

Consumer switching

Decision on reforming the switching of mobile communication services

NON-CONFIDENTIAL VERSION

STATEMENT

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About this document

Consumers need to be able to switch providers easily to exercise choice and take advantage of competition in the communications sector.

We have identified unnecessary difficulties that many consumers experience when they switch or consider switching mobile provider.

This document sets out our decision to address these difficulties by reforming the process for switching mobile provider, removing requirements on consumers to pay for their old service during a notice period once they have switched provider, and ensuring consumers are better informed about switching.

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1. Summary

Mobile switching can be unnecessarily difficult

- 1.1 We want to ensure that consumers do not experience unnecessary difficulties when switching mobile provider. Consumers should be able to exercise choice and take advantage of competition in communications markets by being able to switch provider easily. Unnecessary difficulties can give rise to consumers suffering harm, making switching difficult or preventing it entirely in some cases.
- 1.2 We asked consumers about their experiences of switching mobile services. We found that a quarter of those who switch mobile provider – equivalent to around 1.7 million – had experienced major difficulties with the process.¹ These difficulties also affected 37% of consumers who had considered switching but did not do so.² We recognise that many consumers who have switched mobile providers found the process easy. However, we are concerned that there is a significant minority of consumers who either find the process difficult or are deterred from switching.
- 1.3 We have identified three sources of concern for consumers:
- some experienced difficulties when contacting their existing provider to transfer (port) their number or cancel their old service, including unwanted attempts from their provider to persuade them to stay;
 - many mobile switchers found themselves paying notice period charges for their old service weeks after they had switched, which amounts to around £10 million per year in unwanted double-payments; and
 - some consumers experienced short-term loss of service when switching.

Our reforms will make mobile switching quicker and easier

- 1.4 We have previously consulted on proposals to address these concerns and make mobile switching easier.³ Based on our analysis and responses to our consultations, we have decided on the following package of reforms:

¹ BDRC 2015 consumer research, adults 16+ who switched in the 18 months prior to research.

² BDRC 2015, adults 16+ who considered switching in the 12 months prior to research.

³ We consulted on reforming mobile switching arrangements in March 2016, July 2016 and May 2017. These consultations can be found here:

March 2016 <https://www.ofcom.org.uk/consultations-and-statements/category-1/consumer-switching-mobile>

July 2016 <https://www.ofcom.org.uk/consultations-and-statements/category-2/mobile-switching-jul16>

May 2017 <https://www.ofcom.org.uk/consultations-and-statements/category-2/consumer-switching-proposals-to-reform-switching-of-mobile-communications-services>

Package of reforms

1. **Introduction of a new and simplified way to switch ('Auto-Switch')**: consumers will be able to request and automatically receive a unique code by text, or through their online account, which they can give to their new provider to switch and port their number (if they wish to do so). This will remove the need for consumers to call their old provider.
2. **Banning notice period charges after the switching date**: consumers will no longer have to pay for their old and new service at the same time.
3. **Providing clear information to consumers**: mobile providers will be required to provide consumers with clear information, for example on their websites, about the switching and number porting process.

- 1.5 Our Auto-Switch reform allows consumers to control the contact they have with their existing provider when they are looking to move away from them, including avoiding having a phone conversation if they do not want one. Additionally, consumers will only need to contact their new provider once – to transfer their existing number or cancel their old service. After doing this, the number transfer or cancellation occurs automatically, and the new service starts.
- 1.6 Prohibiting mobile operators from charging consumers for notice periods once they have switched provider will ensure people do not have to pay for a service they no longer use after the date they switch. It will also make it easier to switch without worrying about notice periods.
- 1.7 Requiring mobile providers to supply consumers with clear information will ensure people are better informed about the switching process and will be less likely to be put off from switching because of uncertainties about how to do it.
- 1.8 This simpler switching process will be available to all mobile customers regardless of whether they:
- wish to keep their existing mobile number when moving to their new provider or not (known as “porting” their number);
 - are seeking to port a single number, or multiple numbers (or switch a single account or multiple accounts in cases where they do not want to port their number); and
 - are residential or business customers.
- 1.9 In relation to loss of service, industry is implementing initiatives to address this on a voluntary basis. We are satisfied that these initiatives are sufficient to address our concerns, and do not therefore consider it would be appropriate to impose regulation. We will monitor their effectiveness and revisit the issue in the future if necessary.

Effective and proportionate reforms

- 1.10 We consider that together these reforms will substantially benefit consumers by addressing the unnecessary difficulties and deterrents they face when switching. We also expect easier switching to deliver other important benefits to consumers more generally, as more consumers engage in the market which in turn will encourage greater competition between providers.
- 1.11 We have considered the expected benefits of these reforms and their likely impact on providers. In our judgment, the package of reforms is a proportionate means of achieving our objective of removing unnecessary difficulties when switching mobile provider and ensuring a switching process that is quick, simple, and convenient to use.
- 1.12 The Government has made clear its commitment to improving switching, which is reflected in the Digital Economy Act. Our reforms support this commitment.
- 1.13 We require these reforms to be in place within a reasonable implementation period, and no later than 1 July 2019.

2. Introduction

- 2.1 Around 5 million UK consumers currently switch mobile provider each year, and of these, around 3.2 million also keep their existing mobile number when they switch provider.⁴
- 2.2 We have found that under current switching arrangements, consumers – including small businesses – can experience difficulties, service interruptions, or incur unnecessary costs when switching. These issues fall into three main categories:
- **Unnecessary time and difficulties progressing the switch**, in particular as a result of consumers needing to contact their existing provider to request a PAC⁵ and/or cancel.
 - **‘Double paying’ while switching provider**, because of providers’ requirements for consumers to pay out notice periods when cancelling a mobile service, even where that service is no longer being provided.
 - **Loss of service while switching provider**, for example because the consumer must coordinate the switch (start and stop dates), and this does not go to plan, and/or because of service disruption during the porting process.
- 2.3 We also found that the risk of experiencing these difficulties was having the practical effect of deterring some consumers from switching altogether.
- 2.4 We consulted on proposals to address these harms in a number of previous consultations.⁶ This section explains current mobile switching processes and briefly describes the switching proposals set out in our March 2016 and July 2016 consultations and our final proposals set out in the May 2017 consultation. It concludes by setting out our regulatory policy objectives and the legal framework under which our proposals were framed and our decision in this document is made.

⁴ Based on data from Syniverse which showed that there were 3.23 million non-bulk (i.e. fewer than 25 numbers) PAC switches between October 2015 and September 2016. This figure is for total non-bulk ports and was not restricted to adults only. According to our BDRC 2016 omnibus data, 63% of switchers ported their number and 37% did not keep their number (figures for adults 16+). These numbers therefore suggest that the total number of switchers was 5.12 million (3.23/0.63). Our 2017 Switching Tracker, which reflects switching numbers among those aged 16+, similarly found that in the 12 months to August/September 2017, 60% of mobile switchers ported their number and 40% did not.

⁵ At present a consumer wanting to port his or her number would need to request a PAC (Porting Authorisation Code) from their current provider to switch their mobile service. Most providers require that consumers call in and speak to a service agent to request this.

⁶ See: https://www.ofcom.org.uk/data/assets/pdf_file/0013/102037/Proposals-to-reform-switching-of-mobile-communications-services.pdf. We refer to this document as the ‘May 2017 consultation’. We also published previous consultations in March 2016 (https://www.ofcom.org.uk/data/assets/pdf_file/0025/82636/consumer-switching-mobile-consultation.pdf) and July 2016 (https://www.ofcom.org.uk/data/assets/pdf_file/0023/83453/Consumer-Switching-Further-proposals-to-reform-switching-of-mobile-services-July-2016.pdf).

We refer in these documents as the ‘March 2016 consultation’ and the ‘July 2016 consultation’.

Current mobile switching routes

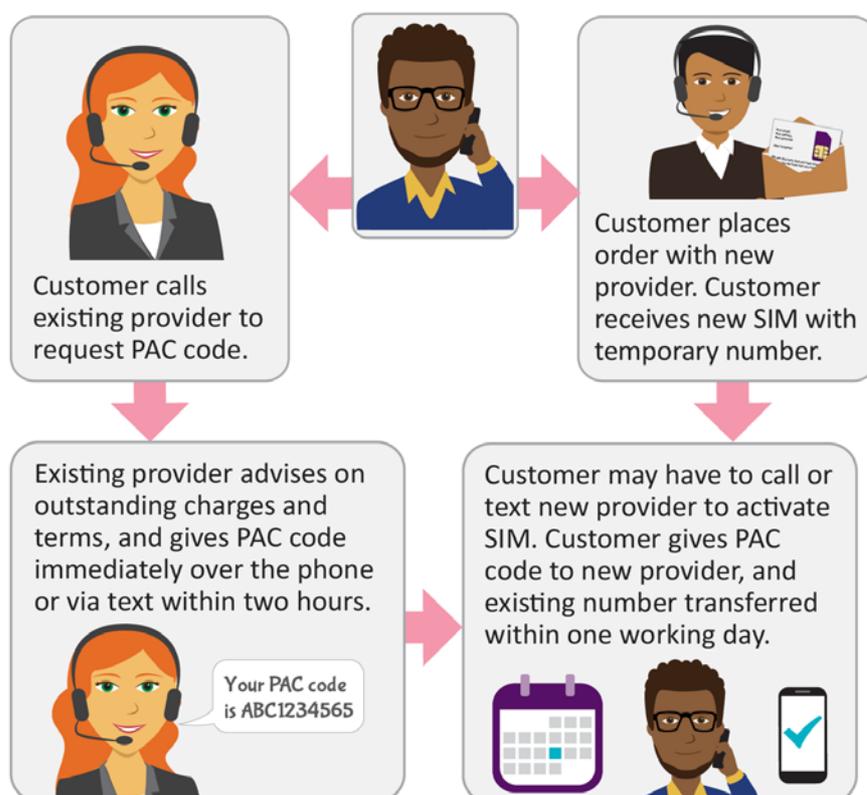
2.5 Consumers currently seeking to switch mobile provider must follow either the 'PAC' process, or use the default 'Cease & Re-provide' ('C&R') approach.⁷

PAC process

2.6 The 'PAC' process must be used by consumers who wish to switch their provider and keep, or 'port', their number.

2.7 Figure 1 summarises the steps a consumer must follow when switching and porting using the current PAC process. Figure 2 describes the PAC process in more detail.

Figure 1: Consumer steps for mobile switching and porting under the current PAC process



⁷ Our previous consultations described in detail these processes for switching and how, under the PAC process, consumers can transfer over their existing mobile number to their new provider. They also described how loss of service might occur in a switching context, as well as how double paying, as a result of notice period requirements, might arise (March 2016 consultation Section 3, July 2016 consultation §3.4 - §3.6, and §3.18 - §3.19, and May 2017 consultation §2.4-§2.15).

Figure 2: PAC process in detail

The consumer requests a PAC from their old provider	If the consumer contacts their existing (losing) provider ⁸ by phone ⁹ to request a PAC, Ofcom regulations require that the PAC is given immediately over the phone or within two hours by text. ¹⁰ The PAC is valid for 30 days.
The consumer gives their PAC to their new provider	When the consumer signs up to a new service with their new (gaining) provider, ¹¹ the consumer will normally receive a new SIM card from the gaining provider with a temporary number, which they can use to make and receive calls and texts prior to the port of their existing number. ¹² When the consumer receives their PAC from the losing provider, they port their existing mobile number over to their new service by giving the PAC to their gaining provider. Ofcom regulations require that providers port the mobile number within one business day of the consumer's request.
The existing number is transferred to the new service	Following completion of the port, the temporary number on the consumer's new service will be replaced by the ported number and the old service will be automatically deactivated.

2.8 The consumer is responsible for coordinating the end of the old and the start of the new service. Notice period policies differ between providers,¹³ but where notice periods apply, a consumer wishing to avoid overlapping services and 'double paying' must coordinate the end of the notice period with the start date of the new service and the transfer of their existing number.¹⁴ This might involve the consumer deferring the start of the new service until any notice period for the old service has expired. If a consumer is unable to coordinate the process, they may pay for both their old and new service at the same time.

Cease & Re-provide (C&R) process

2.9 Where the consumer wants to switch provider but not port their number, currently no formal process exists to achieve the switch. Instead the consumer must follow a default process involving the consumer contacting their losing provider to cancel their old service, including giving any required notice. The consumer must separately contact their gaining provider to take out a new service.

2.10 As with the PAC process, under this approach the consumer is responsible for coordinating the end of the old and the start of the new service. C&R switchers can avoid overlapping services and 'double paying' by coordinating the end of the notice period with the start date of the new service, but this might involve the consumer deferring the start of the new

⁸ We referred to the losing provider as 'LP' in previous consultations.

⁹ Some providers also allow a consumer to request the PAC via webchat or email.

¹⁰ By 'text' we refer to SMS text throughout this document.

¹¹ We referred to a consumer's new provider or the provider they are joining as the 'Gaining Provider' ('GP') in previous consultations.

¹² The consumer is billed by the gaining provider from the date of SIM activation.

¹³ Some providers charge 30 days' notice from the day the PAC is requested, some charge this from the day the PAC is used (the day of the number port), and others do not charge for notice once a number port has taken place. These different approaches are set out in footnote 120.

¹⁴ In some circumstances, it may not be possible to avoid some double paying where a provider charges notice from the day the PAC is used, unless the consumer knows they have to give notice in advance of redeeming the PAC.

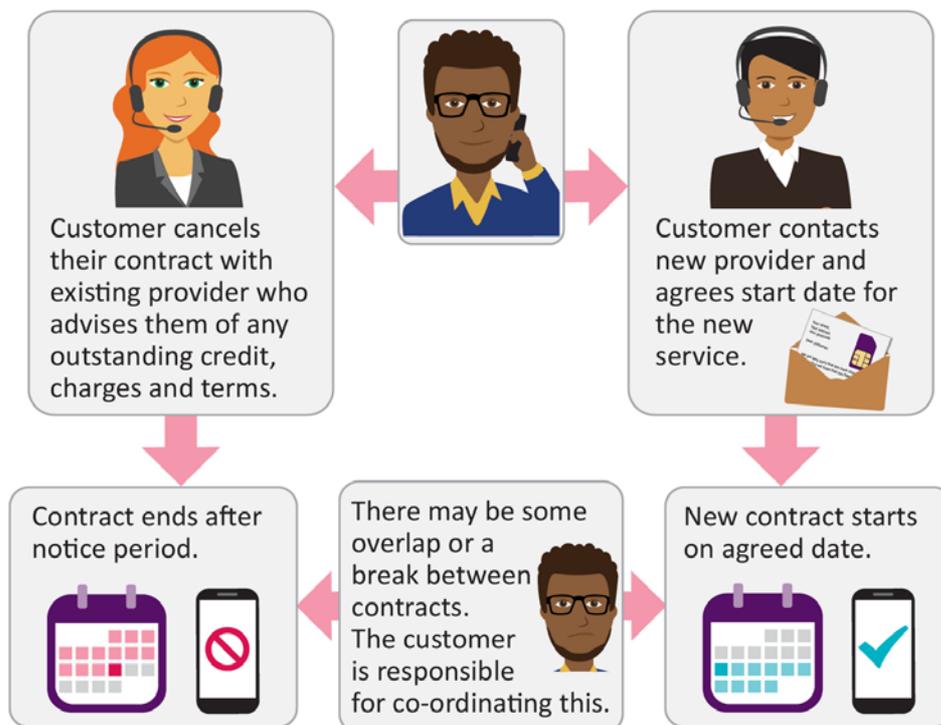
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service until any notice period for the old service has expired. If a consumer is unable to co-ordinate the process, they may pay for both their old and new service at the same time, or they may end up with no service for a period of time.

2.11 Figure 3 summarises the steps a consumer takes when switching through the C&R method.

Figure 3: Consumer steps for mobile switching via Cease and Re-provide



The 2016 consultation proposals

2.12 In our March 2016 consultation, we set out our view¹⁵ that a sizeable minority of mobile switchers experience harm when switching, under both the current PAC process and the C&R route, as a consequence of unnecessary time spent and difficulties encountered during the switching process, double paying, and loss of service while switching provider.

2.13 In our July 2016 consultation¹⁶ we provided further analysis on the effects notice period requirements can have on consumers when applied in a switching context, and concluded that many consumers experience difficulties when switching, where notice periods apply, regardless of the switching process (i.e. whether PAC or C&R).

2.14 To address the harms we had identified, we proposed two options for reforming the core mobile switching process:

¹⁵ Based on consumer research conducted by BDRC (BDRC 2015 research)

https://www.ofcom.org.uk/data/assets/pdf_file/0025/91834/mobile_switching_quantitative_research_feb16.pdf

¹⁶ July 2016 consultation Section 3, in particular §3.7 to §3.28

- **Gaining Provider Led (GPL)** process - under this proposal, consumers would only need to contact the provider they want to switch their service to i.e. they would not need to contact their losing provider if they did not want to. The gaining provider would arrange for the consumer to be sent a text message containing information relevant to their switching decision e.g. any early termination charges (ETCs).
- **Auto-PAC** - under this proposal, consumers would be able to request a PAC and have it delivered by text, or through an online account, in addition to being able to request and receive it over the phone. The message containing the PAC would also contain information relevant to their switching decision, such as any ETCs.¹⁷

2.15 Across our consultations we also set out proposals for two accompanying measures aimed at addressing the harms identified:

- A requirement on providers not to charge notice beyond the date on which a consumer switches.¹⁸
- End-to-end management - we proposed that the switching process should be centrally coordinated, which would ensure that a consumer's new service would start before the old one was deactivated. This was aimed at avoiding any potential loss of service when porting.

2.16 We also said that it would potentially be helpful to require providers to give consumers clear guidance on the switching and porting process. We suggested that, in discussion with Ofcom and other interested parties, industry would be best placed to develop this guidance.

2.17 In the 2016 consultations, we set out a marginal preference for the GPL option over Auto-PAC, on the basis that we considered GPL to be simpler for consumers as it did not require them to obtain a PAC. We were also of the view that the higher costs of implementation of the GPL option were justified in light of the additional consumer benefits we considered it would bring.

May 2017 consultation proposals

2.18 Following responses to our March and July 2016 consultations, we undertook further work to understand the likely costs to industry of implementing our reform options.¹⁹ We also commissioned further consumer research (BDRC 2017 research)²⁰ and gathered additional evidence concerning switchers' experiences of current processes as well as their views on the two reform options we proposed (GPL or Auto-Switch (a revised version of Auto-PAC

¹⁷ These are charges that may be payable by a consumer for the termination of a contract before the end of any minimum contract period

¹⁸ This proposal was first set out in our July 2016 consultation.

¹⁹ In January 2017, we published an update on our estimate of the likely gross implementation costs of our proposed reforms and invited stakeholders and interested parties to comment.

²⁰ https://www.ofcom.org.uk/data/assets/pdf_file/0026/101996/Mobile-Switching-Research-2017-Attitudes-towards-current-and-potential-alternative-processes.pdf

which would also include consumers who wanted to switch without porting their number)).^{21 22}

- 2.19 Our updated analysis supported our view, as set out in previous consultations, that a significant number of switchers experience difficulties when switching. It also suggested that consumers place significant value on the likely reduction in time and difficulties offered by both the Auto-Switch and GPL options. In particular, both options enabled consumers to avoid having to speak with their previous provider – the key factor behind the time spent and difficulties experienced by consumers under the current arrangements.
- 2.20 In the May 2017 consultation we also said that, partly as a result of information provided by stakeholders in response to previous consultations, our estimates of the costs of implementing these reforms had risen, and significantly in the case of GPL. We were therefore of the view that Auto-Switch was a more proportionate remedy to address the problems we had identified as it would meet our policy objectives but at a lower cost than GPL. Additionally, we were also of the view that the “LP-variant” of Auto-Switch, under which consumers can make PAC/N-PAC requests directly with losing providers (rather than the “CPS variant” under which consumers would make requests to the Central Porting Service (CPS)) was also more proportionate.
- 2.21 In relation to loss of service, we acknowledged that industry had made commitments to develop and implement measures to address loss of service on a voluntary basis which we were satisfied were sufficient to adequately address our concerns, subject to sufficient progress being made.²³ Thus, we no longer felt it to be proportionate to impose regulation regarding loss of service (for instance, through end-to-end management). However, we said that our final view on industry commitments, and whether they sufficiently delivered against our policy objectives, would depend on the progress industry made in delivering an improved porting process.
- 2.22 Our May 2017 consultation therefore proposed the following package of reforms as our preferred option:
- introduction of Auto-Switch;
 - prohibiting charging for notice after the switching date; and
 - providing transparency to consumers.

²¹ Auto-Switch is described in detail in Figure 5 in Section 4.

²² We also took into account data from: Ofcom’ Switching Tracker 2016 (Data tables available online https://www.ofcom.org.uk/data/assets/pdf_file/0031/98536/Switching-Tracker-2016-Revised-definitions-for-standalone-services-Mar2017.pdf); updated data on complaints received by Ofcom concerning changing mobile provider; further consumer research results concerning loss of service experienced by consumers when they switch mobile provider (BDRC omnibus December 2016 https://www.ofcom.org.uk/data/assets/pdf_file/0025/101995/Mobile-Switching-Research-2017-Omnibus-data-tables.pdf); data on the incidence of number ports taking place within on business day; and our SME Tracker 2016, which examines small businesses’ experience of communications services (See: <https://www.ofcom.org.uk/research-and-data/multi-sector-research/general-communications/consumer-experience/sme-research>). The scope of reforms covers both residential consumers and businesses, where they are switching fewer than 25 mobile numbers (i.e. excluding “bulk ports” which we defined to be 25 numbers or more.)

²³ These measures are set out in §4.7

Summary of stakeholder responses to the May 2017 consultation

- 2.23 We received 21 responses to our May 2017 consultation.²⁴ Respondents included consumer groups, communications providers and individuals.
- 2.24 In response to our consultation, consumer groups and individual respondents generally agreed with our assessment of consumer harms arising from the current switching arrangements, while responses from mobile providers were mixed. In addition, many respondents agreed with our preference for Auto-Switch, including [3<], Virgin and the Communications Consumer Panel and Advisory Committee on Older and Disabled people (CCP/ACOD), as well as all individual respondents.²⁵
- 2.25 Others, however, disagreed with our preference for Auto-Switch over GPL, and argued that GPL is a more effective solution to address the consumer harms we had identified, including SSE and uSwitch. TalkTalk and Three also expressed a preference for GPL reform, but nevertheless recognised that Auto-Switch would be an improvement on current mobile switching arrangements. [3<] said that their preferred model would be a harmonised switching process across the telecommunications industry.²⁶
- 2.26 In addition, a number of mobile operators (BT/EE, O2 and Vodafone) criticised our analysis on the need for intervention and disagreed with our proposals for reform overall. BT/EE and Vodafone also put forward a voluntary code of practice on switching for the mobile industry, which they argued should be adopted in place of reform. This proposal is discussed further in paragraphs 4.17 to 4.22.
- 2.27 We do not consider that responses to our May consultation raised points which mean we should change our preference for Auto-Switch over GPL. The rest of this statement therefore focuses on Auto-Switch. Specific stakeholder comments on GPL and our response to those are discussed separately in Annex 9.
- 2.28 Stakeholder responses concerning our assessment of harm and the need for intervention, our package of reforms (Auto-Switch proposal, notice period reform and transparency requirements) and our assessment of the proportionality of our intervention are discussed in the following sections and more fully in the annexes to this document.

