making communications work
for everyone

Helping consumers to engage in communications markets

Consultation on end-of-contract and out-of-contract notifications

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CONSULTATION:

Publication Date: 31 July 2018
Closing Date for Responses: 9 October 2018

About this document

In this consultation, we put forward proposals to set new rules that will require communications providers to send a notification to their customers when they approach the end of their minimum contract period. We are also proposing a new rule that will require providers to send a one-off notification to their customers who have already passed the end of their minimum contract period, where these customers were not informed of that at the time. These notifications will be sent to both residential and small business customers (ten individuals or fewer).

In April 2018, we announced that we would focus our consumer engagement work on end-of-contract notifications. This document sets out our findings and invites stakeholder views on our proposals.

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1. Summary

1.1 We want people to be able to take advantage of the wide choice of communication services available and shop around with confidence, so that they can get the best deals for their needs. This could mean keeping their current deal, taking up a new deal with their current provider, or switching to a new supplier.

1.2 Many landline, broadband, mobile and pay TV deals in the market today are offered on contracts with a minimum term of 12, 18 or 24 months. Customers cannot leave until the end of this term, unless they pay an early termination charge. At the end of this minimum contract period, customers are no longer tied into their existing deal and have different options available to them. Although practices differ across the sector, if the consumer does nothing at this point, their contract is likely to continue on a monthly rolling basis. They may face a price increase, or elements of the deal they originally signed up to may change.

1.3 Most providers do not notify their customers when their minimum contract period is coming to an end. Nor do most providers explain what this means for the customer's service and price, or the options available to them. Instead, many suggest that customers upgrade their services, with important information missing.

1.4 Our view is that providers need to do more to treat their customers fairly, by sending them important information about their services at an appropriate time. This information will help consumers make informed decisions about their current deal, exercise choice, and be protected against unexpected or unwelcome changes – such as price increases at the end of their minimum contract period.

Consumers are paying more than they need to

1.5 We have found that some people lack information that is fundamental to their ability to make informed decisions about their services. In particular:

- **Many don't know the status of their contract.** Up to 26% of people taking landline, broadband and pay TV services (standalone or as a bundle) do not know or are confused about their contract status.[1] The same is true of 15% of mobile phone customers.
- **Some are unclear about future charges.** Around a quarter of people who do not know when their contract ends, also do not know what will happen to the price they pay when it does; and
- **People often don't understand their options.** Some consumers do not understand what coming to the end of their minimum contract period means. They are also unaware of the options, savings or benefits available to them. Around one in ten are unaware that they could switch to a better deal with their current provider once their contract ends. One quarter of customers on a mobile handset contract are unaware of

[1] The research did not cover standalone landline, standalone broadband, or quad play packages.

the possibility of moving to a SIM-only deal. And up to a quarter of out-of-contract customers do not think they could make any savings.

1.6 We have found that more than 20 million consumers are outside their minimum contract period, and more than 10 million are on deals with an automatic price increase at the end of this period. As a result, many consumers pay more because of higher prices or because they miss out on deals that could improve their package or save them money.

1.7 For example, customers taking landline and broadband services in a single package pay, on average, around 20% more when they are out-of-contract. This reflects the fact that providers tend to offer promotional discounts to new customers, or 'retention' or 'loyalty' discounts to existing customers who negotiate their price or threaten to leave.

1.8 Also, certain mobile consumers continue to pay the same price after the end of their minimum contract period, which for some consumers could be significantly higher than if they switched to a SIM-only deal.

We are consulting on new rules for end-of-contract and out-of-contract notifications[2]

1.9 We propose to introduce requirements as follows:

- Providers should send end-of-contract notifications to their customers before the end of their minimum contract period, to allow them sufficient time to act effectively on receiving this information.
- We also want providers to send a notification to their customers who are already outside their minimum contract period. A one-off notification would ensure these customers are appropriately informed that they are out-of-contract, together with the relevant implications of remaining on their existing deal.

[2] For the purpose of this consultation, we use the term 'end-of-contract' as this is how consumers tend to talk about the end of their minimum contract period or 'minimum term'. Where we refer to 'end-of-contract' or being 'in-contract' or 'out-of-contract', this refers to customers' minimum contract period.

What we are proposing – in brief

- Providers will be required to send:
  - an **end-of contract notification** to their customers, 40-70 days before the end of their minimum contract period, which allows customers sufficient time to take action and gives providers some flexibility on when to send the notification;
  - a one-off, **out-of-contract notification** to customers who are already out-of-contract and have not previously been informed about their contract coming to an end.
- The notifications should be sent to all residential and small business customers (ten individuals or fewer) who use services including landline, broadband, pay TV and mobile (standalone or as a bundle), using the customer’s preferred communication route (e.g. SMS, email or post).
- The notifications should include specific information, including:
  - the date on which the customer's minimum contract period will end, or has ended;
  - the services currently provided to the customer and the price paid;
  - changes to the service and price at the end of the minimum contract period, where relevant;
  - that the customer has options available to them (such as SIM-only deals for mobile[3]) and may be able to make savings.

1.10 Our proposals will benefit consumers by protecting them against unexpected and unwelcome changes, such as higher prices, and ensuring that they get the right information at the right time, enabling them to make informed decisions and exercise choice. We expect the proposals to lead to material benefits for consumers, particularly those who are able to avoid higher prices, save money or move to a better service package. Our plans will also benefit consumers by increasing competition in the market, and reducing the time and effort required for consumers to monitor and seek out information.

1.11 We expect limited costs to industry in implementing our proposed notifications, given that they involve a single communication to each customer. Therefore, our assessment is that these costs are proportionate in view of the likely benefits and our objectives to achieve what is fair for consumers.

Next steps

1.12 We invite comments on our proposals by 9 October 2018. We will assess the available evidence and take account of consultation responses before deciding how to proceed.

1.13 We propose that consumers should start to receive end-of-contract notifications from six months after the date of our final statement, and that they should receive the one-off out-of-contract notification within 9 months.

[3] A contract between a mobile network provider and a customer whereby the customer is only paying for the monthly network service and not a handset.

2. Background and introduction

Introduction

2.1 One of Ofcom's core aims is to ensure that markets work effectively for consumers, through regulation where appropriate, so that they can gain from the benefits of competition.[4] This reflects our principal duty to further the interests of citizens and consumers.

2.2 In our 2016 *Strategic Review of Digital Communications*, we noted that competition is generally the best way to deliver good outcomes for consumers, but that for consumers to gain the benefits of competition they need to be able to engage with the market and make informed choices.[5] Consumers should be able to take advantage of the choice available, shop around with confidence equipped with the right information, and ultimately secure the best deal for their needs. This could mean taking up a new deal with their current provider, switching to a new provider or making an informed decision to stay on an existing deal.

2.3 There are typically good deals on offer, but the evidence we have, shows that all too often consumers do not take advantage of the choice available to them. Instead, many consumers continue with the same service and the same provider for a long period of time. Our recent *Pricing Trends for Communications Services* report (the "Pricing Trends report") highlights that consumers who do not effectively engage with the choices available to them in the market typically pay higher prices than those who do.[6]

2.4 This is a trend that also concerns the UK Government, with the recent Green Paper, *Modernising Consumer Markets*, noting that it is often the most vulnerable consumers who are least likely to be on good deals.[7]

2.5 As we explain below, and in more detail in this document, we have identified that most providers do not notify their customers at an appropriate time, and some consumers do not know when their minimum contract period is due to end, or indeed that it has in fact ended. Most providers also do not notify their customers of price increases or other service changes that occur at the end of their minimum contract period.

2.6 We are concerned that this lack of information results in too many consumers allowing their existing contracts to roll-over onto 'out-of-contract' terms. This means that some consumers experience an unexpected increase in their price, or change to their services,

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[4] Ofcom, Annual Plan *2018/19: Making communications work for everyone*: https://www.ofcom.org.uk/__data/assets/pdf_file/0017/112427/Proposed-Annual-Plan-2018.pdf.

[5] Ofcom, Making communication work for everyone: initial conclusions from the Strategic Review of Digital Communications, *25 February 2016:* https://www.ofcom.org.uk/__data/assets/pdf_file/0016/50416/dcr-statement.pdf.

[6] Ofcom, *Pricing trends for communications services in the UK,* 17 May 2018: https://www.ofcom.org.uk/__data/assets/pdf_file/0030/113898/pricing-report-2018.pdf.

[7] Department for Business, Energy & Industrial Strategy, *Modernising Consumer Markets: Consumer Green Paper,* 11 April 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699937/modernising-consumer-markets-green-paper.pdf.

while others continue on the same price and service package and do not benefit from moving to a better package and saving money.

2.7 This consultation sets out proposals to ensure that consumers are equipped with the right information at the right time to make informed decisions about the communications services they buy.

July 2017 Call for Inputs

2.8 In July 2017, we published a Call for Inputs (the "July 2017 CFI"), launching a programme of work to help us better understand why some consumers may face difficulties engaging in communications markets.[8]

2.9 We received 26 responses to our CFI, including from providers, consumer bodies and advocacy groups, industry bodies, other regulators and individual consumers. The non-confidential responses are published on our website.[9] The relevant responses are discussed in sections 3 and 4 of this consultation.

We published an update on our work in April 2018

2.10 In April, we announced that the first phase of our work on consumer engagement would consider whether end-of-contract notifications – whereby providers would proactively inform their customers when they are approaching the end of their minimum contract period – might address some of the lack of consumer engagement that we had identified.[10]

Our regulatory policy objectives

Most providers do not remind consumers when their minimum contract period ends

2.11 Many landline, broadband, mobile and pay TV deals in the market today are offered on contracts with a minimum contract period of 12, 18 or 24 months, where customers are not able to leave until the end of their minimum contract period unless they pay an early termination charge. At the end of this minimum contract period, consumers are no longer tied into their existing deal and have different options available to them. Although practice differs across the sector, if the consumer does nothing at this point, their contract may

[8] Ofcom, *Helping consumers to engage in communications markets: Call for Inputs,* 14 July 2017: https://www.ofcom.org.uk/__data/assets/pdf_file/0014/104441/call-inputs-consumer-engagement-communications.pdf.
[9] Non-confidential responses can be found at*:* https://www.ofcom.org.uk/consultations-and-statements/category-2/helping-consumers-engage-communications-markets.
[10] Ofcom, *Helping consumers to engage in communications markets: Update on next steps*, 27 April 2018: https://www.ofcom.org.uk/__data/assets/pdf_file/0015/113451/Engagement-project-update_April-2018.pdf.

continue on a monthly rolling basis[11] on existing terms, they may face a price increase, or they may find that elements of the deal they originally signed up to change.[12]

2.12 The evidence we have indicates that most providers, across landline, broadband, mobile and pay TV services, do not notify their customers when their minimum contract period is coming to an end, or has ended, and what that means for their service and price.[13] Without this information, consumers do not always know when they should be reviewing their existing deal and if they should shop around for a new one. Where notifications are sent by providers to customers who are approaching the end or have reached the end of their minimum contract period, many suggest that customers upgrade their services, but with important information missing.

Providers should inform their customers of important information at the appropriate time

2.13 It is reasonable to expect that providers will treat their customers fairly in the provision of communications services. An essential aspect of fairness is that providers ensure their customers are informed at the appropriate time of important information about their services. This will enable consumers to make informed decisions and will protect them against unexpected and unwelcome changes to their service or price (such as a price increase at the end of their minimum contract period).

2.14 Current Ofcom rules require providers to provide consumers with certain information on request at the time they purchase a service, which includes the duration of the contract, and the conditions for renewal and termination, as well as details of prices and tariffs, and the services provided.[14,15]

2.15 However, as set out in Section 3, consumers lack awareness of when their minimum contract period ends and what this means for their price and the services they buy. They are also not clear about the options available to them, including that they could make savings by taking up a new deal.

2.16 In our view, this shows that consumers do not always remember information that was provided to them when they purchased their service, which could have been up to 24 months previously (or longer where the consumer is already beyond the minimum contract period end date). Indeed, consumers may not have been provided information about subsequent precise price increases at all when they entered into the contract.

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[11] Where the customer is not tied into a new minimum term but may have to give notice (potentially up to 30 days) to cancel their contract and/or switch provider.

[12] See Section 3, Figure 5: Proportion and number of customers on deals with an automatic price increase at the end of the minimum contract period.

[13] See Section 3.

[14] See GC 9.1 and 9.2 of the current General Conditions, which will be replaced by GC C1.2 as of 1 October 2018.

[15] Furthermore, providers are required to give all subscribers notice of any price changes that were not agreed at point of sale (see GC 9.6 of the current General Conditions and GCs C1.6 to C1.8 of the revised General Conditions to come into effect on 1 October 2018).

2.17 For consumers to be able to avoid price and service changes and make informed decisions about their existing package and whether they should find a new deal, we consider that it is necessary for them to be informed of:

- when they are no longer tied to their minimum contract period and are able to change their contract or switch to another provider without incurring a penalty; and
- the implications if they do not engage and remain on their existing deal. In particular, consumers should be made aware of any changes to their price or service that take effect from the end of the minimum contract period.

2.18 Consumers should be informed of this information at an appropriate time to ensure that they can effectively act on receiving this information. This means that it should be sent to consumers near or at the end of the minimum contract period without them having to seek it out. Where consumers are already outside their minimum contract period but were not informed of this, this information is equally important for them and should be sent as soon as possible.

Consumers may face paying higher prices as a consequence

2.19 As a result of being unaware of when their minimum contract period ends or of the fact that it has ended and the implications of this for their price or services, a significant number of consumers allow their contracts to 'roll over' after the expiry of their minimum contract period. As a result, many pay higher prices, and do not benefit from better deals or opportunities to improve their package, either with their existing provider or by switching to another provider. In all these cases, we are concerned that consumers pay much higher prices than they need to.[16]

2.20 Our recent Pricing Trends report highlights that consumers who do not shop around for better deals typically pay higher prices than those who do. This reflects the fact that providers tend to offer promotional discounts to new customers, or 'retention' or 'loyalty' discounts to existing customers who negotiate or threaten to leave.[17] Generous promotional discounts for bundles (typically between 10% and 20% of the non-discounted price of the service over its minimum contractual term) and growing take-up of bundles (our research shows that 79% of UK households purchased bundled services in 2018[18]) emphasise the importance of consumers being equipped with the right information at the right time so that they are able to make informed choices about their current deal and the offers available to them.

Our policy objectives

2.21 In light of the concerns highlighted above, we consider that it is in the interests of consumers that they are given important information about the services they buy at an appropriate time to ensure they know when to exercise choice and take advantage of

[16] See Section 3 for evidence to indicate that there is often a financial penalty for customers who remain out of contract.
[17] Ofcom, *Pricing trends for communications services in the UK*, 17 May 2018.
[18] Ofcom, *Technology Tracker,* H1 2018: https://www.ofcom.org.uk/__data/assets/pdf_file/0021/113169/Technology-Tracker-H1-2018-data-tables.pdf.

competition in communications markets. Reflecting our statutory duties to further the interests of consumers, we have two regulatory policy objectives:

- to ensure consumers are informed at an appropriate time when their minimum contract period is coming to an end, and of any changes to price or services that will occur as a result; and
- to ensure consumers are informed that their minimum contract period has already come to an end if they were not previously informed of this.

Legal Framework

Ofcom's general duties

2.22 Section 3(1) of the Communications Act 2003 (the "Act") states that it shall be the principal duty of Ofcom, in carrying out its functions:

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

b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.[19]

2.23 In performing its duties under section 3(1) of the Act, Ofcom is 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) of the Act).[20]

2.24 Section 3(4), provides that Ofcom must have regard, in performing its duties, to a number of matters[21] including the desirability of promoting competition in relevant markets; the desirability of promoting and facilitating the development and use of effective forms of self-regulation; the desirability of encouraging investment and innovation in relevant markets; the needs of persons with disabilities, of the elderly and of those on low incomes; the opinions of consumers in relevant markets and of members of the public generally; and the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in section 3(1) is reasonably practicable.

2.25 In addition, section 3(5) of the Act requires that, when performing its 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.

[19] 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.
[20] Ofcom's regulatory principles can be found at: https://www.ofcom.org.uk/about-ofcom/what-is-ofcom.
[21] As they appear to Ofcom to be relevant in the circumstances.

Duties for the purpose of fulfilling EU obligations

2.26 As set out in Section 4 of the Act, when exercising certain functions[22] Ofcom must act in accordance with the six European Community requirements described there. The requirements of Section 4 of the Act are read in the light of Article 8 of the Framework Directive[23] 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.[24] Those objectives include:

- the promotion of competition in the provision of electronic communications services[25] 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;[26] and
- the promotion of 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).[27]

Powers and duties in relation to general conditions

2.27 Alongside the Framework Directive, the Authorisation Directive provides for national regulatory authorities to set conditions of general authorisation for communications providers.[28] Under Article 6 and paragraph 8 of the Annex these include conditions containing *"…. consumer protection rules specific to the electronic communications sector, including[29] conditions in conformity with Directive 2002/22/EC ("Universal Service Directive")."* The over-arching principle is that such conditions shall be non-discriminatory, proportionate and transparent.[30]

2.28 These provisions are implemented into national law by the Act. In particular, Section 45 of the Act says that Ofcom may set general conditions which contain provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64. Under Section 51(1)(a), the general conditions Ofcom may make include conditions making such provisions as Ofcom consider appropriate for the purpose of protecting the interests of end-users of public electronic communications services ("PECS"). Section 51(2) sets out a non-exhaustive list of the specific types of general conditions that Ofcom may set in pursuance of this purpose.

[22] Including those we propose to exercise in this document.
[23] Directive 2002/21/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/legal-content/EN/TXT/?uri=celex:32002L0021
[24] Set out in paragraphs 2, 3 and 4 of Article 8.
[25] As well as electronic communications networks and associated facilities and services.
[26] Article 8(2)(a) and (b) of the Framework Directive.
[27] Article 8(4)(b) and (d) of the Framework Directive.
[28] Directive 2002/20/EC of the European Parliament and of the Council (as amended by Directive 2009/140/EC), paragraph 8 of Annex A. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0020&from=EN
[29] And therefore, not limited to.
[30] Article 6(1) of the Authorisation Directive.

Section 51(2)(d) provides that Ofcom can, by general condition, *"require the provision, free of charge, of specified information, or information of a specified kind, to end-users"*. We are proposing to exercise these powers, in the manner set out in this consultation document, to further the interests of citizens and consumers in these markets.

2.29 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 does not discriminate unduly against particular persons or against a particular description of persons and is proportionate to what the condition or modification is intended to achieve, and transparent in relation to what it is intended to achieve. [31]

2.30 We consider in Section 5 how the proposals set out in this document accord with our powers and duties.

Impact Assessment

2.31 The analysis presented in this document constitutes an impact assessment as defined in Section 7 of the Act. 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. This is reflected in Section 7 of the Act, which means that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out impact assessments in relation to the great majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see the guidelines *Better policy-making: Ofcom's approach to impact assessment*, which are on Ofcom's website.[32]

Equality Impact Assessment

2.32 Ofcom is also required to assess the potential impact of all its functions, policies, projects and practices on the equality of individuals to whom those policies will apply. An equality impact assessment ("EIA") assists Ofcom in making sure that it is meeting its principal duty of furthering the interests of citizens and consumers regardless of their background or identity.

2.33 We have given careful consideration to whether or not the proposals 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 proposals would have a detrimental impact on any particular group of people.

