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Dear Ms Evans

RESPONSE TO –
Ofcom review of additional charges - Including non-direct debit charges and early termination charges

Please note that my interest in this subject is only in respect of non direct debit charges and my experience as a BT ***Business*** customer, not domestic.

Question 1
YES

Question 2
No opinion – but see additional comments on page 2

Question 3
NO – but see additional comments on page 3 onwards, as Ofcom appears to have overlooked some fundamental aspects.

Question 4
No opinion

Question 5
YES

Yours sincerely,

PETER ARROWSMITH

QUESTION 2 – ADDITIONAL COMMENTS

2.1

It is for government to decide whether it is acceptable that – across all industries – the poorest in society, or those without bank accounts, or the least educated who are scared of direct debits or are not confident enough to manage their finances in this way should be penalised with higher costs for basic services. (According to Payroll World magazine, May 2008, page 32, there are thought to be 3 million ‘unbanked’ *households* (not individuals)).

2.2

The fact that, as you say in 1.18, the practice of additional charges for non direct debit payment is common in other industries does not in itself make it either acceptable or correct in a decent, modern, civilised society.

2.3

Ofcom should go further than its position in 1.19 and encourage government to carry out an economy wide review of this point so that the same policy can be applied across the board without individual quangos having to decide this and/or other related issues on an industry by industry basis. Your findings reported at your para 3.22 would suggest that your duties to consumers require this action from you (your para 3.71 also refers).

2.4

I agree with what you say in your para 2.45 that the decision in the bank penalty charges case may be of some application and you will no doubt review and consider this alongside this response and the other responses you receive.

QUESTION 3 – ADDITIONAL COMMENTS

3.1

There seems to be a fundamental gap in the considerations set out in the document as Ofcom considers only cash, cheque and direct debit payments in paras 1.2 and 3.1 of the consultation document (though the latter also mentions credit cards) – ignoring another very popular and convenient method of payment these days namely internet banking (effectively BACS). And with some banks (once set up) the same instructions can also be carried out at ATMs and over the phone. Even if a charge for non direct debit payers were justified, a charge for people who pay by internet banking, etc is most certainly not. In such cases the supplier does not even have to find space on their hard disc to note customers account details and update it quarterly with the amounts due, and then for their computer to have to ‘remember’ to take customers money at the right time. Furthermore, with direct debit, the supplier has to incur costs in data maintenance and protection, including complying the Data Protection legislation and procedures. In contrast with internet banking, etc it is the customer who initiates the payment and carries out all of that work. There might be additional costs incurred in chasing unpaid bills – but direct debit does nothing to prevent that as these may be bounced if accounts do not have sufficient funds or overdraft capacity. Not only should those who pay on time by internet/ATM banking not suffer the same charge as those who dare to inconvenience suppliers by them having to open envelopes, list cheques for banking, hire Securicor to go to the bank, etc but they should receive a **bigger** discount than direct debit payers to reflect the work not needed to be done by the supplier.

3.2

Even if a charge for non direct debit payers were justified, it is not sufficient to take into account only the alternative cost of processing cheque and cash payments. There needs to be **deducted** the costs incurred in running the direct debit system, maintaining the files, complying with Data Protection legislation, etc. Only the difference is then up for grabs – **NOT** the total unmitigated cost of cheque and cash collection.

3.3

Your para 2.6 refers to the extra cost as being £1.50 per month. I do not recognise this figure as in my case there is a payment processing charge (as it is falsely called – see 3.10 below) AND the line rental is surcharged 50p per month as well for not paying by direct debit. This makes a total surcharge of £2 per month. Thus there are two separate penalties for the same “offence” – this cannot be right or fair.