Our regulatory policy objective on mobile switching

- 2.29 It is important that consumers do not experience unnecessary difficulties when switching mobile provider and are not deterred from switching because of the process. The ability of consumers to switch easily to their preferred provider, or away from a provider they are dissatisfied with, ensures better outcomes for consumers, and means they can best

²⁴ Non-confidential responses are published on our websites here: <https://www.ofcom.org.uk/consultations-and-statements/category-2/consumer-switching-proposals-to-reform-switching-of-mobile-communications-services>

²⁵ We received 10 responses from individuals, all of whom agreed with our preference for Auto-Switch.

²⁶ For our decision on cross platform switching for landline, broadband and pay TV services, please see our July 2017 statement: https://www.ofcom.org.uk/data/assets/pdf_file/0013/104503/Decision-on-switching-between-platforms.pdf

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exercise choice and take advantage of competition in communications markets. It is also a key enabler of effective competition, which in turn underpins the provision of good value, high quality products, and drives innovation.

- 2.30 Our regulatory policy objective, in light of our statutory duties, is to ensure that switching arrangements do not cause consumer harm by creating unnecessary difficulties or deterrents for consumers when switching mobile provider. Removing unnecessary difficulties or deterrents that give rise to consumer harm should result in a switching process that is quick, simple and convenient to use.
- 2.31 Government has made clear its commitment to improving switching by introducing legislation in the Digital Economy Act 2017 to make explicit Ofcom's powers in relation to switching.

Legal framework

- 2.32 Our objectives are based on a number of provisions of the Communications Act 2003 ("the Act") and on the European common regulatory framework for electronic communications services ("the Framework") which comprises a number of specific Directives and which is implemented by the Act.

Ofcom's general duties

- 2.33 Section 3(1) of the Act states:

"It shall be the principal duty of Ofcom, in carrying out their functions:

- a) to further the interests of citizens in relation to communication matters; and
- b) to further the interests of consumers²⁷ in relevant markets, where appropriate by promoting competition."

- 2.34 Section 3(2) goes on to set out things which the duty in section 3(1) requires us to secure when carrying out our functions. These include securing the availability throughout the UK of a wide range of electronic communications services (section 3(2)(b)). We are also required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, as well as any other principles appearing to Ofcom to represent best regulatory practice (section 3(3)).

- 2.35 Section 3(4) says we must have regard, in performing our duties, to a number of matters²⁸ including:

- the desirability of promoting competition;

²⁷ Consumer is defined in Section 405(5) of the Act and includes people acting in their personal capacity or for the purposes of, or in connection with, a business.

²⁸ As they appear to us to be relevant in the circumstances.

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- the opinions of consumers in relevant markets and of members of the public generally; and
- the extent to which the furthering or securing of the matters mentioned in sections 3(1) and 3(2) is reasonably practicable.

2.36 In addition, section 3(5) requires that, when performing our duty to further the interests of consumers, Ofcom must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

European requirements for regulation

2.37 As set out in section 4 of the Act, when exercising certain functions²⁹ Ofcom must also act in accordance with the six European Community requirements described there. These include promoting competition in the provision of electronic communications networks and services, and the interests of all EU citizens, while being technologically neutral.

2.38 The requirements of section 4 are read in light of Article 8 of the Framework Directive³⁰ which sets out the policy objectives of the Framework. It says national regulatory authorities shall ensure that, when they carry out the regulatory tasks set out in the Framework, they take all reasonable and proportionate measures aimed at achieving specific objectives.³¹ Those objectives include:

- the promotion of competition in the provision of electronic communications services³² by ensuring that:
 - users derive maximum benefit in terms of choice, price and quality; and
 - there is no distortion or restriction of competition in the electronic communications sector, including the transmission of content.³³
- to promote the interests of EU citizens by ensuring:
 - a high level of protection for consumers in their dealings with suppliers; and
 - promoting the provision of clear information (in particular, requiring transparency of tariffs and conditions for using publicly available electronic communications services).³⁴

Powers and duties under the Framework in relation to general conditions

2.39 We will implement our decision to make switching mobile providers easier by introducing consumer protection rules in the form of general conditions (“GCs”).

²⁹ Including those whose exercise we propose in this document.

³⁰ Directive 2002/20/EC of the European Parliament and of the Council (as amended by Directive 2009/140/EC), 7 March 2002. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0033:0033:EN:PDF>

³¹ Set out in paragraphs 2, 3 and 4 of Article 8.

³² As well as electronic communications networks and associated facilities and services.

³³ Articles 8(2)(a) and (b).

³⁴ Articles 8(4)(b) and (d).

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2.40 Alongside the Framework Directive, the Authorisation Directive³⁵ provides for national regulatory authorities to set conditions of general authorisation for communications providers. Under Article 6, and paragraph 8 of the Annex, these include conditions containing “.... *consumer protection rules specific to the electronic communications sector, including conditions in conformity with Directive 2002/22/EC*” (“Universal Service Directive”).”

2.41 The Universal Service Directive concerns the provision of electronic communications networks and services to end-users and, amongst other things, establishes the rights of end-users and the corresponding obligations of providers of publicly available electronic communications services and networks.³⁶ In this context, Article 30 of the Universal Services Directive³⁷ and Recital 47 to the 2009 Directive which amended it are particularly relevant.³⁸ The latter states:

“In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interests. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges and so on. This does not preclude the imposition of reasonable minimum contractual periods in consumer contracts..... Experience in certain Member States has shown that there is a risk of consumers being switched to another provider without having given their consent. While that is a matter that should primarily be addressed by law enforcement authorities, Member States should be able to impose such minimum proportionate measures regarding the switching process, including appropriate sanctions, as are necessary to minimise such risks, and to ensure that consumers are protected throughout the switching process without making the switching process less attractive for them.”

2.42 Article 30 of the Universal Service Directive includes provisions dealing with the porting of numbers and the switching of providers. It says national regulatory authorities should take into account, where necessary, measures ensuring that:

- subscribers are protected throughout the switching process; and
- subscribers are not switched to another provider against their will.

2.43 It also states that, “[w]ithout prejudice to any minimum contractual period, Member States shall ensure that conditions and procedures for contract termination do not act as a disincentive against changing provider”.

³⁵ Directive 2002/20/EC of the European Parliament and of the Council (as amended by Directive 2009/140/EC), paragraph 8 of Annex A

³⁶ See Articles 1(1) and (2).

³⁷ Directive 2002/22/EC of the European Parliament and of the Council (as amended by Directive 2009/136/EC), 7 March 2002. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0051:0051:EN:PDF>

³⁸ Directive 2009/136/EC of the European Parliament and of the Council, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009L0136&from=EN>

Powers to set General Conditions under the Act

2.44 Section 45 of the Act says we may set General Conditions which contain provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64. Section 47(2) governs the circumstances in which Ofcom can set or modify a General Condition. It states that a condition can be made or modified where doing so is:

- objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;³⁹
- not such as to discriminate unduly against particular persons or against a particular description of persons;
- proportionate to what the condition or modification is intended to achieve; and
- transparent in relation to what it is intended to achieve.

2.45 Under Section 51(1)(a) the General Conditions we may make include conditions making such provision as we consider appropriate for the purpose of protecting the interests of end-users of public electronic communications services. Section 51(2) says this power includes (but is not limited to) setting conditions for that purpose which:

- relate to the supply, provision or making available of goods, services or facilities associated with the provision of public electronic communications services;
- give effect to EU obligations to provide protection for such end-users in relation to the supply, provision or making available of those goods, services or facilities;
- ensure that conditions and procedures for the termination of a contract do not act as a disincentive to an end-user changing communications provider;
- require the provision, free of charge, of specified information, or information of a specified kind, to end-users; and
- specify requirements in relation to arrangements that enable an end-user to change communications provider on request.

2.46 We set out in this statement how our decision accords with our powers and duties, including meeting the relevant tests.

Impact Assessment

2.47 The analysis presented in the March 2016, July 2016 and May 2017 consultations constituted an impact assessment as defined in section 7 of the Act. In this document, in particular in Annex 4, we update our analysis in relation to the impact assessment set out in our May 2017 consultation, to the extent we consider appropriate in light of the responses to that consultation.⁴⁰

³⁹ Section 47(3) says this does not apply to the setting of a condition. We are likely, however, to take it into account as part of our assessment of whether any condition is proportionate.

⁴⁰ For further information about our approach to impact assessments, see the guidelines, "Better policy-making: Ofcom's approach to impact assessment"

(https://www.ofcom.org.uk/_data/assets/pdf_file/0026/57194/better_policy_making.pdf)

2.48 Impact assessments 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.

Equality impact assessment

2.49 Ofcom is also required to assess the potential impact of all our functions, policies, projects and practices on the equality of individuals to whom these policies will apply. Equality impact assessments ('EIAs') assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.

2.50 We have given careful consideration to whether or not the decision contained in this document will have a particular impact on race, age, disability, gender, pregnancy and maternity, religion or sex equality. We do not envisage however, that our decision would have a detrimental impact on any particular group of people.

This document

2.51 This document sets out an overview of our decision and the reasons for it. It should be read together with the Annexes to this document, which contain further detailed reasoning and which form part of our decision. The remainder of this document is structured as follows:

- Section 3 sets out our judgement on consumer harm arising from current switching arrangements;
- Section 4 sets out the reforms to current mobile switching arrangements and how these will work;
- Section 5 sets out our conclusion on introducing mobile switching reform; and
- Annex 1 contains a glossary of terms.

2.52 The separate document of further annexes is structured as follows:

- Annex 2 sets our Auto-Switch process reform in more detail;
- Annex 3 describes our cost methodology;
- Annex 4 updates the impact assessment for our package of reforms;
- Annexes 5 to 8 provides the supporting calculations to the impact assessment including time savings, double paying, willingness to pay and benefits to non-switchers;
- Annex 9 sets out consultation responses on GPL; and
- Annexes 10 and 11 set out the modifications to the General Conditions.

3. Consumer harm under current switching arrangements

Introduction

3.1 This section sets out our views of the harm that consumers, including businesses, can experience when switching mobile providers. We also summarise our provisional views from previous consultations, and set out stakeholders' responses to the May 2017 consultation.

Previous consultations

3.2 In our consultations we set out that a quarter of consumers who switch mobile provider - equivalent to around 1.7 million consumers⁴¹ - had experienced major difficulties with the current switching process. We also set out that 37% of consumers who had actively considered switching but did not do so, said that these difficulties were a major factor in their decision not to switch.⁴² We recognised that most consumers who have switched mobile providers found the process easy, but stated that we were concerned there was a significant minority of consumers who were either finding the process difficult or were deterred from switching.

3.3 We provisionally concluded that consumers switching mobile provider can suffer harm from unnecessary time spent and difficulties encountered during the process, double paying (namely paying for their old and new service at the same time) and loss of service. On that basis we provisionally concluded that intervention was appropriate to address these harms.

Consumers suffer harm from unnecessary time spent and difficulties encountered while progressing a switch

3.4 In our May 2017 consultation we said that current switching processes can lead to unnecessary time spent and difficulties for consumers when switching, and can deter some consumers from switching. In particular, we set out that:

- requesting and obtaining a PAC and porting a mobile number can be difficult and time consuming, including where the consumer encounters unwanted persuasion to remain;
- cancelling the old service and contacting the losing provider can be difficult for both PAC and C&R switchers, including where the consumer encounters unwanted persuasion to remain; and
- such difficulties can deter consumers from switching.

⁴¹ BDRC 2015. Figure for adults 16+ who switched mobile provider in the 18 months prior to research

⁴² BDRC 2015. Figure for adults 16+ who considered switching mobile provider in the 12 months prior to research

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- 3.5 We said our conclusions also applied to small and medium sized enterprises (SMEs), on the basis that the majority of SMEs purchase and use mobile services in ways that substantially resemble those of residential consumers, and that a significant number can spend unnecessary time and experience difficulties when switching.
- 3.6 We also relied on our BDRC 2017 research which suggested that some consumers remained dissatisfied with current switching methods, and that consumers placed significant value on likely reduction in time and difficulties offered by our proposed Auto-Switch reform.

Double paying after the switch has taken place

- 3.7 Our May 2017 consultation set out our provisional view that consumers face both unnecessary difficulties and costs when they switch – under either PAC or C&R arrangements – because they are required to pay notice after the switch has taken place. For example, we set out that:
- Some consumers double pay because they pay for their old service and their new service at the same time. PAC switchers continue to pay even though their old service has been deactivated. We also set out that although C&R switchers can continue to use their old service, there is little evidence that they always wish to do so.⁴³
 - Some consumers try to avoid or minimise double payments by deferring their switch (whether via PAC or C&R arrangements). However, we said that avoiding double payment can be difficult because a consumer would have to have a good understanding of their current provider's notice period policy and actual charging practices. We said that avoiding double payment may result in an unnecessary delay of their switch date.
- 3.8 We also provisionally concluded that some consumers are deterred from switching because of their perception that there is a risk of double paying.

Loss of service while switching provider

- 3.9 Finally, our consultation set out that consumers switching provider may suffer harm where there is a break in service during the switch, for example as a result of a porting process failure or difficulties coordinating the end of the old service with the start of the new service.
- 3.10 We provisionally concluded that loss of service in a switching context is an issue for a significant number of mobile switchers under both PAC and C&R switching routes. We also set out our view that concerns about loss of service may deter switching.
- 3.11 We said that we particularly regarded any extended service interruptions of a day or more as likely to be especially harmful.

⁴³ This is discussed further in paragraphs 3.85 to 3.90

Stakeholder responses on consumer harm

General views

- 3.12 In Section 2 we explained that consumer groups and individual respondents generally agreed with our assessment of consumer harms arising from the current switching arrangements, but that responses from mobile providers were mixed.
- 3.13 In particular, [redacted], [redacted], CCP/ACOD, SSE and Three, as well as a number of individual respondents, agreed with our views.
- 3.14 However, several mobile providers criticised our harm analysis:
- BT/EE said that our research showed only a small minority of switchers indicated they had issues when switching, and highlighted that Ofcom’s own complaints data show very small numbers of complaints regarding switching, with a downward trend over time, indicating that the process is working better for consumers. They said that this is also reflected in EE’s complaints data on switching.⁴⁴
 - O2 said that the current PAC process works well for most consumers, and that customer satisfaction is high, mobile switching prevalent, complaint levels low, and mobile compares favourably to fixed markets, where Ofcom has already made interventions in the switching process. O2 said that Ofcom relied too heavily on its BDRC research as evidence and that Ofcom had dismissed broader indicators of satisfaction in the market.⁴⁵
 - Virgin said that, while it had not reviewed our revised estimates of harm in detail, in their view our updated analysis strengthened the evidence that the current system works well for the clear majority of consumers.⁴⁶
 - Vodafone also said our BDRC 2017 research showed that there were very few consumers not satisfied by the current process, and that 86% reported that they were satisfied.⁴⁷
- 3.15 [redacted] specifically disagreed with our view that harms to SMEs are similar to those suffered by residential consumers. It said that while this may be true for sole proprietors or businesses with a handful of employees, this is not true for typical businesses that would be covered by Ofcom’s proposals. It also highlighted that many residential packages only allow customers to take up to four numbers, and that those with over four numbers would behave differently and have different needs from residential consumers.⁴⁸
- 3.16 Some stakeholders argued that our analysis did not go far enough and said we had not included all the harms caused by existing processes:

⁴⁴ [BT/EE May 2017 consultation response](#) §25 and §30-§34.

⁴⁵ [O2 May 2017 consultation response](#) §21-§23

⁴⁶ [Virgin May 2017 consultation response](#) §21 and §23

⁴⁷ [Vodafone May 2017 consultation response](#) pages 14-16

⁴⁸ [redacted] May 2017 consultation response, [redacted]

- [3] said that we had not considered barriers to switching from the wider research journey, such as access to information or the impact of differing contract lengths in bundles.⁴⁹
- Three said that we had not considered the harm to consumers and to competition in general from providers being able to offer discount deals to consumers trying to switch in order to retain them as customers (referred to as ‘reactive save’).⁵⁰

Stakeholder views on unnecessary time spent and difficulty encountered while progressing a switch

- 3.17 Many stakeholders agreed with our view that consumers face harm from unnecessary time spent and difficulty encountered progressing a switch. [3] and Three agreed that we were correct to identify this as a source of harm.⁵¹ Individual respondents also agreed with our assessment, with one commenting that the need to call their existing provider is ‘unnecessary time’ and leads to ‘emotional duress’.⁵² Others described the current process as ‘a headache’, and said providers wasting time could lead to customers being on hold for up to 2 hours.⁵³
- 3.18 In addition, [3] said that our analysis was in line with the feedback they received, which suggested there are problems with offices not being open 24/7, call waiting times being too long and customers not being given their PACs immediately due to retention activity.⁵⁴
- 3.19 A number of mobile providers criticised our harm assessment. In particular BT/EE, O2, Virgin and Vodafone disagreed that consumers face unnecessary time and difficulties when switching:⁵⁵
- Vodafone and Virgin said that the research showed that consumers were more likely to identify things they liked than disliked about the switching process, and that many of those who disliked the process could not specify a reason why they disliked it.⁵⁶
 - Virgin said that our BDRC 2017 evidence showed that people were more satisfied with phone based PAC and cancellation requests, in comparison to other routes, and that people who requested their PAC by phone were less likely than those using other methods to say they felt it was a ‘sales pitch’.⁵⁷

⁴⁹ [3] May 2017 consultation response [3]

⁵⁰ [Three May 2017 consultation response](#) pages 4-8 and page 18.

⁵¹ [3] May 2017 consultation response [3], and [Three May 2017 consultation response](#) page 18

⁵² [Individual respondents](#) May 2017 consultation responses, page 1

⁵³ [Individual respondents](#) May 2017 consultation responses, pages 3-4

⁵⁴ [3] May 2017 consultation response [3]

⁵⁵ Many of these points have previously been raised in response to our March and July 2016 consultations.

⁵⁶ [Virgin May 2017 consultation response](#) §23, and [Vodafone May 2017 consultation response](#) pages 14-15

⁵⁷ [Virgin May 2017 consultation response](#) §24-§25.

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- BT/EE and O2 argued that it was invalid to compare our evidence on the average length of calls which resulted in a successful PAC request (7.7 minutes)⁵⁸ with [X]’s IVR⁵⁹ system which takes 97 seconds, as call times include genuinely necessary steps such as the provision of important information about the switch (such as outstanding charges) and authentication of the customer.⁶⁰

3.20 BT/EE submitted that in the case of C&R switchers not porting their number, the fact that in 20% of cases this was due to the old or new provider telling them they could not do so, is not a reason for regulatory reform. It said this was a breach of Ofcom rules which would be better addressed through an enforcement programme.⁶¹

Stakeholder views on double paying

3.21 Most stakeholders continued to agree with our assessment that double paying is a harm, and [X], Three, CCP/ACOD, and [X] agreed it is a harm arising from switching arrangements.⁶²

3.22 [X] said that an average bill overlap of 13-20 days equated to around a £20 surcharge for switching, which could go some way to offset the benefit of switching in the first place. It also said that avoiding double paying is not easy for consumers. [X] added that a consumer does not have a choice about whether to agree to notice periods in order to get a mobile connection.⁶³

3.23 The CCP/ACOD argued that consumers should not have to pay twice for a service, nor should they have to defer the start of a new service to avoid this. It said they could see no justification for the retention of a notice period once the service has been deactivated.⁶⁴

3.24 Other providers argued that, while double paying may constitute a harm, this is independent of switching and so could not be identified as a harm arising from current mobile switching arrangements. O2 said double paying was a function of contractual notice periods and not part of the switching process itself.⁶⁵ BT/EE said that double paying was separate from the switching process, and should be addressed separately.⁶⁶

⁵⁸ This is set out in §3.42 of the May 2017 consultation. We recognise that some of the calls related to switchers who actively wanted a save conversation with their losing provider, which would therefore be lengthier in nature. We further note in this context uSwitch’s response to our March 2016 consultation, in which they quoted their own research findings that it takes an average of 25 minutes’ worth of phone conversations to go through the switching process for mobile.

⁵⁹ This is an automated telephony system that picks up calls, interacts with callers and routes calls to a customer service agent.

⁶⁰ [BT/EE May 2017 consultation response](#) §26, [O2 May 2017 consultation response](#) §119-§121

⁶¹ [BT/EE May 2017 consultation response](#) §29

⁶² [X] May 2017 consultation response [X], [Three May 2017 consultation response](#) page 18, [CCP/ACOD May 2017 consultation response](#) page 2, [X] May 2017 consultation response [X]

⁶³ [X] May 2017 consultation response [X]

⁶⁴ [CCP/ACOD May 2017 consultation response](#) page 2

⁶⁵ [O2 May 2017 consultation response](#) §73

⁶⁶ [BT/EE May 2017 consultation response](#) §35. BT/EE raised this point in response to previous consultations.

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- 3.25 BT/EE also said that in the case of C&R switchers, and contrary to our conclusions, the majority benefit from contract overlap. It said that contract overlap does not indicate that there are issues with switching arrangements for C&R switchers.⁶⁷
- 3.26 BT/EE and Virgin also said that where consumers wish to avoid double payment, it is possible for them to do so.⁶⁸
- 3.27 Virgin continued to disagree with our view that double paying as a result of notice periods constitutes a harm.⁶⁹ It said that:
- Notice periods are legitimate charges and are voluntarily entered into by consumers. It argued that there are many legitimate charges consumers may not like, but this does not mean they should be prohibited by the regulator.
 - Consumers not being aware of their notice period at the time of a switch and incurring double payment as a result should not be identified as a harm, as long as the obligation to provide this information at the start and end of the contract is met.
- 3.28 Virgin also said that Ofcom had not provided robust data on the likely increase to switching numbers following a ban on notice periods, meaning we had not considered the likely impacts on the market of our reforms, which further weakens our justification for intervention.⁷⁰
- 3.29 Furthermore, Virgin said that Ofcom's proposals were going further than consumer law and argued that Ofcom should be seeking to align its position with UK consumer law rather than broadening its powers.⁷¹

Stakeholder views on loss of service

- 3.30 Several respondents agreed with our views on consumer harm arising from the loss of service that can occur when consumers switch mobile provider, including [X], [Y], and Three.⁷²
- 3.31 In particular, [X] said it strongly believed that reforming the porting process should address loss of service, and said 85% of the complaints they received about porting related to delayed or failed ports. It said the average time to resolve this was 9 days. However, it added that loss of service of less than a day should also be addressed, and this can cause emotional distress and inconvenience, as well as having potential safety concerns (such as a lack of access to emergency numbers) and financial implications for businesses.

