

Protecting citizen-consumers from mis-selling of fixed-line telecoms services

This document is a statement and consultation document further to Ofcom's consultation document on the effectiveness of current consumer safeguards which have been designed to protect consumers from mis-selling of fixed-line telecoms services.

This document includes a consultation on a notification of proposed modifications to General Condition 14 on codes of practice and dispute resolution.

Statement and consultation document

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Section 1

Summary

Background

- 1.1 'Ofcom (the Office of Communications)' exists to further the interest of citizen-consumers through a regulatory regime which, where appropriate, encourages competition. Effective competition delivers choice and lower prices to consumers as well as opportunities for new services and providers. However, consumers may need protection from adverse consequences of competition if they arise.
- 1.2 This statement sets out Ofcom's conclusions on whether the current safeguards designed to protect consumers from mis-selling of fixed-line telecoms services are effective, or whether it is appropriate for Ofcom to secure new enforcement powers. This follows on from Ofcom's consultation, *Protecting citizen-consumers from mis-selling of fixed-line telecoms services*, published in April 2004, which put forward two options for consideration:
 - (1) consumers are adequately protected, and there is no need to make any changes; and
 - (2) consumers are not adequately protected, and there is a need for further regulation by making the current guidelines on sales and marketing codes of practice mandatory.
- 1.3 The consultation incorporated a regulatory impact assessment. On the basis of information and evidence received during the consultation, Ofcom considers that the balance of arguments, together with the risk to consumers should a serious problem arise, supports the decision that the current consumer safeguards do not provide satisfactory consumer protection against mis-selling of fixed-line telecoms services.
- 1.4 Ofcom therefore considers that there should be a requirement upon Communications Providers ('Providers') who engage in sales and marketing activity for fixed-line telecoms services to establish codes of practice on sales and marketing in accordance with published guidelines, and to comply with the provisions of those codes. This measure would ensure that codes of practice for sales and marketing are enforceable, and Ofcom would have the power to take enforcement action against those providers who breach the provisions of their code, including ultimately imposing a financial penalty on the relevant Provider.
- 1.5 Ofcom is also proposing that the obligation should be subject to a 'sunset' clause, such that it would lapse two years after the date of introduction unless a positive need were demonstrated to reinstate the obligation. Ofcom considers that such a period would cover the period where most problems are likely to occur as Carrier-Pre Selection ('CPS') and Wholesale Line Rental ('WLR') continue to be rolled out.
- 1.6 In deciding upon the relevant guidelines to be adopted, Ofcom has opted to follow the current industry guidelines on sales and marketing, which we are

proposing to update in light of issues emerging from the consultation, and to reflect the proposed modified status of these guidelines.

- 1.7 Ofcom is also proposing that Providers' codes of practice for sales and marketing be provided on request, and free of charge, to customers. This reflects the current obligation for codes of practice for complaints set out in General Condition 14.1, and is proposed to ensure customer awareness of Providers' codes.
- 1.8 In reaching its proposed conclusions set out in this statement, Ofcom has considered, and acted in accordance with, its principal duty in section 3, as well as the six community requirements in section 4, of the Communications Act 2003.
- 1.9 Ofcom's detailed analysis in respect of this proposed decision, including supporting information and evidence, is set out in this statement.

Consultation

- 1.10 Ofcom is inviting written views and comments by **5pm on Friday 7 January 2005**, on the Notification and proposed modifications to General Condition 14 on Codes of Practice and Dispute Resolution, attached at Annex 3, which set out:
 - the obligation to establish, under set guidelines, codes of practice on sales and marketing, and to comply with the provisions of those codes;
 - the relevant period of such an obligation;
 - the guidelines for sales and marketing codes of practice for fixed-line telecoms services; and
 - the obligation to provide codes of practice on sales and marketing on request, and free of charge, to customers.
- 1.11 Details of how to respond on each of these issues can be found in section 6.
- 1.12 Ofcom will give careful consideration to all comments received during the consultation period, and in light of the comments received may give effect to the proposals set out in this document, with or without modification, by publication of a Notification and explanatory statement. Ofcom expects to publish the Notification and explanatory statement early in 2005.

Effective date

- 1.13 Subject to the outcome of the consultation, Ofcom proposes that the requirement upon Providers who engage in sales and marketing for fixed-line telecoms services to establish, under set guidelines, codes of practice on sales and marketing, and to comply with the provisions of those codes, will take effect one month from the date of publication of the Notification and explanatory statement.

Section 2

Introduction

Background

- 2.1 The development of competition for fixed-line telecoms services, notably CPS and WLR, continues to bring benefits through changes in the way in which services are marketed and delivered. This includes much greater use of direct selling techniques such as selling via the doorstep, by telephone and in public places such as supermarkets.
- 2.2 Such sales and marketing techniques are used throughout the energy industry and, while they have made a significant contribution to the development of competition in that sector, they have also resulted in instances of irresponsible sales and marketing activity, specifically mis-selling. This has the effect of undermining consumer confidence in the transfer and switching process, and causing consequential damage to the industry as a whole.
- 2.3 The term mis-selling covers a range of sales and marketing activities that can work against the interests of both consumers and competition and undermines confidence in the industry as a whole. It can include:
- the provision of false and/or misleading information (for example, about potential savings or promising offers or gifts which do not actually exist);
 - customers being told they are signing for information and then being switched from one provider to another;
 - applying unacceptable pressure, such as refusing to leave until the customer signs, or using threatening or otherwise intimidating behaviour; and
 - 'slamming', an extreme form of mis-selling, where customers are simply switched from one company to another without their express knowledge and consent. This can include, for example, passing off (i.e. where companies claim to represent a different company) or forging of customers' signatures on contracts without the customer being aware.
- 2.4 There are currently a number of safeguards which have been put in place to protect consumers from mis-selling and, more specifically, slamming of fixed-line telecoms services.
- There is an industry-agreed transfer process that includes a ten-day switchover period before a customer's order can be activated, and the customer switched. During this time the customer should receive two letters – one from the losing provider and one from the gaining provider – notifying the customer of the details of the transfer. This process is intended to ensure that customers should not be transferred without their express knowledge and consent.

- Guidelines have been agreed with the industry and consumer representatives in respect of sales and marketing codes of practice for fixed-line telecoms services. These guidelines are currently voluntary, and Ofcom does not have any enforcement powers in relation to such codes.
- There is a telephony consumer guide, *Promoting competition in fixed-line services: a customer guide to using different phone companies for your line and phone calls*, which aims to ensure that customers are adequately informed about the nature of these services. It is available on the Ofcom website at:
http://www.ofcom.org.uk/consumer_guides/telephony_con_guides/ofw165/?a=87101
- Ofcom monitors complaints data and meets with those individual Providers who, on the basis of Ofcom's complaints data and data from BT about the number of alleged selling issues, appear to be causing most problems in respect of their sales and marketing activities.

2.5 As set out in Ofcom's consultation document, published in April 2004, Ofcom is committed to prevent mis-selling of fixed-line telecoms services from becoming a serious problem, and was concerned that there was growing evidence that consumer complaints had started to increase faster than the underlying volume of transfer requests being processed each month. In light of this, and the strong view from stakeholders, Ofcom decided to consult earlier this year on the effectiveness of the current consumer safeguards.

The regulatory framework and basis for Ofcom involvement

2.6 A new regulatory framework for electronic communications networks and services entered into force on 25 July 2003. The framework is designed to create harmonised regulation across Europe, and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers.

2.7 Section 3 of the the Act states that "it shall be the principal duty of Ofcom, in carrying out their functions –

- (a) to further the interests of citizens in relation to communications matters; and
- (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition."

2.8 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements for regulation, including, in particular, to:

- promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
- contribute to the development of the European internal market;
- promote the interests of all persons who are citizens of the European Union; and

- not favour one form of, or means of, providing electronic communications networks or services, i.e. to be technologically neutral.
- 2.9 Under the new framework, Providers are subject to a number of general conditions which apply to all persons providing electronic communications networks and services. Matters to which general conditions can relate include conditions appropriate for protecting the interests of end-users of public electronic communications services ('PECS') (section 51(1)(a) of the Act). Section 52(2)(e) of the Act states that it is Ofcom's duty to set such general conditions appropriate for securing that Providers establish and maintain procedures, standards and policies necessary to secure the effective protection for domestic and small business customers of such Providers.
- 2.10 Accordingly, the basis for Ofcom's involvement is to ensure that the regulatory environment provides appropriate safeguards to protect the interests of citizen-consumers as well as the reputation of the industry as a whole. This needs to be balanced by the application of Ofcom's regulatory principles and, in particular, issues of proportionality, 'bias against intervention' and the obligation to make the 'least intrusive' form of regulation.

