

Dear Sir/Madam

Fair treatment and easier switching for broadband and mobile customers. Proposals to implement the new European Electronic Communications Code (EECC)

I write in response to the consultation Fair treatment and easier switching for broadband and mobile customers. Proposals to implement the new European Electronic Communications Code. Included at Appendix A to this response is information about Ombudsman Services.

General Comments:

We welcome the changes set out by Ofcom to implement the European Electronic Communications Code and think it will be particularly important for improving customer experience and building upon the fairness principles to make markets work for all.

As products and services evolve, and customer behavior and expectations grow, it is important that regulation keeps pace and responds accordingly. It is right that:

- Consumers are not disincentivised to switch due to locked handsets;
- They have access to clear contract information;
- There are stronger rights to exit;
- They are protected when things go wrong; and
- Consumers with disabilities have equivalent access to communication services.

We have shared our views from where we see consumer detriment from some of these areas in our response below.

Key points:

Making broadband switching easier and more reliable

We think it is sensible to ensure that switching broadband provider is easier and more reliable so that consumers aren't disincentivised from doing so. Broadband services are essential and play an important role in allowing consumers to participate fully in society.

Providing clearer expectations to providers for how a consumer's services should be switched makes sense and will allow for a more consistent consumer experience. We think it is worth considering the pros and cons of voluntary and mandatory approaches, their effectiveness and impact on the market.

We are supportive of Ofcom aligning to the EECC by introducing a new General Condition (GC) which requires providers to make available to qualifying third parties, information that relates to price, tariffs and minimum



quality of services. (Chapter 5, page 44 referencing Digital Comparison Tools). It's important for consumers to have access to reliable comparison tools to make informed choices and find deals that suit their needs.

Banning mobile providers from selling 'locked' devices

We do see a small number of complaints from consumers who face difficulty in requesting that their handsets are unlocked. Our 2019 data indicates it is an issue that relatively few consumers complain to our service about, but this may be due to the fact that customers do not feel they can challenge a provider's unlocking policy via ADR. In the complaints we have recently investigated, we have found that frontline agents are sometimes unsure on what to do or whether a handset can be unlocked. The process for unlocking devices can be inconsistent across providers and even less clear to consumers when third party resellers are involved so we agree that Option 1 (Chapter 8, page 132), which means providers must sell unlocked devices to residential consumers, is the right one. This proposal will be a step in the right direction for ensuring that customers are able to switch more easily, and it is important for all consumers, including those who obtain a handset before this comes into effect, to benefit from this requirement.

Better contract information and stronger rights to exit

Contract issues made up 14% of complaints from residential consumers that we saw at Ombudsman Services in 2019. We handle complaints from consumers who struggle to understand the agreements they have, so measures that can reduce confusion are welcome. It is in the best interests of consumers to make contract terms clearer, to set limits for the amount of time they can be locked in, to be able to see contract terms clearly in writing before committing, and having the right to exit if changes are made which they were not aware of which do not benefit them. This latter change will add needed clarity to an area today – the definition of detriment – that leaves room to interpret. We also think it would be right to review the protection given to consumers taking out contracts with third party resellers as we think that would go even further, as an important step for building trust, to ensure that all consumers and businesses, regardless of how they choose to engage in the market, are given the opportunity to review terms and make informed choices.

Price increases

As mentioned above, contract issues made up 14% of the complaints we saw in 2019 for domestic consumers, with around 300 complaints about price increases within that category. Consumers sometimes tell us that they were not aware that their contract had a built-in price increase and we think some providers could do to make price changes explicit. So, we welcome the proposed guidance for providers to make it more explicit what the impact will be where subscriptions are impacted by a specific pricing index.

Contract duration

As previously mentioned in our response to the consultation on helping consumers get better deals with mobile handsets, which included proposals for linked split contracts¹, we think that 24 months is an appropriate maximum commitment timescale for consumers and small businesses as the pace of change regarding technology and tariffs mean that they can be disadvantaged by being tied into longer contracts. It is clear to us that if a consumer purchases a bundle and part of this is longer than 24 months then they are being disincentivised to switch, when the shorter length service from that agreement are due to end.

In 2019, 16% of complaints made by business customers were about their contracts, although only a small number complained specifically about the length of the contract. Again, however, we believe that this is because customers are less likely to use ADR to challenge the length of contracts they have freely entered into, rather than it being evidence that business customers have few concerns about contract duration. We

¹ Ofcom. Helping consumers to get better deals in communications markets: mobile handsets
https://www.ofcom.org.uk/data/assets/pdf_file/0037/157699/statement-and-consultation-mobile-handsets.pdf

are seeing a great deal of innovation in the sector with new services being launched and existing services becoming cheaper and we consider that customers are potentially being put into a disadvantageous position if they are not able to shop around on a fairly regular basis. And in many cases, smaller business owners have similar negotiating power to consumers and may sometimes have no choice but to sign up to a contract the provider is prepared to offer. We therefore think it makes sense for the GCs to be amended to extend the requirement of a maximum 24-month commitment period to microenterprise customers, small enterprise customers and not for profit customers (as mentioned in Chapter 6, page 49). If providers are still able to agree contracts of more than 24 months with small business customers, we consider that it is important that providers give clear information about the range of contracts on offer.

Bundles

We know that bundling services can offers advantages, but we also see instances where changes to component parts of bundled services cause confusion and detriment, particularly when these services are dependent on each other. Consumers can be enticed to opt for certain additional services based on specific offers or circumstances without fully understanding the contractual implications. Equally, services from the same provider while sold with separate contracts may be perceived as a bundle by a consumer because they are billed from just one provider and may have been under the impression that there was a benefit due to a technical or financial dependency. For that reason, we think it is right to revise the definition of a bundle and consider technical, financial and contractual dependencies (mentioned in Chapter 3, pages 20/21).

So, we also agree that adding a new requirement in GC C1.15 to extend the notification of contractual requirements and right to exit to all elements of a bundle (Chapter 6, page 61) makes sense. It seems right that any non-beneficial contractual modifications would allow the customer the right to exit the whole bundle without extra cost. It will be necessary to have clear guidelines of this right to exit in relation to bundled services and we will continue to share complaints data and work with the providers to make sure this works to good effect.

Please do not hesitate to contact us if you would like further information regarding our response. Our response is not confidential.

Your sincerely,

Ed Dodman
Director of Regulatory Affairs

For more information regarding this consultation please contact:

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Appendix A

About Ombudsman Services:

Ombudsman Services is a not-for-profit private limited company established in 2002 which runs a range of discrete national ombudsman schemes across different sectors including energy, communications and an appeals service in private parking. Each scheme is funded by the companies under our jurisdiction and our service is free to consumers. In 2018 we received 174,855 initial contacts from complainants and resolved 68,063 complaints. In the energy sector we received 108,349 initial contacts and resolved 45,667 cases, and in the communications sector, we received 62,233 initial contacts and resolved 21,251 cases. We also received over 67,000 appeals in our private parking appeals service.

We are:

- to our consumers, the people they can turn to for impartial advice and solution that's fair;
- to our partners, the people they look to for knowledgeable and insightful ways to help them reduce complaints by enabling them to make the changes they need to deliver better customer services;
- to our regulators, champions in protecting rights as well as partners in information sharing, we share our analysis so that regulators and business partners can make improvements; and
- to our people, here to enable them to deliver clarity to consumers and partners through meaningful work.