⁶⁷ [BT/EE May 2017 consultation response](#) §39-§41 and §106

⁶⁸ [BT/EE May 2017 consultation response](#) §36, and [Virgin May 2017 consultation response](#) §10. This point was raised in response to our March and July 2017 consultations.

⁶⁹ [Virgin May 2017 consultation response](#) §9-§10. Virgin raised this point previously in response to our March and July 2017 consultations.

⁷⁰ [Virgin May 2017 consultation response](#) §9

⁷¹ [Virgin May 2017 consultation response](#) §12

⁷² [X] May 2017 consultation response [X], [Y] May 2017 consultation response [X], and [Three May 2017 consultation response](#) page 18.

- 3.32 Other stakeholders did not disagree with our assessment that loss of service can lead to consumer harm but questioned the degree to which both loss of service and harm occur and said this was low. For example, Vodafone highlighted that only 2% of ports take longer than a day,⁷³ and as such it considered that incidents of loss of service, and in particular long periods of loss of service likely to cause harm, are extremely limited. They added that mobile retailers provide compensation for consumers when they experience service loss.⁷⁴
- 3.33 BT, O2, Vodafone and Virgin highlighted that the Mobile Number Portability Operator Steering Group ('the OSG') have already committed to addressing loss of service as a result of porting.⁷⁵ In their view, this would reduce loss of service and therefore harm.
- 3.34 BT also pointed out there could be many causes of a perceived loss of service, and that this could cover genuine loss of service arising out of timing differences when providers transfer files between them at different times of day. It suggested that perceived loss of service could be minimised further if consumers are made fully aware of the actions they should take on the day of the port, for instance unlocking the handset or using the temporary number given to them.⁷⁶

Conclusions on consumer harm

- 3.35 We have considered the views of respondents to our consultation in detail. Having done so, our judgment is that current switching arrangements can cause harm to a substantial number of consumers that do switch and can discourage others from switching at all. This applies to both residential consumers as well as businesses.
- 3.36 We set out below our final views on current mobile switching arrangements and consumer harm due to:
- unnecessary time spent and difficulties encountered when progressing a switch;
 - double paying while switching provider, or delay and unnecessary effort arising from requirements to pay out notice periods that extend after the switch has taken place; and
 - loss of service while switching provider.

Current mobile switching arrangements work well for many consumers, but not for all

- 3.37 We disagree with BT/EE, O2, Virgin and Vodafone's views that the current process works well.

⁷³ [Vodafone May 2017 consultation response](#) page 12

⁷⁴ [Vodafone May 2017 consultation response](#) page 12

⁷⁵ [BT/EE May 2017 consultation response](#) §43-§49, [O2 May 2017 consultation response](#) §71, [Vodafone May 2017 consultation response](#) page 12, and [Virgin May 2017 consultation response](#) §10

⁷⁶ [BT/EE May 2017 consultation response](#) §42

- 3.38 Evidence from the BDRC 2015 survey shows that although the majority of consumers rated the process for switching mobile providers as easy, **a significant minority of consumers encountered difficulties**. We acknowledge that our consumer research suggested the majority of mobile switchers (78%) subsequently rated the process of switching as either ‘very’ or ‘fairly’ easy,⁷⁷ and that this was also reflected in other sources of evidence that we drew on.⁷⁸ However, 38% of switchers (2.5 million consumers) said they had encountered at least one major difficulty, and 70% (4.6 million consumers) of switchers cited a minor difficulty.⁷⁹ Our analysis also suggested that a quarter of switchers (equivalent to around 1.7 million mobile consumers) had experienced a major difficulty specifically related to the switching process.
- 3.39 These difficulties were also encountered by people who considered switching but did not do so. Thirty-seven percent of mobile consumers who had actively started looking for a new provider but not switched⁸⁰ (around 0.7 million consumers) identified at least one difficulty related to the switching process as a major factor in deciding not to switch. We note that, in addition, 15% of those who had not switched or considered switching⁸¹ (equivalent to around 5.9 million consumers) said that process concerns were the main reason they didn’t switch or consider switching.⁸² This is a significant number of consumers.
- 3.40 Our BDRC 2017 research also explored consumers’ views on our proposed core process reforms, and the extent to which they would be likely to use a new switching process. A majority of both previous PAC switchers and C&R switchers reported interest in using Auto-Switch (text and online routes), rather than the way they switched previously.⁸³ In our view, this is also a strong indication that there are problems with current switching processes.
- 3.41 We note that some stakeholders continue to argue that current arrangements work well as Ofcom receives low numbers of complaints about mobile switching, and that these are lower than complaints about fixed and broadband services. We note that Ofcom received an average of 73 complaints a month about mobile switching in the year to October 2017, and that over half of these complaints related to difficulties requesting or obtaining a

⁷⁷ BDRC 2015 consumer research – see: BDRC 2015 and BDRC 2017 research findings for switchers are based on those who switched in the last 18 months, unless otherwise stated.

⁷⁸ For instance, the Switching Tracker 2016 found that 94% of mobile switchers said that switching was either ‘fairly’ or ‘very’ easy.

⁷⁹ We place more weight on the prompted responses than the headline figures on ease of switching given evidence from our Diary Research that respondents who noted difficulties during the switch did not always reflect these when asked, after the event. To counter any concerns that issues may have been identified solely because they were prompted, we have taken the conservative approach of focusing principally on issues reported as ‘major’. (Respondents were asked, on the basis of a list of possible difficulties or factors, whether any may have been ‘major’ or ‘minor’).

⁸⁰ We refer to such consumers as ‘considerers’ in the remainder of this document. BDRC 2015 research findings for considerers are based on those who considered switching in the last 12 months.

⁸¹ We refer to such consumers as ‘inactive consumers’ in the remainder of this document

⁸² Analysis of difficulties among this group is focused on the ‘main’ reason only.

⁸³ 80% of PAC switchers and 73% of C&R switchers stated that they definitely or probably would use the Auto-Switch process compared to the way they switched previously. BDRC 2017 slides 56 and 74.

PAC.⁸⁴ While this is a slight decline from the average of 80 complaints a month in 2016, we continue to view these complaint levels, in combination with the evidence of difficulties with switching we have identified, as material. In addition, complaints to Ofcom do not reflect the overall scale of the problem, as this does not take account of complaints made directly to providers, nor does it take into consideration that some consumers who experience problems do not submit complaints.

3.42 We disagree with O2's comments that we rely too heavily on BDRC data and dismiss broader indicators of satisfaction in the market. As we said in our May 2017 consultation, we have taken into account other sources of evidence, including Ofcom's Switching Tracker, other consumer research, data from providers and complaints data, as well as our detailed quantitative BDRC consumer research.⁸⁵ In our judgment, this body of evidence indicates that some consumers are experiencing harm as a result of current switching arrangements.

The harm suffered by consumers also applies to SMEs

3.43 We note [3]s argument that SMEs do not suffer similar harms to those experienced by residential consumers and that they do not behave like residential consumers.

3.44 We recognise that there are business customers who are likely to have more complex needs than residential consumers when purchasing and switching mobile and other communications services. However, our analysis found that both residential and business customers experienced harm when switching or considering switching. We found that around a fifth of all SMEs (as well as a fifth of SMEs who specifically take business tariffs) said they experienced at least one of the following difficulties when switching under current arrangements:

- process took longer than expected;
- existing provider persuasion to stay;
- difficulty contacting provider to cancel services; and/or
- difficulty getting a PAC from their existing provider.⁸⁶

3.45 Many SMEs behave like residential consumers. For example, around 44% of all SMEs taking mobile services are on residential mobile tariffs.

Harms not addressed by our analysis

3.46 We note points made by [3] and Three that there are additional harms that consumers suffer when switching mobile providers.

3.47 We have considered the points raised carefully, but in our view, these lie outside the scope of this work on reforming mobile switching arrangements. Ofcom's work on consumer

⁸⁴ Analysis of complaints to Ofcom's Consumer Contact Team between November 2016 and October 2017.

⁸⁵ These sources of evidence are set out in full in Section 2, footnote 22.

⁸⁶ SME Tracker 2016, analysis based on those who only switched their mobile service. 20% relates to the net aggregate of cited reasons.

engagement is specifically looking at the issues raised by [3<] on additional barriers to consumer switching engagement.⁸⁷

- 3.48 On Three's submission that we have not considered the harm to consumers and competition from reactive save, the harms we have identified, specifically in relation to time and difficulties contacting the losing provider, includes unwanted persuasion to stay and that this can exacerbate switching difficulties. This is discussed in paragraphs 3.63 to 3.66 below. We also consider reactive save further in paragraphs 4.95 to 4.101.

Consumers suffer harm from unnecessary time spent and difficulties encountered when progressing a switch

- 3.49 We have considered stakeholder responses carefully and our view remains that current switching processes can result in unnecessary time spent and difficulties encountered by some consumers when switching mobile provider.
- 3.50 Our BDRC 2015 research found that 23% of switchers each year reported they had encountered a major difficulty when switching.⁸⁸ Our BDRC 2017 research also suggested that a significant minority (16%) were dissatisfied with their method of requesting a PAC, and a similar proportion (14%) were dissatisfied with their method of cancellation.⁸⁹
- 3.51 We found that both the above difficulties could also involve consumers encountering unwanted persuasion to remain.
- 3.52 As set out in paragraph 3.44 above, around a fifth of SME switchers (equivalent to around 100,000 SMEs a year) experienced process related difficulties when switching, which were similar to those experienced by residential consumers.
- 3.53 We note the comments made by BT/EE, O2, Virgin and Vodafone that consumers who disliked the process could not name what they disliked about it. However, we disagree and note from our BDRC 2017⁹⁰ that:
- 57% of switchers dissatisfied with the method they used for requesting a PAC named something they disliked about the process, including 16% who said the process was too long/longer than expected;⁹¹ and

⁸⁷ https://www.ofcom.org.uk/data/assets/pdf_file/0014/104441/call-inputs-consumer-engagement-communications.pdf

⁸⁸ BDRC 2015 bespoke analysis.

⁸⁹ BDRC 2017 slides 27 and 32.

⁹⁰ Following the publication of our May 2017 consultation, we also updated our BDRC 2017 research after identifying a data processing error in the original analysis. This error resulted in some open-ended responses not being pulled through to the final data. The impact was an uplift in negative experiences of PAC requests and cancellations among those who contacted by phone compared to all contacts, and among those who said they were dissatisfied with the process. Our 'Mobile switching: Attitudes towards current and potential alternative processes' slide pack was amended on our website in August 2017, and slides 30, 31, 35 and 36 were updated. The revised slide pack can be found here:

https://www.ofcom.org.uk/data/assets/pdf_file/0026/101996/Mobile-Switching-Research-2017-Attitudes-towards-current-and-potential-alternative-processes.pdf

⁹¹ BDRC 2017 slide 31, bespoke analysis

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- 54% of switchers dissatisfied with the method they used to cancel their old service named something specific they disliked about it, including 14% who said the process was too long/longer than expected and 13% who cited provider persuasion to stay.⁹²

3.54 We have found that time spent and difficulties encountered by switchers can take various forms:

- difficulties keeping phone numbers and/or obtaining a PAC;
- consumer experiencing provider persuasion to stay; and
- dissatisfaction with phone based routes to cancel/request a PAC.

Difficulties keeping phone numbers and/or obtaining a PAC

3.55 Consumers' ability to keep their phone number when they switch is an important aspect of switching that should be an easy and straightforward process, not just because it is useful to maintain contact details, but also because numbers are becoming increasingly important as identifying information for other accounts.⁹³ Difficulties keeping phone numbers are therefore likely to cause considerable harm, or deter people from switching altogether.

3.56 Our BDRC 2015 research found that 10% of switchers reported 'keeping your phone number' as a major difficulty (8% of PAC switchers and 14% of C&R switchers). It also found that time and difficulties obtaining the PAC during a switch can cause problems for consumers, in particular:

- While the majority (81%) of consumers who had requested a PAC said that they found it 'easy' to do so, 18% said they found it either 'fairly' or 'very' difficult.⁹⁴ Two thirds of those who found it difficult said that the "conversation to get the code took too long".⁹⁵
- Difficulty obtaining a PAC was a major factor in the decision to stay with their current provider for around 10% of active considerers (around 0.2 million consumers).⁹⁶

3.57 We found that difficulties with the PAC process can also prevent some consumers who wanted to port their number from doing so. Our BDRC 2017 research found that one in six (15%) C&R switchers said they 'really wanted to' or had a 'mild preference' for keeping or porting their mobile number, but ultimately did not.^{97, 98} Reasons cited for not porting their number included concerns and difficulties with the PAC process used to switch and port.

⁹² BDRC 2017 slide 36, bespoke analysis

⁹³ For instance, Whatsapp and gmail accounts will often use mobile numbers as an identifying detail.

⁹⁴ Based on BDRC 2015 slides 72 and 73

⁹⁵ BDRC 2015 Slide 73

⁹⁶ BDRC 2015 slide 92

⁹⁷ BDRC 2017 slide 20. 7% said they 'really wanted to keep number' and 7% said they had a 'mild preference for keeping their number'.

⁹⁸ BDRC 2015 research also asked those switchers who had not ported their number whether they would have liked to. 14% of these said they "Ideally wanted to keep my number". Cited reasons for switching but not keeping their number included because of problems with the PAC process. (BDRC 2015 slides 77 to 79). These findings are broadly consistent with the BDRC 2017 findings.

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- 3.58 Our BDRC 2017 research also revealed that of the C&R switchers who stated that they would definitely or probably use Auto-Switch, were it available, 86% of them said they would opt to keep their number.⁹⁹ This suggests many consumers consider it easier to keep their number under Auto-Switch than the current process, and that many would choose to retain their mobile number if the process for doing so was made easier.
- 3.59 We also note findings for PAC users which showed that around four in five switchers who had previously switched using the PAC process said they would use Auto-Switch.
- 3.60 It is possible that these figures may over-state the degree to which switchers would use these processes in practice.¹⁰⁰ Nevertheless, the results suggest high levels of interest in a process that does not require a conversation with the losing provider. Indeed, when consumers were asked why they would take up these options, responses appeared to be linked to consumers' perceptions that these methods would be easier, quicker and less difficult, compared to current methods.¹⁰¹
- 3.61 We note BT's comments that there are rules in place to ensure consumers should be able to keep their numbers and that any difficulties in doing so should be addressed through an enforcement programme.¹⁰² We agree that where a mobile provider behaves in ways which prevent consumers from porting their number, we would look to take enforcement action.
- 3.62 However, our research found that only a minority of C&R switchers who had wanted to change their number but did not do so, reported being told this by either the losing provider or the gaining provider.¹⁰³ Instead there were other reasons for consumers experiencing difficulties in trying to port their number, and others being deterred from attempting to do so due to concerns about the process. For instance, the most common reasons cited for not keeping a number despite wanting to do so, were that it was easier to switch without keeping a number (32%) and that it was faster to switch without keeping a number (32%).¹⁰⁴

⁹⁹ BDRC 2017 slide 75. We note that some of them also stated they would "ideally" keep their number next time they switched (irrespective of availability of Auto-Switch), but note that there is uncertainty as to whether these respondents would port next time absent Auto-Switch as many of them had a preference for keeping their number last time, but they did not do so.

¹⁰⁰ Although as we note in §5.29, there are also reasons why take-up may be understated, for example if gaining providers encourage new customers to use Auto-Switch. Please refer to Section 5 and Annex 7 for detailed discussion.

¹⁰¹ Please see May 2017 consultation page 74 Figures 11 - 13

¹⁰² General Condition 18 requires networks to provide number portability. In the revised General Conditions that will come into force on 1 October 2018, General Condition B3 requires networks to provide number portability.

¹⁰³ Our BDRC 2015 research identified that of those C&R switchers who said they would have liked to keep their old number, 10% said their old provider said they couldn't keep their number, and 10% said their new provider told them they couldn't keep their number. BDRC 2015 slide 78 (multiple answers).

¹⁰⁴ BDRC 2015 slide 78

Persuasion to stay

- 3.63 Difficulty switching for some consumers can be exacerbated by providers seeking to persuade them not to switch. This can be a particular problem when consumers have to navigate this step to progress a switch.
- 3.64 We acknowledge that many consumers seek, and benefit from, contact with their old provider where this leads to a better deal. However, 7% of all switchers cited “your previous provider trying to persuade you to stay” as a major difficulty when switching.¹⁰⁵
- 3.65 Our updated BDRC 2017 analysis shows that, those who requested their PAC/cancelled their service by phone, were more likely to say they were dissatisfied with pressure from their current provider to stay compared to all switchers who requested a PAC/cancelled.¹⁰⁶ Eight percent of those who requested a PAC by phone and 12% of those who cancelled their old service by phone said that their current provider trying to persuade them to stay was something they disliked about the process, compared to 5% and 7% of those who used any method to request a PAC or cancel their service.¹⁰⁷
- 3.66 In addition, we note research provided by Three, which found 61% of switchers who were offered a reactive save deal said they had made their final decision before starting the switching process, and that their previous provider could not reasonably have done anything to change their mind about switching. This suggests that for many consumers unwanted reactive save offers are an unnecessary difficulty of current switching arrangements.¹⁰⁸

Difficulties contacting the old provider/cancelling the old service

- 3.67 A further difficulty encountered by consumers when switching, highlighted by both the 2015 and 2017 BDRC research, includes cancelling the old service and/or contacting the losing provider, under both PAC and C&R processes. For example, our BDRC 2015 research found that:
- 10% of switchers cited ‘cancelling their previous service’, 11% cited ‘contacting your old provider’, and 9% cited ‘getting the information you needed from your previous provider’ as major difficulties when switching.¹⁰⁹
 - Around one in ten (c. 0.2 million consumers) active considerers, cited difficulties contacting their current provider as a major factor in their decision not to switch.¹¹⁰
- 3.68 Our 2017 BDRC research found that:

¹⁰⁵ BDRC 2015 slide 34, this figure rose to 14% among those switchers who experienced this behaviour

¹⁰⁶ BDRC 2017 slide 30 and slide 35.

¹⁰⁷ BDRC 2017 slides 30 and 35.

¹⁰⁸ [Annex to Three's supplementary May 2017 consultation response](#) page 43

¹⁰⁹ BDRC 2015 slide 34

¹¹⁰ BDRC 2015 slide 92

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- 17% of those who requested a PAC by phone¹¹¹ reported that they were either ‘very’ or ‘fairly’ dissatisfied with this method.
- Switchers also expressed dissatisfaction with cancellation methods. Sixteen per cent of switchers cancelling their old service by telephone only were either ‘very’ or ‘fairly’ dissatisfied with this method.¹¹²

3.69 We acknowledge Virgin’s point that our research shows consumers report higher levels of satisfaction with phone-based PAC and cancellation requests than with other methods.¹¹³ However, these differences were not statistically significant.¹¹⁴ In our view, the dissatisfaction experienced by around one in six mobile switchers who contact their provider by telephone to request a PAC (17%)¹¹⁵ or to cancel (16%) is material evidence that some consumers are experiencing unnecessary harm as a result of current switching arrangements.¹¹⁶

3.70 BT/EE and O2 submitted it is not appropriate to compare call length times when requesting a PAC with the time taken to navigate an IVR system. We acknowledge that it is important that consumers are given relevant information about the switch. We also recognise that some of these calls may have related to switchers who actively wanted a save conversation with their losing provider, which would be lengthier in nature. However, we also note that:

- it is possible to provide a PAC much more quickly than through a 7-minute call, especially if the consumer does not want a ‘save’ conversation;
- our BDRC 2017 research found that 16% of those who were dissatisfied with the process for requesting a PAC, and 14% of those who were dissatisfied with the process for cancelling, specifically disliked how long the process took; and
- in their response to the May 2017 consultation, uSwitch said their research suggests that UK consumers spend 2.4 million hours on the phone to losing providers each year trying to switch mobile network, representing a large burden on mobile users.¹¹⁷

3.71 Therefore, while it is important to provide consumers with information in relation to a switch, our evidence suggests that for a significant proportion the current process is unnecessarily long.

3.72 These findings are particularly significant in the context that telephone contact with the losing provider is the main method currently offered by providers and used by consumers to request a PAC. It is also the only route which providers are currently required to provide.¹¹⁸

¹¹¹ BDRC 2017 slide 27 (61% of those who requested a PAC contacted their losing provider by telephone to do so)

¹¹² BDRC 2017 slide 32

¹¹³ For instance, by email, web-chat, via web-form or in store.

¹¹⁴ 83% of consumers requesting their PAC by phone and 83% cancelling by phone said they were either ‘very’ or ‘fairly’ satisfied with the method of requesting a PAC, compared to 82% and 79% overall. BDRC 2017 slide 27 and slide 32

¹¹⁵ BDRC 2017 slide 27

¹¹⁶ BDRC 2017 slide 32

¹¹⁷ [uSwitch May 2017 consultation response](#) page 2

¹¹⁸ As required under General Condition 18.2

Conclusion

3.73 In our judgment, consumers and businesses face harm from unnecessary time spent and difficulties encountered when using current mobile switching processes. We consider the evidence shows that this affects consumers whether they port their number or not, and also deters some consumers from switching altogether.

Consumers suffer harm as a result of double paying

3.74 Many mobile providers require consumers switching or cancelling their service outside of a minimum contract period,¹¹⁹ to serve a notice period typically of 30 days.¹²⁰ Depending on the losing provider's notice period policy, and on how a consumer coordinates the stop and start dates of each contract, they may end up paying for both the old and the new service at the same time until the notice period expires ('double paying').

3.75 Our 2015 BDRC consumer research found that around a third of mobile switchers recalled paying both providers for a period of time, and that on average this period of double paying was 13 days.¹²¹ We found that:¹²²

- Around 28% of PAC switchers who were in a contract said they incurred a period of contract overlap, and so were likely to have double paid.¹²³ On average these consumers said they experienced an overlap of 9.6 days.
- Based on operator data, we estimated that 97% of consumers who switched and ported away from an operator (that imposes charges in respect of a notice period which extends beyond the switch date), incurred a period of double paying. The average duration of double paying for these consumers was around 21 days.¹²⁴
- Regarding C&R switchers, our consumer research found that around 40% of C&R switchers reported a period of contract overlap, and so were likely to have experienced a period of double paying.¹²⁵

¹¹⁹ Requirements to serve and pay out notice generally apply where a consumer is beyond the minimum contract period (MCP), when consumers can switch provider without incurring other contract related charges such as an Early Termination Charge ('ETC'). Notice period requirements may also apply where the remaining time to reach the MCP is less than the notice period requirement. For example, a consumer seeking to switch who has 15 days left on their contract term may be subject to an Early Termination Charge relating to cancelling 15 days early, plus 15 days' notice, which make up a 30-day notice period. For the avoidance of doubt our concern does not extend to the effects of minimum contract terms or early termination charges

¹²⁰ Our July 2016 consultation (Figure 1) summarised the main providers' policies and practices regarding notice periods, in circumstances in which the consumer is outside any MCP. In summary, O2 and Vodafone only bill to the date that the number is ported out. EE and Three take the PAC request date as the start date for the notice period.