The April 2004 Consultation

- 2.11 Ofcom's consultation document, *Protecting citizen-consumers from mis-selling of fixed-line telecoms services*, was published in April 2004. It is available on the Ofcom website at:
http://www.ofcom.org.uk/consultations/past/mis_selling/mis_selling.pdf
- 2.12 Ofcom received a total of 25 responses, including responses from members of the industry, consumer interests and others with a particular interest in the subject. A list of the respondents who submitted non-confidential responses is attached at Annex 4. The non-confidential responses themselves are available for viewing on Ofcom's website at:
http://www.ofcom.org.uk/consultations/responses/mis_selling_fl_telecoms/responses/?a=87101
- 2.13 The consultation document put forward two options for consideration:
- (1) consumers are adequately protected, and there is no need to make any changes; and
 - (2) consumers are not adequately protected, and there is a need for additional regulation in the form of mandatory guidelines for sales and marketing codes of practice.
- 2.14 The consultation document made clear that Option 2 would only be preferred if there was evidence and support that mis-selling of fixed-line telecoms services is a significant problem, and that the current measures do not provide sufficient protection to consumers.
- 2.15 In addition, and separate to the issue of the effectiveness of consumer safeguards, Ofcom also sought views in relation to the need for clarification of certain provisions contained within the existing guidelines for sales and marketing codes of practice for fixed-line telecoms services.

Dispute between BT and various Communications Providers about cancellations during the CPS and WLR transfer process

- 2.16 Ofcom has published proposals for resolving a dispute between BT and various communications providers relating to BT's use of 'Cancel Other', which are available on Ofcom's website. 'Cancel Other' is a functionality which enables BT to cancel orders for CPS and WLR in certain circumstances, including where a customer has been slammed. In making its proposals for resolving the dispute, Ofcom has not addressed the broader issues surrounding mis-selling of fixed-line telecoms services. It has, however, had regard to the separate proposals for strengthening consumer protection measures in this area which are set out in this document.

Section 3

Effectiveness of current consumer safeguards

Overview

- 3.1 The key purpose of the consultation document was to explore whether the current safeguards designed to protect consumers from mis-selling of fixed-line telecoms services are sufficient, or whether it is necessary for Ofcom to secure new enforcement powers in this area.
- 3.2 In considering options, Ofcom stated that it would consider that there is a need for intervention if there was evidence and support for the view that mis-selling of fixed-line telecoms services is a problem, and that the current safeguards do not provide effective protection for consumers.

Analysis of responses

- 3.3 Ofcom received a total of 25 responses, including responses from members of the industry, consumer interests and others with a particular interest in the subject. A list of the respondents who submitted non-confidential responses is attached at Annex 4. The non-confidential responses themselves are available for viewing on Ofcom's website at:
http://www.ofcom.org.uk/consultations/responses/mis_selling_fl_telecoms/responses/?a=87101

Question 1: Whether or not mis-selling of fixed-line telecoms services is a serious problem?

- 3.4 Ofcom received 23 responses to the question of whether or not mis-selling of fixed-line telecoms services is a serious problem. Of these 14 were from industry stakeholders and nine represented the interests of consumers.

There is evidence that mis-selling of fixed-line telecoms services is a serious problem

- 3.5 Ten respondents argued that the evidence suggested that mis-selling of fixed-line telecoms services is already a serious problem. The key points made to support this view included the following:
 - evidence of a growing number of transfers where consumers have expressed concern and dis-satisfaction about sales techniques, mis-selling and their experience of the transfer process;
 - evidence of mis-selling practices encountered in telecoms markets internationally, including the USA, Australia and Ireland (all of which introduced a far more interventionist approach, including compulsory verification of transfers by means of signed consumer letters or independent third party and/or compensation arrangements);

- evidence from other utility sectors and, in particular, the energy experience, and the need to ensure that problems on a similar scale are avoided; and
- the view that the low level of complaints made to Ofcom result from a lack of consumer understanding about making complaints to Ofcom.

There is no evidence that mis-selling of fixed-line telecoms services is a serious problem

3.6 13 respondents argued that the evidence did not support the view that mis-selling is a serious problem at present. The key points made to support this view included the following:

- concern about the extent to which BT's Unfair Trading Incident ('UFT') data captures exclusively mis-selling rather than issues related to internal customer mis-communication and/or the transfer process more generally;
- the low level of consumer complaints made to Ofcom in the context of the volume of transfers being processed each month;
- the view that all new services generate issues that could be deemed to be mis-selling;
- the lack of evidence that the ongoing rollout of WLR would lead to an increase in mis-selling and slamming;
- the fact that similar problems which were encountered in the early days of number portability were adequately resolved by the industry through the establishment of industry-agreed guidelines and processes; and
- early signs that Ofcom's ongoing action programme to tackle mis-selling by initiating discussions with Providers having problems with CPS sales activities is working.

Ofcom's comments

3.7 The view emerging from the consultation in respect of whether or not mis-selling of fixed-line telecoms services is a serious problem was mixed and, in particular, there was a clear split between the views of industry and those representing the interests of consumers. However, of those representing consumer interests there was a strong belief that mis-selling was a major issue and, with the exception of Otelo, all the citizen and consumer groups supported the position that mis-selling was already a serious problem, citing, in particular, the evidence set out in paragraph 3.5 above. This conflicted with the views of industry members, who argued that there was not sufficient evidence to suggest that mis-selling was a serious problem, and the evidence cited included that set out in paragraph 3.6 above. Of the industry responses, only BT and uSwitch did not agree that there was not sufficient evidence to suggest that mis-selling was a serious problem.

Question 2: Whether the current consumer safeguards provide satisfactory protection against such abuse, or whether further measures should be considered?

- 3.8 Ofcom received 26 responses to the question of whether or not current consumer safeguards provide satisfactory protection against mis-selling, of which 16 represented the views of industry and ten represented the interests of consumers.

Consumers are adequately protected, and there is no need to make any changes

- 3.9 Seven respondents believed that consumers were adequately protected, and that further regulation was therefore not appropriate. The key points made to support this view included the following:

- the existence of a wide range of consumer protection measures that already safeguard consumers from the risk of mis-selling and slamming, including general consumer protection legislation;
- the absence of clear evidence that the benefits of additional regulation would outweigh the costs or enhance the customer experience;
- the view that additional regulation would work to the benefit of the providers with significant market power ('SMP'), and consequently work against the development of competition;
- the existence of industry groups such as the UK Competitive Telecommunications Association ('UKCTA') which already provide a framework for encouraging and promoting professional behaviour; and
- the view that commercial pressures faced to retain customers already provide clear incentives to ensure that all sales are 'clean' and that mis-selling is eliminated.

Consumers are not adequately protected, and there is a need for further regulation

- 3.10 17 respondents argued that that the current consumer safeguards did not provide satisfactory protection, and that further measures should be considered. The key points made to support this view included the following:

- there would be no additional burden on industry as a result of introducing further measures to protect consumers as responsible companies already follow best practice in the area of sales and marketing;
- associated costs should be regarded as part of the cost of doing business and offering a good customer experience, and that any costs would only be imposed on those Providers who have not already adopted 'best practice' guidelines on a voluntary basis;
- the energy example showing that should mis-selling become a more serious problem, and there is increased negative publicity, this would have a negative effect on competition;

- enforceable codes of practice would enable Ofcom to act directly against those parties that are selling to consumers, and causing the problems, rather than current system whereby regulation is carried out indirectly (in the case of CPS) via the CPS operator;
- the view that the fixed-line telecoms sector would benefit from a set of codes that are unequivocal, and where breaches are subject to enforcement action by Ofcom, as this would mean that all players in the market would be subject to the same rules and would therefore bear the same costs; and
- the view that current consumer protection measures are ineffective, and consumers are not aware of their rights;

Ofcom's comments

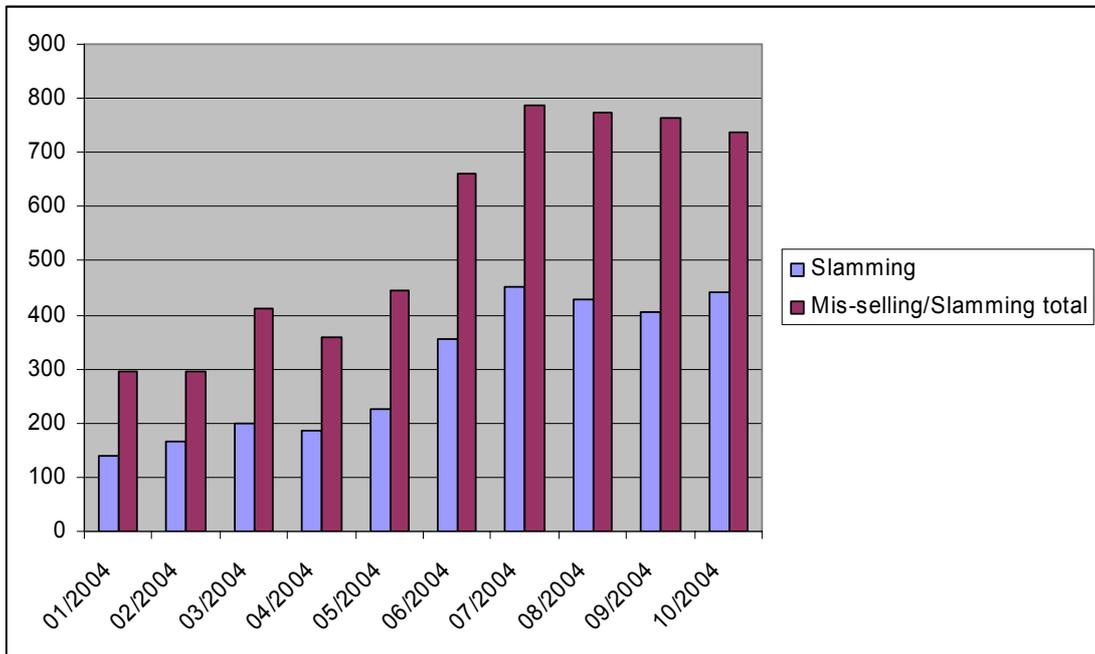
3.11 Ofcom notes that, of those responding on this issue, a majority supported the need for mandatory guidelines for sales and marketing codes practice, with 17 out of 24 respondents who expressed a preference supporting this approach. In particular, there was a strong view emerging from all consumer bodies that effective protection measures were necessary to prevent problems resulting from mis-selling growing as an issue. Evidence cited included that set out in paragraph 3.109 above. In addition, Ofcom notes that many Providers also expressed support for the position that there should be a requirement to establish, and comply with, codes of practice on sales and marketing, including quite a few who were not persuaded that mis-selling was already a serious problem.