[31] In assessing whether a General Condition is proportionate or not Ofcom is likely to consider whether it is objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates.
[32] More information about Ofcom's approach to impact assessments are available at: http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf

Sources of evidence

2.34 In making the proposals set out in this consultation, we have taken into account evidence from a number of sources, including:

- responses to our July 2017 CFI;
- bespoke qualitative and quantitative consumer research undertaken in 2015, 2016, 2017 and 2018 (detailed below);
- the *Pricing Trends for Communications Services in the UK* report 2018;[33]
- the Ofcom 2017 Switching Tracker;[34] and
- input from stakeholders (including material obtained using our statutory information gathering powers) on providers' current practices and customer bases.[35]

Consumer research

2.35 We have commissioned and published research exploring consumers' engagement with communications services, including awareness and expectations regarding the end of their minimum contract period. These are summarised below, with further methodological detail in their respective slide packs or reports:

- Qualitative consumer engagement research, conducted in July 2017 by Futuresight ("2017 qualitative consumer engagement research"). This study provided insights to better understand why consumers do not engage fully, or at all, with communications markets; what, if any, barriers exist; and what might encourage those who are less engaged to participate more.[36]
- Quantitative consumer engagement research, conducted in January to April 2018, by Critical Research ("2018 quantitative consumer engagement research"). This study quantified the extent of any difficulties with engagement that consumers had identified in our qualitative research; and explored consumer awareness and understanding of their contractual status.[37]
- Qualitative end-of-contract notification testing, conducted in May 2018, by Jigsaw ("2018 end-of-contract notification qualitative research"). This study tested various potential pieces of information for inclusion in an end-of-contract notification, seeking to understand attitudes towards the content and ordering, to test comprehension and

[33] Ofcom, Pricing trends for communications services in the UK report, May 2018.
[34] Our annual Switching Tracker monitors switching levels and the extent to which consumers engage with communications markets. Data tables are available on the Ofcom website here:
https://www.ofcom.org.uk/__data/assets/pdf_file/0024/107178/Switching-Tracker-2017-Data-tables.pdf
[35] We collected information from: BT, EE, KCOM, O2, Plusnet, Post Office, Sky, TalkTalk, Tesco Mobile, Three, Verastar, Virgin Media, Vodafone and XLN.
[36] Ofcom's qualitative consumer engagement research 2017, conducted by Futuresight:
https://www.ofcom.org.uk/__data/assets/pdf_file/0022/113458/Engagement-Qualitative-Research-Report,-2017.pdf
[37] Ofcom's quantitative consumer engagement research 2018, conducted by Critical. Slide 15:
https://www.ofcom.org.uk/__data/assets/pdf_file/0022/117076/Consumer-engagement-quantitative-research-2018-slide-pack.pdf

to understand which pieces of information would be most useful and effective in a potential end-of-contract notification.[38]

2.36 We also rely on previous bespoke research on end-of-contract notifications, conducted in 2015 by Jigsaw (the "2015 end-of-contract notification research").[39] This research explored knowledge of minimum contract period end dates across the triple play, dual play, standalone pay TV and mobile markets, awareness of contract issues, as well as interest in being informed of their minimum contract period end date and the usefulness of knowing this end date when considering switching.

2.37 We also use previous bespoke research on SMEs' experience of communications services, conducted in 2016 by Jigsaw ("2016 SME research").[40] This research looked at business customer experience of communications services, switching behaviour, usage and satisfaction.

2.38 All of this research is available on Ofcom's website using the links provided in the footnotes.

Information requested from providers

2.39 To inform our assessment, we collected data from providers using our statutory information gathering powers. The required information relevant to this consultation is set out below, with further detail in Annex 7.

- First information request (residential customers), January 2018: Providers were asked to provide information:
  - about current practices relating to end-of-contract notifications;
  - on any notifications of price or service changes that occur at the end of the minimum contract period; and
  - on how customers can access information about their minimum contract period themselves.
- Second information request (residential customers), May 2018: Providers were asked to provide information about customers who are:
  - on contracts that will see an increase in price during, and/or at the end of, the minimum contract period; and
  - within and outside of their minimum contract period.
- Information request to providers regarding small to medium enterprises (SMEs), May 2018: SME providers were asked to provide similar information as we requested from residential providers in our first information request.

[38] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw: https://www.ofcom.org.uk/__data/assets/pdf_file/0020/117074/Qualitative-end-of-contract-notification-research-July-2018.pdf
[39] Ofcom's 2015 end of contract notification research, conducted by Jigsaw: https:/www.ofcom.org.uk/__data/assets/pdf_file/0024/74715/end-of-contract-notification-research.pdf
[40] Ofcom's 2016 quantitative SME research, conducted by Jigsaw: https://www.ofcom.org.uk/__data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf

This document

2.40 The rest of this document is set out as follows:

- Section 3 sets out the case for requiring end-of-contract and out-of-contract notifications.
- Section 4 sets out our proposals for making end-of-contract and out-of-contract notifications simple for consumers and practical to implement.
- Section 5 contains our provisional conclusions on the proportionality of our proposals.

2.41 The Annexes are set out as follows:

- Annex 1: Responding to this consultation
- Annex 2: Ofcom's consultation principles
- Annex 3: Consultation response cover sheet
- Annex 4: Consultation questions
- Annex 5: Glossary
- Annex 6: Impact assessment for regulating end-of-contract and out-of-contract notifications for residential consumers
- Annex 7: Data and methodology used to assess consumer outcomes
- Annex 8: End-of-contract and out-of-contract notification process
- Annex 9: Notification of proposed new general condition and modification to the General Conditions under section 48A(3) of the Act.[41]

[41] Annexes 6 to 9 can be found here: https://www.ofcom.org.uk/__data/assets/pdf_file/0017/117161/Annexes-6-to-9.pdf

3. The case for requiring end-of-contract and out-of-contract notifications

Introduction

3.1 Many deals in the communications market are offered on contracts with a minimum contract period of 12 to 24 months. Although practice differs across the sector, if the consumer does nothing at the end of their minimum contract period, their contract continues on a monthly rolling basis. As they go 'out-of-contract', consumers may face an automatic price increase, or they may find that elements of the deal they originally signed up to change.

3.2 In this section, we set out the evidence that we have gathered which shows that most providers do not notify their customers, at the appropriate time, of information about the services they buy. In particular, consumers are not notified that they are approaching the end of their minimum contract period; what this means for their price and the services they buy; and the options available to them after this point, including the potential for savings. We also describe the evidence which shows that some consumers lack awareness of this information.

3.3 We consider that this lack of information leads to a significant number of consumers staying out-of-contract for longer than they otherwise would. As a result, we are concerned that many consumers are paying higher prices, and are unable to benefit from better service packages:

- Many consumers experience automatic price increases, or service changes, at the end of the minimum contract period. Due to a lack of awareness, they are unable to avoid them.
- More generally, consumers cannot make informed decisions on when and whether they should search for a better deal.

3.4 For those consumers that are aware of this information, they have to incur time and effort to retain, monitor and seek out this information.

3.5 Later in this section, we set out the options for intervening to protect consumers' interests. We propose to require that providers send end-of-contract notifications and a one-off out-of-contract notification. We consider that this would be the most appropriate and effective approach to address the harms we have identified. We propose that these notifications be sent to all residential and Small Business customers.

Most providers do not notify consumers of relevant information about the end of their minimum contract period, at an appropriate time

3.6 The evidence we have collected shows that most providers do not notify consumers at the appropriate time of important information about the services they buy. In particular, consumers are not notified that they are approaching the end of their minimum contract period; what this means for their price and the services they buy; and the options available to them after this point.

3.7 We asked the largest landline, broadband, pay TV and mobile providers whether they send end-of-contract notifications to customers. [42,43] In relation to landline, broadband and pay TV:

- Four providers, Sky, Virgin Media, Post Office and KCOM, told us they do not send any notifications to customers as they approach the end of their minimum contract period informing them that they are reaching that point, or of any changes in service or price at the end of the minimum contract period.[44,45]
- Four providers, BT, TalkTalk, Plusnet and Vodafone, told us they do send notifications to customers as they approach the end of their minimum contract period;[46] however, our analysis of the examples these providers provided to us indicates that they do not clearly state that the customer is approaching the end of their minimum contract period, the date the minimum contract period ends, or provide information relating to early termination charges.
- In terms of pricing information, two providers, BT and TalkTalk, told us they send notifications that inform customers their 'discount' or 'promotional' price plan is ending.[47] Another provider, Vodafone, told us it sends notifications that include a possible price saving if the consumer upgrades relative to the customer's current (in-contract) tariff price.

[42] We contacted providers with a relative market share above [✂]% for each service.
[43] We also asked providers what other notifications they send to customers to convey information about changes in prices payable or the scope of services to be received. In particular, we asked providers if they send notifications to customers when they are coming to the end of a discount or promotional period.
[44] KCOM told us there are no price or service changes when a customer's contract reaches the end of the minimum contract period.
[45] Sky told us that it sends SMS notifications to customers informing them about their upcoming bill payment, including how much the customer will pay and the date the payment will be taken.
[46] One provider [✂] told us it only sends notifications to dual and triple play customers, and not to those on standalone services.
[47] Some notifications from BT include details of the exact amount of the discount that will expire and the price change whereas TalkTalk only states that the customer may see an increase in their bill, without specifying the magnitude of the increase.

Figure 1: Notifications by Landline, Broadband and Pay TV providers

Provider	Is a notification sent?	Is the minimum contract period mentioned?	Does the provider send a notification when a price change occurs at the end of the minimum contract period?	Additional Comments
BT	✓	×	✓	• Customers are sent notifications which show the price change incurred, as well as the date the change will occur.
KCOM	×	×	Not Applicable	• There are no price or service changes when a customer's contract reaches the end of the minimum contract period.
Plusnet	✓	×	×	• This provider notifies customers they can re-contract, but no other information is provided.
Post Office	×	×	×	• If there is a limited discount on a tariff and it ends, the customer's contract will revert to the standard price.
Sky	×	×	×	
TalkTalk	✓	×	✓	• Customers are sent notifications near the end of the minimum contract period that their 'promotion' or 'offer' is coming to an end. These do not include what the price of the standard tariff will be.
Virgin Media	×	×	×	• Any discounts on the tariff (which may run for the duration of the minimum contract period) are removed when the time-limited offer period ends.
Vodafone	✓	×	×	• Customers may receive invitations to upgrade their contract close to the end of the minimum contract period. These include a possible price saving relative to the customer's current tariff price. • Provider recently introduced discounted tariffs where the price changes at the end of the minimum contract period, and have not provided notification examples as customers have not yet reached the end of the minimum contract period.

Source: Provider response to formal information request

3.8 In relation to mobile, almost all mobile providers said they send customers upgrade communications to encourage the customer to re-contract to secure a new handset.[48] However, at the time of our request, only some providers (O2, Virgin Mobile and Vodafone) told us they send notifications to customers specifying they are coming to the end of their minimum contract period – of these providers, only one (O2) told us they send notifications that included the exact minimum contract period end date, and only one

[48] We did not specifically ask providers for examples relating to upgrade or re-contracting practice – the information gathered on this is based on what has been provided additionally by providers in their responses.

(Vodafone) told us they informed consumers on handset contracts that they can switch to a SIM-only deal after the minimum contract period has expired.

3.9 A number of providers, BT Mobile, EE and Three, have told us that customers will see no changes in price at the end of the minimum contract period.[49] Other providers (O2, Sky Mobile, Tesco Mobile and Virgin Mobile) said that customers that have agreements with the provider to pay for the handset separately will see a change in their bill once the device plan is paid off, and only the airtime plan remains.[50]

3.10 More recently, EE has launched an SMS notification letting customers know they can upgrade after the minimum contract period. The notification does not state that the customer is approaching or has reached the end of their minimum contract period. However, for those customers who have not consented to receive marketing, it includes a link to a webpage which informs the customer of their options at the end of the minimum contract period, namely to upgrade to a new handset, move to a SIM-only contract, or leave the provider.

[49] Sky Mobile has told us that this is the case for airtime contracts.

[50] We did not specifically ask providers whether they send notifications as a result of this change in our formal information request. However, based on provider responses, we know that at least two providers (Virgin Mobile and Sky Mobile) do send notification to customers that this change has occurred.

Figure 2: Notifications by mobile providers

Provider	Is a notification sent?	Is the minimum contract period mentioned?	Does the provider send a notification when a price change occurs at the end of the minimum contract period?	Additional Comments
BT Mobile†	×	×	Not Applicable	• There are no price changes when a customer's contract reaches the end of the minimum contract period.
EE	✓	×	Not Applicable	• There are no price changes when a customer's contract reaches the end of the minimum contract period. • Customers are sent notifications when they are nearing the end of the minimum contract period to inform them that they can 'upgrade' to a new deal.
O2	✓	✓	×	• Customers with offers on their tariffs which are limited to during the minimum term have the discount end and the price revert to the full contract price at the end of the minimum contract period.
Sky Mobile	×	×	Not Applicable	• There are no price changes when a customer's contract reaches the end of the minimum contract period.
Tesco Mobile	✓	×	×	• There are no price *increases* when a customer's contract reaches the end of the minimum contract period. • Provider sends notifications for customers to upgrade their plan or calls customers to discuss options with the provider.
Three	×	×	Not Applicable	• Any recurring discounts that are part of the customer's chosen plan at point of sale or added during the contract will remain on the customer's account until the customer upgrades or terminates the contract.
Virgin Mobile	✓	✓	×	• Provider sends notifications for customers to upgrade their plan.
Vodafone	✓	✓	✓	

Source: Provider response to formal information request

† Since responding to our formal information request, BT has told us that it now sends notifications to BT Mobile customers with handset contracts (not SIM-only). These do not mention the minimum contract period.

Some consumers do not have the information they require to make informed decisions

3.11 Current Ofcom rules require providers to provide consumers with certain information on request at the time they purchase a service, which includes the duration of the contract, and the conditions for renewal and termination, as well as details of prices and tariffs, and the services provided.[51,52]

3.12 However, the evidence shows that some consumers lack awareness in respect of this information, which is fundamental to their ability to make informed decisions about the services they purchase. In particular, some consumers lack awareness of when their minimum contract period ends, and what this might mean for the price they pay and the services they buy. They are also not clear about the options available to them at this point, including that they could make savings by taking up a new deal.

3.13 In our view, this shows that consumers do not always remember information provided to them when they purchased their service, which could have been up to 24 months previously (or longer where the consumer is already beyond the minimum contract period end date). We also understand that consumers may lack awareness where providers only communicate in general terms what will happen to the price they pay at the end of the minimum contract period.

Some consumers are unaware of their minimum contract period end date

3.14 In order to understand the extent to which consumers are aware of the end of their minimum contract period, we asked participants in our 2018 quantitative consumer engagement research[53] when they thought their contract with their service provider ended. The results of this research, as well as our 2017 Switching Tracker, indicated both a lack of awareness and confusion regarding consumers' contractual status.

3.15 In our quantitative research, up to 26% of dual play, triple play or standalone pay TV consumers and 15% of mobile consumers appeared to lack awareness or be confused about their contract status.[54] More specifically, some consumers said that:

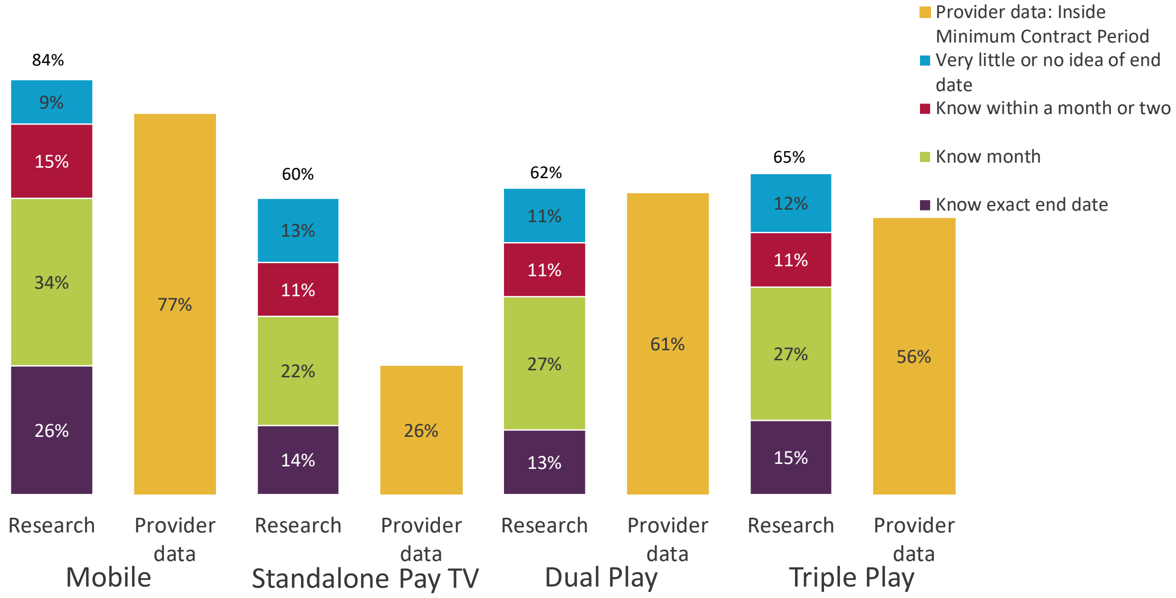
- they do not know *if* their contract had ended (13%-14% of each standalone pay TV, dual play or triple play customers and 6% of mobile customers);[55] or
- they are within their minimum contract period, but were not clear when this would end (11%-13% of each dual play, triple play and standalone pay TV customers and 9% of mobile customers – see Figure 3 below).

[51] See GC 9.1 and 9.2 of the current General Conditions, which will be replaced by GC C1.2 as of 1 October 2018.
[52] Furthermore, providers are required to give all subscribers notice of any price changes that were not agreed at point of sale (see GC 9.6 of the current General Conditions and GCs C1.6 to C1.8 of the revised General Conditions to come into effect on 1 October 2018).
[53] Our research was focussed on services and bundles of services that have the largest subscriber numbers.
[54] Dual play – 25%; triple play – 26%; standalone pay TV – 26%. Ofcom's quantitative consumer engagement research 2018, conducted by Critical, slide 15. These percentage figures are the sum of the figures for "Unsure if in or out of contract" and "I have very little/no idea – but know I am still in contract".
[55] Ofcom's quantitative consumer engagement research 2018, conducted by Critical. Slide 15. Specifically, 13% of standalone pay TV, 14% of dual play and 14% of triple play customers reported that they do not know if their contract has ended.

3.16 Similarly, our switching tracker found that around one in ten (13%)[56] standalone landline customers did not know whether they were in-contract, and around one in five (19%) did not know when their contract ends.[57]

3.17 Separately, a comparison of our research and provider data illustrates that the proportion of consumers who reported being in-contract is higher than the proportion reported by providers to be within their minimum contract period, particularly in the standalone pay TV market (see Figure 3 below). This suggests some consumers incorrectly believe they are within their minimum contract period, when they are more likely not to be.[58]

Figure 3: Consumers who reported being in-contract and consumers who providers reported to be in-contract



Source: Ofcom's 2018 quantitative consumer engagement research, conducted by Critical. Slide 15; proportion of consumers who are within their minimum contract term from Pricing Trends report 2018, Fig 31, p.44 based on provider data. Mobile data is based on Ofcom analysis of provider data (see Annex 7 for further details). Note: Mobile base excludes SIM-only 30-day and Pay As You Go mobile.

Some consumers are unaware of what happens after their minimum contract period ends

3.18 Our research suggests that some consumers are unaware of what happens after the end of their minimum contract period. In particular, we find that some consumers do not know that they (i) may face a price increase at the end of their minimum contract period; and (ii) do not need to pay a penalty or early termination charge after the end of their minimum

[56] Ofcom's switching tracker, 2017. The equivalent figure for standalone broadband was 8%.
[57] Ofcom's switching tracker, 2017. The equivalent figure for standalone broadband was 20%.
[58] If some consumers also reported being out of contract when they are in-contract, the extent of consumer confusion as implied by the data in Figure 3 is likely to be understated.

contract period. Some consumers thus lack an understanding of what will happen when they reach the end of their minimum contract period.

3.19 As shown in the first row of the table below, between 16%-18% of consumers (i.e. across each of mobile, standalone pay TV, dual play and triple play services) who said they are 'in-contract' do not know what will happen to their price at the end of their minimum contract period. This proportion is higher among those who lack awareness in relation to their contract status. In particular, the third row in the table shows how 23%-30% of consumers who have little idea as to when their minimum period contract ends, also do not know what will happen to the price they pay at that point.

Figure 4: Proportion of consumers who do not know what will happen to the price they pay at the end of their minimum contract period

Group of consumers	Mobile	Standalone Pay TV	Dual Play	Triple Play
All in-contract consumers	18%	16%	18%	17%
In-contract consumers, who know their contract end date within a month or two	16%	14%	16%	15%
In-contract consumers, who have little/no idea as to when their contract ends	30%*	24%	25%	23%

*Source: Ofcom's consumer engagement quantitative research 2018, conducted by Critical, slide 20 and bespoke analysis. Note: * indicates low base so treat as indicative only.*

3.20 In the 2015 end-of-contract notification research some participants were unaware that once their minimum contract period ends, they could switch to another provider without paying any additional charges[59] (9% of mobile, 12% of dual play, 11% of triple play and 15% of standalone pay TV).[60]

Some consumers are not clear about the options available to them after the minimum contract period and the savings that could be made

3.21 Our research suggests that some consumers are unaware of the options available to them when their minimum contract period ends. In particular, we find that some consumers do not know that (i) they can switch to a different package or deal with their existing provider (including SIM-only deals for mobile), and (ii) that savings could be made by changing deal/package, either with their own or another provider. This means that some consumers fail to properly understand the options available to them as they come to the end of their minimum contract period.