¹²¹ BDRC 2015 slides 55 and 56.

¹²² These figures are based on our consumer research and operator data. Our July 2016 consultation sets out estimates of the extent of double paying in full.

¹²³ BDRC 2015 slide 53. We recognise that this figure may include some respondents who switched within their MCP and incurred an Early Termination Charge (ETC).

¹²⁴ Based on operator data. For further details, see July 2016 consultation §3.12, §A6.5 to §A6.6.

¹²⁵ BDRC 2015 slide 53.

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- 3.76 In our view charging for a notice period after a switch has taken place results in harm to consumers as:
- Consumers pay for old and new services at the same time to ensure continuity and to avoid loss of service. PAC switchers continue to pay for their old service even though it has been deactivated by the losing provider who is nevertheless still being paid for it. C&R switchers *can* still use their old service alongside their new service, but there is little evidence they wish to do so.
 - Consumers try to avoid or minimise double payments by deferring their switch (whether via PAC or C&R arrangements). However, this is difficult to do as explained in paragraph 3.7 and it may result in an unnecessary delay of their switch date.
- 3.77 Double paying is also a concern for those who do not switch. Our research found that around one in six (17%) of active considerers (0.3 million consumers) cited concerns about having to pay two providers at the same time as a major factor in their decision not to switch.¹²⁶ A comparable number of inactive consumers cited similar worries as the main factor in their decision not to switch.¹²⁷
- 3.78 We estimate that consumers incur charges as a result of a requirement to pay notice period beyond the switch date of around £8 million per year for PAC switchers and around £5.6 million a year for C&R switchers.¹²⁸
- 3.79 We set our reasoning on why we consider double paying to be a source of consumer harm in our May 2017 consultation. Our final judgement on the consumer harms that arise from consumers paying their losing provider in respect of notice periods which extend after they have switched to a new provider is set out below in respect of:
- Difficulties coordinating a switch to minimise double payment
 - Unwanted overpayment as a result of contract overlap
 - Notice periods acting as a deterrent to switching
 - Double paying constituting a switching harm
 - Notice periods as a legitimate charge.
- 3.80 We note providers did not raise any new concerns in response to our May 2017 consultation, over and above those raised in previous consultations.

Difficulties coordinating a switch to minimise double payment

- 3.81 We consider that a significant proportion of consumers experience difficulties coordinating a switch to minimise double payment and that this represents an unnecessary switching cost.

¹²⁶ BDRC 2015 slide 91

¹²⁷ BDRC 2015 slide 113. 1% of inactive consumers cited concerns about paying two providers at the same time, as the main factor in their decision not to engage. This equates c. 0.3 million mobile consumers.

¹²⁸ Please see Annex 6 for a detailed explanation.

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- 3.82 While it is possible for switchers to avoid double paying by precisely coordinating the timing of their switch (as BT and Virgin pointed out to us), we have found that the steps necessary for a consumer to coordinate the switch and avoid double payments are not straightforward.¹²⁹ Our consumer research found that 8% of PAC switchers (7% C&R) said that getting the switch to happen on the date they wanted was a major difficulty when switching and 23% of PAC switchers (17% C&R) said that this was a minor difficulty.¹³⁰
- 3.83 Under either PAC or C&R, a consumer looking to coordinate the switch to minimise double payments needs to:
- **incur time and effort** to a) understand the interplay between the switching/porting process and any notice period and b) discuss and actively manage the co-ordination of these components with providers. This is likely to be even more challenging where information on notice period policies and how they interact with the PAC process is poor. We are also concerned that a lack of consistency among providers' notice period policies makes it difficult for consumers to understand how notice periods apply; and
 - **defer the start date of their preferred new service** (despite existing requirements to ensure that consumers should be able to switch within one business day), to minimise the outstanding notice period to be paid out. Where the switch is not sufficiently well coordinated, or where the coordination does not go according to plan, also risk loss of service between the old service terminating and the new service starting.
- 3.84 Furthermore, whilst at the start of contracts consumers should be informed about the notice period, many take out mobile contracts lasting for up to two years. In the first quarter of 2017, 47% of new post-pay mobile connections were for contracts lasting two years.¹³¹ Consumers cannot be expected to remember all the information they are told two years before switching, and our research suggests that by the time they switch many are unaware of their notice period or were unaware that they could delay the start date of their new contract:
- We found that 22% of PAC switchers and 18% of C&R switchers incurred contract overlap as they were unaware of their old provider's notice period requirements when they signed up to their new service.¹³²
 - Our research also suggests that some consumers are unaware that they can delay their start date, as 20% of PAC switchers and 14% of C&R switchers said they had a contract overlap because their new provider gave them a date that was before the end of their previous contract.¹³³

¹²⁹ This is set out in our July 2016 consultation, Section 3.

¹³⁰ BDRC 2015 slides 34 and 32.

¹³¹ Communications Market Report 2017, figure 4.24 https://www.ofcom.org.uk/_data/assets/pdf_file/0015/105441/uk-telecoms-networks.pdf

¹³² BDRC 2015 slide 55

¹³³ BDRC 2015 slide 55

Unwanted double payment as a result of contract overlap

- 3.85 Our research found that many consumers who have contract overlap do not want it, and experience unwanted double payment as a result.
- 3.86 Reasons for contract overlap and double paying are similar for both PAC switchers and C&R switchers and reflect lack of awareness of notice period requirements, difficulties in coordinating start and stop dates, a desire to ensure continuity of service and an unwillingness to defer the start of the new service. Figure 4 sets out the main reasons cited in our consumer research for having a contract overlap.

Figure 4 – Cited reason for contract overlap

Cited reason for contract overlap by those who had an overlap ¹³⁴	PAC	C&R
Unwilling to defer the start of the new service	41% ¹³⁵	55% ¹³⁶
To ensure continuous service	31%	25%
Had signed up with their new provider and were unaware of the notice period required by their current provider	22%	18%
New provider gave them a date that was before the end of their previous contract	20%	14%

- 3.87 BT/EE argued that it is possible for consumers to benefit from contract overlap.¹³⁷ We recognise that some consumers will want contract overlap, for instance if they want to test out a new service before cancelling their old one. However, our evidence suggests that many who experienced contract overlap did not want it.
- 3.88 Where PAC switchers experience contract overlap their old service is deactivated once the new one starts, so any benefits relating to having two active services at the same time are unavailable to them.
- 3.89 Whilst C&R switchers who double-pay can use both the old and new services during the overlap period, our research found that only a minority of C&R switchers who double paid

¹³⁴ BDRC 2015 slide 55

¹³⁵ Bespoke analysis of BDRC 2015 consumer research, based on: 18% said they wanted to get their handset as soon as possible; 15% wanted to sign up before a deal ran out; 19% wanted to switch to a better service immediately

¹³⁶ Bespoke analysis of BDRC 2015 consumer research, based on: 32% said they wanted to get their handset as soon as possible; 28% wanted to sign up before a deal ran out; 19% wanted to switch to a better service immediately

¹³⁷ As discussed in §3.25

provided a reason which suggested they benefitted from contract overlap. We found that:¹³⁸

- Nearly seventy percent of C&R switchers who said they experienced some contract overlap also said they did not want it (68%), as opposed to around a quarter (24%) who said they did.
- Of all those C&R switchers who said they had a contract overlap, 32% said this was to get the handset as soon as possible, 28% said it was to sign up with a new provider before a deal ran out and 19% said it was to switch to a better service immediately.¹³⁹ While these consumers chose to switch more quickly, this does not suggest a benefit to contract overlap, rather that it had to be incurred to access other benefits.

3.90 We also note that our BDRC 2017 research found a high level of interest in Auto-Switch (which removes contract overlap) among C&R switchers. Seventy-four percent of C&R switchers stated that they would definitely or probably use Auto-Switch.¹⁴⁰ This also suggests that a contract overlap is not seen as a benefit.

Notice periods as a deterrent to switching

3.91 Virgin, in its response to the consultation, submitted that we did not have robust data on the likely increase in switching that would result from a ban on notice periods (and by extension that we did not know what impact a ban on notice periods would have on switching rates).

3.92 In our view, and as stated in the May 2017 consultation, our consumer research findings provide a reasonable basis to find that the prospect of double payments is a factor which inhibits some potential switchers. As set out in paragraph 3.77, just over one in six (17%) active considerers cited concerns about having to pay two providers simultaneously as a major factor in their decision not to switch.¹⁴¹ Therefore, we consider that prohibiting charging for notice periods beyond the date of the switch is necessary in order to remove this barrier to switching and to make the switching process easier. We do not consider that we need to consider the precise impact that this will have on switching rates.

Double paying as a separate harm from the switching process

3.93 In response to our consultation, several respondents argued that we should not consider difficulties arising from notice periods to constitute a consumer harm arising from switching, as set out in paragraph 3.24.

3.94 We do not agree that double paying is separate from switching arrangements and this is clearly reflected in our analysis. A consumer seeking to switch provider and not intending to use their old service after having switched (or in the case of PAC switchers unable to do

¹³⁸ Based on BDRC 2015 slide 54 and 55 - Analysis of the verbatim responses suggests that a minority of respondents who experienced a contract overlap provided a reason which suggested they benefitted from contract overlap (e.g. "to get used to a new phone"). This is included in "Other".

¹³⁹ BDRC 2015 slides 54 and 55

¹⁴⁰ BDRC 2017 slide 74

¹⁴¹ BDRC 2015 slide 91

so) suffers harm because the interplay of the notice period with the switching process leads to difficulties for that consumer. These difficulties result in being exposed to unwanted double payment.

3.95 We have not seen good reasons that, in our view, explain why it would be appropriate or necessary to continue to charge a consumer in respect of their old service beyond the time at which the switch takes place, particularly where that old service is no longer available to the consumer after that point. We consider that the effect of deferring a switch in order to avoid the costs of double payment is a switching harm.

Notice periods as a legitimate charge

3.96 Virgin, in its response to the May 2017 consultation as well as in its response to previous consultations, said that notice periods are a legitimate charge voluntarily agreed to by consumers and Ofcom should not seek to impose regulation beyond UK consumer law.¹⁴²

3.97 We are not suggesting that notice periods constitute unfair terms per se, and we recognise that there are many instances in which notice periods are perfectly fair contractual terms. Our concerns here are specific to the circumstances of switching mobile provider and the consumer harms that can arise in that context because of notice periods, which have effect beyond the date that services have been switched. We consider that those concerns warrant specific regulatory consideration.

3.98 We do not consider that addressing the issue of notice periods duplicates the conditions in the CRA.¹⁴³ It is appropriate to consider going further to protect consumers' interests in these specific circumstances by preventing mobile providers from charging for the period of notice that extends beyond the switch date, thereby addressing the consumer harms that we consider currently arise from this practice, as set out in paragraphs 3.74 to 3.90.

Conclusion

3.99 We consider that the current practice of many providers of charging consumers in respect of a notice period which extends after the switch has taken place constitutes a harm to switchers and those that are deterred from switching as a result.

Loss of service can lead to consumer harm

3.100 Having taken account of stakeholder views, we remain of the view that loss of service is a harm that can arise as a result of current switching arrangements.

¹⁴² [Virgin May 2017 consultation response](#) §12

¹⁴³ We recognise that any regulatory obligations we impose may not duplicate general consumer protection laws. However, we note that the legal framework permits us to impose specific consumer protection measures that go beyond such laws, provided that extension is consistent with other EU and national laws and the proposed regulatory intervention is appropriate in the specific circumstances to protect consumers against the identified harm(s). This is consistent with other EU and national laws, in particular the Unfair Contract Terms Directive and the UK's Consumer Rights Act 2015 (the CRA). The Unfair Contract Terms Directive allows Member States to go further than the minimum requirements of that directive. The CRA, amongst other things, sets out the general rules about the fairness of contract terms and notices.

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- 3.101 Our BDRC 2015 research found that 20% of all switchers experienced some loss of service when switching (22% of PAC switchers and 14% of C&R switchers). Fifteen percent of all switchers reported that loss of service exceeded one day.¹⁴⁴ Such harm can arise because of:
- how the switch is coordinated by the consumer (if a C&R switcher), for instance if the old service is terminated before a new contract is agreed with the gaining provider; and
 - failures in the porting process.
- 3.102 Concerns about loss of service when switching may also deter non-switchers from changing provider. Just over one in six (17%) of active considerers (i.e. around 0.3 million consumers a year)¹⁴⁵ and a similar number of¹⁴⁶ inactive consumers cited “having no service while switching to another provider” as a concern.
- 3.103 Our 2016 omnibus research which collected data on the incidence and type of loss of service, together with data from providers concerning ports, further found that amongst switchers:
- 26% of PAC switchers experienced some loss of service on their mobile number when switching.¹⁴⁷
 - 25% of PAC switchers said that they were not aware that there might be a period of time during which they would be unable to make or receive calls or texts when the mobile number was being transferred.¹⁴⁸
 - Around one in ten (11%) of C&R switchers experienced some loss of service when switching.
- 3.104 Many respondents to our consultation focused on loss of service due to porting failures or delays.¹⁴⁹
- 3.105 Under our General Conditions¹⁵⁰ providers have a duty to ensure all ports are completed by the next working day. Industry protocols and back office processes¹⁵¹ for mobile number porting are structured to meet this requirement, so that a mobile number port takes place on the business day following a consumer’s port request. On the day of the port, the

¹⁴⁴ BDRC 2015 slide 49

¹⁴⁵ BDRC 2015 slide 91

¹⁴⁶ BDRC 2015 slide 113

¹⁴⁷ BDRC 2016 omnibus data tables, table 30 https://www.ofcom.org.uk/data/assets/pdf_file/0025/101995/Mobile-Switching-Research-2017-Omnibus-data-tables.pdf

¹⁴⁸ BDRC 2016 omnibus data tables, table 22. Such lack of awareness is likely to compound any issues that consumers may suffer from service interruptions because, for example, they are unlikely to have prepared for such a possibility when switching.

¹⁴⁹ BT/EE indicated that loss of service can be a result of different causes. The scope of our work has focused on loss of service when switching.

¹⁵⁰ Ofcom regulations (General Condition 18.3) require that providers execute a number port within one business day of a request to port by the consumer. Where providers fail to meet this requirement, consumers are entitled to reasonable compensation.

¹⁵¹ As set out in the industry agreed Mobile Number Porting manual.

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duration of any loss of service during the transfer is limited to six hours at most, i.e. to between 10am and 4pm on the next working day after requests to port.¹⁵²

- 3.106 We noted in our May consultation that data from the four major providers for the second half of 2016 showed that around 2% of aggregate switches and ports did not complete by the next working day following a consumer's request to port, which equated to around 6000 consumers a month.¹⁵³ For such consumers, this delay may have been experienced as a delay to the transfer of their mobile number to the new provider rather than as an interruption or loss of service per se.¹⁵⁴
- 3.107 We note Vodafone's response that the incidence of loss of service as a result of porting failure is low. However, as outlined above, a material number of consumers (c.6000 a month) experienced porting failures. Given that providers are required to ensure that all ports are completed by the next working day, in our consultation we were clear this was a concern, and it remains so.
- 3.108 As a response to our concerns regarding loss of service, mobile providers have taken steps to improve current processes to reduce the incidence of porting failures. This was highlighted by a number of respondents to the consultation and considered a key solution to address loss of service. We note the OSG's commitment to improve customer information on the porting process, which should result in more consumers being aware that they could experience a temporary loss of service while their number is ported. We discuss the specific commitments and how we consider they address loss of service in Section 4.

Conclusions on consumer harm arising under current switching arrangements

- 3.109 The current mobile switching arrangements work well for many consumers, but not for all. We consider that our evidence shows that current switching arrangements can cause harm to a substantial number of consumers in that they create unnecessary difficulties for those that do switch and discourage others from switching at all.
- 3.110 In our judgment, this harm arises under the current mobile switching arrangements due to:
- unnecessary time spent and difficulties encountered when progressing a switch;

¹⁵² Mobile operators, acting through the industry mobile number porting forum the Operator Steering Group ('OSG') extended the porting window from four to six hours on 3 July 2017. We note that operators have committed to taking forward several initiatives designed to improve the mobile number porting process, as set out §4.7.

¹⁵³ Information provided by mobile operators on mobile ports for the period July 2016 to December 2016, aggregate data for 'Port in' + 'Port out'.

¹⁵⁴ Consumers may not distinguish between loss of service from a failed port and perceived loss of service during a porting process that occurs as a result of the number transfer. For instance, PAC switchers might consider that they have experienced a loss of service on the day of the port as they may be unable to make or receive calls or texts on their existing number during the porting process; or they may have difficulties with their temporary number, for instance if it is de-activated too early.

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- double paying while switching provider, or delay and unnecessary effort arising from requirements to pay out notice periods that extend after the switch has taken place; and
- loss of service while switching provider.

3.111 In light of these conclusions, we go on to consider in Section 4 how these consumer harms may be addressed effectively.

4. Reforms to mobile switching

Introduction

- 4.1 In this section we set out our conclusions on reforms that we consider would be effective to address the consumer harms we have identified under current arrangements, as set out in the previous section.
- 4.2 We first summarise the proposals for reform as discussed in our May 2017 consultation, stakeholders' responses and our assessment of those responses. More detailed responses on Auto-Switch are presented in Annex 2. We then conclude on the reforms to mobile switching arrangements that we consider would effectively address the consumer harms we have identified.

May 2017 consultation proposals

- 4.3 Our May 2017 consultation discussed a number of remedies to address the consumer harms we identified. These included:
- Two alternative proposals for reform of the basic switching process – Auto-Switch and GPL. These aimed to address time spent and difficulties encountered in switching experienced by both switchers and those considering switching.
 - Prohibition on charging notice periods beyond the day on which the switch occurs. This was to address the costs and difficulties arising from double paying when switching.
 - Introduction of an *End-to-end management* process or voluntary commitments agreed by industry. These aimed to address loss of service issues that can arise during a switch.
 - We also proposed to introduce requirements for providers to be more transparent about the switching process.
- 4.4 We provisionally concluded that both our Auto-Switch and GPL options would be effective in addressing the harms we had identified. However, we proposed in the consultation that having taken account of the evidence we had seen, including responses from stakeholders, Auto-Switch reform was a more proportionate remedy to address the problems we had identified because it was the least onerous of the effective options we identified. As set out in Section 2, given we have not altered our preference for Auto-Switch over GPL, we focus this section on Auto-Switch reform. Stakeholder comments on GPL are separately discussed in Annex 9.
- 4.5 We set out that Auto-Switch would remove the need for consumers to speak to their old provider. Instead, consumers would be able to request a unique code, via text or online, that allows them to switch provider, whether they keep their mobile number or not (a PAC for people wishing to port their number and N-PAC for those people who do not wish to port their number). Consumers would only need to contact their new provider once to port their existing number or cancel their old service.

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- 4.6 We also proposed that prohibiting charging notice periods beyond the day on which the switch occurs would address the harm of double paying.
- 4.7 In relation to loss of service issues, we said that we would look to industry in the first instance to commit to addressing these, rather than pursue *End-to-end management* at this stage. This was based on commitments put forward by mobile providers which included:
- extending their back office ‘porting window’ to create additional porting capacity;
 - improving the processes that operators follow when responding to incidents of porting failures; and
 - improving consumer guidance on the switching and porting process to explain possible short duration interruptions in service while the consumer’s number is transferred from one provider to another. Operators intend to publicise this guide on their websites.
- 4.8 Finally, we proposed to require mobile providers to supply consumers with clear information, for example on their websites, about how the switching and number porting process works, including our proposed reforms.

Stakeholder responses on reform proposals

- 4.9 As discussed in Section 2, many stakeholders agreed with our preference for Auto-Switch, including [redacted], Virgin and CCP/ACOD, as well as all individuals who responded to the consultation.¹⁵⁵
- 4.10 Others, however, either disagreed with our preference for Auto-Switch over GPL or expressed a preference for GPL reform, but recognised that Auto-Switch would be an improvement on current mobile switching processes. We set out responses on GPL in more detail in Annex 9.
- 4.11 **In relation to Auto-Switch**, some respondents raised concerns with our specific requirements. Key concerns included:
- Switching Information – BT/EE, O2, Virgin, Vodafone and [redacted]¹⁵⁶ suggested that consumers may make poor or worse switching decisions as a result of our reform because insufficient information will be provided to consumers at the point of switching.
 - Business customers – [redacted] suggested that mobile providers who serve business customers should be allowed 2 days to return all the relevant information needed for these customers to make informed decision about switching. This is because for some business customers, simple ETC information may not provide the full commercial

¹⁵⁵ We received 10 responses from individuals, all of whom agreed with our preference for Auto-Switch.

¹⁵⁶ [BT/EE May 2017 consultation response](#) §9, §51, §73 - §77, [O2 May 2017 consultation response](#) §27-§28, §30, §56-§60, §151-§156, [Virgin May 2017 consultation response](#) §7-§8, §17-§18, [Vodafone May 2017 consultation response](#) pages 16-17, page 27, and [redacted] May 2017 consultation response [redacted]

impact of any decision to switch. Furthermore, it is not always easy for smaller providers to return the information immediately;¹⁵⁷

- Extension of Auto-Switch to non-porters – BT/EE and Vodafone¹⁵⁸ argued that the introduction of N-PAC is unwarranted and/or disproportionately costly. BT/EE¹⁵⁹ also suggested that using scarce (porting) capacity for non-porting switches could result in a worse switching experience for switchers who port.
- Automatic activation of the SIM triggering the switch – BT/EE¹⁶⁰ commented that this could be an issue in areas where there is poor mobile coverage.
- Multi-SIM accounts - BT/EE¹⁶¹ suggested that the consumer switching experience for products with multi-SIM accounts may be compromised, because it may not be clear which SIMs are being switched (and ported).
- Compensation – Virgin¹⁶² expressed concerns and sought clarification on our proposals to extend current GC protections and compensation arrangements for porting switchers to non-porting switchers.
- Unauthorised or fraudulent switching – BT/EE and O2¹⁶³ expressed concerns that our Auto-Switch proposals could increase risks of unauthorised or fraudulent switching, in part because text requests for PAC/N-PAC would not require additional customer verification.

4.12 A number of respondents raised the question of whether, and if so how, providers could engage in ‘save’ activity:

- Mobile operators BT/EE and Virgin¹⁶⁴ sought clarification about Ofcom’s approach to relevant General Conditions and the extent to which they would be permitted, under Auto-Switch to contact consumers who had requested a PAC/N-PAC with the intention of seeking to persuade them to stay rather than switch.
- SSE, TalkTalk, Three and [redacted]¹⁶⁵ on the other hand expressed concerns that Auto-Switch might afford mobile operators further or unwelcome opportunities to contact consumers to seek to persuade them to stay or frustrate the switch, after such consumers had expressed their intention or wish to switch to another provider.¹⁶⁶ These respondents called on Ofcom to ban or restrict such activity.