Ofcom's conclusions

- 3.12 In the light of the responses received during the consultation, Ofcom has considered the evidence submitted in reaching its proposed conclusions. Ofcom considers that the balance of evidence supports the position that current consumer safeguards do not provide satisfactory consumer protection against mis-selling of fixed line telecoms services, and that further measures are needed.
- 3.13 While the evidence on whether mis-selling of fixed line telecoms services is already a serious problem is mixed, there is evidence that it is growing as a problem. In particular, Ofcom notes that since the publication of the consultation document, there has been a further increase in the volume of complaints and 'expressions of dis-satisfaction' about mis-selling and slamming being received by Ofcom, with complaints over recent months showing a steady increase on previous months' numbers. Figure 1 shows the trend in relation to cases being handled by Ofcom relating to mis-selling and slamming for CPS and WLR where customers have contacted us directly.
- 3.14 In addition, Ofcom recognises that the volume of UFTs being recorded by BT each month about the number of alleged selling issues continues to remain high. While Ofcom is currently investigating BT's UFT data to determine the extent to which this data captures mis-selling exclusively, Ofcom believes that the high volume of such data, when set in the context of the increasing volume of calls coming into Ofcom, is a relevant consideration as part of this review.

- 3.15 Ofcom has also had regard to the strong view emerging from consumer bodies, including Ofcom’s Consumer Panel, that current consumer safeguards do not provide effective protection for consumers, and that the issue of mis-selling will continue to increase without effective enforcement powers, and that this will damage competition.
- 3.16 In Ofcom’s view, the evidence, together with the risks of not being able to take effective enforcement action should a serious problem arise, supports the introduction of additional regulatory safeguards. In particular, and having had regard to the evidence, Ofcom has not been persuaded that the current measures create sufficient incentives upon all Providers to improve performance and follow best practice in this area.

Figure 1: Complaints and ‘expressions of dissatisfaction’ about CPS and WLR mis-selling and slamming



- 3.17 In considering the application of safeguards aimed at preventing mis-selling of fixed-line telecoms services, Ofcom has considered various alternative options used in other sectors and countries, as set out, in detail, in paragraphs 5.17.to 5.21. Ofcom has concluded that introducing an obligation that requires Providers who engage in sales and marketing of fixed-line telecoms services to establish, under set guidelines, codes of practice, and to comply with the provisions of those codes, would provide the best balance of enhanced consumer protection while avoiding unnecessary regulatory burdens. This measure would ensure that codes of practice for sales and marketing are enforceable, and Ofcom would have the power to take enforcement action against those providers who breach the provisions of their code, including ultimately imposing a financial penalty on the relevant Provider.
- 3.18 Most of the other options considered would have resulted in far more intrusive regulation than the proposed obligation to establish, and comply with, codes of practice on sales and marketing. It is evident that other options tend to

result in changes to wholesale processes which have the potential effect of making it more difficult to switch between Providers. This would be contrary to the approach taken by Ofcom to switching and, in particular, the need for consumers to engage effectively in the competitive process, as set out in Ofcom's Strategic Review of Telecommunications, and available on Ofcom's website at

http://www.ofcom.org.uk/codes_guidelines/telecoms/strategic_review_telecoms/?a=87101.

- 3.19 Moreover, Ofcom does not consider that the proposed requirement to establish, and comply with, codes of practice, would represent an unnecessary regulatory burden as any costs would only be borne by those Providers who have not adopted 'best practice' in accordance with the current 'voluntary' guidelines for sales and marketing. In Ofcom's view, the proposed requirement would therefore encourage good behaviour by all Providers in their sales and marketing practices, and ensure that good behaviour can be reinforced through effective enforcement action where Providers either fail to establish, or comply with, such codes of practice.
- 3.20 In accordance with Ofcom's regulatory principles and, in particular, its bias against intervention, Ofcom considers that the obligation should be subject to a 'sunset' clause, such that it would lapse two years after the date of introduction unless a positive need were demonstrated to reinstate the requirement.
- 3.21 The effect of such a clause would be that the obligation to establish, and comply with, such codes of practice, would be a short-term interim measure aimed at preventing mis-selling of fixed-line telecoms services, and ensuring that consumers are protected during the continuing rollout of CPS and WLR. As service provider competition becomes more established over the next two years, the requirement would cease to apply, and be replaced by self-regulatory mechanisms. Ofcom would expect that there would be a concerted effort by the industry to address the issue of mis-selling during the relevant two-year period.

Section 4

Issues related to the current guidelines for sales and marketing codes of practice

Overview

- 4.1 In the April 2004 Consultation, Ofcom also sought comments in relation to the need for clarification of certain provisions contained in the existing guidelines on sales and marketing codes of practice for fixed-line telecoms services. This section sets out Ofcom's conclusions in the light of responses received during the consultation.

Analysis of responses

Question 3: Whether Ofcom's policy on no cost cancellations relating to WLR should be extended to CPS?

- 4.2 Ofcom received 20 responses on the question of whether Ofcom's policy of 'no cost' cancellation for WLR should be extended to CPS. Of these, 12 comments represented the views of industry and eight comments represented consumer interests.
- 4.3 19 respondents agreed that 'no cost' cancellation should be extended to CPS for domestic and small business customers while one respondent did not agree.
- 4.4 Those supporting the extension of Ofcom's policy of 'no cost' cancellation for WLR to CPS argued that a single set of procedures should improve consumer awareness of rights, simplify the provision of consumer information and may enhance competition by increasing consumer confidence in switching. Moreover, respondents did not feel that the extension of the 'no cost' cancellation policy for WLR would have a negative effect upon the provision of CPS.
- 4.5 The respondent objecting to the proposal argued that regulatory intervention was not necessary as there was no evidence as to the need for regulatory involvement on contract terms over and above those required by consumer protection legislation. While it noted that the impact of extending 'no cost' cancellation to CPS would be limited, it took the view that it was not good regulatory practice to extend obligations without some form of cost benefit analysis.

Ofcom's comments

- 4.6 In the light of the responses received during the consultation and, in particular, the strong support from the majority of stakeholders, Ofcom believes that there should be a single and consistent set of consumer safeguards in place for both CPS and WLR. Ofcom is therefore proposing to extend its WLR policy of 'no cost' cancellation during the switchover period for

residential and small business customers to CPS. The policy is reflected in the updated guidelines for sales and marketing codes of practice which are set out in the Annex to the Schedule of the Notification at Annex 3.

Question 4: What is your understanding of the term ‘no cost’ cancellation’?

- 4.7 Ofcom received 17 responses in respect of the meaning of ‘no cost’ cancellation, of which 11 represented the views of industry and six represented consumer interests.
- 4.8 There was broad agreement that ‘no cost’ cancellation meant precisely that – that there should be no cost to the customer and that any costs of cancellation during the switchover period should be borne by the provider. Some respondents, however, argued that where additional costs apply (i.e. above normal costs of acquisition), the provider should be entitled to seek recompense from the cancelling customer.

Ofcom comments

- 4.9 Ofcom remains of the view, as set out in its consultation, that ‘no cost’ cancellation means that domestic and small business customers should not be required to pay administrative or cancellation charges (i.e. there is no cost) during the switchover period. Costs of cancellation should be borne by Providers. In the case of large businesses, however, Providers will continue to be able to recover their costs where these are significant although there should be no punitive charges.

Question 5: Does anything need to be done in relation to the availability of the Consumer Guide?