3.22 In the 2015 end-of-contract notification research, we found that some participants were unaware that they could switch to a different package/deal with their current provider

[59] For example, early termination charges.
[60] Ofcom's 2015 end-of-contract notification research. Slide 37.

once their contract ends (i.e. 7% of mobile, 11% of each of dual play and triple play and 13% of standalone pay TV).[61]

3.23 Our 2018 quantitative consumer engagement research found that a quarter of consumers on a mobile handset contract were unaware of the possibility of moving to a SIM-only deal at the end of their minimum contract period.[62] This lack of awareness was also evident in our qualitative research, where some participants on a mobile handset contract 'discovered' they could make substantial savings by switching to a SIM-only deal.[63]

3.24 Further, consumers who were unaware of the end of their minimum contract period (i.e. consumers who do not know if their minimum contract period has ended, or lack awareness of when their minimum contract period ends), were among those most likely to agree that 'it is difficult to know whether any cost savings could be achieved from changing deal or provider'.[64] This was true across each of dual play, triple play and standalone pay TV services analysed in our 2018 quantitative consumer engagement research.[65] Ofcom's Switching Tracker 2017 also found that three in five (60%) standalone landline customers agreed that 'it is too hard to work out if I would save or not if I switched provider'.[66]

3.25 Similarly, there was a perception among consumers who said they were out-of-contract that signing up to a new deal with their existing or an alternative provider would not result in any savings. In particular, up to a quarter of out-of-contract consumers for each of the standalone pay TV (17%), dual play (24%), and triple play (24%) services did not think they could make any savings by signing up to a new contract.[67]

3.26 Communications markets are complex and the perception amongst some consumers that no savings can be made by signing up to a new deal at the end of their minimum contract period is likely to limit their ability to make informed decisions about their existing deal. While we cannot say with certainty that all of these consumers would achieve savings by doing so, our analysis (see below) suggests that: (i) consumers of dual play, triple play and standalone pay TV who are out-of-contract tend to spend more on average than those who are in-contract; and (ii) consumers who go out-of-contract when purchasing mobile services with a handset on average pay more than those on SIM-only deals

Some consumers incur a penalty due to this lack of information

3.27 The evidence shows that many consumers are on a contract with an automatic change to the price after their minimum contract period ends. For those consumers who allow their contract to roll-over onto out-of-contract terms due to the lack of awareness we identify

[61] Ofcom's 2015 end-of-contract Notification Research. Slide 37.
[62] Ofcom's quantitative consumer engagement research 2018, conducted by Critical. Slide 29.
[63] Ofcom's qualitative consumer engagement research 2017, conducted by Futuresight (p. 29).
[64] Ofcom's quantitative consumer engagement research 2018, conducted by Critical. Slide 12.
[65] Base for mobile too low to report.
[66] Ofcom Switching Tracker 2017. The equivalent figure was 53% of standalone broadband customers. Standalone landline customers were significantly more likely than average (53%) to agree with this statement.
[67] Ofcom's quantitative consumer engagement research 2018, conducted by Critical. Slide 53.

above, we are concerned that they are unable to avoid unexpected increases to the price they pay or reductions in the service they receive.

3.28 More generally, the evidence suggests that there is often a financial penalty for consumers who are out-of-contract. Moreover, the pace at which communication services and prices progress over time suggests that consumers who stay out-of-contract may not benefit from the best deals available. As such, we are concerned that consumers who lack awareness stay out-of-contract longer than they otherwise would, and thus pay higher prices and fail to benefit from better service packages.

3.29 Finally, we recognise that there are consumers who are aware of this information, but we note that they have to incur time and effort to monitor, retain and search for this information.

Some consumers are unable to avoid unexpected price and service changes

3.30 The evidence suggests that a significant number of consumers are on contracts which have an automatic price increase at the end of the minimum contract period. We are concerned that consumers who lack information allow their contract to roll-over, and as a result they are not in a position to avoid such unexpected price increases.

3.31 We asked major providers to report information in relation to the number of customers[68] who are on contracts with automatic price increases,[69] both within and at the end of the minimum contract period.[70]

3.32 As shown below, this data suggests that a significant proportion of dual and triple play customers are on contracts where the price increases automatically at the end of the

[68] For standalone landline, the total subscriber figure is taken from the 2017 Review of the market for standalone landline telephone services statement (para. 2.5, p.7). For the other services, our estimates of the number of customers (either in total or by service) throughout this document are based on the data we collected for the purpose of this proposal. In order to arrive at these estimates, we gross-up the aggregate customer numbers for a given service as implied by the data we collected from providers using our formal powers so as to take into account customers using providers for a given service that did not submit data to us. The factor we use to gross-up these aggregate consumer figures for a given service is based on the market share estimates for these providers as implied by [✂]. We recognise that alternative methods may arrive at different estimates, particularly given the use of survey data to measure market shares. For example, to the extent that the market shares understate the size of the providers who responded to our formal request, our grossing-up factor would be too high and our estimates of the customer total would be overstated. For further details, see Annex 7.
[69] In our request, we asked providers to exclude from 'an automatic price increase' any RPI price changes.
[70] By an automatic price increase, we mean the occasions where the price increases either during or at the end of the minimum contract period, as per the agreement signed when the contract is taken out. Hence, a provider does not need to inform the consumer again at the time when such a price increase comes into effect. At Figure 1 and Figure 2 we include an overview of providers' practices in terms of price communication at the end of customers' minimum contract period.

minimum contract period. While this proportion is somewhat lower for standalone pay TV, [✂].[71]

Figure 5: Proportion and number of customers on deals with an automatic price increase at the end of the minimum contract period

Service	Proportion of in-contract customers[72]	Number of customers (millions)
Dual Play	75%	c.5.4
Triple Play	57%	c.3.6
Standalone pay TV [73]	[✂]%	[✂]
Mobile with SIM-only	11%	c.1.0
Mobile with handset	3%	c.0.6

Source: Ofcom analysis of provider data (see Annex 7 for further details).

3.33 Some consumers may experience changes to services at the end of the minimum contract period. Similar to our concerns about price increases, we also have concerns that consumers who lack information about this may allow their contract to roll-over, and as a result they are not in a position to avoid such changes.

There is often a financial penalty to staying out-of-contract

3.34 The evidence we collected confirms that out-of-contract consumers who purchase dual play, triple play and standalone pay TV on average spend more than consumers who are in-contract. Likewise, we find that consumers on a mobile handset contract who are out-of-contract spend more than in-contract consumers who are on a SIM-only deal. This would suggest that consumers often incur a financial penalty for staying out-of-contract. The evidence also shows that this affects a significant number of consumers, as provider data we collected implies that a considerable proportion of consumers are out-of-contract for each of the services we investigated.

In-contract and out-of-contract spend

3.35 We asked providers to report the average spend for customers who are in and out-of-contract. As illustrated in the table below, the data shows that the average spend by consumers of dual play, triple play and standalone pay TV who are out-of-contract is substantially higher than the spend by corresponding customers who are in-contract. In particular, out-of-contract dual play customers spend on average 19% more than those who are in-contract, where this figure is 24% for triple play and [✂]% for standalone pay TV. This is in contrast to mobile services and standalone landline, where we find that the

[71] [✂]

[72] There are differences across individual providers in the proportion of customers who are on deals with a price increase at the end of the minimum contract period only. For Dual Play, the proportions across providers are: [✂]. For Triple Play, the proportions across providers are: [✂]. For Mobile with SIM-only, the proportions are [✂] for other providers. For Mobile contracts with a handset, the proportions are [✂] for other providers.

[73] [✂]

average spend for in-contract customers is higher than the average spend of customers who are out-of-contract.

Figure 6: Average spend of customers by contract status[74]

Service	Average in-contract spend (£ per month)	Average out-of-contract spend (£ per month)	Out-of-contract relative to in-contract spend
Dual Play	£35	£41	19% higher
Triple Play	£52	£65	26% higher
Standalone Pay TV	£[✂]	£[✂]	[✂]% higher
Standalone landline	£26	£24	6% lower
Mobile SIM-only	£17	£15	8% lower
Mobile handset	£31	£22	27% lower

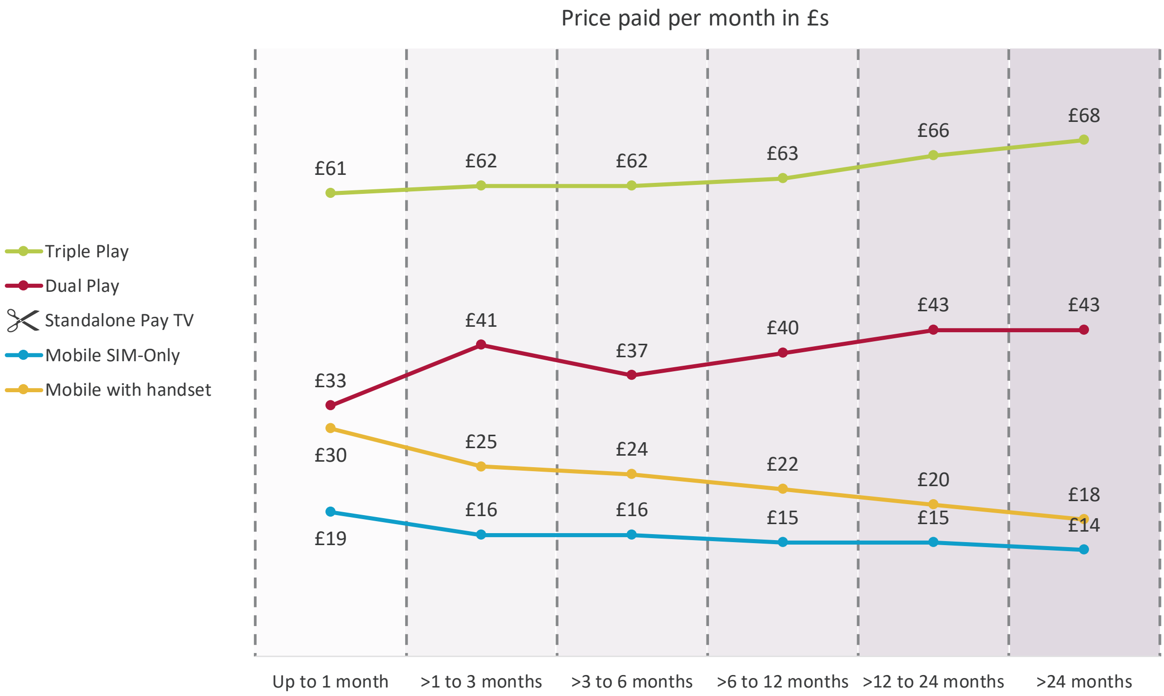
Source: Ofcom analysis of provider data (see Annex 7 for further details). The average spend data for standalone landline is from the Pricing Trends report 2018.[75]

3.36 Further, we asked providers to report the average spend of out-of-contract customers according to the time elapsed since the end of their minimum contract period. As illustrated in Figure 7 below, the data suggests that on average consumers of dual play, triple play, standalone pay TV and mobile services spend more, the longer they have been

[74] The average spend of in-contract and out-of-contract customers implied by the provider data [✂] is similar to the corresponding numbers in the 2018 Pricing Trends report for Q3 2017. The latter found an average monthly spend of £32 for customers in-contract and £39 for customers out-of-contract for dual play, £51 for customers in-contract and £63 for customers out-of-contract for triple play, and £36 for customers in-contract and £45 for customers out-of-contract for standalone pay TV.
[75] Figure 30: 'Average monthly spend for customers within the minimum contract period and outside the minimum contract period, by service type/combination: Q3 2017', p.44 in the Pricing Trends report.

out-of-contract. In contrast, mobile customers tend to spend less on average the longer they have been out-of-contract.

Figure 7: Average spend of out-of-contract customers, by service and length of out-of-contract



Source: Ofcom analysis of provider data (see Annex 7 for further details).

3.37 This evidence should be interpreted carefully, as the difference in the average spend of out-of-contract and in-contract customers may under or overstate the extent to which customers pay higher prices after the end of their minimum contract period. This is because of the potential distinction between the average spend and the average price. For example, the average spend for a service package could be higher in part because the group of out-of-contract customers is generally buying more services within that package compared with the corresponding group of in-contract customers. If so, at least part of the reported difference in average spend could be explained by this difference in the composition of the package, rather than solely reflecting that out-of-contract customers pay higher prices for the same package of services. Alternatively, if the group of out-of-contract customers is generally buying fewer services within a package than the corresponding group of in-contract customers, the difference in the average prices they pay for these services could be larger than the reported difference in average spend.

3.38 We recognise that differences may exist in the average packages purchased by in-contract and out-of-contract customers of dual play, triple play packages and standalone pay TV.[76] However, we consider that the difference between the average in-contract and out-of-contract spend reported in the table above could be as a result of out-of-contract consumers of these services: (i) being subject to a price increase at the end of their

[76] In dual and triple play, it is possible that a larger proportion of in-contract customers purchase bundles which include superfast broadband. If this is the case, this would imply that the difference between the average in-contract and out-of-contract spend may understate the extent to which customers pay higher prices when they go out-of-contract.

minimum contract period; and / or (ii) failing to secure promotional discounts providers offer to new customers, or 'retention' or 'loyalty' discounts their existing provider may offer to customers who negotiate or threaten to leave.[77]

3.39 The situation is different in the mobile market. In contrast to dual play, triple play and standalone pay TV, the spend of mobile customers who are out-of-contract is on average lower than that of mobile customers who are within their minimum contract period. This is likely to be the result of a number of factors. First, only a small proportion of mobile contracts are subject to an automatic price increase at the end of the minimum contract period (see Figure 5 above). In contrast, the monthly price for some mobile customers may fall at the end of the minimum contract period, if the charge for the handset contract is automatically removed at the end of the minimum contract period.[78] Second, the higher spend by in-contract customers could in part be due to a compositional effect, as providers offer deals with larger data packages and deals with more expensive phones over time. Mobile customers who are in-contract may have taken up recent contracts which are on average more expensive than older contracts (more likely to be used by customers who are out-of-contract).[79]

3.40 Separately, we note that consumers on combined airtime and handset deals pay a price that reflects the cost of the handset. When these consumers continue to pay the same price after the end of their minimum contract period, remaining out-of-contract means they pay a significantly higher price than if they switched to a SIM-only deal. As set out above, many mobile customers lack awareness of the options available to them, including moving to a cheaper SIM-only deal, and the savings or improved services that they could benefit from. This is consistent with the spend data reported in Figure 6, which shows that the average spend of out-of-contract customers who are on a mobile handset contract is higher than the average spend of SIM-only customers who are in-contract.

3.41 Finally, we also find that the average in-contract spend for standalone landline customers is higher than that of out-of-contract customers. It is not immediately clear why this difference occurs, but given the recent changes to prices in this market we do not consider it relevant to our analysis.[80]

A significant proportion of consumers are outside their minimum contract period

3.42 The relevance of the difference in average spend between in-contract and out-of-contract consumers for dual play, triple play and standalone pay TV cannot be understated. Data

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[77] This is also consistent with an analysis of actual offers available in the market, included at Annex 6.
[78] Particularly where there are separate contracts for the handset and airtime element of the mobile deal.
[79] This is suggested by the fact that the type of handset and inclusive data allowances are the most important factors in determining the price of pay-monthly mobile services. Also, there has been an increase in both handset functionality as well as the proportion of mobile tariffs offering large or unlimited data services over time. (See the 2018 Pricing Trends report, pp. 13-15.)
[80] BT has recently lowered the monthly price paid by its voice-only landline customers (customers that do not purchase broadband) by £7. Post Office has also lowered the price of its standalone voice product to new customers. This change means that voice-only consumers could make savings by signing up to a new deal with a different provider. Those consumers that do not bundle their voice and broadband services could make considerable savings by bundling their services.

collected from major providers[81] and our recent Pricing Trends report indicates that a significant proportion of consumers on dual play, triple play, standalone landline and standalone pay TV products are outside their minimum contract period.[82]

3.43 As illustrated in the table below, around 40% of dual play and triple play customers are currently out-of-contract, which we estimate equates to ~4.3 million and ~4.4 million customers respectively.[83] The proportion of standalone landline customers who are out-of-contract is 87%, which we estimate equates to ~2.3 million customers.[84] From our Pricing Trends report, the proportion of standalone pay TV customers who are out-of-contract is ~74%.[85,86]

3.44 In terms of mobile contracts, the picture is somewhat different depending on the type of contract taken. In particular, while 44% of SIM-only customers (or ~6.8 million) are out-of-

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[81] We have asked for information from the following providers. [✂]

[82] The proportions of in-contract and out-of-contract consumers implied by the information request data [✂] are similar to the proportions reported in the 2018 Pricing trends for communications services in the UK report for Q3 2017. In particular, the Pricing Trends report found that for: (i) dual play, 61% of customers are in-contract, and 39% are out-of-contract; (ii) for triple play, 56% of customers are in-contract, and 44% are out-of-contract; (iii) for standalone pay TV, 26% of customers are in-contract, and 74% are out-of-contract; and (iv) for standalone landline, 13% of customers are in-contract, and 87% are out-of-contract.

[83] Our analysis also indicates that ~2.6 million dual play customers (i.e. 23% of the total) and ~2.4 million triple play customers (i.e. 23% of the total) have been out-of-contract for more than one year.

[84] Ofcom. Pricing trends for communications services in the UK, May 2018.

[85] Ofcom. Pricing trends for communications services in the UK, May 2018.

[86] This reflects the data we gathered from providers' responses to our formal information requests. This data shows that the proportion of standalone pay TV customers who are out-of-contract is [✂]%, which we estimate equates to [✂] million customers. The proportion of customers who are out-of-contract for more than 2 years is [✂]%, which accounts for [✂] million customers.

contract, this proportion is substantially lower for customers on contracts that include a handset (we discuss the mobile market further below).

Figure 8: Estimated number of customers, by contract status

	Dual Play	Triple Play	Standalone Pay TV	Standalone landline	Mobile SIM-only	Mobile with handset
Number of customers (in millions)						
Total	c.11.5	c.10.6	[✂]	c.2.6	c.15.6	c.28.0
Out-of-contract (any duration)	c.4.3	c.4.4	[✂]	c.2.3	c.6.8	c.3.7
Estimate of proportion (%) of customers who are out-of-contract						
Any duration	37%	41%	[✂]%	87%	44%	13%
Up to 1 month	2%	3%	[✂]%		4%	1%
1 month to 3 months	3%	4%	[✂]%		5%	2%
3 months to 6 months	4%	4%	[✂]%		6%	2%
6 months but to 12 months	7%	8%	[✂]%		9%	3%
12 months to 24 months	9%	10%	[✂]%		10%	3%
More than 24 months	14%	13%	[✂]%		10%	3%

Source: Ofcom analysis of provider data (see Annex 7 for further details). The total number and proportion of out-of-contract customers for standalone landline are from the 2017 Review of the market for standalone landline telephone services statement and the Pricing Trends report 2018.[87,88] *Note: Due to rounding, the percentage of customers who are out-of-contract for different durations does not necessarily add up to the overall percentage of customers who are out-of-contract. For standalone landline, we do not have information regarding the proportion of customers who are out-of-contract by duration.*

Some consumers do not benefit from improvements in services and price once their minimum contract period ends

3.45 In addition to the evidence that consumers who are out-of-contract are generally spending more, we are concerned that consumers who do not move to a new deal may not benefit from the continuing improvement in services and prices over time.

3.46 The communications market is constantly evolving and developing at a fast pace. Consumers who search for a new deal at the end of their minimum contract period can benefit from improvements in the choice and value available in the market. For example:

- **Many people could upgrade their broadband at no extra cost.** As superfast broadband coverage continues to increase,[89] the gap has narrowed between the price of superfast and standard broadband services.

- **Mobile users are getting more for their money.** Average data consumption per mobile subscription has grown significantly over time as mobile data service use has increased, however, average spend has declined. This is partly due to the availability of pay-monthly tariffs with larger inclusive data allowances.
- **There are improvements in the service and prices paid for pay TV.** Consumers signing up to the latest deals may benefit from the added functionality and improved user experience of higher-spec TV set-top boxes and/or packages which allow them greater flexibility in accessing and paying for what they want to view. Moreover, the price for pay TV purchased as part of a bundle has decreased. For example, it is notable that new customers purchasing triple play bundles rarely pay the standard price due to promotional discounting and gifts. [90]

3.47 In light of such developments, we are concerned that consumers that do not search for a new deal as they approach the end of their minimum contract period may not benefit from these developments. While it would be difficult to quantify this, the speed of developments and changes in the communications market means that consumers who remain out-of-contract are likely to be missing out on better deals. In particular, we note that [✂]% of standalone pay TV customers who are out-of-contract have been so for more than two years and therefore are more likely to be missing out from the benefits that new packages provide.