¹⁵⁷ [redacted] May 2017 consultation response [redacted]

¹⁵⁸ [BT/EE May 2017 consultation response](#) §7-§8, §12, §66-§70, §108 and [Vodafone May 2017 consultation response](#) pages 12-13

¹⁵⁹ [BT/EE May 2017 consultation response](#) §62

¹⁶⁰ [BT/EE May 2017 consultation response](#) §71

¹⁶¹ [BT/EE May 2017 consultation response](#) §89

¹⁶² Virgin May 2017 consultation response §35-§37

¹⁶³ [BT/EE May 2017 consultation response](#) §11, §55, §78-§88, §109 and [O2 May 2017 consultation response](#) §29, §61-§62, §142-§150

¹⁶⁴ [BT/EE May 2017 consultation response](#) §52-§53 and [Virgin May 2017 consultation response](#) §7

¹⁶⁵ [SSE May 2017 consultation response](#) pages 6-7, [TalkTalk May 2017 consultation response](#) §3.0, [Three May 2017 consultation response](#) §1.7-§1.55, [Three September 2017 supplementary response](#), [redacted] May 2017 consultation response [redacted],

¹⁶⁶ SSE for example suggested that, under Auto-Switch, the losing provider could use their role of informing consumers about the implications of switching to promote ‘winback’ activity, for example by judicious design of their website. Three

- 4.13 **In relation to our proposals to prohibit charging notice beyond the switch date**, most stakeholders were supportive. BT/EE, Virgin and Vodafone¹⁶⁷ however put forward alternative approaches or remedies to our proposed prohibition, such as a voluntary proposal to waive charges for all switchers (BT/EE and Vodafone), allowing C&R switchers to choose the date on which they want the service with their current provider to cease (BT/EE) and requiring providers to be more transparent about the switching process (BT/EE, Virgin).
- 4.14 **Regarding transparency requirements**, most respondents who commented on this were supportive. Vodafone suggested however that Ofcom's proposed requirement for transparency did not pass a cost benefit analysis.¹⁶⁸
- 4.15 Finally, respondents to our consultation agreed that the commitments put forward by industry through the OSG could address loss of service as a result of porting failures (where ports are not completed by the next business day after the request) and the lack of consumer awareness about what happens on the day of a port. SSE and [3<] called for oversight of this work or individual industry parties involved, to ensure the collective process works.¹⁶⁹
- 4.16 Our response to stakeholders' comments are set out below and in relation to the design of Auto-Switch there is further detail in Annex 2.

Voluntary code proposals

- 4.17 In response to our May 2017 consultation, Vodafone and BT/EE proposed a voluntary code of practice on switching for the mobile industry, which they argued should be adopted in place of our proposed reform.
- 4.18 Under the proposed code, signatories would agree to:
- Provide the consumer with a PAC before discussing any retention offers, but only after the losing provider had authenticated the consumer and provided them with information relevant to their switching decision (such as any ETCs, outstanding charges or the impact on other contracts). Once the PAC had been given, providers would then ask the consumer if they wanted to discuss retention offers.
 - No longer charge a consumer for a notice period once a switch had occurred, in order to address double paying. For C&R switches, the losing provider would ask consumers to nominate the date they wanted to stop their old service, and charge them for the service up until that date.
- 4.19 We note that the proposals put forward by Vodafone and BT/EE would reduce double payments and mitigate some consumer harm as a result of provider persuasion to stay.

suggested that, where a consumer had requested a PAC/N-PAC from their current provider by text or online, the provider might nevertheless seek to call the consumer in an attempt to persuade him/her not to switch.

¹⁶⁷ [BT/EE May 2017 consultation response](#) §38, §63-§65, §115-§126, [Virgin May 2017 consultation response](#) §9-§13, and [Vodafone May 2017 consultation response](#) pages 24-25

¹⁶⁸ [Vodafone May 2017 consultation response](#) page 22. We address the proportionality of our requirements in Section 5.

¹⁶⁹ [SSE May 2017 consultation response](#), Appendix and [3<] May 2017 consultation response [3<]

However, we do not consider that these proposals adequately address the consumer harms that we have identified arise from current switching arrangements.

- 4.20 In our judgement, the proposed code does not do enough to mitigate our concerns about unnecessary time spent and difficulties encountered in progressing a switch. It does not address consumer difficulty around contacting their losing provider, including long hold times, nor does it address the issue of would be switchers being put off from switching by concerns arising from contacting and having a conversation with their losing provider. In addition, it would be difficult to assess the effectiveness of the code because it relies on operator practices during phone calls with consumers, which are not easy to monitor.
- 4.21 We are also concerned that the code does not have the full support of industry. Only two providers actively supported the voluntary code.
- 4.22 On these bases, we do not consider the voluntary code is an effective solution to the harms we have identified. However, given that the code identifies changes which would reduce some of the consumer harm we have identified, we would welcome providers implementing these in the intervening period before our reforms come into effect.

Package of reforms to mobile switching arrangements

- 4.23 Our policy objective is to ensure that consumers do not experience unnecessary difficulties when switching mobile provider, so that they can exercise choice and take advantage of competition in communications markets. We consider that unnecessary difficulties can give rise to consumer harm, making switching difficult or preventing it entirely in some cases.
- 4.24 In Section 3, we concluded that consumers suffer from harms due to unnecessary time spent and difficulties encountered when progressing a switch; double paying while switching provider, or delay and unnecessary effort arising from requirements to pay out notice periods that extend after the switch has taken place; and loss of service while switching provider.
- 4.25 Our analysis has led us to the conclusion that the harms suffered by consumers apply to all switchers whether they port their number or not, that SMEs suffer similar harms to consumers and that there is not a case which justifies the need for the consumer to speak to the losing provider if they do not wish to do so.
- 4.26 In designing remedies to address these harms, we have also been mindful of the risk of unintended consequences, particularly the need to ensure that:
- Consumers are sufficiently informed before switching: Consumers should understand the switching process, and receive key information about the implications of switching prior to making their decision. They should be at least as informed under any new process as they are currently under existing processes; and
 - Consumers are protected against unauthorised switching: The process should ensure that only the authorised account holder can request a switch.

- 4.27 We have taken these factors into consideration, as well as taken account of responses to our May consultation, and have decided that the following package of reforms to mobile switching arrangements would be effective in addressing the consumer harms we have identified:
- Introduction of Auto-Switch. This reform addresses unnecessary time spent, and difficulties encountered in switching experienced by both switchers and those considering switching, in particular by removing the need for the consumer to speak to the losing provider in order to switch. It also substantially removes the need for consumers to coordinate the switch themselves, which can be one source of loss of service during switching.
 - Prohibition on charging notice periods beyond the day on which the switch occurs. This addresses the costs and difficulties arising from double paying when switching.
 - Requirements on providers to be transparent about the switching process.

Loss of service

- 4.28 In relation to the third harm we have identified, loss of service, our May consultation set out that industry stakeholders had committed to taking several steps to address issues that may lead to service loss, and that the mobile industry forum, the OSG had written to Ofcom setting out the operators' intentions. We considered these commitments sufficient to address our concerns but said we would monitor progress.
- 4.29 Since May, mobile providers, coordinated by the OSG, have undertaken a number of initiatives to address loss of service, set out in paragraph 4.7, that can happen as a result of failed number porting.
- 4.30 Following these changes, in particular the extension of the porting window which came into effect on 3 July 2017, there have been indications from the four major providers of an improvement in the number of ports successfully completed by the next working day. We expect to see further improvements in porting success rates, as the changes are embedded fully.
- 4.31 We also expect that our Auto-Switch reform will lead to a reduction in loss of service for non-porters who use it. This is because, under Auto-Switch, switchers will no longer need to manage contract overlap to minimise double paying and risk loss of service when this goes wrong.
- 4.32 On this basis, we have decided that it is appropriate to allow mobile providers to continue to pursue initiatives on a voluntary basis to address loss of service that can arise under switching arrangements.
- 4.33 However, we will continue to monitor consumers' experiences of loss of service during switching, the reasons for this and providers' effectiveness in addressing it. If we are concerned that this issue is a significant source of consumer harm that has not been addressed by providers, we may pursue regulatory initiatives, including, where relevant, consideration of the End-to-end management reform discussed in our previous consultations.

- 4.34 The remainder of this section describes our regulatory reform of mobile switching arrangements in more detail.

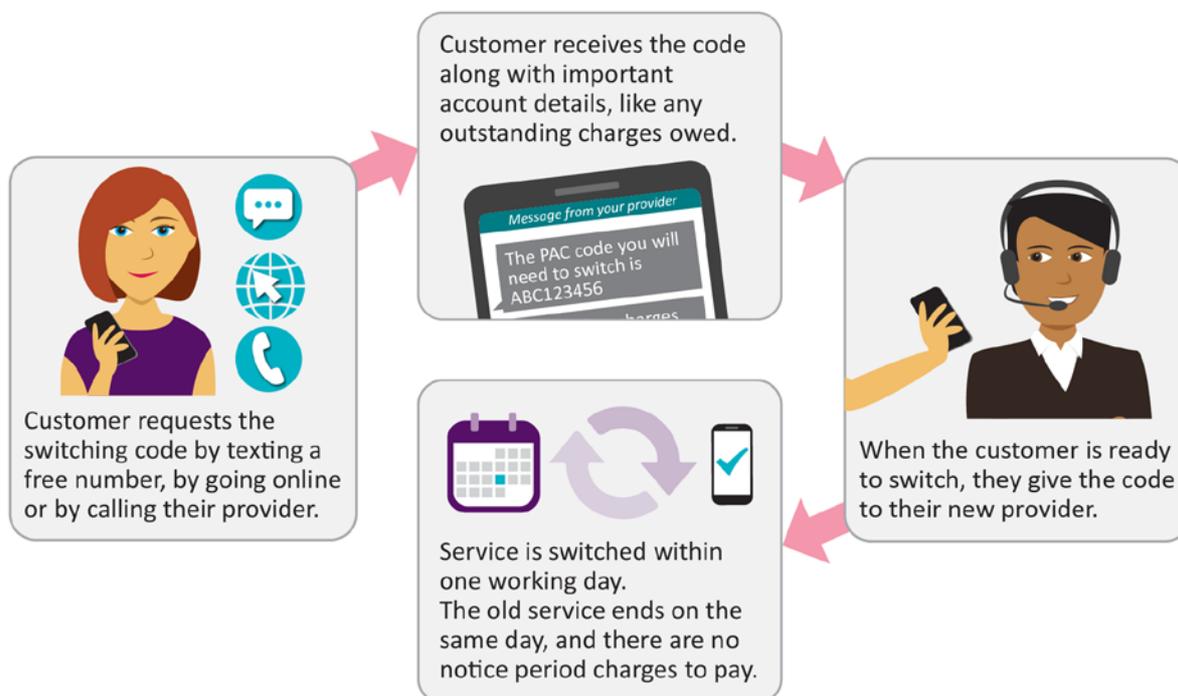
Auto-Switch

- 4.35 In Section 3 we concluded that current switching processes can result in unnecessary time spent and difficulties encountered when switching for a significant number of consumers and businesses. These difficulties include time spent when requesting a PAC or cancelling an old service and unwanted persuasion by mobile providers to stay with them. The prospect of such difficulties can also deter some consumers from switching.
- 4.36 We set out in our May 2017 consultation how Auto-Switch would address such harms. We have considered the responses to our May 2017 consultation. They did not contain any material comments which have led us to alter our view and, in our judgement, Auto-Switch remains an appropriate reform to mobile switching processes to address our concerns. We note that some respondents called for a number of amendments or clarifications to the design specifications for Auto-Switch including how it may apply to business tariffs. In reaching our final decision, we have considered and taken these into account. We discuss comments and clarifications in detail in Annex 2.
- 4.37 We set out below the key features and design specifications of Auto-Switch and our judgement of how these features effectively address consumer harms.

Key features of Auto-Switch

- 4.38 Under Auto-Switch, a consumer would be able to contact their current provider by text, via their online account, or by phone, to request a code which they can give to their new provider when switching. This choice of contact method allows consumers to control the degree of contact they have with their current provider when switching, and in particular would enable them to avoid any unwanted 'save' conversation. These have been key considerations for our reform given the harms identified in Section 3. At the same time, the reforms do not prevent consumers from contacting their current provider, if they wish to do so. The key point is that the consumer has a choice, which is not always the case under the current switching process.
- 4.39 Figure 5 illustrates how the Auto-Switch process will function from the customer's perspective.

Figure 5 – The Auto-Switch process



Step 1: Customer contacts the existing provider to request a PAC/N-PAC code

The customer requests from their existing provider the switching code – either a PAC (“Porting Authorisation Code”) if he/she wishes to port their number, or an N-PAC (“Non-porting Authorisation Code”) if wishing to switch without a port. Customers can request these by text, through their online account, or by speaking to their existing provider over the phone.

Requests by text will be made to two different short codes - one to request the PAC, and another to request the N-PAC. Each short code will be the same across all providers.

Requests for a PAC/N-PAC relating to a single switch involving between 2 and 24 numbers may only be made via online account or by phone. Customers may however submit multiple single requests by text.

There will be no charge when using these methods.

Step 2: Customer receives PAC/N-PAC and information relevant to the switch

The customer will receive the PAC/N-PAC immediately by text if they are a residential customer, and if requested through an online account or by phone, the customer will also receive it immediately by these means as well as by text. In the case of business customers, they can request a PAC/N-PAC by phone, and they will be given this immediately and where this is not possible, within 2 hours by text. If requested through an online account or by text, they will receive the PAC/N-PAC within 2 days by the means requested as well as by text.

The PAC/N-PAC is valid for 30 days.

Along with the PAC/N-PAC, the text will also include Switching Information i.e. information about the direct financial costs of switching. Customers can also ask for Switching Information independently of any decision to switch by using a separate short code.

Relevant Switching Information must include the following information:

- any applicable early termination charge;
- any outstanding credit balances in respect of prepaid mobile services; and
- a web-link directing the customer, at a minimum, to the customer's account login page.

Switching Information may also contain:

- any information about outstanding loans or balances for a handset, where this is sold separate to the SIM / airtime contract;
- factual information from the existing provider about whether the switch would impact on any other services provided; or
- the contract end date.

The Switching Information will be accurate as of the day it is sent to the customer, and will set out the total charge for mobile services (if any) to be paid by the customer to their current provider. Where the request to switch is for more than one mobile number, any charges payable will be aggregated across the applicable set of mobile numbers.

Customers will also be able to access Switching Information by sending a text request to their current provider, via their online account, or by phone, independently of any need to switch. Providers will immediately return the details via the means by which it was requested, as well as by text. In the case of business customers, Switching Information will be returned within 2 days of request.

Step 3: The customer signs up with their new provider

The customer chooses and signs up for a new service with a new provider (for example in-store, online or by phone) and gives them the PAC/N-PAC. The new provider gives the customer a new SIM, and where applicable, a handset.

Step 4: The customer's old service is cancelled, and the new service activated

Once the customer activates his/her new SIM card on the new provider's network, the old service is automatically deactivated and (where relevant) the customer's existing mobile number is transferred to the new provider. These processes should be completed automatically within one working day of the activation of the new SIM (unless the customer indicates that they would like a delay beyond one working day).

The old provider will send the customer a final bill confirming cancellation.

Consumer switching

Decision on reforming the switching of mobile communication services

4.40 We set out below our considerations on the key features and design specifications of Auto-Switch and our judgement of how these address consumer harms resulting from the current mobile switching arrangements.

Auto-Switch includes non-porters

4.41 In our previous consultations, we were of the view that consumers who switch but do not port their number also suffer harm from current switching processes in terms of unnecessary time spent and difficulties encountered when switching mobile provider. We have confirmed this view in Section 3.

4.42 We consider that protection should be extended to include switches where there is no number port, since our findings include that consumers making or seeking to make such switches can suffer harms similar to switches with a number port.

4.43 Auto-Switch therefore allows for non-number porting to be accommodated in a similar way to the PAC process. These non-porting switchers can request a separate code to cancel their old service (the 'N-PAC') and co-ordinate the start of their new one without porting their number. As described in Figure 5 above, consumers would request an N-PAC from their losing provider in the same way as they would request a PAC. However, they would need to use a different short code when texting their losing provider to request an N-PAC. This process is detailed in the diagrams in Figures A2.1 and A2.2 in Annex 2.

4.44 In addition, non-porters will be less likely to experience loss of service, which as we discussed in Section 3 is a harm that results from the need to coordinate the switch to minimise the outstanding notice period to be paid out, with Auto-Switch reform. Where the switch is not sufficiently well coordinated, or where the coordination does not go according to plan, consumers risk loss of service between the old service terminating and the new service starting. Under Auto-Switch, switchers will no longer need to manage contract overlap to minimise double paying and risk loss of service when this goes wrong.

Auto-Switch allows consumers to control the degree of contact with their mobile provider

4.45 Auto-Switch provides consumers with the ability to control the type of contact they have with their losing provider by introducing new ways to request their PAC/N-PAC. Consumers will be able to request their PAC/N-PAC by text or online (in addition to calling the losing provider should they wish to do so). Consumers can thus avoid having to speak to the losing provider directly if they do not want a conversation with the losing provider. In our view, this will address the harm that many consumers say they experience with the current process by removing the need to speak to their losing provider.

4.46 Auto-Switch provides for a minimum of three PAC/N-PAC request routes:

- by text, using short codes accessible free of charge - one for switching with a number port and one for switching without a number port. All providers would use the same two codes;
- via the online account with their provider; and
- by phone call to their provider.

Inclusion of both the text and online routes

- 4.47 We have given careful thought to whether it is necessary to mandate both the online route and the text message route.
- 4.48 We consider both routes are easy to use and understand, do not require spoken conversations with the losing provider and are fast, secure, and convenient to the extent that consumers can make the request at any time (day or night). In particular, the text route is an established form of communication, for example to request billing information, authorise payments for charities, get updates from delivery companies, financial institutions, etc. Text also allows consumers to easily access and retain information in a more durable format than online.
- 4.49 Both these request routes appear popular with consumers. Our consumer research found that around four in five (80%) switchers who had previously switched under the PAC process, and 73% of switchers who had previously switched via C&R, said they would either 'definitely' or 'probably' use the text or online routes. Around half (49%) of PAC switchers said they had a preference for using the online route.
- 4.50 Our current data suggests that around 6% of non-bulk port PAC switches involved two or more numbers. We recognise that switching requests for multiple numbers, whether or not these numbers are ported, are likely to be more complex than requests relating to a single number. For this reason, we do not consider that mobile providers should have to accept multiple number requests by text, but will need to allow multiple number requests through the phone and online account routes, which allow for greater information to be presented to consumers.^{170,171} The online route is therefore necessary for multiple number switches. If there continues to be growth in multiple numbered accounts e.g. family SIM bundles, the availability of an online route will become even more important. We also consider this functionality is important to achieve our policy objectives in respect of business customers, which we discuss below.
- 4.51 The online route also has the benefit of being available to consumers where there is limited mobile reception and is useful for consumers who are already conducting their switching activities online, such as researching mobile deals.
- 4.52 We acknowledge some consumers may be more likely than others to take advantage of the additional request routes. However, we are of the view that these two additional PAC/N-PAC request routes should be effective in reducing a large proportion of the unnecessary time and difficulties that consumers experience under the status quo.
- 4.53 Providers will also need to give equal prominence to the three PAC/N-PAC request routes. Without this requirement, we are concerned that providers may have an incentive to steer consumers towards phone or webchat where they have a retention opportunity to persuade consumers not to switch to another provider.

¹⁷⁰ Auto-Switch allows for fewer than 25 mobile numbers to be switched. This is discussed in Annex 4.

¹⁷¹ It remains open to consumers to submit a series of separate single requests by text

Consumer switching

Decision on reforming the switching of mobile communication services

4.54 Providers remain free to supplement these methods with others that consumers may find convenient, or which may make any of the three mandated methods more available or accessible. For example, consumers and providers may both find it convenient to request and receive PAC/N-PAC via a mobile ‘app’, particularly where such an ‘app’ is essentially a mobile portal to the customer’s online account.

Ensuring consumers are informed about the implications of switching

4.55 Under current switching arrangements, consumers are typically made aware of the implications of their decision to switch when they contact their provider to cancel service and/or request a PAC. This would include any liability for terminating a contract before the expiry of its minimum term, i.e. any early termination charges.

4.56 Our aim is to ensure that consumers are at least as well informed under Auto-Switch as under current PAC arrangements. For this reason, our previous consultations included a number of provisions explicitly aimed at ensuring consumers are informed about the key elements of switching.

4.57 In our view, the following elements are the core potential costs of switching that consumers would need to weigh up before deciding whether and when to switch:¹⁷²

- any applicable early termination charge, including those arising in respect of handset or equipment costs where these are included within the mobile service contract;
- the amount of any outstanding credit balance in respect of prepaid mobile services.

4.58 These two elements, which we term Switching Information, will need to be given to consumers alongside their PAC/N-PAC.¹⁷³ Consumers would also be able to request and receive this Switching Information from their current provider independently of any decision to switch, by text, via online or by phone.

4.59 The information provided needs to:

- be accurate at the date of request and capture the major financial implications of switching in terms of any new charges that may accrue to, or credit that is lost by, consumers who switch;
- aggregated across the applicable set of mobile numbers that are being switched;

4.60 A number of stakeholders raised concerns on the form and content of this Switching Information and said it was insufficient to inform consumers, given the increasingly complex nature of mobile packages and that as a consequence, consumers could make poorly informed decisions to switch.

4.61 In our view, it is important for consumers to retain control over the degree of interaction they have with their existing provider and that the use of text and online routes to request a PAC/N-PAC provides this degree of control.

¹⁷² March 2016 consultation §5.46

¹⁷³ We noted that where the request to switch is for more than one mobile number, any charges payable should be aggregated across the applicable set of mobile numbers.

Consumer switching

Decision on reforming the switching of mobile communication services

- 4.62 However, we recognise that the text route for delivering Switching Information may be limited in terms of more complex information for some consumers and in light of comments from stakeholders we have modified the design.
- 4.63 We are now requiring that the text message sent to consumers containing the PAC/N-PAC and the Switching Information contains a link to their online account held with their mobile provider, which everyone will have access to under Auto-Switch. This link should, at a minimum, lead to the customer's account login page.
- 4.64 It would be at the discretion of each provider to tailor the information available via their online accounts to ensure that its customers are aware of details and elements of their current mobile package that might be lost or amended when switching. Our expectation is that this information will be factual and will not be delivered in a way which could mislead consumers as to the implications or risks of switching providers or lead the customer to contact their provider by phone.
- 4.65 We acknowledge that the multiplicity of providers' offers, including the bundling by some providers of mobile with other communications services, can mean the details and consequences of any switch are correspondingly varied. We have also considered Virgin's view that more detailed consideration needs to be given to whether it is appropriate to inform a consumer via a text message about an outstanding loan which could affect their credit score, where elements of a mobile service package may constitute a loan for the handset.
- 4.66 In relation to both of these points, providers are able to include the information that they consider most relevant within the Switching Information text. Providers could include a statement of fact about whether there is an impact on any other services provided. This would then allow the consumer to decide whether they need to find out further information. We would not consider it appropriate to include a general statement in all texts that this *might* be the case, as that could unnecessarily prompt further engagement between the consumer and with their existing provider.
- 4.67 Providers could also include in the text, information about a handset that is provided to the consumer on a separate contractual basis to the mobile service. The text could helpfully include the contract end date for the handset, as in the example below:
- "Your PAC/[N-PAC] is XXXXXXXXXX and is valid for 30 days. If you switch today [Provider Y] will charge you £XX.XX for your [mobile] contract and you will continue to pay for your handset until [date]. More information about your current mobile service is available on your online account, visit [www.\[Y\].co.uk/\[landing_page\]](http://www.[Y].co.uk/[landing_page])."
- 4.68 In our judgment, Auto-Switch achieves an appropriate balance between providing consumers with the degree of control over the contact they have with their existing provider that we consider is required to address the consumer harms we have identified, and ensuring consumers receive key information they need when considering whether to switch.