- 4.10 Ofcom received 20 responses on the question of whether or not the consumer guide should be made available to consumers by Providers as part of their sales process. Of those, 12 represented the views of industry and eight represented consumer interests.
- 4.11 Those supporting the greater availability of the Consumer Guide did not feel that the current approach whereby it is only made available via the Ofcom website was adequate, particularly given that many vulnerable consumers do not have access to the internet. They also argued that “well informed and protected consumers” are key to any strategy aimed at tackling mis-selling, and that cost implications for Providers should not be a material consideration for Providers given the clear consumer benefit.
- 4.12 11 respondents did not agree that the Consumer Guide should be made available to consumers by Providers as part of their sales process.
- 4.13 It was argued that it is sufficient for the Consumer Guide to be available via the Ofcom website, and on demand from consumers, and that if there was an issue about availability it centred on the accessibility of the Ofcom website. A number of respondents expressed concern that there was already a wealth of other sales material, and that there was a danger that it would be lost amongst other literature. It was also argued that greater requirements in respect of availability would result in further unnecessary costs on Providers, and that consumer education should be left to Ofcom and consumers themselves.

Ofcom comments

4.14 In light of the comments received during consultation, Ofcom has not been persuaded that Providers should be required to provide a copy of the Guide during the sales process. Ofcom does, however, believe that the Guide should be easily accessible to customers, and should be made available on request, free of charge. Customers should be made aware of the existence of the Guide by reference in Providers' sales and marketing literature, and Providers should also make the Guide available via their own public websites, and ensure that it is well sign-posted.

Question 6: Is there a need for further material to be made available for consumers as part of the sales process?

4.15 Ofcom received 18 responses on the question of whether there was a need to make further information available as part of the sales process. Of those, 13 responses represented the views of industry and five represented consumer interests.

4.16 Nine respondents did not feel that there was evidence to suggest that there was a need for further requirements in this respect.

4.17 It was argued that obligations already existed under general consumer protection law including, for example, the distance selling regulations, and consequently there was already sufficient material available to consumers. It was felt that there was a risk that further requirements would result in key information being lost because of a multitude of information. There was also concern that associated costs would bear more heavily on smaller, growing players than established players.

4.18 Further information which it was suggested should be made available included the following:

- provision of a small laminated card notifying the consumer of the Ofcom website and the Ofcom public contact telephone number;
- information relating to switching rights, range of tariffs, price comparison, contact details for billing section and complaints information; and
- a clear product description at point of sale.

4.19 Some respondents also referred to the recently published OFT guidelines on developing effective codes, which made reference to key items of information that a customer should have, including clear and accessible pre-contractual information, clear terms and conditions and information on cancellation rights.

Ofcom comments

4.20 In light of the responses received during the consultation, Ofcom has not been persuaded that there should be further requirements placed upon Providers relating to the provision of additional information. Ofcom notes that there are already various requirements in respect of provision of information which are set out in the guidelines for sales and marketing codes of practice as well as in wider general consumer protection legislation. Ofcom does not

believe that there is sufficient evidence to suggest that current requirements are inadequate, and that further obligations are necessary at this stage.

Question 7: What is your view on the benefits of establishing an industry wide initiative and/or guidelines on particular areas of concern to run alongside the published guidelines on sales and marketing codes of practice?

- 4.21 Ofcom received 20 responses on the question of whether or not there was benefit in establishing an industry wide co-regulatory initiative to address areas of particular concern. Of these, 14 comments represented the views of industry and six represented consumer interests.
- 4.22 Some 14 respondents considered that there would be benefits in establishing an industry wide co-regulatory initiative to address areas of particular concern.
- 4.23 In general, it was felt that an industry initiative would provide a basis for sharing best practice and minimising mis-selling and was a sensible and cost-effective approach. In particular, there was broad support for the introduction of a nationally accepted scheme for the recognition and accreditation of sales agents, similar to the 'Energysure' scheme in the energy sector. There was also a strong view that such initiatives should not act as a substitute for mandatory codes but, rather, should complement them.
- 4.24 Four respondents did not believe that there were benefits to establishing an industry wide co-regulatory initiative in this area.
- 4.25 Those respondents considered that there was no evidence that the current processes were inadequate, and that such industry-wide initiatives could be viewed as disproportionate. In this context, it was noted that the 'Energysure' initiative was introduced in the light of significant volumes of complaints. There was also a view that this would be unnecessary if mandatory codes were established.

Ofcom recommendations

- 4.26 Ofcom notes that there was broad support behind the proposal to consider the extension of co-regulatory measures. In light of responses received Ofcom continues to believe that there are significant benefits to be gained through the development of co-regulatory initiatives within the telcoms sector aimed at reducing the opportunity for mis-selling. Ofcom therefore intends to encourage industry to consider the development of such initiatives, and will consider how it can facilitate such initiatives going forward.

Section 5

Consultation on the Notification of modifications to General Condition 14

The purpose of this consultation

- 5.1 In order to make the guidelines and the codes of practice enforceable, there needs to be a requirement upon Providers who engage in sales and marketing activity for fixed-line telecoms services to establish codes of practice on sales and marketing in accordance with published guidelines, and to comply with the provisions of those codes. Ofcom proposes to achieve this by means of a General Condition. There is already a relevant General Condition that can be modified to include this obligation; namely General Condition 14 on Codes of Practice and Dispute Resolution ('GC 14').
- 5.2 GC 14 would be modified so that there is a regulatory obligation upon Providers, providing Indirect Access ('IA'), CPS and WLR to establish, and comply with, sales and marketing codes of practice, as set out in paragraph 5.1. Ofcom proposes that this new obligation should be subject to a 'sunset' clause, with the obligation lapsing two years after the date of introduction unless a positive need were demonstrated to reinstate the requirement.
- 5.3 The relevant procedures for setting, modifying or revoking conditions are set out in section 48 of the Act. Under section 48 of the Act, Ofcom is required to publish a notification of the proposed modification ('the 'Notification'), and to consult for a period of not less than one month after the day of publication of the Notification.
- 5.4 The Notification and proposed modification is attached at Annex 3. The guidelines for sales and marketing codes of practice for fixed-line telecoms services are set out in the Annex to the Schedule of the Notification at Annex 3.
- 5.5 Ofcom is inviting written views and comments by **5pm on Friday 7 January 2005**, on the Notification and proposed modifications to GC 14, attached at Annex 3, which set out:
- the obligation to establish, under set guidelines, codes of practice on sales and marketing, and to comply with the provisions of those codes;
 - the relevant period of such an obligation;
 - the guidelines for sales and marketing codes of practice for fixed-line telecoms services; and
 - the obligation to provide codes of practice on sales and marketing on request, and free of charge, to customers.
- 5.6 Details of how to respond on each of these issues can be found at section 6.

- 5.7 Ofcom will give careful consideration to all comments received during the consultation period, and in light of the comments received may give effect to the proposals set out in this document, with or without modification, by publication of a Notification and explanatory statement. Ofcom expects to publish this document in early 2005.

Regulatory impact assessment

- 5.8 The analysis presented in this section, when read also with the rest of this document, represents a Regulatory Impact Assessment ('RIA'), as defined by section 7 of the Act. You should send any comments on this RIA to us by the closing date for this consultation. Ofcom will give careful consideration to all comments received during the consultation period before deciding whether to implement our proposals.
- 5.9 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. This is reflected in section 7 of the Act, which means generally we have to carry out RIAs where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. In accordance with section 7 of the Act, in producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.

Aim of the proposed modification to General Condition 14

- 5.10 Ofcom's principal duty in carrying out its functions, as set out in section 3(1) of the Act, is to further the interests of citizens in relation to communications matters, and to further the interests of consumers in relevant markets, where appropriate by promoting competition. Section 4 of the Act sets out Ofcom's duties for the purpose of fulfilling Community obligations. In relation to the proposals set out in this document, Ofcom has considered all the requirements in those sections and, in particular, its duty to further the interests of citizens in relation to communications matters, and to further the interests of consumers in relevant markets, where appropriate by promoting competition.

Option 1: no change to the current consumer safeguards

- 5.11 Under section 6 of the Act, Ofcom has a duty to ensure that it does not impose or maintain unnecessary regulatory burdens. As set out in Ofcom's April 2004 consultation, Ofcom would consider that the 'no change' option would be the most appropriate course of action to take in the event that there is no clear evidence and support that mis-selling of fixed-line telecoms services is a significant problem which requires the imposition of additional regulatory obligations.
- 5.12 As set out in Section 3 of this document, Ofcom considers that the balance of evidence supports the position that current consumer safeguards do not provide satisfactory consumer protection against mis-selling of fixed-line telecoms services, and that further measures are needed. In particular, Ofcom does not consider that the current measures have created sufficient

incentives upon all Providers to improve performance and follow best practice in this area.

- 5.13 In light of this, Ofcom considers that the risk of not doing anything, including increased negative publicity about mis-selling should it continue to grow as a problem, would result in a loss of consumer confidence in the switching process and have a detrimental effect on competition. Accordingly, Ofcom does not support the option of 'no change'.

