash payment charges (non-DD

[2] BT Basic will be available only to people on Income Support, income-based Job Seeker's Allowance and Pension Credit, and assumes low call usage.

charges) were a core term of the contract between BT and its customers, and that BT had given notice of the charges and that they were 'fair' and perfectly reasonable'[3].

Ofcom proposes that fixed line suppliers do more to ensure their customers properly understand the charges they are paying, with clear information on non-DD charges at the point of sale and in improved marketing material and consumer correspondence. It is rooted in extensive 2007 Ofcom market research showing low consumer awareness and understanding of non-DD charges.

But Ofcom's proposals for improved transparency and marketing on non-DD charges will not benefit consumers who can't pay by direct debt or those who choose not to pay by direct debit as part of their budgeting strategy.

Ofcom's 2007 research also revealed a strong feeling among consumers that non-DD charges are unfair, even when consumers are told there's a cost to suppliers (Section 3.8 – 3.23). Feedback from complaints data, consumer groups and MPs in the wake of BT's increase in non-DD charges last year, and changes in presentation of the information, underscore these findings (Section 3.24 – 3.30).

Other communications services
NCC is concerned that Ofcom's consultation document does not address the impact on low-income consumers of non-DD charges in other communications markets – mobile, broadband and Pay TV. NCC does not support this approach.

It should not be assumed, for instance, that low-income consumers with moderate to high mobile phone use wouldn't choose to buy mobile phone services on contract and are therefore unaffected by non-DD charges. Ofcom points out elsewhere in the consultation document (para 8.17) that 14 per cent of low-income consumers have a post-payment mobile phone contract. This is a significant number of consumers – many of whom could be disadvantaged by non-DD charges.

Ofcom should consider the impact of non-DD charges on low income consumers of mobile, broadband and Pay TV services at the earliest opportunity. The current review of the Pay TV market, for instance, should include non-DD charges.

NCC considers that Ofcom's overall proposals on non-DD charges are unfair to low-income consumers, many of whom incur non-DD

[3] http://www.birminghampost.net/news/west-midlands-news/2008/03/28/bid-to-sue-bt-over-direct-debit-charges-fails-65233-20689456/

charges for rational reasons – and not only because they don't have a bank account, or their Post Office account doesn't allow DD payments. NCC research shows that many low-income consumers who have bank accounts with direct debit capability, actually prefer not to use direct debits because it would mean losing control of their finances and risking high default charges.

NCC recommends that Ofcom should explore ways of ensuring that consumers can pay their bills to communications providers in a range of ways – payment method and location– without incurring additional charges. Providers would spread the costs of different payment methods across all customers – in much the same way as costs of supply are spread across the customer base.

Some major energy suppliers were moving towards tariff equalisation in the face of pressure from MPs and lobby groups concerned that the least well off customers often pay more for their fuel. But these initiatives are dependent on the fuel companies' changing pricing strategies and are often short-lived. Recent research by energywatch shows that tariff differentials in the energy market are widening again. The consumer group is therefore calling on the energy regulator Ofgem to use its current market inquiry to establish what represents a legitimate and efficient cost to serve consumers on different payment methods, and to establish the extent to which suppliers' differentials exceed this[4].

NCC recommends that a similar investigation should be carried out by Ofcom into the costs of different payment methods in the communications market.

Customer bills

Ofcom also proposes, as best practice, that customer bills should show non-DD charges as a separate line item and also provide information on alternative payment methods. These transparency requirements are not covered by the Regulations since bills are sent out after the conclusion of the contract. Billing is covered by general condition 12 (GC12) which requires communications suppliers to provide at least a basic level (unspecified) of itemised billing and in sufficient (unspecified) detail to allow consumers to verify and control their charges.

Ofcom's proposed best practice advice comes with a warning to fixed line providers that if Ofcom becomes aware that bills do not present non-DD charges sufficiently transparently, the regulator will consider opening a review of GC12 and how it

[4] insert link to relevant page of energywatch.org.uk

can be used to achieve this. Given the importance that Ofcom is investing in greater clarity on non-DD charges to help further consumer interests, and the immense value to consumers generally of more specific industry standards for accurate and informative itemised billing that meets their needs, NCC urges Ofcom to review GC12 as a priority.

NCC recommends that Ofcom undertakes an immediate review of the general condition on itemised billing (GC12). That review should ensure that GC12 lays down specific requirements for itemised bills – including clarity on non-DD charges. The requirements for itemised billing should be based on research with consumers to develop the most useful content and the clearest, most understandable format. The review should cover all billing for communications services – not only fixed line services.

NCC comments on Initial Minimum Contract Period (MCP) and Early Termination Charges (ETCs)

In common with Ofcom, NCC is concerned that long minimum contract periods (MCPs) and their associated early termination charges (ETCs) as a universal feature of contracts in this sector act as a barrier to switching, and could dampen competition in the market. This is especially so since Ofcom's research indicates low consumer awareness of both MCPs and ECTs, and perceptions that they are unfair.