3.4

In your para 3.29 you state that BT did provide several months notice of the change. This is not true. In my own case I was issued with a letter dated ‘May 2007’ (no actual date, just ‘May’) which in any event was not received until 11 June – presumably because it was not posted in May. It stated that the newly imposed rules would apply to bills issued on and after 1 July. In my case therefore I was charged on 1 July itself for the months of April, May and June, ie periods almost entirely before receipt of the notification. This means that the charge is retrospective and not acceptable. In the March judgment in the West Midlands case of solicitor Ros Fernihough it was stated in support of the decision in favour of BT that notice had been given of the charges and that this was fair and perfectly reasonable. Not giving notice until after the charge has started to accrue is not fair and not reasonable. Ofcom should ensure that there is sanction against BT and any other offenders in this respect.

3.5

The May 2007 letter referred to at 3.4 above says that I will have approximately ten days to review bills before the direct debit is taken but does not explain what will happen if, having carried out that review, the charges are excessive due to supplier error (for example, my own most recent bill at that time was initially overstated by about 50% – and it took at least three phone calls over two or three weeks to get it sorted out). Even if a recipient takes only a couple of days to review bills I suspect that it will then be too late to prevent excess direct debits being collected. That is even assuming that bills arrive within three to four days of its printed date of issue – which happens rarely in the case of BT. I believe that this is due to tardy posting by BT (indeed it must be as I get bills dated 1 January each year) as all my post does in fact arrive extremely promptly apart from BT, electricity and gas. It is not fair to impose extra charges unless people use a payment method which does not protect them from overpayment, failure to respond to phone calls and late posting of bills. Before Ofcom sanctions the acceptability of non direct debit charges it must ensure that the companies are fully responsive to customer contact as the direct debit authority to dip into the public's bank accounts at will is a powerful one not usually treated with due respect by either businesses or government agencies. The so-called direct debit guarantee is virtually worthless as most bank workers claim never to have heard of it, are loath to invoke it and even if they do invoke it many direct debits and other payments to others may have been declined before the error is spotted by the customer let alone corrected (which I understand can take months).

3.6

With regard to your para 3.10, Ofcom must appreciate that the high proportion paying by direct debit may not be through active choice but in response to BT poor practice which was tantamount to bullying.

3.7

In your para 3.80, bullet one, you draw attention to the lesser cost for suppliers in handling direct debits but ignore the even lesser costs they incur in receiving internet BACS payments. See 3.1.

3.8

In your para 3.80, bullet two, you refer to the costs of chasing late payment. This should be borne either by the general body of customers as in most other businesses outside the banking and utility industries or else covered by the separate late payments charges referred to in your document, rather than loading non-DD charges.

3.9

In your para 3.80, bullet three, what data do you have to suggest that those who pay by BACS/internet are more likely to pay late? Presumably, since the document ignores this method of payment, you have not sought this information. I think you should do so before finalising your guidance. I am pleased to note your para 3.108 where you say that bad debt costs should not be covered by loading penalty charges. Apart from anything else an unpaid bill is also a late paid bill so will attract a late payment fee which the supplier can sue for in the courts along with the original charges.

3.10

In your para 3.81 you refer to the “perception” of BT ‘payment charges’. It is more than a mere perception. I reiterate the view expressed by others. It **is not** a payment charge because I pay the same penalty for four payments a year as does someone who pays twelve times a year (using a payment book at a Post Office or perhaps by standing order rather than by direct debit). It is therefore a penalty and not a payment processing fee – if it was a payment processing fee it would apply per payment. Of course, if the impoverished person paying monthly at the Post Office were

stung with three times the current penalty charge that would be an issue for government to address as suggested at 2.3 above (2.1 also refers).

3.11

In your para 3.113, I disagree with your assertion that there is effective competition with BT. BT is the major supplier in the landline market – and to a very significant degree. And in my opinion it has abused your optimistic view of the industry. Do BT's competitors tell you that they are in a free and competitive market? The OFT thinks that there is inadequate competition amongst supermarkets, yet no supermarket has a market share even as much as half of BT's.

3.12

I agree with what you say in your para 2.45 that the decision in the bank penalty charges case may be of some application and you will no doubt review and consider this alongside this response and the other responses you receive.

3.13

The position for landline phones is different from mobiles as with mobiles there is the pay as you go/voucher option – though this reintroduces the point in my comment 2.1 about the most disadvantaged members of society.