Option 2: mandatory guidelines for sales and marketing codes of practice

- 5.14 As set out in Ofcom's April 2004 consultation, Ofcom would consider that this option would be the most appropriate course of action to take in the event that there is clear evidence and support for the position that mis-selling of fixed-line telecoms services is a significant problem, and that the current safeguards do not provide effective protection for consumers.
- 5.15 As already explained, Option 2 is the preferred option on the basis of evidence received during the consultation. Ofcom does not consider that the proposed obligation to establish, under set guidelines, codes of practice, and to comply with the provisions of those codes, would represent an unnecessary burden upon Providers as it merely seeks to ensure minimum standards in sales and marketing activity. Any costs would only be borne by those Providers who have not adopted 'best practice' in accordance with the current 'voluntary' guidelines for sales and marketing. The proposed requirement would therefore encourage good behaviour by all Providers in their sales and marketing practices, and ensure that good behaviour can be reinforced through effective enforcement action where Providers either fail to establish, or comply with, such codes of practice.
- 5.16 In addition, Ofcom considers that the proposed requirement under this option is the least intrusive options available to Ofcom to achieve the desired outcome. Indeed, as set out under Option 3, other options tend to result in changes to wholesale processes, and would therefore represent an increased form of regulatory intervention. Under Option 2, regulatory intervention would only be used as a last resort and, as set out above, could be specifically targeted against those Providers who engage in irresponsible sales and marketing activity.

Option 3: changes to wholesale processes

- 5.17 In considering the application of safeguards aimed at preventing mis-selling of fixed-line telecoms services, Ofcom has considered various options used in other sectors and countries. However, Ofcom has concluded that most of these would result in far more intrusive regulation than the requirement to establish, under set guidelines, codes of practice on sales and marketing, and to comply with the provisions of those codes. Other options tend to result in changes to wholesale processes which have the potential effect of making it more difficult to switch between providers. Ofcom considers that this form of regulation would be contrary to the approach taken to switching and, in particular, the importance of consumers being able to engage in the competitive process, as set out in Ofcom's Strategic Review of Telecommunications, and available on Ofcom's website at http://www.ofcom.org.uk/codes_guidelines/telecoms/strategic_review_telecoms/?a=87101.

5.18 Alternative options used in other sectors and countries, and which Ofcom has given particular consideration to, are set out in the following paragraphs.

(i) Customer validation of orders

5.19 A number of respondents proposed the introduction of 'direct notification' whereby the order received from a gaining provider during the CPS or WLR transfer process would not be processed until confirmation is received from the customer. While this may reduce significantly the potential for mis-selling and slamming to occur, it is also likely to be detrimental to the interests of competition as it would result in switching becoming more difficult – as shown with the experience of the 'reply card' system previously used for CPS where there was evidence that genuine customers were finding the process obstructive and were finding it difficult to obtain CPS as a result. Accordingly, Ofcom does not consider that such an approach would be proportionate.

(ii) Third party verification of orders

5.20 The use of third party verification of orders is commonplace in other countries, including the USA, Ireland and Switzerland. In the USA, for example, Providers are required to use a formal verification process before consumers can be switched. In Ireland, customers are required to sign a customer authority form ('CAF') or use an independent third party verification ('TPV') process. The telephone call between the customer and the TPV body is recorded and must be produced within 2 days if the transfer is challenged. If the CAF or TPV record cannot be produced the consumer cannot be switched. As with customer validation, Ofcom considers that the introduction of TPV is potentially damaging to the development of competition. It is also likely to be time-consuming and costly to establish. Ofcom, therefore, considers that such an approach would be disproportionate.

(iii) Automatic compensation

5.21 Another possible option would be the introduction of automatic compensation in the event of mis-selling and slamming. This practice is also used in the USA, and has also been recently introduced in the UK energy sector. Such an approach, in Ofcom's view, would represent an increased form of regulatory intervention than that set out under Option 2, and would be disproportionate.

Sunset clause

5.22 In accordance with Ofcom's regulatory principles and, in particular, its bias against intervention, Ofcom considers that the proposed requirement to establish, under set guidelines, codes of practice on sales and marketing, and to comply with the provisions of those codes, should be subject to a 'sunset' clause. The effect of such a clause would be that the proposed requirement would lapse two years after the date of introduction unless a positive need were demonstrated to reinstate the requirement. Ofcom is inviting written views and comments on the relevant period set out in this statement.

Guidelines for sales and marketing codes of practice for fixed-line telecoms services

5.23 The guidelines for sales and marketing codes of practice for fixed-line telecoms services are set out in the Annex to the Schedule to the Notification at Annex 3. In deciding upon the relevant guidelines, Ofcom has opted to substantively follow the current industry-agreed guidelines on sales and marketing albeit that it has updated in light of issues emerging from the April 2004 consultation, as discussed in section 4, in particular, and to reflect the proposed modified status of these guidelines. Proposed modifications from the current guidelines, as published, have been indicated in italics and yellow. Ofcom is inviting written views and comments on the guidelines.

Provision of codes of practice for sales and marketing

5.24 As set out in the proposed GC 14.3, Ofcom is proposing that Providers' codes of practice for sales and marketing be provided on request, and free of charge, to their customers. This reflects the current obligation for codes of practice for complaints as set out in GC 14.1, and is proposed to ensure customer awareness of Providers' codes. Ofcom is inviting written views and comments on this proposal.

Tests set out under the Communications Act 2003

5.25 In modifying conditions, Ofcom is required to meet various tests set out in the Act. These tests, and Ofcom's assessment of how these are met in connection with the proposed modification to GC 14, are set out below.

Section 3 – Ofcom's general duties

5.26 Section 3(1) of the Act sets out the principal duty of Ofcom. Ofcom is required by this section to carry out its functions in line with this duty.

5.27 Ofcom considers that its proposed decision to require Providers who engage in sales and marketing of fixed-line telecoms services to establish, under set guidelines, codes of practice on sales and marketing, and to comply with the provisions of those codes falls within the scope of section 3 of the Act. In particular, Ofcom considers that the principal duty, set out in section 3(1) of the Act is appropriate to this issue; namely:

(a) to further the interests of citizens in relation to communications matters;
and

(b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

5.28 This is because, as explained in this document, Ofcom considers that the balance of evidence supports the position that the current consumer safeguards do not provide satisfactory consumer protection against mis-selling of fixed-line telecoms services, and that further measures are therefore required. Ofcom considers that instances of mis-selling can be distressing to those consumers involved, particularly in the case of vulnerable consumers, and this can work against the interests of both consumers and competition by undermining consumer confidence in the switching process. Ofcom considers

that the proposed requirement set out in this document would ensure that consumers are better protected, and that it would provide a greater incentive upon Providers to improve performance and follow best practice in this area.

5.29 Ofcom has also considered when carrying out its functions, amongst other things, the requirements in section 3 (2) of the Act to secure the availability throughout the UK of a wide range of electronic communications services, and section 3 (4) of the Act, namely that in performing its duties Ofcom must also have regard to such of the following as appears to be relevant in the circumstances, in particular:

- the desirability of promoting competition in relevant markets;
- the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- the desirability of encouraging investment and innovation in relevant markets;
- the needs of persons with disabilities, of the elderly and of those on low incomes; and
- the opinions of consumers in relevant markets and of members of the public generally.

5.30 Ofcom considers that the proposed requirement set out in this statement meets the above criteria and that, in particular, and as set out above, the imposition of consistent rules in this area would be beneficial to competition given that a loss of consumer confidence in the switching process would damage the industry as a whole. Ofcom also considers that the proposed requirement would have the effect that all Providers who engage in sales and marketing of fixed-line telecoms services would be subject to the same rules, and that this would also be beneficial to competition.

Section 4 – European Community requirements for regulation

5.31 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements for regulation. In summary these requirements are to:

- promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
- contribute to the development of the European internal market;
- promote the interests of all persons who are citizens of the European Union;
- not favour one form of or means of providing electronic communications networks or services, i.e. to be technologically neutral;
- encourage the provision of network access and service interoperability for the purpose of securing:
 - efficient and sustainable competition; and

- the maximum benefit for customers of Communications Providers; and
 - encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of Communications Providers.
- 5.32 For the reasons set out above and, in particular, that it would provide greater incentives for Providers to improve performance and follow best practice in this area, and ensure that all Providers are subject to the same rules, Ofcom believes that its proposed decision would meet these requirements.

Section 47 – Test for setting or modifying conditions

- 5.33 As set out under section 47(1) of the Act, in modifying a condition, Ofcom must be satisfied that the test set out under section 47(2) has been met. The test is that the modification of the condition is:
- (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - (b) not unduly discriminatory against particular persons or against a particular description of persons;
 - (c) proportionate to what it is intended to achieve; and,
 - (d) transparent in relation to what it is intended to achieve.

Objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates

- 5.34 Ofcom considers that the proposed modifications are objectively justifiable. Ofcom considers that instances of mis-selling can be distressing to consumers, particularly where they are vulnerable, and can result in a loss of consumer confidence in the switching process, and consequently damage the industry as a whole.
- 5.35 In addition, Ofcom considers that the risk of not doing anything, including that of increased negative publicity, is likely to damage consumer confidence in the switching process, and that this will have a detrimental effect upon competition.
- 5.36 Ofcom therefore considers that the proposal to establish, under set guidelines, codes of practice for sales and marketing, would provide enhanced consumer protection, and ensure that Providers have greater incentives to follow best practice in this area. The proposed requirement, as explained previously, would be subject to a 'sunset' clause which would lapse two years after the date of introduction. This would ensure that it would be a short-term interim measure during the continuing rollout of CPS and WLR, and that the requirement would cease to apply as service provider competition becomes more established over the next two years.

Not unduly discriminatory against particular persons or against a particular description of persons

- 5.37 Ofcom considers that the proposed modifications are not unduly discriminatory. This is because the proposed requirement would apply to all Providers who engage in sales and marketing of fixed-line telecoms services. While a similar requirement is not being imposed in the context of providers of other fixed-line products or mobile services, Ofcom notes that there is no evidence to suggest that there is a problem of mis-selling in respect of other fixed-line telecoms services or the mobile services market which would require similar regulatory intervention at the current time.
- 5.38 Moreover, Ofcom considers that the proposal is preferable to the current system in the case of CPS whereby regulation is carried out indirectly via the CPS operator, and therefore imposes costs on the CPS operator that neither BT nor the actual Provider of the service bear. Under the proposed requirement set out in this document, all Providers would be required to have codes of practice in place and, in the event of problems relating to mis-selling, Ofcom would have power to take action directly against those parties that are selling to consumers, and causing the problems in the first place.

Proportionate to what it is intended to achieve

- 5.39 Ofcom considers that the proposed modifications are proportionate on the grounds that there should be little burden on responsible Providers who already follow industry best practice in this area as set out in the guidelines. In addition, and as previously set out in this section, Ofcom considers that this new obligation would represent one of the least intrusive options available to Ofcom as other available options, including those used in other countries and sectors tend to require changes to wholesale processes. Such options would represent an increased form of regulatory intervention, and would be likely to make it more difficult for consumers to switch to a new provider.

Transparent in relation to what it is intended to achieve.

- 5.40 Ofcom is satisfied that the proposed modifications are transparent insofar as the nature and obligations are clearly set out in this document.

Monitoring and enforcement

- 5.41 Ofcom will continue to gather statistical and qualitative information from both external and internal sources including consumer complaints to Ofcom, BT's UFT data as well as 'Cancel Other' data and 'Cancel Own' data (i.e. the functionality which enables Providers to cancel orders that they have placed for CPS and WLR themselves). In certain circumstances, Ofcom may also use its formal information gathering powers to request information from third parties such as Otelio and CISAS.

- 5.42 If Ofcom receives complaints about non-compliance with GC 14, including the proposed modification as set out in Annex 3, these will be handled in line with Ofcom's Guidelines for the handling of competition complaints, and complaints and disputes about breaches of conditions imposed under the EU Directives which are available at:
http://www.ofcom.org.uk/bulletins/comp_bull_index/eu_directives/?a=87101

Section 6

Responding to this consultation

How to respond

- 6.1 Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on Friday 7 January 2005**.
- 6.2 Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet to indicate whether or not there are confidentiality issues. The cover sheet is attached or can be downloaded from the 'Consultations' section of our website.
- 6.3 Please can you send your response to gavin.daykin@ofcom.org.uk.
- 6.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Gavin Daykin
Competition & Markets
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Fax: 020 7981 3333

- 6.5 Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.
- 6.6 It would be helpful if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

Further information

- 6.7 If you have any questions about the issues raised in this consultation, or need advice on the appropriate form of response, please contact Gavin Daykin on 020 7981 3859.

Confidentiality

- 6.8 Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk. We will do this on receipt of responses, unless respondents request otherwise on their response cover sheet.
- 6.9 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

- 6.10 Ofcom reserves its power to disclose any information it receives where this is required to carry out its functions. Ofcom will exercise due regard to the confidentiality of information supplied.
- 6.11 Please also note that copyright and other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer.

Next steps

- 6.12 Ofcom will give careful consideration to all comments received during the consultation period, and in light of the comments received may give effect to the proposals set out in this document, with or without modification, by publication of a Notification and explanatory statement. Ofcom expects to publish the Notification and explanatory statement early in 2005.
- 6.13 Subject to the outcome of the consultation, Ofcom proposes that the requirement to establish, under set guidelines, codes of practice on sales and marketing, and to comply with the provisions of those codes, will be applied to take effect one month from the date of publication of the Notification and explanatory statement.
- 6.14 Please note that you can register to get automatic notifications of when Ofcom documents are published, at http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- 6.15 Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see below) which it seeks to follow, including on the length of consultations.
- 6.16 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.
- 6.17 If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom's consultation champion:

Philip Rutnam
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
Tel: 020 7981 3585
Fax: 020 7981 3333
E-mail: philip.rutnam@ofcom.org.uk

Annex 1

Ofcom's consultation principles

Ofcom has published the following seven principles that it will follow for each written consultation:

Before the consultation

- 1 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

- 2 We will be clear about who we are consulting, why, on what questions and for how long.
- 3 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- 4 We will normally allow ten weeks for responses, other than on dispute resolution.
- 5 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.
- 6 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a red flag consultation which needs their urgent attention.

After the consultation

- 7 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 2

Consultation response cover sheet

- A2.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A2.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A2.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A2.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A2.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Protecting citizen-consumers from mis-selling of fixed-line telecoms services

To (Ofcom contact): Gavin Daykin

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing

Name/address/contact details/job title

Whole response

Organisation

Part of the response parts?

If there is no separate annex, which

Note that Ofcom may still refer to the contents of responses in general terms, without disclosing specific information that is confidential. Ofcom also reserves its powers to disclose any information it receives where this is required to carry out its functions. Ofcom will exercise due regard to the confidentiality of information supplied.

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 3

Notification

Notification of a proposed modification under section 48(2) of the Communications Act 2003

Proposal for modification of General Condition 14 on Codes of Practice and Dispute Resolution for the purpose of imposing requirements upon all Communications Providers who engage in sales and marketing activities for Fixed-line Telecoms Services to establish codes of practice for sales and marketing in accordance with published guidelines, and to comply with the provisions of those codes.

1. OFCOM in accordance with section 48(2) of the Act hereby make the following proposals for the modification of General Condition 14 on Codes of Practice and Dispute Resolution.
2. The draft modification is set out in the Schedule to this Notification.
3. The effect of, and OFCOM's reasons for making, the proposals referred to in paragraph 1 above is set out at Sections 3, 4 and 5 of the accompanying explanatory statement.
4. OFCOM consider that the proposed modification referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the proposals.
5. In making the proposals set out in this Notification, Ofcom has considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
6. Representations may be made to OFCOM about the proposals set out in this Notification and the accompanying statement by **5pm on Friday 7 January 2005**.
7. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.
8. In this Notification:
 - (i) "the Act" means the Communications Act 2003;
 - (ii) "OFCOM" means the Office of Communications; and
 - (iii) "Fixed-line Telecoms Services" means narrowband calls and lines services which is Indirect Access, Carrier-Pre Selection and Wholesale Line Rental.
9. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
10. For the purpose of interpreting this Notification:

Protecting citizen-consumers from mis-selling of fixed lines telecoms services: a consultation on a notification to modify General Condition 14 on codes of practice and dispute resolution

- (i) headings and titles shall be disregarded; and
- (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

11. The Schedule to this Notification shall form part of this Notification

Neil Buckley

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

22 November 2004

Schedule

Proposal for modifications to General Condition 14 on Codes of Practice and Dispute Resolution for the purpose of imposing requirements upon all Communications Providers who engage in sales and marketing activities for Fixed-line Telecoms Services to establish codes of practice for sales and marketing in accordance with published guidelines, and to comply with the provisions of those codes.

General Condition 14 on Codes of Practice and Dispute Resolution shall be modified as set out below (the added text indicated in italics and highlighted in yellow, for ease of reference):

14. CODES OF PRACTICE AND DISPUTE RESOLUTION

Basic Code of Practice regarding provision of Public Electronic Communications Services

14.1 The Communications Provider shall produce a basic code of practice for its Domestic and Small Business Customers which sets out at least where such customers may avail themselves of the information required to be published under Condition 10.2 as relevant to the provision of Public Electronic Communications Services. The code of practice shall be drafted in plain English which is easy to understand, and copies of the code of practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

Codes of Practice for Complaints

14.2 Within one month of this Condition entering into force, the Communications Provider shall establish and thereafter maintain procedures that conform with any applicable Code of Practice for Complaints for the handling of complaints made by its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

Codes of Practice for Sales and Marketing

14.3 Within one month of this Condition entering into force and during the Relevant Period, the Communications Provider, for the provision of Fixed-line Telecoms Services, shall:

(a) establish and thereafter maintain a Code of Practice for Sales and Marketing for dealing with its Domestic and Small Business Customers, which conforms with the Guidelines set out in the Annex to this General Condition; and

(b) comply with the provisions of the Code of Practice for Sales and Marketing established according to General Condition 14.3 (a) above.