4.69 We note that it remains open to consumers to phone their existing provider to understand or explore further the implications of switching, should they wish to.

Businesses will also benefit from Auto-Switch

4.70 Auto-Switch captures switches of fewer than 25 mobile numbers, including where such switches of mobile provider are made by businesses. A number of stakeholders raised concerns about extending the scope of Auto-Switch to businesses, particularly around the ability of our proposed Switching Information text to convey the full commercial impact to some businesses of a switch of mobile provider and the proposed requirement to return the Switching Information immediately.

4.71 We concluded in Section 3 that businesses can suffer similar harm to residential consumers when switching, or considering switching, under current switching processes. Therefore, we consider it is appropriate to ensure businesses can benefit from the same reform as residential consumers.

4.72 We consider that the great majority of businesses will, where they switch via Auto-Switch, benefit from receiving Switching Information from their providers, including ETC information. This is because most businesses choose mobile tariffs or contracts that are not significantly different to those taken by residential consumers, meaning that for many businesses the financial consequences of switching are likely to be adequately covered by the Switching Information.

4.73 However, we recognise that some businesses have more complex tariff arrangements. Mobile services may be taken as part of a larger package of communications services, which can have complex termination arrangements, for example fees for terminating only the mobile element of the package which may be contingent on previous usage of all services within the communication package as a whole.

4.74 Businesses are also more likely to be able to decide on the appropriate route to request a PAC and will choose the route that will best serve their needs, particularly in relation to understanding the implications of any switch. Ensuring businesses also benefit from the Auto-Switch reform gives them the option of switching by text and online.

4.75 We therefore consider that our Switching Information requirement provides sufficient information for most businesses to make considered decisions and that in addition, the online route will allow businesses, particularly those with more complex needs, to understand the implications of switching.

4.76 On these bases we remain of the view that Auto-Switch should also apply to businesses.

4.77 However, we have considered [redacted] submission that for business switches, it would be more appropriate to require the PAC/N-PAC and Switching Information to be provided within 2 days. We have also considered this submission in the light of the more complex requirements that customers on business tariffs may have and whether they need to receive this information immediately.

Consumer switching

Decision on reforming the switching of mobile communication services

- 4.78 We are now of the view that these types of customers, are less likely to switch in-store and online and may not want to make a decision to switch immediately. These customers may also want to review implications of switching, when they have more complex tariffs, in more detail. We also recognise that Switching Information for some of these customers may be more complex for providers to produce and that having more time to do this would be more practicable for them. For these reasons, we have judged it is appropriate to allow mobile providers that sell business tariffs, to provide Switching Information within a two-day timescale, along with a PAC/N-PAC, or in response to a standalone request. This would only apply where the request is made by text or online.
- 4.79 Where the request is made by phone, we consider the provider can continue to communicate information on the implications of switching to their business customers in the same way they do now.
- 4.80 We have therefore modified the requirements in relation to business customers as follows:
- Where a business customer requests their PAC/N-PAC by phone, they will need to be given this immediately over the phone and where this is not possible, within 2 hours by text. This is the same obligation that exists at the moment, except in relation to the provision of the N-PAC.
 - Where a business customer requests a PAC/N-PAC by text, they will receive via text the PAC/N-PAC and Switching Information within 2 working days of the request.
 - Where a business customer requests a PAC/N-PAC through their online account, they will receive it and Switching Information within 2 working days via their online account and also via text.
- 4.81 A business customer can also ask for Switching Information irrespective of any consideration to switch, and this will be provided via text or online within 2 working days. If requested by phone, Switching Information may be provided immediately if the provider is able to do so, and if not via text or online within 2 working days.

Detailed design specifications for PAC, N-PAC and Switching Information

- 4.82 As we explained in Figure 5 above, Auto-Switch allows consumers to request a PAC, N-PAC and Switching Information via text, via online account, or by phone. This would be free of charge to use, as we do not consider it appropriate that consumers should be charged to switch providers. A PAC/N-PAC would be valid for 30 days after it is issued, as is currently the case for existing PACs.
- 4.83 Requests by text would be made via a short code number which will be the same across all providers, so it is convenient to use and easy to remember. Three short codes would be in use; one for requesting a PAC, one for an N-PAC and a third short code for Switching Information.

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- 4.84 We have designed Auto-Switch on the basis that consumers will be able to receive a PAC, N-PAC or Switching Information immediately following request¹⁷⁴; business customers within 2 working days if requested by text or online, and that the text and online routes are available at all times.
- 4.85 We have also designed Auto-Switch to deliver the PAC/N-PAC by text as well as the method it was requested. We have done this for two reasons:
- It serves as confirmation that a PAC/N-PAC has been requested. This is an important component in combating any potential fraudulent activities as we discuss below.
 - It provides the PAC/N-PAC in a durable format, that the consumer can retain and easily pass on to their new provider.
- 4.86 We received a number of stakeholder comments on other detailed specifications which we set out and address in Annex 2.

SIM card activation triggers the switch process

- 4.87 In our May 2017 consultation, we proposed that a consumer can request to port/ cancel their old service when they sign up for a new service (by giving their new provider the PAC/N-PAC at the point of sale), rather than after the new service has been activated. This means the consumer only has to contact the gaining provider once, instead of twice as is currently the case.
- 4.88 At present the consumer:
- contacts the gaining provider to sign up to the new service; and
 - contacts them again, after their new service has been activated, to provide the PAC that will initiate the transfer of the number.
- 4.89 Some providers and retailers enable the consumer to carry out these two steps together, for example in-store, when the consumer is able to activate their new service immediately and provide their PAC to the gaining provider.
- 4.90 Under Auto-Switch, the consumer, at the point of signing up to their new service, will be able to give the PAC/N-PAC to their new provider, whether or not they are able to activate their new service immediately. Once the consumer receives and activates the SIM on the network, the porting/cancellation process would be triggered automatically and progressed by the gaining provider.
- 4.91 BT/EE¹⁷⁵ expressed concerns about our proposal that SIM activation automatically triggers the switch (and port) under Auto-Switch. It suggested that this could be an issue, particularly for consumers, where the coverage from a new provider is weak and the consumer only becomes aware of this when the new SIM is activated. At this point, the porting of the old number (where the consumer has requested a port) has already been

¹⁷⁴ In practice, and as we set out in our May consultation, we believe it is reasonable to expect that most consumer requests for PAC/N-PAC will be delivered within 1 minute of request.

¹⁷⁵ [BT/EE May 2017 consultation response](#) §71

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initiated with the consequence that the consumer has service neither from their new nor old provider.

- 4.92 We have considered BT/EE's concern. Under Auto-Switch, consumers retain the option not to submit their PAC/N-PAC whilst they test their new services, including coverage. We also note that providers, under our transparency requirements, will need to provide guidance about the switching process, which should ensure that new consumers are aware of this possibility.
- 4.93 We also note it is open to the consumer to cancel the new service under cooling-off or other relevant provisions and seek a new provider or seek to return to their old provider, should they find the new service to be unsatisfactory. This is no different from the current situation.
- 4.94 We recognise that some consumers may prefer to delay the port/cancellation for a period of time, as some stakeholders have suggested. For example, they may wish to test the signal quality of their gaining provider's network before porting/ cancelling their old service. Therefore, consumers will have the choice of providing the PAC/N-PAC to the gaining provider when they sign up to a new service or providing the PAC/N-PAC to them at a later date, after their new service has been activated (as is the case now). This process is detailed in the diagrams in Figures A2.1 and A2.2 in Annex 2.

Ensuring consumers are not exposed to unwanted provider contact or persuasion

- 4.95 It is a fundamental objective of Auto-Switch that consumers are able to control the degree of contact they have with their current provider when switching, including the degree to which a consumer seeks (or not) any retention offer to stay.
- 4.96 As such, we consider it important that Auto-Switch does not introduce new or enhanced opportunities for providers to seek to contact consumers to persuade them not to switch in ways that consumers either do not welcome and/or may find misleading. Stakeholders have also raised this issue in their responses to our May consultation. Specifically:
- Three, SSE, TalkTalk and [3<],¹⁷⁶ while noting the potential benefits of save offers for some consumers, put forward arguments that reactive save activity could have adverse impacts on consumers and competition and/or called for a prohibition or restraints on such activity by providers.
 - SSE¹⁷⁷ noted that Auto-Switch leaves losing providers with some control over the design of websites and links that consumers visit, and that losing providers may use this control to steer consumers towards a 'save' offer;

¹⁷⁶ [Three May 2017 consultation response](#) section 1, [Three May 2017 consultation supplementary response](#) September 2017 §2, [SSE May 2017 consultation response](#) page 6, [TalkTalk May 2017 consultation response](#) §2.6, §3.0, and [3<] May 2017 consultation response [3<]

¹⁷⁷ [SSE May 2017 consultation response](#) page 6

- [3] ¹⁷⁸ argued that reactive save offers that are tailored by losing providers to consumers seeking to switch away can, among other things, mean that different consumers pay different prices for the same products and services. They called for rules to regulate communications from the losing provider once a consumer has requested a PAC;
- Three suggested that, where a consumer has requested a PAC/N-PAC from their current provider by text or online (ie. the consumer has implicitly elected not to speak to their provider), the provider might nevertheless seek to call the consumer in an attempt to persuade him/her not to switch. Three said this would be a significant additional source of ‘nuisance’ calls. It also presented results of consumer research it had commissioned which suggested that reactive save is harmful to the majority of switchers who have already resolved to leave their current provider. Three suggested that, as a remedy, Ofcom should give consumers the ability, as part of the switching process, to choose whether they want to receive reactive save offers, either by:
 - a prohibition on reactive save activity where the consumer has requested a PAC/N-PAC via an automated means such as SMS or online. Consumers who wish to seek a reactive save offer would remain free to phone their provider; or
 - allowing a consumer to opt-in to reactive save offers at the point at which they receive or request their PAC/N-PAC. Consumers who wish to be told about or seek a reactive save offer could opt-in and would be no worse off than under present arrangements.¹⁷⁹

4.97 We recognise that providers will be free proactively to contact consumers once a PAC/N-PAC has been requested, and that such methods of contact may include phone or email. However, the ability of the losing provider to treat requests for PAC/N-PACs as an opportunity to persuade the consumer not to switch is significantly reduced under Auto-Switch, for two reasons:

- We would expect that in many cases the time window between the consumer requesting and receiving the PAC/N-PAC and giving this to their new provider will be very short. For example, in the case of an in-store sale, if the consumer is guided to request a PAC/N-PAC while in store and passes it immediately to their new provider, the consumer’s current provider would have very limited opportunity to initiate some form of provider ‘persuasion to stay’.
- Once the consumer has obtained a PAC/N-PAC, the consumer is free to complete the switch without engaging further with their current provider and is able to refuse calls and other forms of communication.

¹⁷⁸ [3] May 2017 consultation response [3]

¹⁷⁹ Economic consultants commissioned by Three estimated that a mechanism for consumers to opt in/out of reactive save would deliver net benefits to consumers of between £29 million to £38 million (10- year NPV), and that further benefits would be realised through enhancements to the competitive process released through this mechanism. See: https://www.ofcom.org.uk/_data/assets/pdf_file/0018/106560/Three-supplementary-response-Annex.pdf

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4.98 Nevertheless, we note remarks that it is important to ensure that the introduction of Auto-Switch does not increase risks that consumers are contacted unduly or subject to unwelcome persuasion to stay. Neither should Auto-Switch increase opportunities or incentives for providers to use the delivery of information intended to inform consumers about the implications of switching as a means to persuade or mislead consumers into not switching.

4.99 In the light of these concerns, our expectation is that mobile providers will meet requirements regarding the request or provision of PAC/N-PAC and/or Switching Information in the following ways:

- Regarding the dispatch of the PAC/N-PAC and/or Switching Information by text, via online account, or by phone, providers should not make statements or representations which may induce the consumer to not proceed or terminate their contract with their new provider and/or remain in a contract with their current provider. In addition, information should not be presented that would induce the consumer to call their current provider.
- Regarding the dispatch of the PAC/N-PAC together with Switching Information by text, we expect providers to use neutral wording which delivers the required information in a concise and factual manner. We suggest the following as an illustration of a possible format, e.g. when a consumer requests a PAC:

“Your PAC is XXXXXXXXX and is valid for 30 days. If you switch today we will charge you £XX.XX for the remainder of your contract. More information about your current mobile service is available on your online account, visit [www.\[Y’s website\]/\[landing_page\]](#).”

4.100 It is also important that providers do not suggest to consumers that they need to request a PAC/N-PAC well in advance of switching their service, in order to create greater reactive opportunities. We would consider this misleading, as the design of Auto-Switch ensures that a PAC/N-PAC is provided immediately for residential customers, and therefore could be requested at the point a consumer is signing up to a new service. In the case of business customers, we would still consider it misleading because if requested by phone, providers would need to provide the PAC/N-PAC immediately or where this is not possible, by text within 2 hours.

4.101 We see merit in Three’s suggestion of enhancing consumer control over any save activity through an ‘opt in/out’ mechanism to reactive save offers at the point at which consumers receive or request their PAC/N-PAC. We do not consider it necessary to include it within our design of Auto-Switch at this time. However, we will continue, as part of our regular and wider market and consumer research, to monitor the incidence and effect of providers’ save activity and in particular the degree to which consumers find this an unwanted intrusion, and may revisit this aspect of our reform.

Compensation if the switch or cancellation takes more than one working day

4.102 Under General Conditions presently in force, providers are required to complete a number port within one business day of a consumer’s request to port their mobile number

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(GC18.3),¹⁸⁰ and consumers are entitled to reasonable compensation where providers do not meet this requirement (GC18.9).¹⁸¹

- 4.103 Our May 2017 proposals included that these requirements would be extended to mobile switchers who do not port their number. That is, mobile providers would be required to effect the cancellation of the old service within one business day of a consumer's request to switch, and that consumers would be entitled to reasonable compensation where providers do not meet this requirement.¹⁸²
- 4.104 We remain of the view that, in light of our conclusions that switchers experience harm under current switching arrangements irrespective of whether they port their number or not, it is important to extend equal protections to both forms of switchers. For this reason, we remain of the view that it is necessary to extend the protections given under GC18.3 and GC18.9 to switchers who do not port.
- 4.105 We note that, consequently, we expect providers to extend present arrangements for the payment and level of compensation to be extended to those who switch but do not port.

Fraud and verification

- 4.106 It is important that any revisions or reforms to mobile switching processes minimise any risks of unintended consequences and do not introduce or compound further harms. Our May consultation noted that our proposed reforms should not introduce new risks for unauthorised or fraudulent switching.
- 4.107 A limited number of stakeholders have continued to express their concerns about fraud and verification risks under Auto-Switch (which we discuss in detail in Annex 2), specifically around the potential for fraudulent or unauthorised switching or porting to occur and that the current voice process delivers a level of customer verification and authentication which will be difficult to achieve through alternative options.
- 4.108 We have considered these concerns again and agree that any switching mechanism should include effective mechanisms to ensure a request for a switch is made by the person authorised to do so. This would be necessary to avoid slamming, erroneous transfers or more general fraudulent or mischievous attempts to switch mobile provider. In our judgment, and as we set out in May, Auto-Switch provides sufficient safeguards in this regard and does not introduce new risks.¹⁸³
- 4.109 In our view, Auto-Switch represents an improvement over the current porting process as it requires mobile providers to text the PAC/N-PAC to the consumer, whether they have requested it by text, online or by phone. The authorised account holder would then be alerted to any fraudulent PAC/N-PAC request made by phone or online and could contact their provider.

¹⁸⁰ Present GC18.3, to become B3.5 following our Review of General Conditions

¹⁸¹ Present GC18.9, to become B3.11 following our Review of General Conditions

¹⁸² May 2017 Consultation Annex 14 C[X].14 and C[X].21

¹⁸³ Annex 2 and May 2017 consultation §4.112-§4.124

4.110 We have also considered risks of SIM swap fraud and unauthorised acquisition of mobile numbers. In our view, Auto-Switch does not increase these risks compared to the current situation.

Prohibit charging for notice periods after the switch date

4.111 In Section 3 we have concluded that consumers face unnecessary difficulties and unnecessary costs when they switch – under either PAC or C&R arrangements – because they are required to pay notice after the switch has taken place, which leads to consumer harm.

4.112 Most stakeholders were supportive of our proposals to prohibit charging notice beyond the switch date. A small number of providers however put forward alternative approaches or remedies to the prohibition. These include a voluntary proposal to waive charges for all switchers (put forward by BT/EE and Vodafone)¹⁸⁴, allowing C&R switchers to choose the date on which they want the service with their current provider to cease (BT/EE)¹⁸⁵ and requiring providers to be more transparent about the switching process (Virgin).¹⁸⁶

4.113 Vodafone also said that Ofcom had failed to consider the role which notice periods play in helping consumers to exercise their consumer protection ‘cooling off’ rights. Vodafone argued that, under the notice period regime, the consumer continues to have a contract and working service with their old provider which they can revert to or remain with if they change their mind about switching and so invoke their ‘cooling off’ period.¹⁸⁷

4.114 We have considered these alternative approaches. In our view, they do not offer a fully effective solution to the harms we have identified.

4.115 The voluntary proposal put forward by Vodafone and BT/EE, whilst mirroring our proposals would only apply to those two providers, one of which does not currently charge in respect of notice periods for PAC switchers, in any event. In our view, this will only mitigate some of the consumer harm.

4.116 We agree that allowing C&R switchers to choose the date by which they want the service with their current provider to cease could mitigate some of the harms experienced by them. However, such a solution would not address the coordination problems we have identified in Section 3. It is also not clear whether BT/EE was proposing this would be accomplished via regulation or through a voluntary solution.

4.117 In relation to cooling off rights, we note that these rights concern consumers’ ability to leave a contract newly entered into, rather than returning to a contract they have left. Our proposals on notice periods do not affect how providers manage customers who wish to return soon after switching away, therefore existing processes will be unaffected. Providers are free to choose how to manage this process, and they have the option of

¹⁸⁴ [BT/EE May 2017 consultation response](#) §115-§126 and [Vodafone May 2017 consultation response](#) section 5

¹⁸⁵ [BT/EE May 2017 consultation response](#) §63

¹⁸⁶ [Virgin May 2017 consultation response](#) §13

¹⁸⁷ [Vodafone May 2017 consultation response](#) pages 12-13

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keeping consumers' accounts 'open' for a set period after they leave should this make the process of re-joining easier.

- 4.118 Finally, we do not consider that increasing the information available to consumers about notice period requirements would adequately address the harms we have identified in relation to notice periods. Even where terms are transparent to all consumers, we believe that consumers would continue either to incur double payments that are unwarranted, would delay the start of their new service or would face difficulties coordinating switches in order to avoid double payments.
- 4.119 We have therefore decided that a new requirement on mobile providers not to charge notice beyond the day of switch, where the consumer seeks to switch using the Auto-Switch process, is necessary in order to address the harms we have identified.
- 4.120 The provider the consumer is leaving should calculate final bills on a pro-rata basis. This means consumers will only be charged for the period between day one of their monthly billing cycle to the day of the switch on a pro-rata basis, rather than being based on a consumer's usage of their inclusive monthly bundle at that point of the billing cycle. We consider this is a fair and pragmatic approach and note that we did not receive any stakeholder responses on this in our May consultation. For the avoidance of doubt, this approach does not inhibit providers' ability to calculate and settle final bills which take into account service charges that the consumer has incurred before deactivation of the old service, but which arrive for settlement after this, for example charges for roaming abroad.¹⁸⁸
- 4.121 For consumers using the Auto-Switch process, these requirements will mean that they no longer need to anticipate, time and coordinate their switch to try to avoid double paying. No notice will be payable after the switch date. This will be the case whether or not the consumer transfers their existing mobile number to their new provider.
- 4.122 Our reform of notice periods will avoid consumers paying for a service they no longer receive or value after the switch date, and will make it easier to switch without worrying about notice periods. It will significantly reduce double paying for switchers, as well as remove a deterrent to switching. This is in line with our regulatory objectives.

Providing transparency to consumers

- 4.123 We highlighted in our previous consultations that the quality of information provided to consumers on how to switch varied significantly across providers. Issues included a lack of, or unclear, information on how to obtain a PAC and the steps involved in the porting process, and on consumers' rights if the porting process goes wrong.
- 4.124 Respondents generally expressed support for requirements on providers to provide greater transparency on switching processes.

¹⁸⁸ We note O2 raised this point in footnote 39 to its response to the May 2017 consultation

- 4.125 TalkTalk submitted that reform needed to be accompanied by clear, accessible consumer information to maximise the benefits of change, and that measures should be put in place to ensure that different routes for requesting PAC/N-PACs are given equal prominence in mobile providers' communications with consumers. They said that these communications should ensure that the text route is clearly explained, and that there should be specific promotion by Ofcom to set out the advantages of the text route.
- 4.126 [3<] agreed with the need for transparency requirements, and said this would bring mobile switching into line with the fixed market.¹⁸⁹
- 4.127 We note that mobile providers have committed, working through the OSG, to develop and publish on their websites better guidance to consumers about what to expect during the switching (and porting) process. We welcome such steps.
- 4.128 We remain concerned however that transparency about switching processes remains insufficient to inform consumers fully. We note that Communications Consumer Panel continued to highlight the need for more transparent guidance for consumers in their response to our May 2017 consultation.
- 4.129 We have decided therefore that the third element of our package of reforms is necessary in order to ensure the effectiveness of Auto-Switch and notice period reform. Providers should provide consumers with clear information about the switching and porting process, to ensure consumers are better informed and specifically should:
- Ensure that the three means by which a customer can request and receive a PAC/N-PAC or information about switching are publicised and readily available, including being easily accessible via providers' websites; and
 - provide guidance to consumers on the switching process which is concise and easy to understand. This guidance must be readily available on providers' websites and they must ensure it is well publicised.
- 4.130 We consider that the requirements for clearer and more readily available guidance, will result in consumers being better informed about the switching process, including Auto-Switch. They will be able to switch providers more easily and be less deterred from doing so because of uncertainties about how to switch.