Ofcom acknowledges in the consultation that it is important to consider whether transparency is enough to ensure these terms are constrained by competition. Although providing clearer information pre-contract may help, consumers' ability to exercise their market power is limited due to convergence around terms. Ofcom's snapshot of MCPs in force in Summer 2007 shows a convergence of MCPs among providers of each communications service. For mobile phones the MCP is either 12, 18 or 24 months; for broadband the MCP is either 12 or 18 months; and for fixed line an MCP of 12 months is the most common.

Early termination charges are commonly calculated as the remaining number of monthly payments to the end of the contract period - capped in some cases. So cancelling a contract with a 12-month MCP after 6 months, means an ECT of six times the monthly subscription - equating to a penalty of £150 for cancelling a £25 a month mobile package. Cancelling a £15 a month broadband package 12 months into the 18-month MCP would mean a £90 penalty. The penalties are substantial and likely to discourage consumers from changing supplier - even if they are dissatisfied with the service.

We therefore echo Ofcom’s concern that, with large numbers of locked-in customers, firms may become complacent about the quality of the service they offer. The issue of MCPs, ECTs and poor customer service was of particular concern among low income households according to Ofcom’s qualitative research (paras 5.28 – 5.32). It was felt that if customers did not get the service as originally agreed, they should be entitled to leave the contract without penalty.

However, Ofcom considers that the issue of whether a contract can be terminated without penalty because of poor services is beyond the scope the review of additional charges. It is nevertheless an important issue for consumers and for competition.

Issuing Guidance on the application of the Regulations to MCPs and ETCs would do nothing to reduce the anti-competitive effects of this type of additional charge.

Ofcom’s consultation document gives no explanation for MCPs in the broadband and fixed line markets, and merely repeats the mobile suppliers’ own assertion that MCPs cover the cost of the handset provided.

In common with communications markets, the energy market also supplies an essential infrastructure service. But, according to consumer group energywatch, domestic energy consumers don’t normally have to sign up to an MCP and don’t have to pay ETCs if they switch supplier. Only customers on fixed or capped price deals are – appropriately – locked in for the duration of the deal.

Also NCC can see no justification for a supplier locking an existing customer into a new contract (with a subsequent MCP and ETC) simply because of moving house, or upgrading/downgrading their communications package.

While we welcome the measures proposed in this consultation, we are not confident they will be sufficient on their own to ensure a fully competitive market and remain concerned over the length of MCPs and the size of ECTs. Given the depth of consumer concern on this issue, **we urge Ofcom to look closely at whether this aspect of the market is operating as competitively as it should be and consider what further action is needed.**

NCC comments on itemised or paper billing as core terms
Ofcoms’ proposals consider how charges for fully itemised bills should be expressed transparently to consumers under the Regulations.

NCC can understand the logic of Ofcom's proposed Guidance on charges where itemised billing may be a core term (and the proposed fairness test for charges when itemised billing is not a core term).

However, the scope of the Regulations to further the interests of consumers on itemised billing is limited to contractual information – omitting important post-contractual issues for consumers, such as the level of detail and usefulness of the billing layout and format.

NCC considers Ofcom's overall approach to charges for full itemised billing fails to take sufficient account of the consumer interest.

Fully itemised bills are important to users of communications services because a large number of low-value transactions (pay TV/broadband extras, phone calls, e-mails and text and photo messages) can often accumulate into a substantial monthly or quarterly bill.

Unless consumers have access to a fully itemised bill, they cannot check the accuracy of their bill and, if necessary, query it with their provider. Fully-itemised bills also help families keep tabs on who is making calls in their households. What's more, unless providers are obliged to issue fully-itemised bills as part of the service contract, (and as an important component of good customer service), inaccurate billing is likely to be hidden from consumers, distorting perceptions of service quality and restricting competition in the market.

Consumers also need access to fully itemised bills in the format that best suits their needs – electronic or hard copy (by post).

NCC considers that fully itemised billing is so fundamental a part of the contract between communications service suppliers and their customers, that a choice of fully itemised bills – either electronic or paper – should be part of the service supplied, and free of charge.

Fully itemised bills show consumers that they have got what they paid for, and allow them to check for mistakes – in the same way as a restaurant bill. No-one would accept restaurants charging for bills; communications providers should be no different.

NCC recommends that free itemised billing should be part of Ofcom's General Conditions of entitlement for communications providers.

NCC recommends that Ofcom undertakes an immediate review of GC12 (itemised billing). That review should ensure that GC12 lays down specific requirements for fully-itemised bills. The requirements should be based on research with consumers to develop the most useful content and the clearest, most understandable format. The review should cover all billing for communications services.