The Code of Practice for Sales and Marketing shall be drafted in plain English which is easy to understand, and copies of it shall be provided on request and free of charge to any Domestic and Small Business Customer.

Dispute Resolution

14.4 The Communications Provider shall implement and comply with a Dispute Resolution Scheme, including any final decision of the Dispute Resolution Body made in accordance with that Scheme, for the resolution of disputes between the Communications Provider and its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

14.5 In this Condition:

(a) “Carrier Pre-Selection” (CPS) means a facility which allows a Subscriber to whom a Publicly Available Telephone Service is provided by means of a Public Telephone Network to select which Pre-selected Provider of such Services provided wholly or partly by means of that Network is the Pre-selected Provider he wishes to use to carry his calls by designating in advance the selection that is to apply on every occasion when there has been no selection of Provider by use of a Telephone Number;

(b) “Communications Provider” means a person who provides Public Electronic Communication Services to Domestic and Small Business Customers;

(c) “Code of Practice for Complaints” means a code of practice approved from time to time by the Director for the purpose of this Condition in accordance with sections 52 and 53 of the Act;

(d) “Codes of Practice for Sales and Marketing” means a code of practice established in accordance with General Condition 14.3 (1);

(e) “Dispute Resolution Body” means the body of persons responsible for administering a relevant Dispute Resolution Scheme;

(f) “Dispute Resolution Body” means the body of persons responsible for administering a relevant Dispute Resolution Scheme;

(g) “Dispute Resolution Scheme” means procedures approved or established from time to time by the Director for the purpose of this Condition in accordance with sections 52, 54 or 55 of the Act;

(h) “Domestic and Small Business Customer” means, in relation to a Communications Provider, a Customer of that Provider who is neither-

(i) himself a Communications Provider; nor

(ii) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);

(i) “Fixed-line Telecoms Services” means narrowband calls and lines services which is Indirect Access, Carrier-Pre Selection and Wholesale Line Rental;

(j) “Guidelines” means the guidelines set out in the Annex to this General Condition;

(k) “Indirect Access” (IA) means a facility which allows a Subscriber to whom a Publicly Available Telephone Service is provided by means of a Public Telephone Network to select which such Service provided wholly or partly by means of that

Network is the service he wishes to use by the use of a Telephone Number on each separate occasion on which a selection is made;

(l) “Publicly Available Telephone Services” means a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for End-users with disabilities or with special social needs and/or the provision of non-geographic services;

(m) “Public Telephone Network” means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data;

(n) “Pre-selected Provider” means a provider of a Public Telephone Network who has notified the Communications Provider with Significant Market Power in the Relevant Market that it is able and willing to provide Carrier Pre-selection to Subscribers to whom the Communications Provider with Significant Market Power in the Relevant Market provides Publicly Available Telephone Services;

(o) “Relevant Period” means a period of two years beginning on [date] and ending on [date];

(p) “Subscriber” means any person who is party to a contract with the provider of Publicly Available Telephone Services for the supply of such Services in the United Kingdom;

(q) “Wholesale Line Rental” (WLR) means a facility which allows Communications Providers without Significant Market Power in the Relevant Market to provide an integrated service comprising calls and access by renting the exchange lines on wholesale terms from the Communications Provider with Significant Market Power in the Relevant Market, and sending customers a single bill for both calls and line rental;

Annex to the Schedule

Guidelines for sales and marketing codes of practice for fixed-line telecoms services

Key elements to be included within sales and marketing code of practice

[modifications from the current guidelines, as published, shall be indicated in italics and in yellow]

1. Introduction and overview

1.1 Key objectives to be outlined:

- To ensure that companies provide *their Domestic and Small Business Customers ('Customers')* with standards of protection over and above those provided by the law (see table below for examples).
- To ensure good practice and responsible selling in the marketing of Fixed-line Telecoms Services, and to help Customers understand the service and behaviour to be expected;
- To provide a clear framework within which responsible companies should be working, providing reassurance to Customers and consumer representatives as to what constitutes good practice in the sales and marketing of Fixed-line Telecoms Services.

1.2 The focus to be sales and marketing of Fixed-line Telecoms Services to *Customers*, dealing primarily with issues arising before, during and at the point of sale, with particular emphasis on the avoidance of mis-selling and misrepresentation, and ensuring customer understanding of the services offered *and the full terms of any contracts they are entering into.*

1.3 Procedures to be in place for sales and marketing staff, and agents, to be informed of the *Codes of Practice for Sales and Marketing ('the Code')* and its contents, and for monitoring their compliance with it.

1.4 Procedures to be in place for Customers and advice agencies to be made aware of the Code and its contents such as, for example, making reference to the Code in marketing literature.

1.5 Codes to be drafted in plain English which is easy to understand, and copies of it to be provided on request, and free of charge, to Customers.

1.6 Company accountability to be visible in the form of a named person responsible for compliance.

2. Status of code

2.1 All Communications Providers who engage in sales and marketing

for Fixed-line Telecoms Services are required under General Condition 14.3 to establish the Code in accordance with these Guidelines, and comply with the provisions of the Code.

- 2.2 Compliance with the Code does not guarantee compliance with any legal requirement.
- 2.3 Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.

3. Sales, marketing advertising and promotion

- 3.1 Customer approaches may occur in a wide range of ways e.g. by TV, radio or press advertising, promotions in shops or shopping centres, post, fax, electronic mail, telephone or in person. Regardless of the way in which sales and marketing activities are conducted, companies to act responsibly and compliantly.
- 3.2 Customers' wishes to be respected where they have registered with any relevant preference service, including the Mailing Preference Service, the Telephone Preference Service, the Fax Preference Service and the E-mail Preference Service.
- 3.3 Advertising and promotion to comply with the British Codes of Advertising and Sales Promotion. In addition, advertising and promotional literature to be clear, unambiguous, accurate and fair, containing no false or misleading information about price, value or service and, in particular, must not denigrate other companies.

4. Recruitment and sales training

- 4.1 Appropriate procedures to be set up for the selection of staff involved with direct contact with customers for the purposes of sales and marketing activity.
- 4.2 Companies to be responsible for ensuring that sub-contractors (third party agencies) also set up equivalent selection procedures.
- 4.3 Whilst operating within current employment legislation, recruitment of sales staff to have regard to:
 - behaviour and appearance, recognising that the sales person may be seen as the 'public face' of the industry;
 - security – references and relevant convictions for criminal offences to be checked and taken into account;
 - evidence of mis-selling or lack of integrity in any previous selling employment.
- 4.4 The following requirements related to sales staff to be observed:
 - the applicant must provide proof of NI number, proof of address and two references;

- referees cannot be related to the applicant;
- business referees must not both be from the same company;
- if a sales person transfers to another company, a copy of his or her records will be retained for a minimum period of three years;
- the identification badges of staff leaving the company to be returned **and accounted for**.

4.5 Companies to satisfy themselves that they have taken reasonable steps to ensure that every such person is trained so as to have a sufficient understanding that any relevant advice given by such person is not misleading. Topics covered to include:

- arrangements for competition in the supply of telecommunications in the UK;
- the different telephone options provided by the company and how these differ from other competitive telecoms products (which may or may not be offered by the company); for example, **Indirect Access, Carrier-Pre Selection and Wholesale Line Rental**;
- the process for ordering the telephone service;
- the relevant principles of consumer protection law;
- the prices charged by the employing company and its other terms and conditions of service and, in particular, methods of payment, duration of contract and any termination fees;
- the nature, and cost, of any additional services on offer;
- the process for cancelling the contract both during the cooling-off period and at any time following commencement of the service; and
- the existence of the sales and marketing code of practice and the benefits provided.

4.6 Responsibility for compliance **with the Code** by representatives, and any sales agency acting on their behalf, to lie with the company. The company to identify the title of the person accountable for ensuring that the company and its agents observe the Code, and the title of the person responsible for handling complaints relevant to the code.

4.7 Remuneration systems not to be such as to encourage misleading or exploitative sales practices **such as schemes largely based on commission and/or pyramid recruiting structures**. The company to be kept informed of incentive schemes used by any agencies it employs for sales and marketing.

