

Title:

Mr

Forename:

Andrew

Surname:

Walker

Representing:

Organisation

Organisation (if applicable):

Otelo

Email:

What do you want Ofcom to keep confidential?:

Keep nothing confidential

If you want part of your response kept confidential, which parts?:

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Ofcom should only publish this response after the consultation has ended:

You may publish my response on receipt

Question 1: Do you agree that it is helpful and appropriate for Ofcom to issue guidance on the application of the Regulations to consumer contracts for communications services?:

Yes

Question 2: Do you agree with Ofcom's proposed guidance regarding core terms and transparency?:

Yes

Question 3: Do you agree with Ofcom's proposed guidance (including any administrative thresholds we have set) on non-core terms to which we apply the test of fairness?:

Yes

Question 4: Are there any other issues that are covered by the Regulations which Ofcom should give guidance on?:

Yes - see our additional comments in relation to right of set-off.

Additional comments:

Otelo welcomes Ofcom's review of additional charges. Otelo carries out a significant number of investigations each year in which contractual charges, especially early termination charges, form some part of the dispute. Otelo cannot comment on terms and conditions, although it may direct complainants to Ofcom if it feels that there may be issues raised under the Unfair Terms Regulations.

Among the most important issues are those which Ofcom has already identified, of transparency and prominence. We often deal with cases where customers claim that they have not been informed that they were entering into agreements with minimum contract periods. We often have to make decisions on the balance of probabilities, and if information is made more prominent, and consumers are better informed about their contracts, this should reduce the scope for disputes later on.

Another area of frequent misunderstanding is that of late and missed payment charges. Consumers who are in dispute with their suppliers will often withhold payment, and are billed for these particular additional charges, as well as non-DD charges when they do make payments. They may regard the charges as unfair, especially when they believe they have a legitimate grievance against their suppliers.

Some clarity would be welcomed on consumers' right of set-off when they have an arguable claim. Paragraph 2.5.1 of the OFT's Guidance on Unfair Contract Terms explains that where a consumer has an arguable claim under the contract against a supplier, the law generally allows the amount of that claim to be deducted from the anything the consumer has to pay.

We frequently investigate disputes where consumers have withheld all or part of a billed sum. Contractual terms are variable, and while some suppliers explain that consumers must pay any undisputed amounts, others do not permit withholding of any portion of an outstanding sum. As there is a linkage between the issues of withholding payments, and charges which Ofcom has already examined in its review, we think

that it would be beneficial for Ofcom to include a reference to this in its guidance for the industry, to reinforce what the OFT has already said.