Consultation Q3: Ofcom's proposed guidance on non-core terms and test of fairness

Ofcom proposes that these additional charges are likely to be a non-core terms in consumer contracts and so subject to a fairness test:

- o Default charges (for late payment, failed payment, restoration of service after disconnection for non-payment)
- o Early termination charges (for terminating a contract within the minimum contract period)
- o Subsequent minimum contract periods (on variation of existing contract eg upgrading mobile handset, moving house, upgrading/downgrading service level)
- o Minimum notice periods (of intention to cancel a service - usually 30days/1 month)
- o Itemised or paper billing charges (when not sufficiently prominent and transparent as a core term)
- o Cease charges (when consumers stop taking a service with no transfer to another service - eg switching from broadband to cable)
- o Non-DD charges (when not sufficiently prominent and transparent as a core term)

Non-DD charges, itemised billing, MCPs and ETCs

As explained in answer to Consultation question 2 (above), NCC does not support Ofcom's approach on the proposed Guidance for non-DD charges, for itemised billing, minimum contract periods and early termination charges.

Default charges

NCC agrees with Ofcom that default charges cannot be core terms. This view is supported not only by the House of Lords decision cited in Ofcom's proposed Guidance (para 5.47), but also by the recent High Court judgement on unauthorised overdraft charges.

NCC also broadly supports Ofcom's proposed fairness test for default charges (that charges should be no more than reflective of direct costs incurred by providers) to the limited extent that it addresses the consumer interest.

However, default charges - particularly late payment charges - are considered unfair by the majority of consumers according to Ofcom's market research. And, as the consultation document acknowledges, late payment charges can cause financial hardship to the most vulnerable members of society who may experience difficulty meeting deadlines and who are not always dealt with sympathetically by suppliers. Costs of late or non-payment can also be cumulative - with bank charges for an unauthorised overdraft or for missed automated payments - exacerbating a customer's financial difficulties.

NCC therefore welcomes Ofcom's recognition that it is important that suppliers alert consumers to the size of the late payment charge in advance of it being charged – on a red bill or with a payment reminder call – so giving the consumer the opportunity to avoid the charge. However, Ofcom's proposed best practice advice to encourage suppliers down this route does not go far enough.

NCC recommends that the interests of consumers would be more effectively furthered if gaps in post-contractual information (such as information on bills on imminent late payment charges) were filled by relevant amendments to Ofcom's general conditions of entitlement on suppliers (GC10 (transparency). Relying on the regulator's best practice advice to achieve transparency in such post-contractual circumstances lacks the required incentive to ensure that suppliers comply.

Any new GC10 transparency obligations on suppliers to spell out default charges on final bills should be based on research with consumers into the content and format that is most understandable. (For instance, late payment charges expressed as 'interest at xx bank rate + 4%', or 'administration charge for any 3rd party charges and internal costs' are too vague to be meaningful to consumers.)

Minimum notice periods (MNPs)

NCC agrees with Ofcom's approach on minimum notice periods; they are a non-core term under the Regulations and so subject to a fairness test.

NCC agrees that it is important that the notice period isn't so long that it increases the risk of a consumer paying twice for a service during the process of switching from one supplier to another.

NCC therefore also supports Ofcom's proposals on the fairness test – transparency of the MNP at point of sale; and a length of MNP that reasonably reflects the minimum necessary administration for terminating the service – and where a formal Ofcom migrations process exists, no longer than that.

The proposal that providers should follow Ofcom's best practice advice and alert consumers to the MNP at the point at which the consumer is considering terminating the contract, does not, in our view, go far enough. Relying on the regulator's best practice advice to achieve transparency in such post-contractual circumstances lacks the required incentive to ensure that suppliers comply (see recommendation below).

Cease charges
NCC notes that cease charges are low (around £5 or £6 with VAT) and applied in limited circumstances reflecting BT Openreach wholesale charges for complete termination of a broadband service.

In practice the charge is incurred only when a consumer terminates their broadband service but does not switch to a new broadband supplier. Such circumstances are likely to be when the consumer has died – leaving no-one else in the household – or leaves the country, or switches to a non-broadband service eg cable.

Ofcom proposes that cease charges are non-core terms under the regulations and therefore subject to a fairness test. NCC supports this approach. The proposed fairness test that cease charges are transparent to consumers at the point of sale, and that they reflect only the direct costs associated with ceasing services are reasonable in the circumstances.

However, NCC suggests that in cases of a consumer's death, the cease charge could be absorbed by the supplier. Given that cease charges are small and arise relatively rarely, the goodwill benefits to suppliers of waiving cease charges following a death, are likely to outweigh the small costs involved.

Ofcom also proposes to issue best practice advice to suppliers on making the level of cease charges clear to consumers at the point they are considering terminating the contract. In NCCs view this does not go far enough. Relying on the regulator's best practice advice to achieve transparency in such post-contractual circumstances lacks the required incentive to ensure that suppliers comply.

NCC recommends that the interests of consumers would be more effectively furthered if gaps in post-contractual information (such as clear information on MNPs and cease charges) at the point most useful to consumers were filled by relevant amendments to Ofcom's general conditions of entitlement on suppliers (GC10 (transparency).