Some consumers have to spend time and effort to proactively seek out contract status information

3.48 Even for those consumers that have some awareness of their contract status, these consumers have to incur time and effort to retain, monitor and seek out this information.

3.49 As set out above, consumers are made aware of contract terms at the point of sale. However, as contracts tend to have a minimum period of one to two years, consumers must expend effort to recall these details over a prolonged period of time. In addition, we understand that, when a customer purchases a service, providers may not always communicate the extent of the price increase that will occur at the end of the minimum contract period, and rather refer to it only in general terms.

3.50 In principle, consumers could aid their memory, or search for the information, by contacting their provider. Providers in response to our information requests told us that[91]:

- they provide minimum contract period information to customers in the 'welcome letter' or in the contractual terms of agreement;

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[87] Paragraph 2.5, p.7.

[88] Figure 31: 'Average customer tenure and proportion of customers outside the minimum contract period, by service', p.44.

[89] It is now available to 93% (27.2m) of UK premises. Ofcom, *Connected Nations Update*, Spring 2018: https://www.ofcom.org.uk/__data/assets/pdf_file/0017/113543/Connected-Nations-update-Spring-2018.pdf.

[90] Ofcom, *Pricing trends for communications services in the UK*, May 2018.

[91] We asked providers to tell us whether their customers can access information on whether they are within or outside of their minimum contract period, and if they are within this period, when that period ends. Providers' responses indicate that this information is available in a number of cases, but not necessarily signposted or presented in a consistent way to

- they also provide access to end-of-contract information via an online platform (website or app) and/or via their customer call centres;[92] and
- with the exception of three providers, Sky Mobile, Tesco Mobile and Virgin Mobile, most mobile providers provide information on the minimum contract period end date via their smartphone application.

3.51 However, consumers incur time and effort to proactively search for this contract information, some of which may not be available without actually speaking to their provider (such as precise price increases). Moreover, in the absence of an external trigger, consumers need to set reminders to check their contract status against this information to be able to act on it in a timely manner.

3.52 As illustrated in the last row of the table below, we consider that the group of consumers who incur such time and hassle is likely to be sizeable – it aggregates to a rough estimate of more than 18 million customers across all services, and on the basis of our 2017 engagement index.[93]

Figure 9: Estimated number of engaged customers, by service

Consumer base	**Dual Play**	**Triple Play**	**Mobile**	**Standalone Pay TV**	**Standalone landline**
Estimated number of customers (million)	11.5	10.6	43.6	[✂]	2.6
2017 engagement index	36%	41%	22%	26%	8%
Number of customers who engaged (million)	4.1	4.4	9.6	[✂]	0.2

Source: Estimated number of subscribers, except for standalone landline, is from Ofcom analysis of provider data (see Annex 7 for further details) while that for standalone landline is from the 2017 Review of the market for standalone landline telephone services statement, p.7; the 2017 engagement index proportions are from Ofcom's Switching Tracker 2017.
Note: The number of subscribers who engaged in 2017 for any service is the product of the estimated number of subscribers and the engagement index proportion for that service.

3.53 The evidence we have indicates that 16% of consumers who said they were in-contract reported to have searched for their minimum contract period end date, or whether their minimum contract period has ended. Nearly all of these consumers said that they were able to locate this information[94] and 27% to 32% of in-contract consumers (depending on

their customers. For example, the end date for the minimum contract period is often referred to as the point from which the customer can 'upgrade' (rather than when this period ends).

[92] Post Office do not provide this information online, but customers are able to call the customer contact team to access this information.

[93] Ofcom is in the process of reviewing the engagement index, as such the engagement statistics shown here may be subject to revision. The methodology of the current engagement index can be found on pages 165-167 of the following document: https://www.ofcom.org.uk/__data/assets/pdf_file/0029/98615/access-inclusion-research-annex.pdf.

[94] Ofcom's quantitative consumer engagement research 2018, conducted by Critical, slide 17. Data is an average across markets.

the service) said they did not need to look for the end date, as they had already made a note of it.[95]

3.54 Even for these consumers we consider that there is time and effort required to keep track of the relevant contract information, and as set out above, they would need further effort to understand the implications of their contracting ending. This is consistent with the fact that across the services, 88%-92% of consumers who said they had at least some idea of when their contract would end, also said they would find it helpful to receive an end-of-contract notification.[96]

Small Businesses

3.55 Our 2017 qualitative consumer engagement research included respondents who were sole traders and / or worked from home and found that they responded in a similar way to residential consumers.[97]

3.56 Our 2016 SME research found that for those on business contracts, a significant minority said they did not know how long their minimum contract period was (15% for landline, 12% for broadband, 9% for mobile), similar to our findings for residential consumers (as highlighted above). [98]

3.57 We also found from this research that many business respondents were on residential contracts. These participants thought their use of communications services was not high enough to warrant a more expensive business contract and residential contracts often offered a cheaper solution.[99] Small Businesses on residential contracts are already covered by our analysis of the residential market.

3.58 In our July 2017 CFI, we asked stakeholders to provide input into the possible scope for SMEs to be included in our consumer engagement work. In its response, Sky suggested that Ofcom seek a better understanding of the engagement levels and drivers of SME customers, while Moorhouse Consulting highlighted that the SME market is significantly different to the residential market. BT said that SME customers often have support options and will put effort into making informed decisions; however, it accepted that smaller businesses may not have as much support, but are likely to be very cost conscious, and may purchase consumer products. Virgin Media stated that Ofcom should keep the scope limited to consumers and micro businesses of up to 10 employees, in line with the General Conditions of Entitlement (GCs). The Federation of Small Businesses, First Utility, and another respondent [✂] highlighted that small businesses share some similarities with

[95] Ofcom's quantitative consumer engagement research 2018, conducted by Critical, slide 17.

[96] 88% for dual play, 92% for triple play, 88% for mobile phone and 89% for standalone pay TV. Base includes consumers who reported to be in-contract, and knew when their contract ends at least within a month or two. Source: Ofcom's consumer engagement quantitative research 2018, conducted by Critical, bespoke analysis.

[97] Ofcom's consumer engagement qualitative research 2017, conducted by Futuresight.

[98] Ofcom's 2016 quantitative SME research, bespoke analysis of small business customers (with between 1 and 9 employees) on a business contract for each service.

[99] Ofcom's 2016 quantitative SME research found that a significant proportion of small businesses were not on a business contract for one or more of their communications services. Among small businesses, 51% of those with a mobile service, 65% of those with an internet service, and 69% of those with a landline service were on a business contract.

residential consumers, including the way in which they interact with communications markets. The Communications Consumer Panel raised that this subset is particularly susceptible to the types of harm that affect domestic consumers.[100]

3.59 We also collected information from business landline, broadband and mobile providers about whether they currently send end-of-contract notifications to SME customers.[101]

3.60 Our analysis is summarised in Figure 10 below. This suggests that only one of the providers we asked (BT) sends end-of-contract notifications to SMEs for the services they offer which specifically reference the minimum contract period. Another provider (O2) stated that it sends end-of-contract notifications, but these do not mention the minimum contract period, instead telling the customer they are able to 'renew' their contract. None of the other providers we asked sent written notifications, but they did note the availability of this information to customers who are willing to proactively check their welcome information or engage via a customer contact centre.

[100] Ofcom, *Call for inputs: Helping consumers to engage in communications markets*, July 2017.

[101] In our information request we defined SMEs as 'a business for which no more than 250 individuals work (whether as employees, volunteers or otherwise)'.

Figure 10: Information on SME notifications

Provider	Is a notification sent?	Is the minimum contract period mentioned?	Additional comments
BT	✓	✓*	• *The minimum contract period is *only* mentioned in notifications sent to customers who have *opted-out* of receiving marketing material. • Customers who have *opted-in* to marketing receive information about what would happen if the customer did nothing (e.g. if their tariff would become more expensive)
O2	✓	×	• Customers receive upgrade and renew notifications which encourage them to call the provider and discuss their options.
TalkTalk	×	×	• Minimum contract period information is available via the online portal and the provider's customer contact team.
Verastar	×	×	• Customers with Unicom, Clear Business or Kinex are contacted by phone when they are approaching the end of the minimum contract period to discuss contract options. • Minimum contract period information is available in the customer's contractual terms of agreement, the letter sent to customers upon activation of the service or via a call to their customer contact team.
Virgin Media	×	×	• The provider runs campaign-driven proactive marketing to re-engage and re-contact customers. • Minimum contract period information is available on the customer's contract agreement, or via their customer contact team.
Vodafone	×	×	• Around [✂] of customers (which have opted-in to marketing) receive a call to discuss their upgrade options, and if a customer cannot be reached, they will be contacted by email. • Customers can access minimum contract period information in store, or by calling the customer contact team. Some customers can access this information through the provider's app.
XLN	×	×	• Customers can find information about their minimum contract period by contacting the customer contact team by phone, email, social media, their online accounts, or in their welcome letter.

Source: Provider response to formal information request.

3.61 Given our research and the previous approach taken by Ofcom in relation to Small Businesses (those with no more than ten individuals), we consider that these businesses are likely to behave in a similar way and raise similar concerns to residential consumers. This would mean that in addition to potentially not knowing when their minimum contract period ends, they are similarly unlikely to know what happens when it does, their options and that they could make savings (and/or find a better deal to suit their needs). Therefore, as with residential consumers, Small Businesses are likely to suffer harm from paying higher prices, not benefiting from improvements in services and price or from having to proactively seek out this information.

3.62 In the General Conditions of Entitlement, Small Businesses employing no more than ten individuals (whether as employees, volunteers or otherwise) often have the same regulatory protections as residential customers. In contrast, larger businesses, while enjoying the same basic protections (such as the right to minimum information regarding their contracts, a minimum contract period of 12 months, and a minimum notice period of one month), do not need certain additional protections that the GCs extend to residential consumers and Small Businesses (such as the requirement for providers to seek consent for each new specific minimum contract period, before renewing a contract). As noted in our September 2017 statement on our review of the GCs, large businesses generally have greater bargaining power than Small Businesses and consumers, and are therefore less likely to experience harm in this area.[102] Within the scope and make-up of small and medium sized enterprises, recent government statistics showed that small businesses of 0-9 individuals made up 90% of SMEs.[103]

Our assessment of consumer harm

3.63 We have set out our concerns above that most providers do not notify their customers, at the appropriate time, of important information about the services they buy. In particular, they are not notified that they are approaching the end of their minimum contract period; what this means for their price and the services they buy; and the options available to them after this point, including the potential to make savings.

3.64 While some providers communicate with their customers near the end of their minimum contract period, we consider that the extent of current communications is not sufficient to ensure that consumers have the right information at the right time to ensure they can make informed decisions. First, most providers do not send notifications to customers which make clear that customers have reached, or are about to reach, the end of their minimum contract period. Second, the content of this communication is not consistent across providers, and often excludes important information, such as the change in service and price at the end of the minimum contract period. Finally, communications do not make clear to customers what coming to the end of their minimum contract period means and the options that are available to them at this point.

3.65 The evidence shows that some consumers lack awareness in respect of certain information that is fundamental to their ability to make informed decisions about their services. In particular:

- **Many don't know the status of their contract.** Up to 26% of people taking landline, broadband and pay TV services (standalone or as a bundle) lack awareness or are confused about their contract status.[104] The same is true of 15% of mobile phone customers.

[102] Ofcom, *Review of the General Conditions of Entitlement*, September 2017: https://www.ofcom.org.uk/__data/assets/pdf_file/0026/106397/Statement-and-Consultation-Review-of-the-General-Conditions-of-Entitlement.pdf. Section 7.18.

[103] ONS UK Business Stats 2017; Table 10 - Number of VAT and/or PAYE based enterprises in districts, counties and unitary authorities within region and country by employment size bands (https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/datasets/ukbusinessactivitysizeandlocation).

[104] The research did not cover standalone landline, standalone broadband, or quad play packages.

- **Some are unclear about future charges.** Around a quarter of people who do not know when their contract ends, also do not know what will happen to the price they pay when it does; and
- **People often don't understand their options.** Communications markets are complex by nature and some consumers do not understand what coming to the end of their minimum contract period means. They are also unaware of the options, savings or benefits available to them. Around one in ten are unaware that they could switch to a different deal with their current provider once their contract ends. One quarter of customers on a mobile handset contract are unaware of the possibility of moving to a SIM-only deal. And up to a quarter of out-of-contract customers do not think they could make any savings.

3.66 As most providers do not inform their customers at the appropriate time of important information about the services they buy, we consider that this lack of information leads to a significant number of consumers moving to rolling out-of-contract terms. The evidence we have gathered indicates that, as a result, many consumers pay higher prices than they need to, and do not benefit from improved service packages:

- Many consumers are subject to automatic price increases, or service changes, at the end of the minimum contract period. We estimate that more than 10 million customers are on deals with an automatic price increase at the end of the minimum contract period. Due to their lack of awareness, many consumers go out-of-contract and are unable to avoid these changes.
- More generally, consumers who lack awareness cannot make informed decisions on when and whether they should search for a better deal. We are concerned that some of these consumers are unable to make savings, or benefit from an improved service package, at the end of their minimum contract period. For example, customers taking a bundle of landline and broadband services spend, on average, around 20% more when they are out-of-contract. Also, certain mobile consumers continue to pay the same price (which includes the cost of handset) after the end of their minimum contract period, which could be significantly higher than the price they would pay if they switched to a SIM-only deal.

3.67 For those consumers that are aware of this information, we consider it unreasonable that they have to incur time and effort to retain, monitor and seek out this information.

3.68 Based on the evidence set out in this section[105], our assessment is that consumers experience harm as a result of not being notified by their providers, at an appropriate time, of important information relevant to coming to the end of their minimum contract period.

Intervening to protect consumers' interests

3.69 We consider below the options that would be effective at addressing the issues we have identified in order to achieve our policy objectives.

[105] The evidence we rely on is specific to those services and bundles of services that have the largest subscriber numbers. We have no reason to believe that other combinations of services, e.g. quad play, would change our assessment.

3.70 As set out in Section 2, our policy objectives are to ensure that consumers are informed:

- at an appropriate time when their minimum contract period is coming to an end, and of any changes to price or services that will occur as a result; and
- that their minimum contract period has already come to an end if they were not previously informed of this.

3.71 The two main options we evaluate below are: (1) Maintaining the status quo; and (2) Requiring providers to send end-of-contract notifications and a one-off out-of-contract notification to their residential and Small Business customers.

Option 1: Maintaining the status quo

3.72 In accordance with our regulatory principles, we have considered whether maintaining the status quo is likely to fulfil our policy objectives.[106] We have set out above why we consider that residential consumers' and Small Businesses' interests are not currently being met by the existing regulatory measures in place and the practice of most providers. In our view, it is not reasonable that most providers do not notify customers of when their minimum contract period ends, what this means for their price and the services they buy, and the options available to them after this point.

3.73 We do not have evidence that the harms we have identified will reduce of their own accord or that providers will improve the information they provide to their customers in the absence of regulatory change. Therefore, we do not consider that our policy objectives will be achieved if the status quo is maintained.

3.74 Our provisional view is that, in order to ensure our policy objectives are met, and the respective harm areas, in terms of consumers paying higher prices and not benefiting from deals that could improve their package or save them money, are addressed, changes are likely to be necessary.

Option 2: Requiring providers to send end-of-contract notifications and a one-off out-of-contract notification

3.75 Under this option, residential and Small Business customers nearing the end of their minimum contract period would receive a communication from their provider with information that we consider important in order to meet our policy objectives and address the harm we have identified (we discuss the precise information we consider appropriate in Section 4). Also under this option, residential and Small Business customers already beyond their minimum contract period would receive a one-off out-of-contract notification if they have not been informed previously of all of the information that we consider important.

[106] See Ofcom's regulatory principles: https://www.ofcom.org.uk/about-ofcom/what-is-ofcom

3.76 This information would ensure consumers are informed of the status of their contract at an appropriate time so that they are able to make informed decisions about the services they buy. They would be aware of:

- when they are no longer tied to their minimum contract period and so can engage and change their contract or switch to another provider without penalty; and
- the implications if they do not engage and remain on their existing deal. In particular, of any increase to their price, or a loss in the service they receive, that may occur from the end of that period. This would also include information to address lack of understanding of what coming to the end of their minimum contract period means in terms of the options available, and the possible savings they could achieve from moving to a new deal.

3.77 The end-of-contract notification would be sent to customers at an appropriate time, which would be when they are nearing the end of their minimum contract period. This ensures that consumers are able to act accordingly when it is most appropriate. It is also supported by our consumer research, with around nine out of ten consumers who reported being in-contract across each of the services saying they thought it would be useful to be contacted by their provider and told their contract is coming to an end (about 1 to 2 months before this happened).[107]

3.78 End-of-contract notifications were spontaneously suggested as a way to support informed decision making by participants in our 2017 qualitative consumer engagement research, who felt it had the potential to 'awaken' people to think about whether their current deal is the best one for their needs. This was evident among less engaged participants as well as those in a potentially vulnerable situation, where many did not feel confident to do something proactively. Those who were less engaged also felt they would be prompted to engage if notified of a price increase before it was imposed, with some feeling they could be 'caught' out by a price increase.

3.79 Given that those consumers who are already out-of-contract will not receive a notification advising them that their minimum contract period is ending and providers have not previously provided them with this information, it is equally important that this option addresses the harm we have identified in relation to these customers. A one-off out-of-contract notification would ensure these customers are appropriately informed that they are out-of-contract and of the relevant implications of remaining on their existing deal.

3.80 Stated interest in such notifications was strong among those who said they were out-of-contract. Our research found that many of these consumers across each of the services reported that they would find a notification useful.[108] In particular, standalone pay TV customers who were unsure of their contract status were significantly more likely than those who knew they were out-of-contract to find this type of notification useful (78%).

[107] Ofcom's quantitative consumer engagement research 2018, conducted by Critical. Slide 23. 87% for mobile, 87% for standalone pay TV, 89% for dual play, 90% for triple play.
[108] Ofcom's quantitative consumer engagement research 2018, conducted by Critical, slide 24. 56% for standalone pay TV, 56% for dual play, 62% for triple play.

3.81 Given our assessment of harm evidenced in the landline, broadband, pay TV and mobile markets, we think it is appropriate for this option to apply more broadly to all providers of PECS. This is consistent with the application of our consumer protection conditions (part C in the revised General Conditions of Entitlement which come into force on 1 October 2018). This would build on the provisions in these conditions.

3.82 This means that this option would require notifications to be sent to all residential and Small Business customers who take PECS, which would include landline, broadband, pay TV and mobile services.[109]

3.83 Our research showed that a notification was of less interest to mobile consumers. In this market, we expect the interest or desire to upgrade handsets acts as a natural trigger for engagement. However, this was still viewed as a prompt for less engaged consumers to contact their provider about upgrade options, and for consumers on a mobile handset to consider switching to a SIM-only deal.

3.84 Around half of respondents to the July 2017 CFI were supportive of Ofcom considering end-of-contract notifications as a potential solution to consumers not engaging with the market. One respondent, [✂], thought this could help consumers know when to engage as it removes uncertainty and should boost consumer confidence.[110] This was echoed by others who believed providers are not proactive enough in informing consumers that their promotional period is ending,[111] so that often the first time consumers know about a price increase is when they receive their bill.[112]

3.85 Some respondents raised concerns about the potential for end-of-contract notifications to annoy or overload consumers with information (e.g. Sky,[113] Communications Consumer Panel[114]). In addition, Citizens Advice, uSwitch and MoneySavingExpert highlighted that prompts may not have much impact on their own, for example if a consumer is not free to exit the contract or the notification does not also include information about the best tariffs available as seen in other sectors (e.g. energy market). We have taken these views into account in Section 4 in our proposed notifications design.

3.86 Our provisional judgement is that the option of providers sending end-of-contract and out-of-contract notifications is likely to effectively address the harms we have identified and thereby achieve our policy objectives. In particular, for both residential consumers and

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[109] In relation to standalone landline, we recognise that, following a review of the market for standalone landline telephone services, BT voluntarily committed to improve the information available to ensure its voice-only customers are aware of possible savings available to them in this market. BT has committed to investigate, using a reasonable number of trials, the form of communication which has the best prospect of success in increasing engagement for these customers. We note the potential overlap between this communication and a one-off out-of-contract notification and will consider this further once we know the outcome of the first trial. BT also voluntarily committed to provide its split purchase customers with an annual statement. We note there may be some overlap between the annual statement and the one-off out-of-contract notification and we consider that BT could amalgamate these communications if it wants.
[110] [✂], July 2017 CFI response.
[111] This view was shared by BGL Group Limited, MoneySavingExpert, Moorhouse Consulting, First Utility, SSE, TalkTalk, Inclusion London, Citizens Advice, Communications Consumer Panel, Advertising Standards Authority, uSwitch, Centre for Competition Policy: University of East Anglia and one other provider, [✂].
[112] Ofcom, *Call for inputs: Helping consumers to engage in communications markets*, July 2017.
[113] Sky, July 2017 CFI response: https://www.ofcom.org.uk/__data/assets/pdf_file/0023/108437/Sky.pdf.
[114] Communications Consumer Panel, July 2017 CFI response: https://www.ofcom.org.uk/__data/assets/pdf_file/0023/108428/Communications-Consumer-Panel-and-ACOD.pdf.