Conclusion on the package of reforms

- 4.131 Our policy objective is to ensure that consumers do not experience unnecessary difficulties when switching mobile provider, so that they can exercise choice and take advantage of competition in communications markets. The package of reforms we have identified in our view effectively addresses the unnecessary difficulties which we have identified as giving rise to consumer harm. It allows for a switching process that is quick, simple and convenient to use.

¹⁸⁹ [3<] May 2017 consultation response [3<]

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- 4.132 Our reforms offer significant advantages to consumers compared to the current PAC process for switching and porting or default C&R arrangements for those who wish to switch without porting. These include a single, simple coherent message about switching whether or not consumers wish to port their number, control over the degree of contact with their existing provider, no more need to give notice, and better information about the implications of switching.
- 4.133 In the next section we set our final decision on reforming mobile switching and how it will be implemented.

5. Conclusions on introducing mobile switching reform

- 5.1 In Section 4 we concluded that a package of mobile switching reform comprising an Auto-Switch process, a prohibition on notice period charges beyond the switching date, and the provision of transparent consumer guidance about the switching process would be capable of effectively addressing the consumer harms we identified in Section 3.
- 5.2 In this section we set out our assessment of the likely impact of our package of reforms and in doing so explain why we consider that this package of reforms is the least onerous effective means of achieving our objectives, and why we consider that it does not give rise to adverse effects which are disproportionate to the achievement of those objectives.

Assessing the proportionality of our package of reforms

- 5.3 Under our regulatory principles we operate with a bias against intervention, which is derived from our duty in section 3(3) of the Act to have regard to the principles under which regulatory activities should be (amongst other things) proportionate and targeted only at cases in which action is needed.
- 5.4 In assessing proportionality, we consider:
- whether a potential measure is an effective means of achieving our objectives;
 - whether the potential measure is necessary to achieve those objectives, or whether those objectives could be achieved by a less onerous approach; and
 - whether the potential measure is, in the round, proportionate (i.e. whether the measure gives rise to adverse effects which are disproportionate to the aims pursued).

Effective means of achieving our objectives

- 5.5 As set out in Section 2, our policy objective is to ensure that consumers do not experience unnecessary difficulties when switching mobile provider, so that they can exercise choice and take advantage of competition in communications markets. Removing difficulties or deterrents that give rise to consumer harm should benefit consumers by allowing for a switching process that is quick, simple and convenient to use. In Section 3 we identified a number of consumer harms arising from existing switching arrangements which we consider should be addressed.
- 5.6 To achieve this, we have identified reforms to:
- reduce unnecessary time spent and difficulties encountered in progressing a switch, in particular, by removing the need for the consumer to speak to the losing provider before switching;
 - reduce the risk of 'double paying' as a consequence of any need to pay notice period charges when switching; and

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- provide transparent consumer guidance about the switching process.
- 5.7 As we set out in Section 4, we consider it is important to ensure that our reforms are simple to understand and available to all mobile consumers regardless of:
- whether they wish to port their number or not, so that consumers get a single, simple coherent message about switching;
 - whether they are seeking to port a single number, or multiple numbers;¹⁹⁰ and
 - whether they are residential or business customers.
- 5.8 In fulfilling our objectives, we aim to ensure that consumers are well informed about the implications of switching, and protected against unauthorised switching.
- 5.9 Our assessment is that Auto-Switch combined with reform on notice periods and reform to improve transparency about the switching process, would be effective in achieving the policy objectives described above. Specifically:
- Auto-Switch allows consumers to control the form and degree of contact they have with their losing provider, including allowing them to avoid speaking to their losing provider if they do not wish to do so, but not precluding them from doing so if they so wish.
 - Switching provider would be quicker and more convenient as the consumer only needs to contact their gaining provider once, after which the port or cancellation occurs automatically, and the new service starts.
 - Auto-Switch also ensures that those who do not wish to port their number, also benefit from an easier and more convenient switching process.
 - Auto-Switch provides for multiple ports/switches so long as they involve ports/switches of fewer than 25 numbers.¹⁹¹ It is also available to business as well as residential customers.
 - Consumers would not be less informed than now about the implications of switching (for the reasons explained in paragraphs 4.55-4.69) or exposed to a materially greater risk of unauthorised switching (for the reasons explained in paragraphs 4.106-4.110).
 - The prohibition on charging for notice periods after the switching date removes double paying for consumers porting their number. This prohibition, when combined with Auto-Switch, reduces the level of double-paying incurred by those wishing to switch without porting their number.
 - Removing difficulties associated with the switching process should also remove deterrents for those considering switching.
 - Consumers will be better informed about the switching process. They will be able to switch providers more easily and be less deterred from doing so because of uncertainties about how to switch.

¹⁹⁰ For fewer than 25 ports or switches.

¹⁹¹ In the case of Auto-Switch, this is achieved through the inclusion of an online route.

- 5.10 The 2017 BDRC research provides some indication of the likely effectiveness of our Auto-Switch reform. In this research, many existing PAC and C&R switchers indicated they would use Auto-Switch to port or switch.¹⁹² We recognise that not all of those who said they would use Auto-Switch may do so in reality. Nevertheless, this evidence suggests there is strong interest in Auto-Switch amongst existing switchers who described it as much easier than the current processes.
- 5.11 When asked in the same survey why they would use Auto-Switch, respondents generally commented that the processes appeared quicker, easier and involved less hassle than the current switching process. Some respondents specifically said that it would enable them to avoid the difficulties associated with having to call their losing provider, for example being put on hold; and experiencing pressure from the customer service agent to remain with their existing provider.

Necessary and the least onerous means of achieving objectives

- 5.12 In this section we explain why we consider each of the measures under our package of reforms are necessary (i.e. no more onerous than is necessary to achieve our objectives) and as applicable, the least onerous means of achieving those objectives.

Auto-Switch

- 5.13 We have considered whether Auto-Switch is necessary and the least onerous means of achieving our policy objective of reducing the unnecessary time and difficulties involved in progressing a switch. We note in this regard that it is as a result of considering this that we have decided that Auto-Switch, rather than GPL, is an appropriate and proportionate option to achieve our policy aim. As we explain in Section 2, in our view Auto-Switch would be effective in meeting our policy objectives and would do so at a lower cost than GPL.
- 5.14 It is also as a result of considering this question that we have decided to specify the less costly “LP-variant” of Auto-Switch, under which consumers can make PAC/N-PAC requests directly with losing providers (rather than the “CPS variant” under which consumers would make requests to the Central Porting Service (CPS)). Again, we consider that the “LP-variant” effectively addresses our concerns, and that it is a lower cost means of doing so than the “CPS variant”.¹⁹³

¹⁹² In this research, we asked a sample of consumers who previously switched via PAC or C&R whether they would use Auto-Switch to request their PAC and/or cancel their mobile service, if it was available for free, rather than the way that they did so last time. We first presented respondents with a series of diagrams which set out the steps that would be necessary to switch via our Auto-Switch process. BDRC 2017 slides 13, 75 and 20. Stated take up of Auto-Switch among PAC switchers was 80% and 73% among C&R switchers. Around 60% of C&R switchers said they would definitely, or probably keep their number if they used Auto-Switch. Whilst, many C&R switchers stated that they “ideally” would definitely or probably keep their number next time they switched (irrespective of availability of Auto-Switch), there is uncertainty regarding whether these respondents would port next time absent Auto-Switch as many of them had a strong preference for keeping their number last time, but did not do so.

¹⁹³ Both the GPL and Auto-Switch CPS variant options are described and assessed in detail in the May 2017 consultation.

5.15 We have first considered whether all the main features of the Auto-Switch reform are necessary to achieve our policy aims:¹⁹⁴

- **an online route for requesting and obtaining a PAC** (in addition to the text route)

This route is necessary for switchers who want to switch multiple services. We estimate that currently around 6% of (non-bulk) PAC switches were part of a multiple number switch implying that, without the online route, Auto-Switch would be unavailable to around 300,000 switches per year. If there continues to be growth in multiple numbered accounts e.g. family SIM bundles, the availability of an online route will become even more important. We also consider this functionality is important to achieve our policy objectives in respect of business customers, which we discuss below.

The online route was popular amongst existing switchers with around half of PAC switchers indicating that they would prefer to use the online Auto-Switch route than the text route. It seems likely that more people would use the Auto-Switch process if it included an online route.

- **functionality for switchers who do not want to port their number** (i.e. N-PAC)

Our reform of mobile switching is based on addressing the harms that result from the current switching processes as a result of consumers needing to contact their current provider. Unless we build in functionality for those who do not want to change their number to use Auto-Switch, there is a risk this group continues to experience harms relating to unnecessary time and difficulties, including experiencing provider persuasion to stay, difficulties cancelling their service with their old provider and double paying due to contract overlap. We also think this component of the Auto-Switch reform is necessary to create a symmetric and therefore easier to communicate switching process for porters and non-porters.

- **business consumers** (where they are switching or porting fewer than 25 numbers/accounts)

We have explained in Section 3 that many businesses experience similar harms to residential consumers when switching mobile provider.¹⁹⁵ We found that around a fifth of SMEs switching mobile provider said that they experienced at least one process related difficulty.¹⁹⁶ If the package of reforms does not cover business customers then they will continue to experience the harms we have identified. It is difficult to estimate how large this group is with precision; however, as set out in Annex 4, we have estimated that around 13% of switches per year involving fewer than 25 numbers/accounts relate to business tariffs. The inclusion of business customers in our

¹⁹⁴ We have already explained in §4.17-§4.22 that we do not think that the voluntary solution as proposed by BT/Vodafone would be effective in addressing the harm we have identified

¹⁹⁵ See §3.44

¹⁹⁶ 20% of SMEs said they experienced at least one difficulty of the following: process took longer than expected; existing provider persuasion to stay; difficulty contacting provider to cancel service; and/or difficulty getting a PAC from the existing provider

proposed Auto-Switch reform package is necessary to ensure that business customers can avoid the harms we have identified and so benefit from our reforms.

Nevertheless, we recognise that business customers may have different requirements to residential consumers, as well as more complex tariffs, which means it may not be necessary or practicable to provide them with a PAC/N-PAC and/or Switching Information immediately. We have amended Auto-Switch to recognise this for the text and online routes, and we are keeping the obligation for the phone route as it is now – i.e. immediately or within two hours by text where this is not possible, which makes it a less onerous requirement.

- 5.16 Having carefully considered these issues, we are satisfied that each of these components is necessary and together make up a package of reforms that is the least onerous to deliver our objectives. We are confident that our previous consideration of various options, including GPL and different variants of Auto-switch, has led us to the least onerous of the options we have considered, being less costly than GPL and also less costly than the CPS version of Auto-switch.

Notice Period reform

- 5.17 We have already explained in Section 4 why we consider notice period reform is necessary to achieve our policy objectives and why no other option is likely to be effective in this regard. In summary:
- We do not consider the voluntary proposal put forward by Vodafone and BT/EE to cease charging for notice periods would fully address consumer harm, given it would only be implemented by those two providers, one of which does not charge for notice periods in any event.
 - Allowing C&R switchers to choose the date by which they want the service with their current provider to cease would not address the coordination problems we have identified in Section 3.
 - Increasing the information available to consumers would not adequately address the harms we have identified in relation to notice periods. Even where terms are transparent to all consumers, we believe that consumers would continue either to incur double payments that are unwarranted, would delay the start of their new service or would face difficulties coordinating switches in order to avoid double payments.

Providing transparency to consumers

- 5.18 We consider that for this package of reforms to be effective it should include a requirement to provide transparency of switching processes to help ensure that consumers are better informed. When combined with the process reforms outlined above, greater transparency will improve consumers' understanding of the necessary steps involved in the switching process. We also consider that it could increase awareness and take-up of the Auto-Switch process.

Consideration of impact of reforms to ensure they are proportionate to meet our objectives

- 5.19 We have considered whether our proposed Auto-Switch and notice period reforms, together with increased transparency requirements, would produce adverse effects which are disproportionate to the aims we are seeking to achieve. In answering this question, we take into account the policy objectives we are pursuing, in light of our statutory duties.
- 5.20 As described in Section 2, one of our principal duties is to further the interests of consumers and our view is that consumers' interests will be best served by ensuring that they do not encounter unnecessary difficulties nor are deterred from exercising choice, because of switching arrangements.¹⁹⁷ We set out in Section 3, the specific difficulties that consumers currently encounter when switching their mobile service.
- 5.21 We consider that the objectives we are pursuing, and benefits that we consider would be secured by our proposed reforms, are important and legitimate in light of our statutory duties. Indeed, we consider achieving this outcome is a priority in our work on protecting consumers from harm.
- 5.22 We have carefully considered whether our proposals would generate costs – especially to the mobile industry - which would give rise to adverse effects that are disproportionate to the aims we are seeking to achieve. In making that assessment, we have considered the likely costs and benefits of implementing this package of proposals, which we have set out in detail in Annex 4 and which we summarise below. Some of these factors can be quantified, and where that is possible we have sought to do so to inform our assessment; other factors are less susceptible to meaningful quantification, but are important considerations for us to take into account.

Costs and benefits of our package of reforms

- 5.23 Implementing Auto-Switch, notice period reform and the transparency obligations would require mobile providers to incur costs to amend their existing switching processes, notice period policies and the information they provide to consumers about both. This includes developing the necessary functionality to offer text and online PAC/N-PAC request routes to both residential consumers and businesses.
- 5.24 We have set out the estimated net industry cost of the package of reforms in Annex 3. We have estimated that the net cost of implementing Auto-Switch in conjunction with notice period reform and implementing the transparency obligations (i.e. the implementation costs, net of operator cost savings) would be around £58 million.¹⁹⁸

¹⁹⁷ As set out in Section 2, Government has also made clear its commitment to improving switching across different sectors and introduced legislation in the Digital Economy Act 2017 to make explicit Ofcom's powers in relation to switching.

¹⁹⁸ This is the sum of the cost of notice period reform (£9 million), Auto-Switch (£48 million) and the transparency obligation (£0.9 million). We note that these costs include our estimates for the cost of the reforms customers on business tariffs, which are likely to overestimate costs see A4.

- 5.25 Set against this, we consider that the package of reforms would deliver significant benefits to: switchers; would-be switchers (those consumers who might switch in the future); and consumers more generally, through increasing rivalry between providers.
- 5.26 We have set out in Section 3 how we consider that current switching arrangements are deterring consumers from changing provider, and we have already explained in paragraphs 2.29 and 2.30 that removing unnecessary deterrents to switching mobile provider, which give rise to consumer harm, is a key policy objective. We expect that addressing these difficulties will also deliver secondary benefits to consumers, as more consumers engage in the market, which in turn will encourage greater competition between providers. We consider that the reduction in switching costs will lead to downward pressure in prices, benefitting consumers across the market which we discuss in Annex 8.
- 5.27 We have however where possible sought to quantify the benefits to switchers, recognising that this analysis will only capture some of the benefits implementing the package of reforms will deliver. We expect the package of reforms to deliver three distinct benefits to switchers and we have tried to quantify the first two of these:
- Reduced unnecessary time spent and difficulties switchers experience progressing the switch and – as applicable - porting their number;
 - Reduced levels of double paying amongst switchers; and
 - Reduced loss of service, particularly amongst current C&R switchers.¹⁹⁹
- 5.28 The benefits in terms of reduced time and difficulties progressing the switch depend on how many consumers will take up Auto-Switch to switch mobile providers. In order to estimate this, we commissioned a survey (“BDRC 2017”) which specifically explored how many switchers who had previously switched via PAC or C&R would take-up Auto-Switch²⁰⁰. We explored how many consumers would use Auto-Switch and also asked questions on whether consumers would still use it if they had to pay for it (‘Willingness to Pay questions’). The latter questions were used to derive consumers’ valuations of Auto-Switch and so provide an estimate of the consumer value of this reform. More detail is provided in Annex 7.
- 5.29 Our survey found that 80% of PAC switchers and 73% of C&R switchers stated that they would definitely or probably use Auto-Switch in the future rather than the way they switched last time. This very high level of stated take-up does not take into account the

¹⁹⁹ We would also expect C&R switchers who use Auto-Switch to be less likely to experience loss of service. This is because, under Auto-Switch, switchers will no longer need to manage contract overlap to minimise double paying and risk loss of service when this goes wrong. We have not been able to quantify this benefit but note that 27% of C&R switchers experienced a loss of service of more than a day (see BDRC 2015 slide 49), and 73% of existing C&R switchers told us they would Auto-Switch (which we discounted to 38% to account for any risks associated with hypothetical bias). As such we think this benefit could be material.

²⁰⁰ Text and online routes.

benefits of our notice period reform, nor the way in which gaining providers may promote Auto-Switch in the future, which could increase take-up still further.²⁰¹

- 5.30 Nonetheless, consumers may not always do what they say they will do and so, in line with standard market research practices, we have adjusted the figures to use a conservative assumption of take-up in our quantified analysis.²⁰² The reasons for doing this and the approach we have used are set out in detail in Annex 7. This reduces the number of Auto-Switch users by almost half compared to what consumers stated that they definitely or probably would do. Whilst this may therefore err on the side of caution, we consider it is appropriate to take this approach.
- 5.31 We have also used the survey to estimate the benefit to consumers of the reduction in unnecessary time and difficulties by asking consumers how much they would pay to use Auto-Switch. In theory, the amount consumers would pay to use Auto-Switch should reflect the benefit they receive, i.e. reduced difficulties compared to current processes.²⁰³ In total, switchers told us that they would definitely or probably pay up to £65m (10-year NPV) to use Auto-Switch. However, a significant proportion of those who said they would use Auto-Switch said that they would not pay anything for it at all because they disagreed on principle that they should have to pay for it.²⁰⁴ This suggests that consumers' answers may reflect what they consider reasonable to pay to switch, rather than the true benefit to them of the new process.²⁰⁵ This would mean that this valuation of the reduction in difficulties understates the true value.
- 5.32 Nonetheless and consistent with our take-up figures, we also recognise that consumers may not always do what they say they will do and so, we have applied a similar conservative assumption to the willingness to pay valuations.²⁰⁶ This reduces total willingness to pay (WTP) from £65 to £28 million (10-year NPV²⁰⁷).

²⁰¹ Under the status quo, many consumers who wish to port their number when switching are required to speak to their losing provider to obtain a PAC code. As the PAC conversation is a retention opportunity for the losing provider, gaining providers are not incentivised to encourage switchers to port their number. By contrast, under our reforms, switchers who use Auto-switch will be less likely to speak to their losing provider, and so gaining providers have a greater incentive to encourage switchers to use Auto-switch.

²⁰² Specifically, we assume that 80% of survey respondents who stated that they *definitely* would use Auto-Switch would do so, and that 20% of respondents who stated that they would *probably* use Auto-Switch would do so in reality. As we explain in Annex 7, there are other valid approaches to down-weighting take-up which would result in higher take-up figures.

²⁰³ It would not capture the reduction in double-paying as respondents were not made aware of that part of the reform when giving their valuation.

²⁰⁴ 10-17% of those who said they would use Auto-Switch if free told us they would not pay anything for it at all because they disagreed on principle that they should have to pay for it.

²⁰⁵ Note that this may also affect the answers given by those who stated that they were willing to pay for Auto-Switch. For example, respondents may state that they are only willing to pay low amounts – even if they experience a significant reduction in difficulty – as they do not consider it reasonable to pay significant sums to switch provider.

²⁰⁶ Specifically, we assume that 80% of survey respondents who stated that they *definitely* would pay to use Auto-Switch would do so, and that 20% of respondents who stated that they would *probably* pay to use Auto-Switch would do so. This reflects a somewhat different approach to that we set out in our May 2017 Consultation Document and we explain the reasons for this difference in Annex 7.

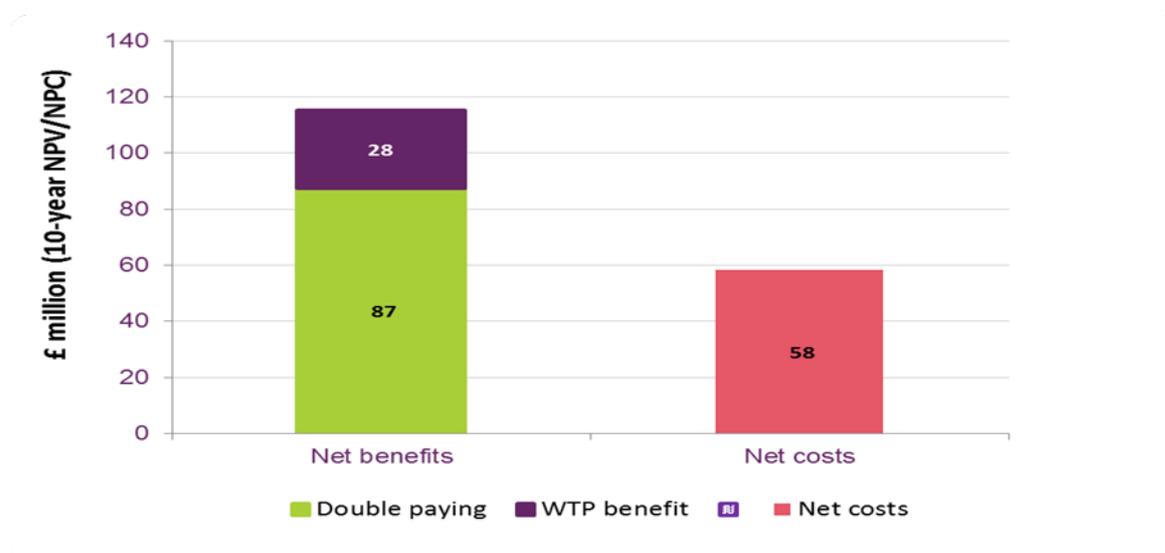
²⁰⁷ 10-year net present value, which represents the benefits derived over the period of 10 years in terms of “current value” of the pound (to reflect a general economic principle that a pound today is worth more than a pound in the future).

5.33 We have therefore estimated the reforms would deliver around £28 million in reduced time and difficulties benefits (10-year NPVs), although for the reasons set out above, we think this figure is likely to under-estimate the actual benefits the reforms would generate in this respect.

5.34 In addition to the reduced time and difficulty, Auto-Switch users will also benefit from a reduction in double-paying through our notice period reform. We set out our methodology for quantifying the reduction in double paying in Annex 6.²⁰⁸ Based on the adjusted take-up figures, we estimate that switchers would save around £87 million in unwanted double-payments over the 10-year period in NPV terms (of which existing PAC switchers would save around £69 million and existing C&R switchers – many of whom we believe would become PAC switchers under the reformed switching process - would save around £18 million).²⁰⁹

5.35 Figure 6 compares our estimates of the quantified benefits of implementing notice period reform and Auto-Switch (and the transparency requirements) against the net costs. It shows that we consider a reasonable but conservative assessment of the benefits would be £115 million whereas the net costs are estimated as £58 million (although as we explain in Annex 4, paragraphs A4.92-97) we consider that this figure is likely to overstate true costs). Quantified benefits therefore exceed the net costs by £57 million.²¹⁰

Figure 6 - Quantified benefits and costs of Auto-Switch, transparency requirements, and notice period reform



²⁰⁸ In summary, we have estimated the number of switchers who would benefit from this reform by adding the number of PAC switchers each year (based on actual data) to our estimates of the number of current C&R switchers each year who would use Auto-Switch (derived from BDRC 2017 survey data) and assumed they would save 20 days of double paying at a value of 33p per day. For both PAC and C&R switchers we excluded consumers on pay-as-you-go contracts as well as those still within the minimum contract duration period.