5. Customer contact

- 5.1 Discretion to be used when visiting consumers' homes, particularly during the hours of darkness. No face to face contact to be made outside the hours of 08.00 to 20.00, and no telephone calls to be made outside the hours of 08.00 to 21.00, unless at the customer's request.
- 5.2 Representatives involved in face-to-face sales and marketing to be issued with identity badges that clearly display the name of the company they represent and a unique identification number for that representative. The identity badge to also display the representative's name, a photograph of the representative and an expiry date for validity of the card. The information on the card to be presented in such a way that does not require close examination, and the font must be in 14 point. Identity cards must also be made available with key information in braille, on request.
- 5.3 All representatives to immediately identify themselves, the company they represent and the purpose of the call and the expected call duration. If visiting or meeting in person, they should draw the Customers' attention to their identity card.
- 5.4 Reasonable steps to be taken to keep informed of local authority initiatives, password schemes etc, such as the Local Distraction Burglary Initiative.
- 5.5 All representatives to be courteous, use appropriate language and offer clear and straightforward explanations. All information should be factual and accurate. Representatives should not misrepresent the services being offered nor those of other companies. Representatives should also check that customers entering into contracts understand, and intend, them.
- 5.6 Representatives to cease contact with any person who indicates that the contact is inconvenient, unwelcome, inappropriate or too long. If the customer requests it, the discussion to be ended immediately and, if making a doorstep call, the premises to be left immediately.
- 5.7 Representatives not to abuse the trust of vulnerable customers e.g. those who are elderly or whose first language is not English, or who have special needs. Companies should have a policy regarding such customers, including that their representatives do not pursue sales presentations to customers whom they believe may be vulnerable.
- 5.8 Where there is sheltered housing, contact to be made with the warden or other person in authority before any approach is made to the customer.
- 5.9 No sales or marketing activity to be conducted that is directed to those who are under the legal age for entering into contracts.
- 5.10 Marketing campaign records to be maintained for **six months**, including the date and the approximate time of the contact with the customer. Records to be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

6. Entering into a contract – information, order forms and contracts

- 6.1 Steps to be taken to ensure that the person entering into a contract is authorised to enter into the contract for the Fixed-line Telecoms Services/bills at the premises.
- 6.2 Order forms and contract forms to be designed such that the contractual nature of the document is clear to the customer, and it contains a statement of the contractual nature of the document immediately adjacent to where the customer signs the document so the statement cannot easily be obscured or concealed¹. Customers to sign over the word “contract”.
- 6.3 Where a face-to-face 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;
 - 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.
- 6.2 Customers to be made aware of the existence of this code, and preferably provided with a summary. *Copies of it to be provided on request, and free of charge, to Customers.*
- 6.3 At the Customers request, full written information about tariffs to be made available.
- 6.4 If a Customer signs an order form following face to face contact, or

¹ This is in order to minimise cases where order forms are misrepresented as confirmations of the sales person’s visit. This is likely to be an offence under the Trades Descriptions Acts.

enters into a written contract, the customer must be given a copy of the order form or contract, as well as the following details **in writing** either at the same time or within 5 working days, unless previously supplied in writing prior to contract:

- information about any after-sales services or guarantees; and
- arrangements for the termination of the contract.

6.5 Orders placed by distance selling means to comply with Distance Selling Regulations, which are set out in the table below.

6.6 In the case of internet orders, a well sign-posted hyperlink to this information which is easily visible to the web site visitor to be prominently displayed with the information being capable of being easily downloaded and printed.

6.7 Customers to be permitted to cancel orders and terminate contracts by telephone, in writing, by fax or by e-mail.

6.8 Companies to send a mandatory letter to the customer by first class mail within five working days of a contract being agreed informing the customer of the details of the transfer, and the following to be clearly communicated:

- date of notification;
- CLI(s) affected;
- list of services affected/unaffected;
- if relevant, information about IA callbarring;
- date of switchover;
- the sender's contacts details for any queries.

6.9 The notification will be by letter although may be sent electronically where consumers have initiated contact by applying online, and have confirmed online that they wish all future correspondence to be sent electronically. Otherwise customers would need to positively request by written correspondence that information be sent electronically.

6.10 *Companies to ensure that the orders they submit do not mature until the switchover period is complete, and that Customers are made aware that they have the right to change their mind before the switchover period. During the switchover period there should be 'no cost' cancellation for Customers where they change their mind.*

7. Consumer protection and other legal requirements

7.1 Procedures to comply with all applicable legislation **and appropriate amendments** (see table below **for examples**).

8. Audit of contracts

8.1 Procedures to be developed to minimise the risk of errors or mis-selling when taking orders/making contracts during face-to-face or telephone selling. Representatives to check that customers entering into contracts understood,

and intended them, and to carry out regular audits of systems, procedures and documentation.

- 8.2 In all cases, customers to be contacted - not more than five working days of a contract being agreed – in order to confirm that the customer understands that they have entered into an agreement, are happy to proceed with the agreement and are content with the way in which the sales and marketing activity was conducted.
- 8.3 Audit contact can either be as part of the mandatory customer 'notification of transfer' letter referred to in paragraph 6.8 and 6.9 above or through a separate process. Audit contact to be made by a person not involved with the company's sales and marketing activities.
- 8.4 If it is found that the contract was not understood or intended, or if the order matured before the expiry of the switchover period, and the customer wishes to cancel, companies to terminate the contract without charge or other penalty to the customer. Companies to keep under review the procedures by which contracts are agreed and to take appropriate steps to prevent recurrence of any problem identified from the audit process.

9. *Customer complaints procedure*

- 9.1 Companies' internal procedures for handling customer complaints to also include those relating to their sales and marketing activities. Companies to ensure that all their staff and representatives who deal directly with Customers are made aware of this procedure, and that they should inform Customers of the existence of their complaints procedure on first contact.
- 9.2 The complaints procedure to set out how Customers may complain about the company's sales and marketing activity and what further steps are available if they believe their complaint has not been dealt with satisfactorily.
- 9.3 In addition, Customers also to be made aware of any dispute resolution arrangements as recognised by Ofcom. Currently Ofcom has approved two schemes: the Office of the Telecommunications Ombudsman ('Otelco') and the Communications and Internet Services Adjudication Scheme ('CISAS').
- 9.4 Companies to liaise regularly with Ofcom and the relevant consumer groups to monitor the number and nature of complaints under its code.

10. *Distributing the code: creating awareness*

- 10.1 The Code to be available to customers on request, free of charge and in a reasonable range of formats.
- 10.2 The head office of the Citizens Advice (address: Myddleton House, 115-123 Pentonville Road, London, N1 9LZ) plus other head offices of relevant major advice agencies normally to be sent copies of the code and any subsequent update. Companies with restricted operations such as those operating only in specific regions to circulate copies to advice agencies as appropriate.

Legislation of particular relevance to sales and marketing of particular telephony products

Particular attention is drawn to the following regulations (as amended, where appropriate), in addition to all other appropriate consumer protection law and advertising Codes of Practice

	Title	Comment
1.	The Unfair Terms in Consumer Contracts Regulations 1999 SI 1999 No 2083	<ul style="list-style-type: none"> introduces controls over unfair standard terms in contracts with consumers requires written contracts with consumers to be in plain, intelligible language
2.	The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 SI 1987 No 2117	<ul style="list-style-type: none"> requires that written notice of cancellation rights (min 7 days) in prescribed form is given to consumers entering into contracts at their homes or in other places (e.g. shopping precincts)
3.	The Consumer Protection (Distance Selling) Regulations 2000 SI 2000 No 2334	<ul style="list-style-type: none"> requires extensive information to consumers before and after consumers enter into contracts using channels of marketing such as direct response press or TV adverts, telemarketing, mail order, etc requires cancellation rights (min 7 working days) to be given to consumers, starting from the date of delivery of prescribed information provides that making demands for payment for services not ordered by consumer is a criminal offence
4.	Telecommunications (Open Network Provision)(Voice Telephony) Regulations 1998 SI 1998 No. 1580	<p>Extensive requirements for system-less resellers and operators of systems licensed by DTI to</p> <ul style="list-style-type: none"> offer written contracts to consumers complying with the regulations; to publish their terms and conditions and tariffs by placing copies in every major office for public inspection during prescribed hours
5.	Various Misleading Advertising Regulations	
6.	Consumer Protection Act 1987 (Part III)	

7.	Consumer protection legislation	<p>Civil responsibilities</p> <ul style="list-style-type: none"> • Misrepresentation Act 1967 • Unfair Contract Terms 1977 • Sales of Goods Act • Supply of Goods and Services Act 1982 • Consumer Protection 1987 • Sale and Supply of Goods Act 1994 • Control of Misleading Advertising Regulations 1988 SI 1988 No 915 • Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 SI 1987 No 2117 • Unfair Terms in Consumer Contracts Regulation SI 1999 No 2083 <p>Criminal liabilities</p> <ul style="list-style-type: none"> • Trade Descriptions Acts 1968 • Administration of Justice Act 1970 • Fair Trading Act 1973 • Price Act 1974 • Consumer Protection Act 1987 (Parts II, III, IV and V) • Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 SI 1987 No 2117 • Consumer Protection (Distance Selling) Regulations 2000 SI No 2334
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Annex4

Non-confidential respondents to the consultation document

Age Concern
BT
Cable & Wireless
Caudwell Communications
Centrica
Citizens Advice Bureau
Consumers' Association
Consumer Panel
Energis
Energy Retail Association
Bob Little
MCI Worldcom
Claire Milne
National Consumer Council
Ntl
Arthur Oppenheimer
Otelio
Scottish & Southern Energy
Telco Global
Telewest Broadband
Thus
uSwitch
Your Communications