Small Businesses, they would increase awareness of their minimum contract period status, they would inform them of price and service changes, and they would also address their lack of understanding and awareness of the options available after that period ends and the savings that could potentially be made. This timely information would protect them against unexpected and unwelcome changes to their service and price and enable them to make informed decisions about their current deal and whether they need to consider alternatives. We consider that they would also more generally reduce the time and effort required for consumers and Small Businesses to monitor, and search for some of this information at the appropriate time.

Other options we have considered

3.87 We have also considered some other potential options that could address our concerns and meet our policy objectives but for the reasons set out below we have not pursued them further in this consultation. These are:

- **Strengthening information given at the time services are purchased**, for example, by requiring providers to inform customers about what precisely will happen once the minimum contract period ends and the potential options available beyond this period.
- **Mandating provision of end-of-contract information online or via app**. We could require this information to be presented in a standardised way so that there is a consistent approach to how this information is presented that would be proactively accessed.

Strengthening information given when the service is purchased

3.88 Our provisional view is that strengthening this information is unlikely to address the specific harms we have identified above and therefore will not achieve our policy objectives in relation to Small Business and residential consumers.

3.89 Our policy objectives are clear that we consider information should be provided at an appropriate time to ensure that consumers can effectively act on receiving this information. We consider this to be at the time the minimum contract period is ending, and, in the case of where this period has already passed, this information should be provided as soon as possible.

3.90 Providers are already required to provide a significant amount of information when a customer purchases a service, with our evidence indicating that some consumers are unable to recall this information. It is therefore unlikely that if more information is provided at this time consumers will recall this information differently. Increasing information requirements at the time a customer purchases a service may also increase the risk of information overload, which would undermine the purpose of increasing awareness of what happens at the end of the minimum contract period.

3.91 To the extent that consumers are focused on getting their new service, they may give limited weight to contract conditions which will usually only come into effect in 12 to 24 months' time when their minimum contract period ends. Moreover, some providers may not be able to provide precise price changes when the service is purchased.

Mandating provision of end-of-contract information online or via app

3.92 Again, our provisional view is that this option is unlikely to address the harm we have previously identified and so achieve our policy objectives in relation to Small Business and residential consumers.

3.93 Our policy objectives are framed in terms of this information being provided to consumers at an appropriate time.

3.94 Our evidence highlights that customers already have multiple ways to access minimum contract period information, with online accounts being a common way that providers typically make this information available to consumers. However, the inclusion of this information in online accounts and apps would still rely on consumers taking proactive action to seek this information out, and the evidence gathered shows that some consumers do not appear to do this (as highlighted earlier in this section).

3.95 We also consider it important to reduce the time and effort of obtaining and monitoring this type of information for those consumers who may be more engaged.

3.96 Since both these alternative options require consumers to either recall or proactively seek out this information, we do not think these options would address the harm identified and thereby achieve our policy objectives.

Our assessment on options for intervention

3.97 We are minded to regard maintaining the status quo, strengthening information provided when the service is purchased and mandating provision of end-of-contract information online or via app alone as unlikely to address the harms we have identified and secure our policy objectives.

3.98 We propose that requiring providers to send end-of-contract notifications and a one-off out-of-contract notification would be the most appropriate and effective approach for consumers faced with the harms identified above. Given the harms we have identified, we propose that these notifications be sent to all residential and Small Business customers who take PECS.

3.99 We have also considered ways to make such a solution less onerous for providers, as detailed in Section 4, where we set out our proposed notification design to be implemented by way of formal regulation.

3.100 In Section 5, we evaluate the benefits and costs of this approach before reaching a provisional conclusion on whether we consider that requiring providers to send end-of-contract notifications and a one-off out-of-contract notification to consumers is proportionate.

Question 1: Do you agree with our assessment of harm relating to residential consumers and Small Businesses?

Question 2: Do you agree that providers should send both end-of-contract and out-of-contract notifications?

Question 3: Do you agree with our proposal that notifications should be sent to all residential and Small Business customers who take Public Electronic Communications Services?

Please provide evidence in support of your views.

4. Making end-of-contract and out-of-contract notifications simple for consumers and practical to implement

Introduction

4.1 As set out in Section 3, our provisional view is that the option of introducing end-of-contract notifications and out-of-contract notifications for both residential consumers and Small Businesses is most likely to achieve our policy objectives. Both notifications would be sent to all residential and Small Business customers who take PECS, that is landline, broadband, pay TV and mobile services, whether taken alone or in dual play, triple play, or quad play bundles. This section sets out our proposed design of such notifications to be implemented by way of formal regulation.

4.2 To ensure that these notifications are effective and easy for consumers and Small Businesses to understand, we set out proposals on the content and structure of the communications. To ensure that they are practical to implement and go no further than is necessary, we propose giving providers some flexibility over when they should be sent and the detailed drafting.

Approach to remedy design

4.3 Taking into account our policy objectives in Section 2 and our assessment of harm in Section 3, we have sought to design notifications which are appropriate to the consumer harm identified in order to achieve our policy objectives. At the same time, we have been mindful of the need to ensure that providers have a degree of flexibility to communicate with their own customers.

4.4 We have identified the following key criteria against which we assess our proposals to ensure they are appropriate:

- They should be effective in addressing consumers' lack of awareness or lack of sufficient information about the end of their minimum contract period and the implications of this. This would help them to avoid unexpected and unwelcome changes to their service or price, make informed decisions about their existing deal and whether they should be shopping around for a new one, and/or avoid incurring time and effort in monitoring and seeking out this information.
- The notification should be in a form that is understandable for consumers.
- The notification should be timely so that when consumers receive the information they can act upon it appropriately.
- They should as far as possible mitigate any unintended consequences for both consumers and providers.

4.5 Our consideration of remedy design is the same for residential consumers and Small Businesses. The evidence we rely on is largely based on consumer research, but as set out in Section 3 we consider that Small Businesses are likely to behave in a similar way and raise similar concerns to residential consumers.

Sources of evidence

4.6 We have considered a number of sources to help inform the proposals for notifications as set out in this section, including responses to our July 2017 Call for Inputs and consumer research, as described below. We have also reflected the views of providers in formulating our proposals, obtained during our discussion with them in the course of this review.

Responses to our July 2017 Call for Inputs (CFI)

4.7 A number of respondents to our July 2017 CFI had specific views on the content, format and timing of end-of-contract notifications. These are set out in more detail in the relevant paragraphs below.

Consumer Research

4.8 We carried out qualitative research ("2018 end-of-contract notification qualitative research") to test consumer comprehension of potential notification messages and to identify any issues with the volume of information and/or any misleading or worrying information/messaging that may have a negative impact on consumers' behaviour.

4.9 Our further aim from the research was to understand:

- which, if any, pieces of information were most relevant in terms of supporting next steps. Our starting point was that the notification should include three key pieces of information: a) the minimum contract period end date; b) that after that date the consumer is free to switch deal/provider without incurring an early termination charge; and c) any monthly price or service change if the consumer takes no action;
- which combinations of information participants said would be the most effective in ensuring the notification supported respondents' decisions on whether to engage and importantly, whether any particular pieces, or combinations of, information would detract from recalling and understanding the key messages – e.g. whether offers from a customer's current provider would overshadow messaging around their ability to find a better deal or switch; and
- whether views differ according to the method of communication (e.g. SMS, letter or email).

4.10 Taking all our evidence into account, we have set out proposed requirements for notifications which in our view achieve our policy objectives by seeking to address the concerns detailed in Section 3, while seeking to avoid any unintended consequences.

Proposed content of end-of-contract notifications

4.11 We propose that an end-of-contract notification should include the following information:

- The date on which the customer's minimum contract period ends, including that early termination charges no longer apply at that point.[115] It should also include details of any applicable notice periods;
- The services which the provider currently provides to the customer under that contract, including additional benefits that accompany the contract, such as free subscriptions to other services (e.g. Netflix, Spotify); the monthly subscription price currently paid by the customer for those services (including any historical discounts); and any changes to the services provided and/or monthly subscription price paid by the customer upon the minimum contract period ending. This should include a list of other services taken with the same provider pursuant to other contracts; and
- The options available to the customer after the minimum contract period has ended, including a message that the customer may be able to make savings by exploring the available options. The notification to customers of mobile services must include SIM-only as one of the options.

Proposed content:

(i) The date on which the customer's minimum contract period ends, including that early termination charges no longer apply at that point. It should also include details of any applicable notice periods.

4.12 Participants in our 2018 end-of-contract notification qualitative research were generally supportive of a notification. They thought that such notifications would be useful and would save them from having to proactively find information about their minimum contract period end date. They considered this end date to be an **essential** piece of information in a notification. The participants considered it to be a core message which should be clear and prominent, such that it sets the context for the rest of the notification.[116]

4.13 Participants were generally in favour of the notification informing them that they would not have to pay **early termination charges** after the end of their minimum contract period if they wanted to end their subscription. Overall, they thought that the inclusion of this information helped to clarify the conditions they would be subject to.[117]

4.14 In general, participants understood relatively little about **notice periods**, including that consumers may be required to give notice to their provider beyond the end of their minimum contract period.[118] They considered this to be essential information, as well as the length of the notice period so as to time their decisions accordingly.[119]

4.15 First Utility commented in its July 2017 CFI response that consumers should be notified ahead of their minimum contract period end date and that the expiry date of any

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[115] The minimum contract period is referred to in the General Conditions of Entitlement as the fixed commitment period.
[116] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slides 15, 49.
[117] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slide 28.
[118] Ofcom's end of contract notification quantitative research, 2015, conducted by Jigsaw. Slide 37: at least 25% of consumers in each of the dual play, triple play, pay TV and mobile markets were not aware that they were required to give notice outside of their minimum contract period.
[119] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slides 15 and 24.

promotional discount, in particular, should be made clear. MoneySavingExpert also commented that consumers should be made aware of when it is a good time for them to engage in the market through prompts.

Our assessment

4.16 For our proposed remedy to be effective in addressing the harms that we have identified, we consider that consumers should be informed, at the appropriate time, of the **date their minimum contract period ends**.[120] In Section 3, we set out that a material number of customers do not know if their minimum contract period has come to an end or when it is due to come to an end, or incur costs to monitor and seek out this information. Our research shows that up to 26% of people taking landline, broadband and pay TV services (standalone or as a bundle) lack awareness or are confused about their contract status. The same is true of 15% of mobile phone customers.

4.17 Our proposal addresses this by ensuring that this information is provided to them in a clear and understandable way, meaning they do not have to proactively seek it out.

4.18 To assist consumers in understanding the implications of reaching the end of their minimum contract period, we consider it important for the notification to make clear that **early termination charges** will not apply after the end of the minimum contract period if the consumer decides to move to a new deal or switch provider.

4.19 This information would address the concerns identified in our research (see paragraph 3.18) that consumers may be put off moving to new deal if they believe they may be subject to early termination charges. It also helps to avoid unintended consequences that may arise where notifications are sent in advance of the end of the minimum contract period (see below), such that consumers are aware that early termination charges will be payable up to the date the minimum contract period ends.

4.20 We consider that providing guidance on the length of **notice periods** in the end-of-contract notification will ensure that consumers understand that even when they are outside their minimum contract period, they will still need to give notice to their provider if they decide to change deals and can therefore plan on the basis of this. It also helps to avoid unintended consequences, such as switching provider before the end of the notice period and potentially having to pay for both old and new services at the same time.

[120] In our assessment sections and analysis below (not where we report research results), references to 'consumers' covers both residential and Small Business customers.

Proposed content:

(ii) The services which the provider currently provides to the customer under that contract, including additional benefits that accompany the contract, such as free subscriptions to other services (e.g. Netflix, Spotify); the monthly subscription price currently paid by the customer for those services (including any historical discounts); and any changes to the services provided and/or monthly subscription price paid by the customer upon the minimum contract period ending. This should include a list of other services taken with the same provider pursuant to other contracts.

4.21 Participants in our 2018 end-of-contract notification qualitative research identified **monthly price changes** at the end of the minimum contract period as essential information in a notification, which could help them determine whether they wanted or needed to take any action. Most thought that if the amount they were paying was going to change after the end of the minimum contract period then it should be incumbent on the provider to let the customer know this.[121] This was a view echoed by respondents to our July 2017 CFI who suggested various pieces of information that should be provided in a notification including current, as well as future, pricing and service information.[122]

4.22 In general, participants preferred price information to be presented as a monthly rather than an annual figure as this would be more helpful to them in terms of budgeting. They were also keen to understand the scale of any price increase (i.e. from £X to £Y), and thought it was reassuring and straightforward to include both the current and future amounts (even for those who already knew what they were paying each month). They also considered it important for the notification to include the current monthly subscription price even where the price does not change, for clarity around what they will pay going forward.[123]

4.23 Our research also tested reactions to the inclusion of information about **price discounts** that applied earlier in the contract. This was considered most useful where no price increase occurred at the end of the minimum term and acted as a reminder that they may be offered a discount if they were to sign up to a new deal. Generally, a lot of price information was considered too complex for a single notification and so a simple reminder that a discount had been applied previously (if relevant) was considered sufficient.[124]

4.24 Participants also thought that including a **breakdown of current service/contract** and any changes was essential to the end-of-contract notification. In particular, it would act as a reminder of the services they currently take and would allow them to review what they are paying for and consider whether they still require those services.[125]

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[121] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slides 15, 26, 52.
[122] Suggestions of this nature were made by respondents including Citizens Advice, BGL Group, SSE, First Utility and MoneySavingExpert. Ofcom, *Helping consumers to engage in communications markets: Call for Inputs,* July 2017.
[123] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slides 26 and 29.
[124] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slide 15, 26, 53. Earlier discounted pricing was unfamiliar to some participants and the seeming irrelevance may have impacted their attitudes.
[125] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slides 15, 27, 55.

4.25 Participants preferred this information to be presented to them in a clear and easy to absorb format, and particularly liked the idea of being able to easily and visually compare current and future services and price in a simple table format. They considered the presentation of information in this way would be transparent. Below is an example of a breakdown of services and price (where price changes exist) used in the research which was well-received by participants.

Figure 11: Example of breakdown table for a dual play contract

Current deal	**After [day] [month] 2018**
Broadband and Talk	Broadband and Talk
Line Rental - £X	Line Rental - £Y
Caller display - FREE	Caller display - £Y
Broadband unlimited - £X	Broadband unlimited - £Y
WiFi Hotspots - FREE	WiFi Hotspots - £Y
Pay as you talk - FREE	Pay as you talk - £Y
Monthly price - £X	Monthly price - £Y

4.26 The participants additionally thought that being told about the implications for any other contracts taken with the same provider was essential if applicable to them, i.e. if other services taken from the same provider did not end on the same date.

4.27 A number of respondents to our July 2017 CFI agreed that pricing information – either highlighting the differences between the current and out-of-contract tariffs or informing customers that a discount or promotional offer is ending – would be important in an end-of-contract notification.[126]

Our assessment

4.28 We consider that reminding consumers of details of their **current package and monthly price paid** is important in helping them understand which services the minimum contract period relates to and assists them in: making an informed decision about whether to remain on their existing deal and assessing their options once the minimum contract period ends. Service details should include additional benefits that accompany the contract, such as free subscriptions to other services (e.g. Netflix, Spotify) as this is relevant information for consumers to be aware of in making an informed decision.

4.29 We propose that the information about the package/service details and monthly price to be provided should be those that are applicable at the time of the notification. This would

[126] Citizens Advice, First Utility, SSE and BGL Group. Ofcom, *Helping consumers to engage in communications markets: Call for Inputs,* July 2017.

ensure that customers are given the most relevant and recent pricing and service information. It would also avoid the risk of confusion with different prices paid during the minimum term of the contract, particularly where consumers could add or remove additional services from month to month. However, we consider it important to inform consumers whether any discounts had been applied to the prices they paid during their minimum contract period, without providing the actual price paid or the value of the discount, as this fact is relevant to a consumer's understanding of the overall price of the contract over the minimum contract period.

4.30 Being informed of **any change in cost and service(s)** that will occur once the minimum contract period comes to an end is essential for consumers to be able to avoid any unexpected and unwelcome changes, and, furthermore, allow them to make an informed decision about whether to remain on their existing deal and make an assessment of their options. This is particularly significant given that we have identified this as a significant source of harm (see Section 3).

4.31 Listing the other services taken with the same provider pursuant to other contracts is important so that consumers are given complete information in terms of the services they currently take with that provider. This aims to help consumers avoid unintended consequences and make an informed decision about next steps as there could be implications for them if they were to change deal or switch provider.

Proposed content:

(iii) The options available to the customer after the minimum contract period has ended, including a message that the customer may be able to make savings by exploring the available options. The notification to customers of mobile services should inform them of the availability of SIM-only deals as one of the options.

4.32 Some participants in our 2018 end-of-contract notification qualitative research considered that giving consumers additional information regarding their options (such as the fact they could shop around for a new deal or switch to a new provider) alongside the contract end date gives a more complete picture of their options. Indeed, among the less engaged participants being provided with all the relevant information in a single communication was considered essential.

4.33 Some participants who had a mobile contract that included a handset were unaware of SIM-only options. Of these, some continued to pay the higher price for their mobile service even when their minimum term had ended. These participants expressed concern at not being notified about SIM-only options and considered it important for this information to be included in an end-of-contract notification, in order for consumers to avoid 'paying over the odds' for their mobile. [127]

4.34 This was also supported in responses to our July 2017 CFI, with MoneySavingExpert stating that consumers often do not engage due to not knowing how much they could save, and therefore a prompt informing consumers that they could make savings would be useful.

[127] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slides 15, 35, 60.

Participants in our 2018 end-of-contract notification qualitative research also noted that a message informing them that they could ‘save money’ was a good reminder that they could be paying less.[128]

4.35 The Communications Consumer Panel’s response to our July 2017 CFI reflected our consumer research findings and highlighted that it would be useful for providers to give their customers clear advice on what new deals are available.

Our assessment

4.36 In order to ensure the effectiveness of the end-of contract notifications, our view is that consumers’ interests will be best served if the recipients understand the implications of coming to the end of their minimum contract period, including the options that are available to them. Communications markets are complex and without that information, consumers may be confused as to what, if anything, they can do next. In order to make these options tangible, we consider that consumers should be informed that these options could enable them to find an improved deal and/or that there is the possibility of making savings.

4.37 This is aimed at ensuring that consumers are fully aware of what it means to come to the end of their minimum contract period, such that they are able to make an informed decision about their existing deal. By not being informed of what their options are and the possibility of savings, there is a risk that consumers will make an assumption that their existing deal is the best available, without exploring other available options. This, in turn, would undermine the effectiveness of end-of-contract notifications in addressing the higher prices paid by some out-of-contract consumers.

4.38 In Section 3, we have explained that consumers often do not understand or lack awareness of the options available to them once their minimum contract period ends and the savings they could make. Therefore, we consider it appropriate for this information to be provided in the end-of-contract notification to ensure the effectiveness of the communication and enable consumers to make an informed decision about whether to stay on their current deal or seek an alternative deal.

4.39 We propose that the notification to customers of **mobile** services should also include that the customer can use their existing handset and take a SIM-only deal as one of the options available to them at the end of the minimum contract period. In particular, these deals are likely to enable a number of out-of-contract mobile consumers to move to a better deal and save money. Alerting customers to the existence of SIM-only deals would address the lack of awareness of some mobile customers of SIM-only deals.[129]

4.40 We do not propose to prohibit providers from including offers in the end-of-contract notification. The inclusion of provider offers would not be out of place alongside the other options available and we consider that it is appropriate that consumers consider a provider

[128] Ofcom’s end of contract notification qualitative research 2018, conducted by Jigsaw. Slides 15, 43, 56.
[129] Our 2018 quantitative consumer engagement research found that a quarter of customers on a mobile handset contract were unaware of the possibility of moving to a SIM-only deal at the end of their minimum contract period. Ofcom’s quantitative consumer engagement research 2018, conducted by Critical. Slide 29.

offer when assessing whether to remain on their existing deal or switching to another provider.