²⁰⁹ This is equivalent to around £8 million per year for PAC switchers and £2.1 million per year for C&R switchers, so £10.1 million per year overall.

²¹⁰ We have also carried out sensitivity analysis on our assumptions. See Annex 4.

- 5.36 These figures represent a conservative estimate of quantified benefits. They do not reflect non-quantified benefits, which we believe to be material. The package of reforms would deliver many important benefits which we have been unable to quantify in particular; reductions in the incidence of loss of service for those C&R switchers who take-up Auto-Switch; benefits for would-be switchers, by making it easier to switch to get a better offer; and benefits to consumers more generally, through increased rivalry between providers stemming from lower switching costs. We consider that this increased competition would benefit consumers by way of lower prices, higher quality of service and increased innovation. We have explained these non-quantified benefits in more detail in Annex 8.
- 5.37 Given the scale of the quantified benefits as compared to the implementation costs, the presence of important and significant non-quantified benefits, and our likely overstatement of costs, we consider that our proposed reforms would clearly not give rise to adverse effects which are disproportionate to the aims we are seeking to achieve. We further note that the estimated net costs in our base case of around £58 million over ten years, as well as being lower than the benefits to switchers that we have been able to quantify, are also small in relation to the size of the overall UK mobile market.²¹¹

Incremental analysis of our package of reforms

- 5.38 In our judgment, it is appropriate to consider the costs and benefits of our package of reforms together, as it is the total package of reforms that will in our view be effective in addressing the consumer harm we have identified.²¹²
- 5.39 Some respondents to our consultation(s) argued that we should instead consider each element of our package of reforms separately. Whilst we do not accept this is necessary to enable us to consider whether our interventions are likely to give rise to adverse effects which are disproportionate to our aims, we have done so for completeness.
- 5.40 If we were to consider notice period reform as a standalone intervention, then it would apply only to the existing regulated PAC process. We have estimated the net costs to industry of notice period reform as £9 million over ten years, compared to consumer benefits of £69 million. We therefore consider that this remedy is proportionate to the aims we are seeking to achieve.
- 5.41 We have also considered the likely costs and benefits of the Auto-Switch reform, and specifically the online and text routes for PAC/N-PAC requests, on its own, incremental to our notice period reform.²¹³ Even on this basis we remain comfortable that introducing

²¹¹ The £58m net costs to mobile operators over 10 years represent less than 0.4% of the £15.3bn retail revenues mobile operators received in 2016. Figure 4.1 of the Ofcom Communications Market Report 2017.

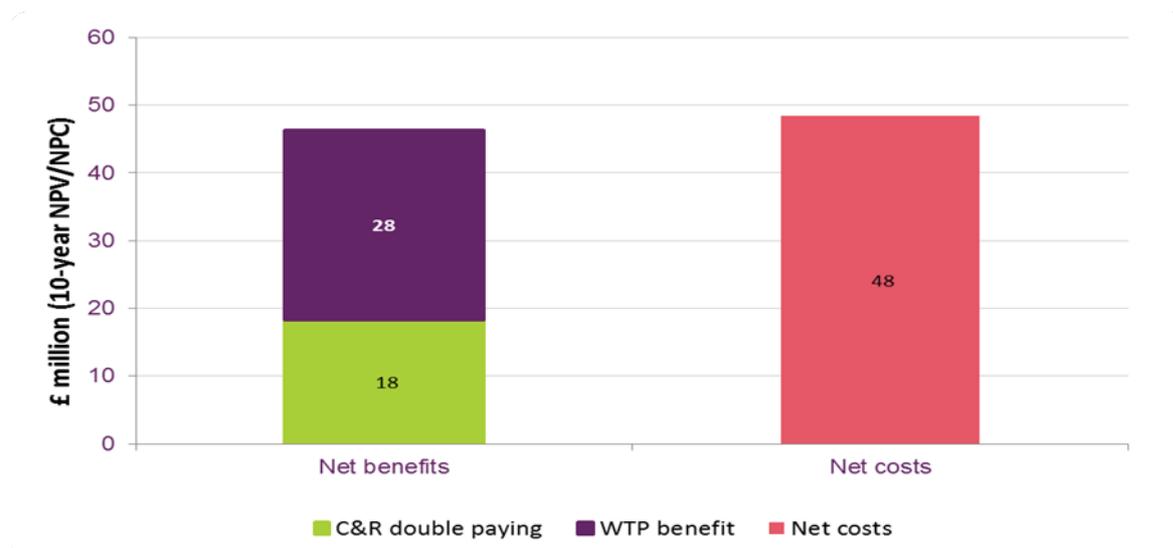
²¹² There may be synergies between benefits which could mean that the total benefits of the reform to consumers exceed the sum of the constituent parts.

²¹³ We have assessed the impact of introducing Auto-Switch over and above the prohibition on notice periods for existing PAC switchers. We do not think it is meaningful to analyse Auto-Switch without also assuming notice period reform, otherwise we would have designed our Auto-Switch proposals differently to mitigate the risk that some switchers incur more double-paying (as we did in our March 2016 consultation, §1.9). May Consultation, footnote 153.

Auto-Switch would not give rise to adverse effects which are disproportionate to the aims we are seeking to achieve by its introduction.²¹⁴

5.42 Figure 7 summarises our quantified assessment of the impact of implementing Auto-Switch on its own, incremental to our notice period reform.

Figure 7 - Incremental quantified benefits and costs of Auto-Switch



5.43 We estimate that if we were to assess Auto-Switch on its own, as incremental to notice period reform, then it would deliver two types of quantified benefits:

- £28 million worth of quantified benefits from reducing the unnecessary time and difficulties progressing the switch and porting numbers.²¹⁵
- £18 million worth of quantified benefits from a reduction in double-paying as existing C&R switchers adopt Auto-Switch and so benefit from the notice period reform.²¹⁶

These benefits are incremental to Auto-Switch as without Auto-Switch these switchers would be outside a regulated switching process and so would not benefit from notice period reform.²¹⁷

5.44 Accordingly, we estimate that, under our base case, including Auto-Switch in the package of reforms would deliver approximately £46 million in quantified benefits. We have estimated that under our base case the net costs of implementing Auto-Switch total £48 million (10-year NPC) (see Figure 7 above).

²¹⁴ This conclusion extends to the individual elements of Auto-Switch, namely the inclusion of the online route, the extension to business and the inclusion of N-PAC. See Annex 4.

²¹⁵ These are the same benefits we describe in §5.33

²¹⁶ We assume in this case that notice period reform for a regulated switching process would be separately introduced. Without such notice period reform, Auto-Switch would be designed differently as without notice period reform the text and online routes may increase the risk of double-paying by switchers. Under Auto-Switch, our down weighted take-up assumption is that 38% of C&R switchers will now use Auto-Switch and so no longer need to manage contract overlap.

²¹⁷ Some stakeholders submitted this was not a benefit of Auto-Switch but should be included, if anywhere, as a benefit of notice period reform. We disagree and set out our reasoning in Annex 4.

- 5.45 This analysis suggests that quantified benefits could be £2 million less than costs. We would however note the following:
- as set out in paragraphs A4.93-A4.98, our cost estimate is likely to overstate the net costs of our reform to business customers;
 - as noted above, our base case omits significant non-quantified benefits, in particular to non-switchers and consumers more generally, that we expect would arise. Our survey evidence revealed that – even using our conservative take-up assumptions - around 620,000 more switchers each year may port their number under Auto-Switch.²¹⁸ We consider that this suggests that Auto-Switch would be a significant change in the market, likely to influence the behaviour of current non-switchers and generating significant additional unquantified benefits;
 - in terms of the quantified benefits that we estimate, we have adopted a conservative approach to estimating both take-up of Auto-Switch and in our willingness to pay calculations. This reduces the benefit from Auto-Switch by almost half compared to survey responses. There are also reasons to believe that consumers’ responses in the survey may already have understated both usage of Auto-Switch and their valuations of it;²¹⁹ and
 - even if the quantified costs of Auto-Switch did slightly exceed the quantified benefits, it does not in our view follow that the intervention would give rise to adverse effects that were disproportionate to the objectives we are seeking to achieve. We believe that it would still be necessary to stand back and consider the costs and benefits in the round in light of the potential benefits to consumers of addressing the harms we have identified.
- 5.46 In our view, even when considered on its own, on an incremental basis (which as we explain above is not how we believe the package should be assessed), the costs of Auto-Switch would not produce adverse effects which are disproportionate to the aims we are seeking to achieve.²²⁰
- 5.47 Finally, we have also considered the information provision remedy separately. This is estimated to cost industry £0.9m over ten years. This represents a modest amount for each individual operator. Whilst the nature of the benefits of better transparency to consumers over the switching process is not readily amenable to quantification, we

²¹⁸ The 620,000 represents those C&R switchers who stated that they would use Auto-Switch in the future and port, down-weighted by our take-up assumptions. We note that some of them also stated they would definitely or probably keep their number “ideally” next time they switched (irrespective of availability of Auto-Switch). There is some uncertainty regarding whether these respondents would port next time absent Auto-Switch. Many of them had a strong preference for keeping their number last time, but did not do so. Moreover, the 620,000 number is a conservative estimate as it is down-weighted compared to stated responses. The unadjusted number of current C&R switchers who would definitely or probably use Auto-Switch and keep their number exceeds 1 million.

²¹⁹ In particular, the take-up figures do not take account of gaining providers’ incentives to promote Auto-Switch and some consumers may have understated their valuation of Auto-Switch as they did not consider that they should pay to use a switching process, or they referenced their valuation to the current zero charge for switching. See Annex 7 for more details.

²²⁰ We have modified our approach to calculating WTP benefits since the May Consultation. Our conclusion on proportionality is not affected by this change in approach. We also consider that the reflections in paragraphs 5.36 and 5.37 on no disproportionate adverse effects are also relevant here.

consider it important that consumers are informed about how to switch and only relatively modest benefits are required for it to be proportionate. We therefore consider that the costs of information provision would not produce adverse effects which are disproportionate to the aims we are seeking to achieve.

Conclusions on proportionality

5.48 On the basis of the above assessment, we consider that it is proportionate to introduce our package of reforms:

- the Auto-Switch process;
- a requirement to prohibit charging for notice after the switching date; and
- a requirement to provide transparency of switching processes to help ensure that consumers are better informed.

5.49 We consider that these reforms are both effective and the minimum necessary to achieve our objectives. We consider the reforms will deliver significant benefits to switchers, would-be switchers and consumers more generally and the costs imposed on mobile providers are not disproportionate to the benefits that would be secured.

5.50 In our judgment, the package of reforms addresses the difficulties and deterrents that we have identified in switching mobile provider and in achieving our objectives to ensure a switching process which is quick, simple and convenient to use. In summary:

- **Control over degree of contact with provider**

Auto-Switch allows consumers to request their PAC/N-PAC by text or online (as well as by calling their provider should they wish to). So, consumers can control the form and degree of contact they have with their existing provider, including, should they wish, avoiding having a phone conversation.

- **No need to give notice**

Consumers who are outside any minimum contract duration and who switch using Auto-Switch will not need to give notice or be charged notice by their current provider after the switch date. This means that consumers will not incur notice period payments inadvertently, because, for example, they were unaware of them. Removal of paying notice beyond the switch date also means consumers need not worry about coordinating or planning their switch in ways designed to avoid paying notice or delaying starting their new service.

- **Benefits available to those who do not wish to port their number**

For the first time, a formal switching process - Auto-Switch - will also be available to those wishing to switch without porting their number. Combined with the prohibition on charging notice after the switch date, this means such switchers will now have access to a process that automatically cancels and deactivates their old service and saves on any notice period charge that would otherwise have applied.

Non-porting switchers will also gain similar rights as switchers and porters to be compensated where the switch is delayed beyond the next working day.

- **Consumers will be informed of the implications of switching**

Under Auto-Switch consumers will be able, via text, phone or their online account, to request and receive information 'on demand' about the financial consequences of switching independently of any action to switch.

- **Consumers will be informed of the switching process**

Providers will be required to provide guidance to consumers on the switching process in a concise and easy to understand manner. This will ensure consumers are better informed about the switching process and specifically will ensure that the three means by which a consumer can request and receive a PAC/N PAC or information about switching are clearly set out. The guidance must be readily available on providers' websites and they must ensure it is well publicised.

Introduction of new General Condition GC7

5.51 The new requirements on mobile service providers are contained in General Condition 7, in Annex 11 of this statement. GC7 also sets out the date for Auto-Switch reforms to be in place across the mobile industry, which is 1 July 2019.

Implementation period

5.52 Our May 2017 consultation proposed a period of 18 months to introduce our reform. This section sets out stakeholders' views in relation to the implementation period for the package of reforms, our consideration of those views and our decision on the appropriate period.

Stakeholder responses on implementation period

5.53 Many respondents broadly supported our view that an implementation period of 18 months would be reasonable, including CCP/ACOD, O2, TalkTalk, Three and Virgin.

5.54 Other respondents raised concerns that 18 months might not be enough time to bring in reforms:

- [3<] argued that this would be a challenge to achieve, and that the development of Auto-Switch is not comparable to the introduction of Ofcom's GPL NoT+ reforms on the Openreach network in June 2015.²²¹ They said that the network and systems developments required for business providers are significant, and would require

²²¹The GPL NoT+ process was implemented in June 2015, and was an enhancement to the existing GPL Notification of Transfer process for switches of fixed line and broadband services on the Openreach platform. For further information see the December 2013 Consumer Switching Statement here:

https://www.ofcom.org.uk/_data/assets/pdf_file/0032/69179/statement.pdf

extensive design, development and testing regimes even before interoperability testing began. They suggested that a staged approach would be needed, with single number transfer systems being implemented before more complex transfers.²²²

- Vodafone said that an 18-month period for implementation is not viable, as we had not assessed the impact of consumers who switch in haste and change their mind later, and the subsequent increase in consumer complaints that may follow.²²³

5.55 Several respondents argued that an 18-month period was excessive:

- [redacted] argued that a solution could be achieved within 6 months. They said that MNOs already have the capability to handle SMS-based requests and responses, which suggests providers already have the necessary security protocols to authenticate these.²²⁴
- Three urged Ofcom to consider whether a 12 rather than 18-month implementation period would be feasible.²²⁵ An individual respondent also argued that 12-month implementation should be sufficient.²²⁶

5.56 Some respondents made comments as to the manner of implementation:

- O2 noted that our proposed implementation period was not underpinned by any detailed design work.²²⁷
- Virgin said that the reforms would be best developed and discussed through an industry forum, with Ofcom acting as the chair of such an industry working group.²²⁸
- TalkTalk also said that the process would require a high degree of industry collaboration and Ofcom attention, and that the process design had to include operators of all sizes, rather than just MNOs.²²⁹
- In addition, two individual respondents made comments about the implementation process, with one commenting that Ofcom should propose a detailed timetable for transition and mandate providers to follow it, and another suggesting that the reforms should be implemented as a trial.²³⁰

Conclusions on implementation period

5.57 Having reviewed responses to the May 2017 consultation, on balance we consider an 18-month period following the publication of this statement is a reasonable period for operators to be able to implement our reforms.

5.58 We have considered concerns that our proposed implementation period is not long enough, but do not consider they raise issues which would lead us to change our view:

²²² [redacted] May 2017 consultation response [redacted]

²²³ [Vodafone May 2017 consultation response](#) page 29

²²⁴ [redacted] May 2017 consultation response [redacted]

²²⁵ [Three May 2017 consultation response](#) page 19

²²⁶ [Individual respondents May 2017 consultation responses](#) page 4

²²⁷ [O2 May 2017 consultation response](#) §107

²²⁸ [Virgin May 2017 consultation response](#) §14

²²⁹ [TalkTalk May 2017 consultation response](#) §4.11-§4.12

²³⁰ [Individual respondents May 2017 consultation responses](#) pages 1 and 3

Consumer switching

Decision on reforming the switching of mobile communication services

- providers have current capabilities to provide SMS based information requests and responses;
- our reforms build on porting arrangements that are already in place; and
- many consumers already have access to online accounts with their providers.

5.59 Regarding Vodafone's concern that some consumers may switch in haste and then subsequently complain, we do not consider that, to the extent consumers currently change their minds about a switch, our reforms will have an impact on this. In particular, we do not consider that our reforms will lead to an increase in consumers changing their mind on the basis they are insufficiently informed about the implications of their switch. As discussed in Section 4, our reforms have been designed to mitigate these risks and they ensure consumers receive relevant information alongside their PAC/N-PAC. In any event, we do not consider this has a bearing on the appropriate implementation period of our reforms.

Approach to implementation

- 5.60 We consider that industry is best placed to manage the implementation process. The requirements on providers to implement the reforms within 18 months are clear and therefore we do not consider it necessary to have an active role in the implementation process from the outset.
- 5.61 It is our expectation that there will be positive engagement and cooperation from all stakeholders. Some limited aspects of these reforms will require agreement and co-ordination across industry (for instance on the short codes for requesting PACs/N-PACs, and the 'go-live' dates), and there will also need to be coordination between MVNOs and MNOs where the reforms require amendments to wholesale arrangements. However, we consider providers can undertake the majority of implementation activity independently.
- 5.62 We will monitor the progress of Auto-Switch implementation as part of regular, quarterly discussions with MNOs and MVNOs.
- 5.63 We expect MNOs to have constructive working relationships with their MVNOs. We will, separately, write to MVNOs to inform them of our reforms. If there are any issues with implementation, we would expect them to contact Ofcom to raise their concerns with us.

A1. Glossary

Act: The Communications Act 2003.

Auto-PAC: a mobile switching reform option put forward in our March 2016 and July 2016 consultations, and January 2017 cost update. Under this proposal consumers wishing to switch and keep their mobile number would be able to request and receive a PAC, via text, online or by phone, if they wanted to switch and keep their mobile number. We set out that this process should also be available to consumers wishing to switch but not keep their mobile number. We updated and re-labelled this reform option *Auto-Switch*, which was set out and proposed in our May 2017 consultation.

Auto-Switch: The mobile switching reform set out in this statement. Consumers wishing to switch would be able to request a PAC (for consumers wishing to switch and keep their mobile number) or N-PAC (for consumers wishing to switch without keeping their mobile number), via text or online or by phone.

Block Operator (or Original Number Operator (ONO)): the operator who was originally allocated a block of telephone numbers and who has the responsibility to enable the onwards routing of calls for all numbers which have been ported from the block.

Calling Line Identification (CLI): the information passed from the telephone number of the user making a call to the person receiving the call. It is sometimes referred to as the 'Caller ID'.

Cease and Re-provide (C&R): the default switching arrangement in circumstances where the consumer does not wish to port their mobile number. Under C&R, the consumer ceases the contract and service with their losing provider and separately organises the new service and contract with their gaining provider.

Central Porting System (CPS): a central system to facilitate the process of switching when the consumer wishes to switch and keep (port) their telephone number.

Communications Provider (CP): a person who provides an Electronic Communications Network or provides an Electronic Communications Service, as defined in the Communications Act 2003. The terms 'communications provider' and 'provider' are used interchangeably throughout this document.

Early Termination Charge (ETC): a charge that may be payable by a consumer for the termination of a contract before the end of any minimum contract period (or subsequent minimum contract period).

"End-to-end management": centralised coordination of the end-to-end process of the switch, to ensure that the losing and gaining provider are in lockstep at each stage of the process.

Erroneous Transfers: these arise where the wrong asset (e.g. mobile phone number) is inadvertently switched.

Gaining provider: the Provider to whom the consumer is transferring (i.e. the consumer's new provider). Also known as the Recipient Operator/Provider.

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Gaining provider Led (GPL) Process: where the consumer contacts their (new) Gaining Provider to switch. The Gaining Provider informs the (current) Losing Provider on behalf of the consumer to organise the transfer.

Interactive Voice Response (IVR): a technology that allows a computer to interact with a human's voice. This is used in automated telephony systems that pick-up calls, interact with callers and route calls to a customer service agent

International Mobile Subscriber Identity (IMSI): the unique identification stored on a SIM that identifies the mobile network providing mobile services to the user of the SIM.

Losing Provider: the provider that the consumer is switching away from, i.e. the consumer's current provider, also known as the Donor Operator or Donor Provider.

Losing Provider Led (LPL) Process: where the consumer contacts their losing provider (i.e. their current provider) to switch. Also known as a 'donor-led' process.

Make-before-break: where the losing provider does not deactivate a SIM until the gaining provider has activated the new SIM, and, if the number is being ported, that traffic has been routed to the gaining provider's network.

Mobile Network Operator (MNO): a provider which owns a cellular mobile network.

Mobile Number Portability (MNP): the process that allows a mobile phone user to retain their mobile telephone number when they switch mobile communications provider.

Mobile Station International Subscriber Directory Number (MSISDN): the telephone number attached to the SIM card in a mobile phone. The MSISDN together with IMSI (see above) are two important numbers used for identifying a mobile subscriber. The MSISDN is defined in the ITU's E.164 numbering plan.

Mobile Virtual Network Operator (MVNO): an MVNO provides mobile services using the infrastructure of an MNO.

Non-Porting Authorisation Code (N-PAC): a proposed unique code under our Auto-Switch proposal that the consumer would obtain from their current (losing) provider to switch their mobile service without keeping their mobile number, if the consumer wants to switch using Auto-switch process. The N-PAC signifies among other things that the Losing Provider is satisfied that the consumer is entitled to switch to another mobile provider.

Onwards routing: the routing of a call to another mobile network where the telephone number, originally allocated to the Block Operator, has been ported.

Openreach: BT's access services division.

Porting: where a consumer keeps their telephone number when they switch providers.

Porting Authorisation Code (PAC): a unique code that the consumer needs to obtain from their current (losing) provider to switch their mobile service and port their number. The PAC signifies among other things that the Losing Provider is satisfied that the consumer is entitled to switch and port their mobile number to another mobile provider.

Slamming: this occurs where consumers are switched to another provider without their consent.

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Subscriber Identity Module (SIM): a special microchip stored on a circuit card and inserted into a mobile handset. The SIM card contains a unique serial number, the IMSI for the issuing mobile network operator and other network specific information. The subscriber number is linked to the SIM card at the operator's network.

Short Messaging Service (SMS): this is also known as a text message.

Unstructured Supplementary Service Data (USSD): is a system used by most mobile phones to communicate with the service provider's computers and allows information to be displayed in a simple format on the user's mobile phone. One common example of USSD is that it can be used by consumers on a prepaid (pay as you go) account to query the available balance on their account.