Content we are not proposing to be in an end-of-contract notification

4.41 Our 2018 end-of-contract notification qualitative research also tested additional content to be included in the notifications. We have decided not to include this additional content in our proposed notifications for the reasons set out below:

- **Total price paid over the term of the contract.** Our research sought participant views on how useful it would be for the notification to include a figure for the total price paid for the services taken by the customer over the minimum term of the contract. Most participants did not consider this information to be essential to them. Our findings suggest that the total price paid over the term of the contract is not something that consumers calculate or would use to make decisions about their contract. Given we are proposing the current monthly subscription price is included in the notification, an additional price point could risk information overload, which could undermine the effectiveness of the notification. Our view is that it is not appropriate to include the total price paid over the term of the contract in our proposed content for the notification.
- **Detailed information about other contracts taken with the same provider.** Our research also sought views on different messages regarding other contracts that consumers may have with the same provider. When these messages were tested in our research, they were only relevant to a few participants. Where the information was relevant, participants deemed this information essential, and the preferred message was to be told the end date of the minimum contract period for their other services. We are proposing that the notification should include a list of other services taken with the same provider, however, in our assessment, we do not consider that it would be proportionate to require providers to give more detailed information. The list of services should be sufficient for consumers to seek out further information if required.
- **A link to the mobile provider's webpage on handset unlocking, where relevant**. Participants in our research felt that information about how to unlock their handset was largely irrelevant in an end-of-contract notification. While participants thought the information was important, they did not consider that it was required at the point the notification is sent. We therefore do not propose to require providers to include information about handset unlocking in the notification. In particular, we consider that this information is likely to be more relevant at the point that a customer decides to switch provider.
- **A link to information about mobile coverage, where relevant.** Participants in our research also felt that a reference to find more information about mobile coverage was irrelevant in such a notification. We do not propose to include this information in the end-of-contract notification. As with handset unlocking, we consider that information about mobile coverage is likely to be more relevant when customers decide to shop around for mobile services.

- **A link to switching information on Ofcom's website.** Participants in our research considered the inclusion of a link to advice on how to switch on Ofcom's website to be desirable rather than essential. The more confident and engaged did not feel that they needed advice on how to switch, while others considered this to be a good or responsible thing to be included in the communication. In our assessment, we do not consider this information essential and it is likely to be more relevant at the point that a customer decides to switch provider. We also note that information/advice about switching can be found elsewhere, such as on providers' and consumer groups' websites.

Structure of the end-of-contract notification

4.42 One of the objectives of our 2018 end-of-contract notification qualitative research was to explore the optimal content and flow for an end-of-contract notification in terms of delivering the core messages in the most effective way.

4.43 Our research tested example notifications of various lengths with participants.[130] In general, the longer versions were thought to be more informative, provided important information that supported decision making and appeared more honest and helpful. The longer versions were, in particular, preferred by the less engaged and less confident consumers. Although the more confident/engaged tended to prefer shorter notifications, they did not reject the longer version.

4.44 As mentioned above, our starting point was that the end-of-contract notification should include three key pieces of information:

- the actual end date of the minimum contract period;
- the fact that after that date the consumer is free to end their subscription without incurring an early termination charge; and
- the monthly price (change) if the consumer takes no action.

4.45 Evidence from our research suggests that participants considered it essential that the end-of-contract notification should lead with the date their minimum contract period ends, as this sets the context for the rest of the communication. Participants also thought that it was 'crucial' to be told about any price change, as this would inform a decision on whether to engage.[131] Other aspects considered crucial or essential by participants were: the ability to cancel or switch without charge (as this highlighted their options), notice periods (given the general lack of understanding), and end dates for other contracts with the same provider (if applicable).

4.46 Participants largely accepted the inclusion of provider offers in the notification and felt it was quite useful and would save them time and effort to look for a new deal. However, they highlighted that an end-of-contract notification that led with an 'offer' may be

[130] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slide 16.
[131] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slides 15, 19, 42, 52-53.

discarded/overlooked because it would be perceived as marketing information.[132] Participants regarded a provider's offer as 'desirable' but considered it better placed after the 'essential' pieces of information.[133]

Proposals for structure

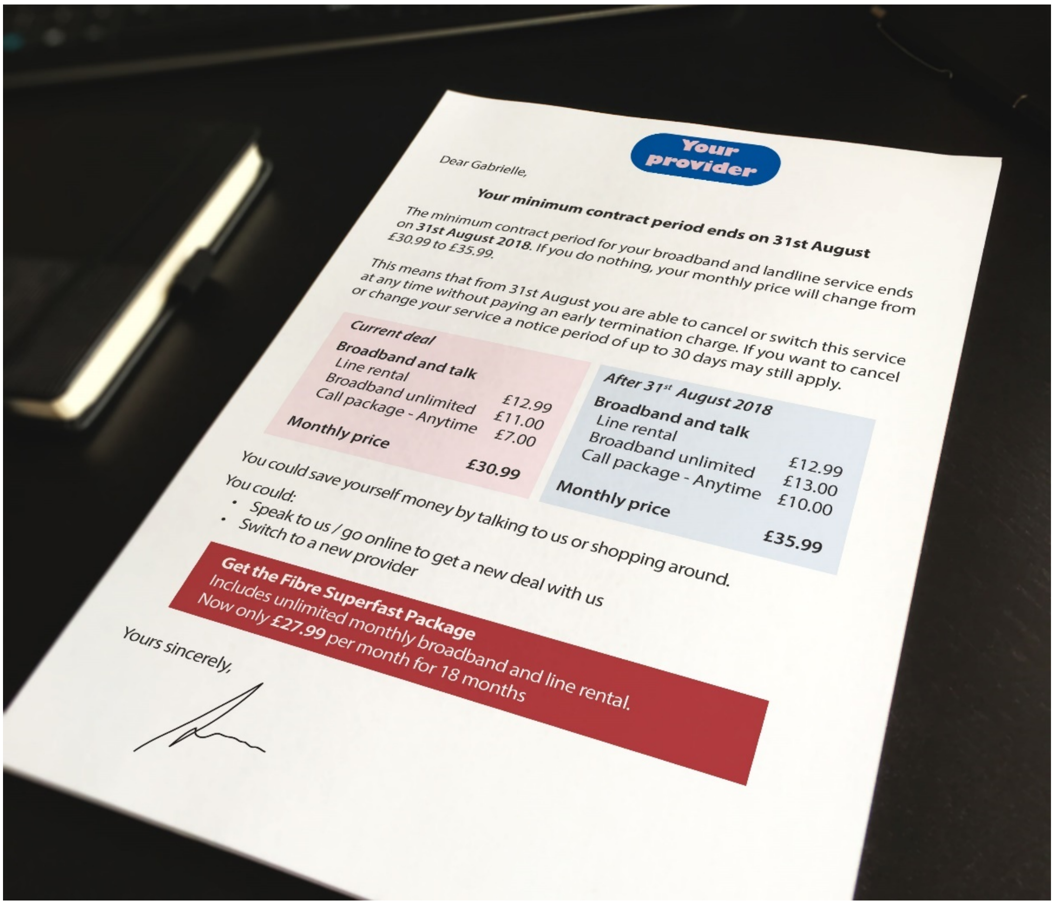
4.47 In order to ensure that the end-of-contract notification is effective and not mistaken for general marketing information, we propose that the end date of the minimum contract period and any resulting price changes should appear upfront in the notification. We consider that placing this information upfront is important to make consumers aware of the purpose of the communication and highlight information essential to their decision-making.

4.48 As set out above, we do not propose prohibiting providers from including offers in their end-of-contract notification. However, where an offer is included, we consider it important that this information appears **at the end of the notification,** as one of the options available to the customer at the end of the minimum contract period. This is to ensure that providers do not include an upfront marketing message that could mean the entire communication is mistaken as marketing and disregarded as a result.

4.49 We do not propose specifying the structure of the remaining content. As set out above, we recognise that some providers adopt a particular style when communicating with their customers and we would not want our proposals to limit their ability to communicate with their customers in the most effective way.

4.50 The following is an illustration of how the proposed information could be set out in an end-of-contract notification letter:

[132] Similarly, in our 2017 qualitative consumer engagement research, some participants felt that it was important for the notification to stand out and apart from sales and marketing they receive, so that it would not be discarded by accident. Ofcom qualitative consumer engagement research, 2017, conducted by Futuresight (p.51).
[133] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slides 15, 25, 44.



Method of sending the end-of-contract notification

4.51 Our evidence suggests that different customers have different contact preferences. For example, participants in our 2017 qualitative consumer engagement research wanted to choose which method to receive the notification. Text was the most common method called for across all services, and after that, a choice of email or post (i.e. letter) was requested.[134]

4.52 In contrast, participants in our 2018 end-of-contract notification qualitative research preferred longer communications with more information, suggesting a letter or email would be more effective. They considered that a letter or email could contain more messages and information relevant to their decision making, where such information would not be conducive to a text. However, some noted that people always read a text message which suggests this could potentially be an effective channel for key facts.

4.53 Most respondents to our July 2017 CFI did not state whether an end-of-contract notification should be sent in a specific format, but MoneySavingExpert said that it should be a distinct communication and separate from any bills. This echoes the views of the majority of participants in our 2015 end-of-contract notification research who preferred

[134] Ofcom's qualitative consumer engagement research 2017, conducted by Futuresight (p.51).

the idea of a standalone communication from the provider to receiving the information with a bill.[135]

Proposals for method of sending the end-of-contract notification

4.54 We are aware that most providers collect information from their customers about their preferred channels of communication and are able to tailor their communication methods accordingly. Using customers' preferred method of contact is likely to be the most appropriate way of ensuring that the end-of-contract notification reaches consumers.

4.55 Therefore, we propose that providers should send the end-of-contract notification in a durable medium using the individual customers' preferred method of contact. By durable medium we mean paper, email or SMS, or any other medium that:

- allows information to be addressed personally to the recipient;
- enables the recipient to store the information so that it is accessible for future reference for a period that is long enough for the purposes of the information; and
- allows the unchanged reproduction of the information to be stored.[136]

4.56 We recognise that in some cases, the provider may not know the customer's preferred contact channel. In such cases, we propose that the end-of-contract notification should be sent in a durable medium using the same contact channel for providing or notifying the customer of available bills.

4.57 We also propose that the end-of-contract notification should be a standalone communication which is sent separately from their bill or other service message from their provider. This is to ensure that the consumer does not mistake, overlook or dismiss the end-of-contract notification with other messages from their provider.

End-of-contract notifications sent by SMS

4.58 We note that some providers communicate with their customers mainly via SMS either because that is their standard method of communication and/or because they are aware that their customers prefer this particular contact channel.

4.59 In our 2018 qualitative research, we tested end-of-contract notifications using SMS with mobile customers. For the group discussions, participants were sent example notifications via text message to their mobile phones. While this format was acceptable to all, it was presented as the only option, and there was agreement that text was better suited to shorter communication (i.e. the 'basic version' that was tested). But some noted that the 'basic version' lacked information that was considered 'essential' e.g. price change information or notice periods. As such, participants suggested multiple texts may be a solution.[137]

[135] Ofcom 2015 end of contract notification research. Slide 28. However, over 55s were happier to receive the notification by standalone letter or along with their paper bill (under 35s preferred online methods, i.e. email).
[136] We do not consider that a push notification from a provider's app would meet the definition of durable medium.
[137] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slides 31-36.

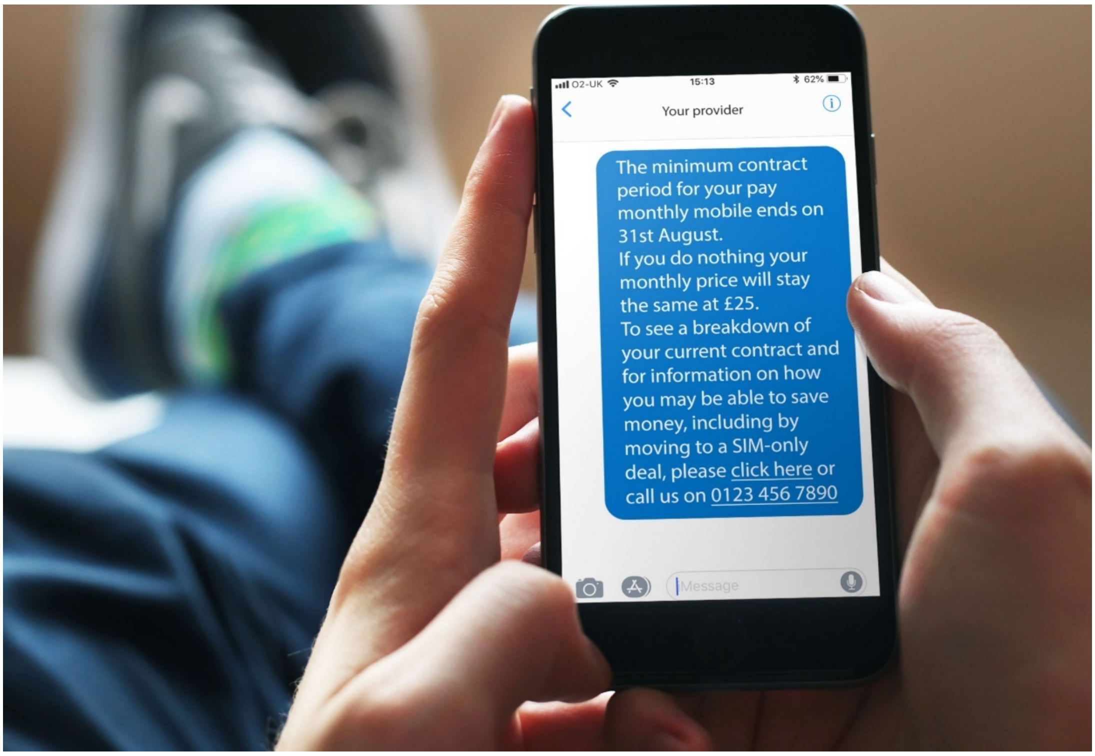
4.60 Given the need to keep SMS (text messages) relatively simple and concise in the interest of effective messaging, we consider that there is certain core information which the provider must include in the main body of an end-of-contract notification sent via SMS. However, the provider would also be required to provide the other details in either another durable medium (SMS, letter or email), or via a link in the SMS which should take the consumer to their online account. Providers need to be clear in the SMS where the other information will be available.

4.61 We therefore propose the following for end-of-contract notifications sent by SMS:

Core information which must be included in the main body of the SMS	**Information that can be included in either another durable medium or via a link in the SMS to the customer's online account**
The date on which the customer's minimum contract period ends.	The fact that early termination charges no longer apply after the end of the minimum contract period, but noting any applicable notice periods if the customer wants to cancel or switch.
The monthly subscription price currently paid by the customer and any changes to this upon the minimum contract period ending.	The services which the provider currently provides to the customer under that contract, including additional benefits that accompany the contract, such as free subscriptions to other services (e.g. Netflix, Spotify) and, if applicable, any changes to the services provided upon the minimum contract period ending. This should include a list of other services taken with the same providers pursuant to other contracts.
That SIM-only is an available option (mobile only)	If applicable, a reminder that a discount did apply during the minimum contract period.
How the information in the next column will be provided (e.g. the online link or other durable medium).	If applicable, a list of other services taken with the same provider pursuant to other contracts.
	Options available after the minimum contract period has ended, including a message that the customer may be

	able to make savings by exploring the available options.

4.62 The following is an illustration of a possible end-of-contract notification for a mobile contract sent via SMS:



4.63 We note from our research that the core messages in the end-of-contract notification better supported decision making if they are embedded in a wider communication which is especially important for the less engaged/confident consumer. Therefore, one of the key disadvantages of sending an end-of-contract notification by SMS is that it could be less effective at supporting those who are less engaged/confident.

4.64 However, our proposal will ensure that even with SMS notifications, all the proposed content will be either be in the main body of the message, a link which will be included in the actual message or another durable medium. This ensures that customers would have access to all the information we deem important and relevant to them even if it is not provided in the SMS message itself.

End-of-contract notifications in accessible formats

4.65 Vulnerable consumers and/or consumers with disabilities should get comparable access to end-of-contract notifications. This view is supported by responses to our July 2017 CFI from the Communications Consumer Panel and Inclusion London who said that it is important to have accessible formats available for vulnerable consumers.[138]

4.66 We are, therefore, proposing to require providers to send end-of-contract notifications in a format such as electronic, braille or large print, where customers have registered to receive bills in an alternative format and/or the provider is aware that the customer requires communications to be sent in an alternative format.

4.67 This requirement on providers to send such notifications in accessible formats to those who they have identified as requiring communications in such formats, will ensure that customers receive these notifications in a form that is most suitable for them.

Timing and frequency of the end-of-contract notification

4.68 In order to be effective, an end-of-contract notification would need to give consumers enough time to consider their options once their minimum contract period has ended and enough notice in case they choose to change their service. Therefore, we consider that an end-of-contract notification would likely need to be sent at least 1-2 months before the minimum contract period end date, taking into account that providers tend to have around 30-day notice periods (although this can vary, including by service).[139]

4.69 This was reflected in our 2017 qualitative consumer engagement research, with many participants saying they wanted to receive an end-of-contract notification **at least a month before the end of their minimum contract period**. Some (potentially those more informed about notice periods) wanted to receive the notification **two months prior**, to ensure that they had time to review their arrangements before the need to provide notice (often around 30 days), in the event that they chose to leave. There was also a universal preference for the notification to be sent towards the end of their minimum contract period, rather than at the end. Some consumers wanted two notifications – one in advance and a second closer to the end as a reminder, to reduce the chances of the original notification being missed.[140]

4.70 This was echoed by participants in our 2018 qualitative research, who ideally wanted to receive an end-of-contract notification a month or so before the end of the minimum contract period as this was close enough that it seems relevant, but far enough in advance to allow time to have a think and/or look around.[141]

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[138] Communications Consumer Panel, July 2017 CFI response: https://www.ofcom.org.uk/__data/assets/pdf_file/0023/108428/Communications-Consumer-Panel-and-ACOD.pdf, p.3; Inclusion London, July 2017 CFI response: https://www.ofcom.org.uk/__data/assets/pdf_file/0017/108431/Inclusion-London.pdf, p.2.

[139] The length of any existing notification period may vary by provider, service and/or whether the customer is switching. E.g. for services switched within the Openreach network, the notice period tends to be aligned with the transfer period, i.e. minimum of 10 working days.

[140] Ofcom qualitative consumer engagement qualitative research, 2017, conducted by Futuresight. Page 51.

[141] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw, Slides 10, 24. Note: there was a general lack of awareness in the sample with regards to notice periods, which may have impacted stated desired timing for an end of contract notification.

4.71 The July 2017 CFI responses that supported end-of-contract notifications were in favour of consumers receiving such notifications before the end date of their minimum contract period, where timing was mentioned.[142] The main reason cited for this is to give consumers enough time to consider engagement and look at available offers before any changes or price rises due to the expiry of the minimum contract period occur. First Utility's response was the most specific, stating that around 30 days before the end of the minimum contract period would be the most appropriate point.

4.72 As set out in Section 3, while most providers do not currently send end-of-contract notifications as we think of them,[143] many send promotional notifications to customers towards the end of their minimum contract period to say that their "discount period" is coming to an end and the customer's contract price will soon increase, and/or that they can re-contract/upgrade without paying an early termination charge.

4.73 Where notifications are currently sent to consumers, these usually go out multiple times before and after the end of the minimum contract period. Responses to our January 2018 information request suggest that most providers that send some form of notification do so at least two times before the end of the minimum contract period.

Proposal on timing and frequency of the end-of-contract notification

4.74 We propose to require providers to send **one** end-of-contract notification to customers approaching the end of their minimum contract period. We do not propose to require the sending of multiple end-of-contract notifications, e.g. one before the end of the minimum contract period and then again at the end of the minimum contract period.

4.75 We consider that notifying consumers of this information once addresses our key concerns set out in Section 3, that most providers are not informing consumers at the appropriate time of important information about the services they buy. This does not preclude providers from sending additional notifications if they so choose, e.g. at the end of the minimum contract period.

4.76 We propose that end-of-contract notifications should be sent to customers **between 40 to 70 days before the end of the minimum contract period**. This reflects our evidence that customers want to be notified nearer to the time they are required to take action but sufficiently in advance so that they have time to take action, particularly if they want to avoid any automatic price increases or service changes. We have also taken into account that in general, customers may have to give their provider up to 30 days' notice before they can cancel their subscription. Therefore, our proposal should mean that notifications are sent in advance of any applicable notice period.

4.77 This also gives providers some flexibility regarding when to send the end-of-contract notification and should enable providers to stagger their customers' communications accordingly, for example, so that the end-of-contract notification is not sent out at the

[142] Including First Utility, SSE, MoneySavingExpert and BGL Group.
[143] I.e. A written or verbal notification which is made to a customer to inform them when they are approaching, are at, or have passed the end of their minimum contractual period.

same time as another campaign. This should help to avoid any consumer confusion on what each communication is telling them.

Proposal on length of contracts to be covered

4.78 We propose that our rules should require providers to send end-of-contract notifications for any contracts that have a minimum contract period of **six months or more**. We do not consider that customers who take out monthly rolling (30-day) contracts should be included given the short minimum term for these contracts.

4.79 We note that typically the current deals in the market have minimum contract periods of 12, 18 or 24 months for consumer contracts. It is customers who are on these contracts that we think would most benefit from end-of-contract notifications. We are aware that some providers currently offer contracts with a shorter minimum contract period, such as 9 months, which we think is still sufficiently long to warrant an end of contract notification. In our proposals, we have sought to target contracts that have a significant period of time between the point the customer purchases services and the end of the minimum contract period.

Assessment of design proposals for an end-of-contract notification

4.80 We have assessed whether our design proposal for an end-of-contract notification satisfies the criteria set out at the beginning of this chapter.

The notification should be effective in addressing the harm we have identified

4.81 We consider that our proposed content would address the harm identified in Section 3 and thereby achieve our policy objectives. The notification would provide consumers with key information about their minimum contract end date, help consumers avoid unexpected and unwelcome changes to their service or price, help consumers to make informed decisions about their existing deal and whether they should be shopping around for a new one, and/or ensure they do not incur time and effort in monitoring and seeking out this information.

4.82 For this reason, we propose that the content of the notification should include the end date of the minimum contract period. To help them understand what this means, we propose that the notification should inform them that early termination charges are not payable after that date.

4.83 We consider that including information about current services and price, and any changes would make it clear to the customer which service(s) the notification is for and what will happen to service/price at the end of the minimum contract period. This would help them to make an informed decision about whether to take any action and avoid these changes if they want to.

4.84 The proposal to include the options available to the customer, including the possibility of making savings, will ensure they understand what, if anything, they can do next to find an improved deal. To ensure that the notification is effective, we have proposed that certain core information is placed upfront so that the context of the communication is made clear to consumers while any provider offers should go at the end to avoid the risk of consumers dismissing the notification as general marketing information.

The notification should be in a form that is understandable for consumers

4.85 We consider that the information we propose to be included in a single end-of-contract notification, and sent in accordance with a consumer's chosen or normal method of communication, will ensure that consumers are more likely to understand the information it contains and the implications of coming to the end of their minimum contract period. This will enable them to make informed decisions on whether and when to act.

4.86 We have varied the information set out in the main body of the notification depending on the communication channel used in order to ensure the messages are understandable in different formats. We have also sought to ensure that certain core information is placed upfront so customers understand the context of the message regardless of the communication channel used.

4.87 The requirement for providers to make such notifications available in accessible formats should ensure that customers who have specific communication needs are able to receive the notification in a form that is most suitable for them.

The notification should be timely so that when consumers receive the information they can act upon it appropriately

4.88 Requiring the proposed information to be sent when the customer is nearing the end of their minimum contract period ensures that customers are informed at a time when they are able to make decisions on how they want to proceed, and, if appropriate, take necessary steps in a timely manner. This may include shopping around for other offers and giving required notice if they want to cancel or switch.

The notification should as far as possible mitigate any unintended consequences for both consumers and providers

4.89 As we are proposing that the notification is sent 40-70 days before the end of the minimum contract period, there is a risk that some consumers may cancel their contract before their actual contract end date and then have to pay early termination charges. Our proposal for the notification to inform consumers that early termination charges no longer apply after the minimum contract period will help to mitigate this risk.

4.90 The proposal to include information about applicable notice periods will help to avoid the unintended consequence of the customer switching provider before the end of their notice period and/or having to pay for old and new services at the same time.

4.91 The proposed requirement for the notification to list the other services taken with the same provider aims to help consumers avoid unintended consequences and make an informed decision about next steps as there could be implications for them if they were to change deal.

4.92 We have sought to design our proposal in a clear, simple and achievable way, which minimises the risk of confusion as to what providers must include in the notification while also giving them flexibility in their communications with their customers. While we are proposing for specific content to be included, we do not propose to prescribe the actual words or language to be used in the notification. We note that some providers adopt a particular tone/style when communicating with their customers and we would not want our proposals to limit their ability to communicate with their customers in the most effective way.

Our proposal for a one-off "out-of-contract notification" at implementation

4.93 As set out in Section 3, many consumers who are already out-of-contract will not have been informed at the appropriate time that their minimum contract period is ending or that it has ended. Where providers have not previously provided their customers with this information, it is equally important that our proposals address the harm we have identified in relation to these customers.

4.94 A one-off out-of-contract notification would ensure these customers are appropriately informed that they are out-of-contract and of the relevant implications of remaining on their existing deal.

4.95 We propose that providers should be required to send a one-off "out-of-contract notification[144]" to all residential and Small Business customers that are already outside of their minimum contract period if they have not previously been informed of the information proposed in the end-of-contract notification.

Content of the out-of-contract notification

4.96 In our 2018 end-of-contract notification qualitative research, out-of-contract customers did not differ markedly from the other consumers in their responses to the end-of-contract notification content tested. Participants considered a notification would raise their awareness of being out-of-contract, what that meant and the options available to them. The notification would also act as a reminder of the details of their existing contract which would facilitate a decision on whether to engage or not.[145]

4.97 We propose that a potential out-of-contract notification would differ slightly in content from an end-of-contract notification, given it would be sent after the minimum contract period has expired. We propose that the notification for those already beyond their minimum contract period would inform the customer of:

[144] By this, we mean a notification to customers who are already outside of their minimum contract period and therefore considered to be "out of contract".
[145] Ofcom's end of contract notification qualitative research 2018, conducted by Jigsaw. Slides 38-39.

- The date the customer’s minimum contract period ended and the fact that early termination charges no longer apply, but noting any applicable notice periods;
- The services which the provider currently provides to the customer under that contract, including additional benefits that accompany the contract, such as free subscriptions to other services (e.g. Netflix, Spotify) and the monthly subscription price currently paid by the customer for those services. This should include a list of other services taken with the same provider pursuant to other contracts; and
- The options available to the customer, including a message that the customer may be able to make savings by exploring the available options. The notification to customers of mobile services must include SIM-only as one of the options.

4.98 We consider our proposed content for out-of-contract notifications to be appropriate as it will ensure that consumers are provided with the same information as we have provisionally concluded as necessary for end-of-contract notifications, where this remains relevant.

4.99 The notification will tell them that they are no longer in their minimum contract period and the proposed information on early termination charges, available options and possible savings will help them to understand what it means to be out-of-contract. Providing information on applicable notice periods helps to ensure that consumers are informed that they still need to give their provider notice if they want to cancel or switch even if their minimum contract period has ended.

4.100 There are unlikely to be any service or price changes relevant to an out-of-contract notification and we do not consider that it would be relevant or effective to include historical service or pricing information (e.g. services or prices paid before the minimum contract period end date and/or any offers or discounts applied during the minimum contract period).

Structure of the out-of-contract notification

4.101 In order to be effective, we propose that the structure of the out-of-contract notification should follow that proposed for end-of-contract notifications, for the same reasons. That is, for the date the customer’s minimum contract period ended to be presented upfront in the notification and for any provider offers to appear towards the end of the notification.

Method of sending the out-of-contract notification

4.102 We propose that this one-off out-of-contract notification would be sent to consumers using the same method and principles set out for end-of-contract notifications, for the same reasons. That is, we propose that providers be required to send the notification in a durable medium using the customer's preferred method of contact (if known). If the customer's contact preference is unknown, the provider should use the durable medium by which it notifies the consumer of any available bills.

4.103 Consistent with our position on end-of-contract notifications sent via SMS above, we recognise the need to keep out-of-contract notifications by SMS (text messages) relatively simple and concise in the interest of effective messaging. Therefore, we consider there is certain core information which should be included in the main body of the SMS. The provider would also be required to provide the other details in either another durable medium (SMS, letter or email), or via a link in the SMS which should take the consumer to their online account. Providers need to be clear in the SMS where the other information will be available.

4.104 We propose the following for out-of-contract notifications sent by SMS:

Core information which must be included in the main body of the SMS	Information that can be included in either another durable medium or via a link in the SMS to the customer's online account
The date the customer's minimum contract period ended.	The fact that early termination charges no longer apply, but noting any applicable notice periods if the customer wants to cancel or switch.
The monthly subscription price currently paid by the customer.	The services which the provider currently provides to the customer and if applicable, a list of other services taken with the same provider pursuant to other contracts.
That SIM-only is an available option (mobile only)	Options available after the minimum contract period has ended, including a message that the customer may be able to make savings by exploring the available options.
How the information in the next column will be provided (e.g. the online link or other durable medium).	

4.105 We also propose, similarly to end-of-contract notifications, to require providers to send out-of-contract notifications in a format such as electronic, braille or large print, where customers have registered to receive bills in these types of ways/requested this and/or where the provider is aware that the customer requires communications in alternative formats.

Proposal on length of contracts to be covered

4.106 As with the proposed end-of-contract notification, we propose that the requirement to send a one-off out-of-contract notification should apply with respect to consumers that were previously subject to a minimum contract period of **six months or more**, where that minimum contract period has since ended and the consumer remains on 'rolled over' or 'out-of-contract' terms.

4.107 This takes into account that some providers currently offer contracts that have a minimum contract period of 9 months as well as the more typical 12, 18 or 24 months.

Assessment of proposal for out-of-contract notification

4.108 We have assessed whether our proposal for a one-off notification to customers who are already outside of their minimum contract period satisfies the criteria set out at the beginning of this chapter:

The notification should be effective in addressing consumers' lack of awareness or lack of sufficient information about the end of their minimum contract period and the implications of this

4.109 As set out in Section 3, consumers who are already out-of-contract will not receive an end-of-contract notification advising them that their minimum contract period is ending. Where providers have not previously provided their customers with all of the information that we are proposing for the end-of-contract notification, it is equally important an out-of-contract notification addresses the harm we have identified in relation to these customers.

4.110 A one-off out-of-contract notification would ensure these customers are appropriately informed that they are out-of-contract and the relevant implications of remaining on their existing deal. For these reasons, we propose that the content of the notification should inform the customer that their minimum contract period has already ended. To help consumers to understand what this means, we propose that the notification should inform them that early termination charges no longer apply.

4.111 Including information about current services and price would make it clear to the customer which service(s) the notification is for. The proposal to include the options available to the customer, including the possibility of making savings, will ensure they understand what, if anything, they can do next to find an improved deal.

4.112 To ensure that the notification is effective, we have proposed that certain core information is placed upfront so that the context of the communication is made clear to consumers while any provider offers should go at the end to avoid the risk of consumers dismissing the notification as general marketing information.

The notification should be in a form that is understandable for consumers

4.113 We consider that the information we propose to be included in the one-off out-of-contract notification, and sent in accordance with a consumer's chosen or normal method of communication, will ensure that consumers are more likely to understand the information sent and the implications of having reached the end of their minimum contract period. This will enable them to make informed decisions on whether and when to act.

4.114 We have varied the information set out in the main body of the notification depending on the communication channel used in order to ensure the messages are understandable in different formats. We have also sought to ensure that certain core information is placed upfront so customers understand the context of the message regardless of the communication channel used.

4.115 The requirement for providers to make such notifications available in accessible formats should ensure that customers who have specific communication needs are able to receive the notification in a form that is most suitable for them.

The notification should be timely so that when consumers receive the information they can act upon it effectively

4.116 We propose that providers should send a one-off notification to customers who are already outside of their minimum contract period **within nine months of our decision statement** (we address our proposed implementation timescales further in Section 5). As the customer is already out-of-contract, the proposed information about the options available to them is particularly relevant as they are able to take immediate action subject to any notice periods, which they will be made aware of.

The notification should as far as possible mitigate unintended consequences for both consumers and providers

4.117 We are proposing that this notification should make clear that the customer has already reached the end of their minimum contract period and of any applicable notice periods to ensure that customers who cancel their subscription understand that they still have to pay for services with their current provider until the end of any notice period. This will also help to avoid the unintended consequence of the customer switching provider before the end of their period and/or having to pay for old and new services at the same time.

4.118 The proposed requirement for the notification to list the other services taken with the same provider aims to help consumers avoid unintended consequences and make an informed decision about next steps as there could be implications for them if they were to change deal.

4.119 We have sought to design our proposal in a clear, simple and achievable way, which minimises the risk of confusion as to what providers must include in the notification while also giving them flexibility in their communications with their customers. While we are proposing for specific content to be included, we do not propose to prescribe the actual words or language to be used in the notification. We note that some providers adopt a particular tone/style when communicating with their customers and we would not want our proposals to limit their ability to communicate with their customers in the most effective way.

Provisional conclusion

4.120 We are proposing to require all providers to send two types of notification:

- an end-of-contract notification to be sent before the customer reaches the end of their minimum contract period; and
- an out-of-contract notification to those customers who are already out of contract and who have not previously been informed of the information proposed in the end-of-contract notification.

4.121 Our proposals for the notifications are summarised below:

End-of-contract notification	**Out-of-contract notification**
Proposed content: • The date on which the customer's minimum contract period ends, including that early termination charges no longer apply at that point. It should also include details of any applicable notice periods. • The services which the provider currently provides to the customer under that contract, including additional benefits that accompany the contract, such as free subscriptions to other services (e.g. Netflix, Spotify); the monthly subscription price currently paid by the customer for those services (including any historical discounts); and any changes to the services provided and/or monthly subscription price paid by the customer upon the minimum contract period ending. This should include a list of other services taken with the same provider pursuant to other contracts. • The options available to the customer after the minimum contract period has ended, including a message that the customer may be able to make savings by exploring the available options. The notification to customers of mobile services must include SIM-only as one of the options.	Proposed content: • The date the customer's minimum contract period ended and the fact that early termination charges no longer apply, but noting any applicable notice periods. • The services which the provider currently provides to the customer under that contract, including additional benefits that accompany the contract, such as free subscriptions to other services (e.g. Netflix, Spotify); the monthly subscription price currently paid by the customer for those services; and a list of other services taken with the same provider pursuant to other contracts. • The options available to the customer, including a message that the customer may be able to make savings by exploring the available options. The notification to customers of mobile services must include SIM-only as one of the options.

Proposals for structure: • The minimum contract period end date and any resulting price changes should appear upfront. • If providers choose to include an offer for the customer then that information should go at the end of the notification.	Proposals for structure: • The date the customer's minimum contract period ended should appear upfront. • If providers choose to include an offer for the customer then that information should go at the end of the notification.
Proposals for sending: • The notification should be sent in a durable medium using the customer's preferred communication channel. • The end-of-contract notification should be sent to consumers between 40-70 days before the end of their minimum contract period.	Proposals for sending: • The notification should be sent in a durable medium using the customer's preferred communication channel. • The one-off out-of-contract notification will be sent to customers who are already out of their minimum contract period at the time of implementation and have not previously been informed of all the information proposed for the end-of-contract notification.

4.122 We have assessed our proposals against set criteria as noted throughout this section to ensure that:

- They are effective in addressing consumers' lack of awareness and lack of sufficient information about the end of their minimum contract period and the implications of this, so that they can avoid unexpected and unwelcome changes to their service or price, make informed decisions and/or avoid incurring time and effort in monitoring and seeking out this information.
- They are in a form that is understandable for consumers.
- They are timely so that when consumers receive the information they can act upon it effectively.
- They should as far as possible mitigate any unintended consequences for both consumers and providers.

4.123 In our judgement, we consider our remedy design to be appropriate to address the consumer harm identified in Section 3 and to achieve our policy objectives. We discuss the overall proportionality of our proposals in the next section.

Consultation questions

4.124 We welcome stakeholder comments on the following questions in relation to our proposed remedy as set out in this section:

Question 4: Do you agree with our proposals on the content of the end-of-contract notification?

Question 5: Do you agree with our proposals on the structure, method, timing and frequency of the end-of-contract notification?

Question 6: Do you agree with our proposals on the content of the out-of-contract notification?

Question 7: Do you agree with our proposals on the structure, method and frequency of the out-of-contract notification?

Please provide evidence to support your views.

5. Provisional conclusions on the proportionality of our proposals

5.1 In this section we set out our assessment of the likely impact of our proposals. In doing so, we explain why we consider that our proposals are proportionate, are an effective means of achieving our objectives, and why we consider that they do not give rise to adverse effects which are disproportionate to the achievement of those objectives.

Assessing the proportionality of our proposals

5.2 As set out in Section 2, section 3(1) of the Act states that it shall be the principal duty of Ofcom to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.

5.3 In Section 3, we set out our concerns that some consumers are not notified by their providers at an appropriate time, and are unaware of important information about the end of their minimum contract period, what this means for their service and price, or the options available to them at this point.

5.4 We also set out our concerns for those who go out-of-contract and move onto rolling contract terms. Many consumers pay more as a result of higher prices and many miss out on deals that could improve their package or save them money.

5.5 In the light of those concerns, we have explained that we consider it reasonable that consumers are notified of this information at an appropriate time to ensure they can avoid price increases and service changes and can make informed decisions about their existing deal and when and how to exercise choice. It is not reasonable that providers do not currently provide their customers with this information and do not give them an opportunity to do this.

5.6 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 (among other things) proportionate and targeted only at cases in which action is needed.[146]

5.7 We have set out in Section 4 why we propose that action, in the form of requiring providers to send their customers end-of-contract notifications and a one-off out-of-contract notification in the manner described, is required in order to address the harms we have identified. We have also considered ways to make these notifications less onerous for providers, in how we have designed these notifications, as set out in that section.

5.8 In assessing proportionality, we consider:

[146] See Ofcom's regulatory principles: https://www.ofcom.org.uk/about-ofcom/what-is-ofcom

- whether a proposed measure is an effective means of achieving our objectives;[147]
- whether the proposed measure is necessary to achieve those objectives, or whether those objectives could be achieved by a less onerous approach; and
- whether the proposed measure gives rise to adverse effects which are disproportionate to the aims pursued.

Effective means of achieving our objectives

5.9 As set out in Section 2, our policy objectives are to ensure that:

- consumers are informed at an appropriate time when their minimum contract period is coming to an end, and of any changes to price or services that will occur as a result; and
- consumers are informed that their minimum contract period has already come to an end if they were not previously informed of this.

5.10 It is reasonable to expect that providers will treat their customers fairly in the provision of communications services. An essential aspect of fairness is that providers ensure their customers are informed, at the appropriate time, of important information about the services they buy. This will enable consumers to make informed decisions and will protect them against unexpected and unwelcome changes to their service or price (such as a price increase at the end of their minimum contract period). In addition, consumers will be able to make informed decisions about whether to take up a new deal with their current provider, move to a new deal with a different provider or make an active decision to stay on an existing deal.

5.11 In Section 3, we set out our concerns that most providers do not notify their customers, and some consumers are not aware of, when their minimum contract period is coming to an end, as well as price increases and service changes that may apply at the end of that period. In addition, given the complex nature of communications markets, some consumers do not understand what coming to the end of their minimum contract period means and lack awareness of the options available, and the possible savings they could achieve from moving to a new deal.

5.12 We also set out that we consider that this lack of information leads to a significant number of consumers moving to rolling out-of-contract terms. As a result, we are concerned that many consumers pay higher prices than they need to, and do not benefit from improved service packages:

- Many consumers are subject to automatic price increases, or service changes, at the end of the minimum contract period. We estimate that more than 10 million customers are on deals with an automatic price increase at the end of the minimum contract

[147] In order for an intervention to be proportionate, the objectives pursued must also be legitimate. We consider that our objectives are legitimate in light of our statutory powers and duties. In particular, and as set out in Section 2, one of our principal duties is to further the interests of consumers (section 3(1) of the Act). In performing this duty, we must have regard to the interests of those consumers in respect of choice, price, quality of service and value for money (section 3(5) of the Act).

period. Due to their lack of awareness, some consumers go out-of-contract and are unable to avoid these changes.

- More generally, consumers who lack awareness cannot make informed decisions on when and whether they should search for a better deal. We are concerned that some of these consumers are unable to make savings, or benefit from an improved service package, at the end of their minimum contract period. For example, customers taking a bundle of landline and broadband services spend, on average, around 20% more when they are out-of-contract. Also, certain mobile consumers continue to pay the same price (which includes the cost of handset) after the end of their minimum contract period, which could be significantly higher than the price they would pay if they switched to a SIM-only deal.

5.13 For those consumers that are aware of this information, we consider it unreasonable that they have to incur time and effort to retain, monitor and seek out this information.

5.14 Section 3 also sets out our view that Small Businesses are likely to experience similar harm to residential consumers, in terms of (i) not being notified and aware of this information, (ii) paying higher prices or not benefitting from improved service packages, and (iii) having to proactively seek out the relevant information. We consider that Small Businesses are likely to behave in a similar way and raise similar concerns to residential consumers.

5.15 To meet our policy objectives, and address the harms we have identified, we consider it reasonable that providers inform their customers at an appropriate time of important information about their minimum contract period. We have identified proposals in Section 3 and 4 which would require providers of PECS to send end-of-contract notifications and a one-off out-of-contract notification to all their residential and Small Business customers. The notifications would include specific information, including:

- the date on which the customer's minimum contract period will end, or has ended;
- the services currently provided to the customer and the price paid;
- changes to the service and price at the end of the minimum contract period, where relevant; and
- that the customer has options available to them (such as SIM-only deals for mobile) and may be able to make savings.

5.16 Our assessment is that these notifications will be an effective means of addressing the harms we have identified and achieving our policy objectives because they:

- inform consumers of the date on which their minimum contract period ends/ended (as well as what happens at the end of that period for relevant consumers), which will signal to consumers when they should be assessing their existing deal and other available options;
- where relevant, will help consumers to avoid unexpected and unwelcome changes to their service and price;
- will help consumers to make informed decisions about their existing deal and whether they should be shopping around for a new one, and
- more generally ensure consumers do not incur time and effort in monitoring and seeking out this information.

5.17 In Section 4, we have also assessed the structure, format, timing and frequency of our proposed notifications and provisionally conclude that in this regard our proposed notifications would be effective for the following reasons:

- they are in a form that is understandable for consumers as certain core information will be placed upfront so that the context of the communication is made clear to consumers, while any provider offers should go at the end to avoid the risk of consumers dismissing the notification as general marketing information. We have also varied the information set out in the main body of the notification depending on the communication channel used in order to ensure the messages are understandable in different formats. Notifications will be sent in accessible formats to those with specific communication needs;
- they are sent in accordance with the customer's chosen or normal method of communication and in a durable medium so that the customer has a record of the information and can refer back to it when needed[148];
- they will be sent at an appropriate time – 40 to 70 days before the end of the minimum contract period for those that are in-contract and within 9 months of Ofcom issuing a final statement for those that are out-of-contract, so that when consumers receive the information they can act upon it appropriately;
- they should as far as possible mitigate any unintended consequences for both consumers and providers. In particular, we have sought to design our proposal in a clear, simple and achievable way to minimise the risk of confusion as to what providers must include in the notification while also giving them the flexibility in their communications with their customers.

5.18 Overall, we provisionally conclude that our proposals will be effective at addressing the consumer harm we have identified and meeting our policy objectives.

Necessary to achieve our policy objectives

5.19 We consider that imposing a requirement for providers to send end-of-contract notifications and, where applicable, a one-off out-of-contract notification to residential consumers and Small Businesses are necessary to address the harm that we have identified and to achieve our policy objectives. We have considered whether there is a potentially less onerous approach, such as maintaining the status quo, strengthening information provided when the service is purchased, or mandating provision of end-of-contract information online or via app. We do not consider that any of these options would achieve our policy objectives for the reasons set out in Section 3.

5.20 We have also considered whether the content, structure, format, timing and frequency of our proposed notifications are necessary to achieve our policy objectives. We have explained in Section 4 and above, why we consider that these aspects are necessary in order to make our notifications effective. Taking into account the need to ensure our

[148] For notifications sent via SMS, we propose that certain core information must be included in the main body of the SMS. Other details can be provided in either another durable medium (SMS, letter or email), or via a link in the SMS which should take the consumer to their online account.

proposals are the least onerous to achieve our objectives, there are aspects of the design of the notifications which we have considered but which do not form part of our proposals:

- Being more prescriptive in terms of the actual words and language to be used in the notifications. We have decided against this as we would not want our proposals to limit providers' ability to communicate with their customers in the most effective way.
- Requiring the inclusion of the following content, which we do not consider would be appropriate and/or proportionate to include given our research findings:
  - Total price paid by the customer over the term of the contract;
  - Detailed information about other contracts with the same provider;
  - A link to the mobile provider's webpage on handset unlocking, where relevant;
  - A link to information about mobile coverage, where relevant;
  - A link to switching information on Ofcom's website.
- Prohibiting providers from including their own offers in the notifications. We have decided not to propose this; however, we are proposing to require that this type of information does not precede the mandatory information that we have proposed.
- Requiring the sending of multiple end-of-contract notifications, e.g. one before the end of the minimum contract period and one at the end of the period. We consider that one notification would be enough to address our key concern that most providers are not (or not consistently) informing consumers at the appropriate time of certain key information.
- Requiring a more specific and shorter timeframe for sending end-of-contract notifications to consumers. We recognise that a range of 40 to 70 days before the end of the minimum contract period gives providers some flexibility for sending these and should help stagger their customers' communications accordingly.
- Requiring the inclusion of historical pricing information in the one-off out-of-contract notification (e.g. prices paid before the minimum contract period end date). We do not think this would be as relevant or effective as these customers are already beyond their minimum contract period.

Consideration of any adverse effects which are disproportionate to our policy objectives

5.21 We have considered whether our proposals to require providers to send end-of-contract and out-of-contract notifications would produce adverse effects, and in particular generate costs to industry, which are disproportionate to the policy objectives we are pursuing, in light of our statutory duties.

5.22 We summarise below our assessment of the impact of our proposals on providers and consumers. Our detailed assessment is set out in Annex 6 and Annex 7.

Impact assessment of our proposals

5.23 We have considered the costs and benefits for those stakeholders that are likely to be impacted by our proposals. Some of these factors can be quantified, and where that is possible we have looked at these in order to inform our assessment. While other factors are less susceptible to meaningful quantification, they are important in our overall assessment of the costs and benefits associated with our proposals.

5.24 We are of the view that the costs of implementing the proposed notifications should be limited, given our proposals would require providers to send a single communication to their customers and that it would include information that is available from a customer's account. Providers communicate with their customers regularly, including as they approach the end of their contract, and we have designed our notifications to ensure that they can fit easily with how providers already communicate with their customers. We have also provided flexibility in terms of when the notifications are sent, in order to allow the notifications to be sent in batches and thus limit costs.

Residential consumers

5.25 We met with a number of providers to discuss the processes required to introduce the proposed end-of-contract and out-of-contract notifications. We also received indicative cost estimates for these processes from some providers. On the basis of this input, we identified three types of costs: one-off implementation costs, ongoing costs to send end-of-contract notifications and one-off costs to send out-of-contract notifications. Our indicative cost estimates focus on the costs to residential consumers (as does our illustrative quantified assessment of benefits).

5.26 Providers would need to incur one-off implementation costs so that their systems can accommodate the extraction of information from customer accounts and distribute end-of-contract notifications to customers.[149] Using the providers' cost estimates and other information we have received, our indicative estimates of one-off implementation costs across industry suggest they are of the order of c.£4 million for mobile services and c.£4-6 million for landline, broadband and pay TV services combined. These estimates support our view that implementation costs are likely to be limited.

5.27 Second, providers would incur ongoing costs associated with sending the proposed end-of-contract notifications. Our indicative estimates, based on information from providers, suggest that these costs would be negligible for mobile providers, as we anticipate that the end-of-contract notifications would be sent via SMS at no material cost. These costs are likely to be higher for landline, broadband and pay TV customers (including standalone, dual play and triple play) service providers, as they are likely to communicate with some of their customer base via letter. Nonetheless, based on indicative estimates received from some providers, these costs are also relatively limited, of the order of c.£8-15 million NPV over ten years for residential customers.

[149] See Annex 8.

5.28 Third, providers would also incur one-off costs to send notifications to customers currently out-of-contract, which we estimate to be c.£2m for residential customers.

5.29 Overall, based on the evidence outlined above and described in more detail in Annex 6, our provisional view is that the cost for industry to implement our proposed notifications is about £4 million for mobile operators and £14-23 million for landline, broadband and TV operators over a 10-year time horizon.

5.30 In relation to benefits, we expect that some consumers will avoid higher prices by seeking out a new deal and exercising choice as a result of our proposals. We consider that the savings that could be made by these consumers are potentially material. As we set out in Section 3, out-of-contract customers spend on average ~20% more than in-contract customers for dual play, triple play and standalone pay TV.[150] Similarly, we find that mobile handset customers who are out-of-contract spend on average ~34% more than mobile SIM-only customers who are in-contract. Separately, we consider that some consumers will be able to change to a product which is more suited to their needs. This could involve a reduction in the price they pay for the same or a better service, or an improvement in the service they receive for no (or only a limited) increase in the price they pay.

5.31 We recognise that some of this benefit may be offset, if providers have the incentive to raise in-contract prices in response to losing revenue from out-of-contract customers. However, this does not lead us to change our provisional conclusion that our proposals would result in a net benefit to consumers. First, there are reasons why providers might not have this incentive; in particular, where the level of in-contract prices is set independently from out-of-contract revenues, or where greater engagement by consumers would create pressure for providers to lower in-contract prices. Second, even where they might, providers are unlikely to pass on in full their loss of out-of-contract revenues into higher in-contract prices. Third, we also expect our proposals to generate additional benefits by:

- reducing the time and effort incurred by a second group of consumers, those who currently have to seek out this information; and
- lowering prices and encouraging choice and innovation by increasing the level of competition in the market.

5.32 While the scale of the net benefits of our proposals are inherently uncertain, we have a reasonable basis to believe that the benefits of this intervention will exceed the costs. In particular, we have conducted an illustrative analysis of the balance between benefits and costs, making a number of simplifying assumptions and abstracting from a number of effects.[151] This analysis illustrates that only a limited proportion of consumers would have

[150] We note that we do not find a similar comparison for mobile customers – consistent with the provider data that only a relatively limited fraction of their subscribers are on contracts which have an automatic price increase at the end of the minimum contract period.

[151] Such as benefits in terms of enhanced competition, savings in time and effort for consumers who are aware of the relevant information, and potential partial offsetting effects by providers.

to avoid going out-of-contract in order for the benefits to be larger than the indicative cost estimates we have produced:[152]

- For residential mobile, benefits would exceed a cost estimate of c.£4 million if end-of-contract notifications led to c.23,000 consumers exercising choice at the end of their minimum contract period, and saving £6 per month for the years they would avoid being out-of-contract.[153] This equates to less than 1% of consumers on a mobile handset contract who are in-contract, but lack awareness of their contract end date.[154]
- For landline, broadband and pay TV services, benefits would exceed the higher boundary of our cost estimate of c.£23 million if our proposal led to c.75,000 customers exercising choice earlier, and saving between £6 and £13 per month (depending on service) for the years they would avoid being out-of-contract.[155] This was derived as c.5,000 out-of-contract consumers signing up to a new deal as a result of out-of-contract notifications (this equates to a negligible fraction of out-of-contract customers),[156] and c.70,000 in-contract consumers avoiding going out-of-contract as a result of our end-of-contract notifications (this equates to c.2% of in-contract consumers who lack awareness on their contract end date).[157]

Small Businesses

5.33 While we recognise that there are additional providers who would incur implementation costs to send notifications to Small Businesses, the residential analysis suggests that these costs are relatively limited. Moreover, some of these implementation costs may be lowered further, to the extent that they can be shared with the introduction of notifications to residential consumers.

5.34 In relation to the distribution costs, we expect the average incremental cost for sending one-off out-of-contract notifications and end-of-contract notifications to be similar to the cost for residential consumers. These costs would therefore be negligible for Small Business consumers who purchase mobile services. While more substantial for other services, they will reflect the number of notifications sent, and thus scale in line with the size of the Small Business base.

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[152] These illustrations are only one combination of the minimum number of out-of-contract and in-contract consumers who would have to re-contract or avoid going out-of-contract for the benefits to exceed the indicative cost estimates. Benefits could also exceed the cost with many other combinations, such as a smaller number of in-contract consumers combined with a larger number of out-of-contract consumers.

[153] £6 is the difference between the average spend of mobile handset customers who are out-of-contract and SIM-only customers who are in-contract. We describe our approach in greater detail at Annex 6.

[154] Our analysis determines the number of out-of-contract consumers who would have to re-contract in order for benefits to exceed the one-off cost of sending out-of-contract notifications. Since we estimate that this cost is negligible for mobile customers who are out-of-contract, equally we consider that only a negligible number of out-of-contract consumers would have to re-contract in order for benefits to exceed these costs.

[155] These savings are the difference between the average spend of in-contract customers and out-of-contract customers for each of these services (dual play, triple play and standalone pay TV).

[156] This is calculated as the number of out-of-contract consumers who would have to re-contract in order for the benefits to exceed the one-off cost of sending out-of-contract notifications. We describe this approach in greater detail in Annex 6.

[157] This is calculated as the number of consumers who are currently in-contract, and who would have to avoid going out-of-contract in order for the benefits to exceed the implementation and ongoing costs for end-of-contract notifications. We describe this approach in greater detail in Annex 6.

5.35 In terms of benefits, there are similarities between Small Businesses and residential consumers. We therefore expect that the benefit to a Small Business from exercising choice could be similar. In any case, the illustrative analysis for residential consumers suggests that only a limited fraction of consumers would have to avoid being out-of-contract and paying higher prices to ensure the benefits exceed the costs, even at lower levels of the benefit for a given consumer.

5.36 Overall, we have a reasonable basis to believe that the benefits of the proposed notifications to Small Business will exceed the costs.

Provisional view on adverse effects which are disproportionate to our policy objectives

5.37 Having considered the impact of our proposals on providers and consumers, we do not consider they would produce adverse effects which are disproportionate to our policy objectives. We consider that the objectives we are pursuing, and the benefits that 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 ensuring that consumers are able to gain the benefits of competition by being able to engage with the market and make informed decisions.

Provisional conclusions on proportionality

5.38 On the basis of the assessment above, our provisional view is that our proposals are both effective and the minimum necessary to achieve our policy objectives. We consider that end-of-contract notifications and a one-off out-of-contract notification will deliver benefits to residential consumers and Small Businesses, and our initial assessment of the potential costs for providers are not disproportionate to the benefits that are likely to be secured.

5.39 In our view, our proposals would address the harms we have identified and achieve our policy objectives. Our policy objectives are clear in terms of ensuring that providers treat their customers fairly in the provision of communications services. We consider it entirely reasonable that providers inform their customers at an appropriate time of important information about their minimum contract period.

5.40 In our view, our proposed notifications will address the harms we have identified and achieve our policy objectives, in summary, by:

- **Ensuring consumers know when to review their existing deal**
  Consumers will be told when their minimum contract period ends/ended, which will signal to consumers when they should be assessing their existing deal and other available options;
- **Ensuring consumers can avoid unexpected price and service changes**
  Where relevant, consumers will be advised of price and service changes that will ensure they are able to avoid them by moving to a deal that allows them to save money or benefit from a better service package.

- **Ensuring consumers are informed about the options available to them at end of the minimum contract period**
  Consumers will be informed of what it means to be out-of-contract, particularly that no early termination charges apply and that they are able to move to a better deal that could save them money. This ensures that they are able to make an informed decision and exercise choice, whether that means moving to a better deal with their existing provider, switching provider or deciding to remain on their current deal.

5.41 Our assessment of impacts shows that the costs of implementing our proposals are likely to be limited and exceeded by the benefits to consumers. We therefore provisionally judge that our proposals are proportionate in order to achieve our policy objectives.

Implementation

5.42 At this stage, we estimate that our proposals would take six months to implement between the date of our final statement and the introduction of end-of-contract notifications. Most providers already have systems in place that allow them to communicate with customers on a regular basis; however, we recognise that this is not done in a consistent way between providers and that it is appropriate to give providers a period of time to implement our proposals. This period will be particularly relevant to ensuring that the notifications include personalised information, such as pricing and service information. Following the implementation period, the sending of end-of-contract notifications will naturally be staggered over time by customers' contract end dates.

5.43 In respect of out-of-contract notifications, while these are likely to require a similar implementation period, we recognise that may be a large volume of these to be sent and do not consider it appropriate to require providers to send all of them at the same time. Therefore, we propose allowing an additional period of time in order for providers to manage this process and stagger the sending out of these notifications. We consider that an additional period of 3 months would be appropriate to allow for this. This would mean that all relevant customers should receive an out-of-contract notification from their provider within 9 months of the date of our final statement.

Proposed general conditions

5.44 Annex 9 sets out our Notification of the draft general conditions we are proposing to introduce to implement our proposals. We propose to include the new general conditions under Part C1 of the General Conditions. It also sets out proposed amendments to an existing General Condition and additions to the definitions section of the General Conditions, which support the proposed draft new conditions.

5.45 It is important to note that in September 2017, Ofcom published a statement about changes that we have decided to make to the general conditions of entitlement (the "GC Review Statement"), in order to ensure the general conditions are up to date and reflect

Ofcom's current priorities.[158] The revised general conditions will come into force on 1 October 2018, and the current conditions will be revoked on the same date.

5.46 For this reason, the proposed new condition set out in Annex 9 should be read alongside the revised general conditions that will come into force on 1 October 2018.

Legal tests and statutory duties

5.47 Section 2 of this document sets out our general statutory powers and duties as well as the powers, duties and requirements relevant to the setting of general conditions. In this sub-section we explain why the introduction of our proposed general condition accords with these provisions of the Act.

Ofcom's general duties

5.48 As explained in this consultation, our provisional judgment is that the introduction of a requirement to send end-of-contract notifications and a one-off out-of-contract notification in the proposed draft general conditions fulfils our duty to further the interests of citizens and consumers by ensuring that they are informed at an appropriate time of when their minimum contract period is coming to an end or has come to an end, as well as the implications (if any) for the services they receive and the price they pay, and their options. These proposed conditions will therefore address the harm to consumers that we have identified in this document.

5.49 This objective is in line with our principal duty set out in section 3(1) of the Act, as well as our duty to have regard to: the interest of consumers in respect of choice, price, quality of service and value for money (section 3(5) of the Act); the desirability of encouraging investment in relevant markets (section 3(4)(d) of the Act); the needs of persons with disabilities, of the elderly and those with low incomes (section 3(4)(i) of the Act); and the opinions of consumers in relevant markets (section 3(4)(k) of the Act), insofar as our proposals have been informed by research into consumers' expectations of the information they should receive.

5.50 We also assess that the introduction of the proposed regulation is in line with our obligation to ensure that our regulatory activities are proportionate and targeted only at cases in which action is needed (section 3(3) of the Act). We have sought to design our proposed intervention in a manner that minimises implementation costs for industry, with a view to ensuring that our proposed intervention is proportionate (as described above).

Duties for the purpose of fulfilling EU obligations

5.51 We also provisionally assess that, by proposing to introduce draft general condition C[x], we are acting in accordance with the six European Community requirements in section 4 of the Act, read in light of Article 8 of the Framework Directive. Article 8 sets out the policy objectives of the Framework. These include:

[158] Ofcom, *Review of the General Conditions of Entitlement*, September 2017.

- the promotion of competition in the provision of electronic communications services[159] 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,[160] and
- the promotion of 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).[161]

5.52 For the reasons set out in this document, our assessment is that introducing the proposed requirements regarding end-of-contract notifications and a one-off out-of-contract notification would be in line with the objectives of Article 8 of the Framework Directive as described above. In particular, it would increase protection for consumers by ensuring that they are informed at an appropriate time of when their minimum contract period is coming to an end or has come to an end, as well as the implications (if any) for the services they receive and the price they pay.

Power to set general conditions under section 51

5.53 As set out in Section 2, we have the power under section 51(1)(a) of the Act to set conditions as we consider appropriate for the purpose of protecting the interests of end-users of PECS.

5.54 As noted in Section 3, the evidence we have gathered shows that many consumers don't know the status of the contract, some are unclear about future charges and some don't understand their options. Moreover, we have identified that there is often a financial penalty associated with remaining out-of-contract, either directly in terms of higher prices or being unable to benefit from better service packages, while for other consumers there are costs associated with the time and effort involved in seeking out contractual status information. Our proposed condition seeks to address these issues and we therefore consider that it falls within the current scope of our powers under section 51(1)(a).

5.55 As explained in Section 2, section 51(2) contains a non-exhaustive list of the types of condition that may be set under section 51(1)(a). Section 51(2)(d) provides that Ofcom can, by general condition, *"require the provision, free of charge, of specified information, or information of a specified kind, to end-users"*. We are proposing to exercise this power.

Scope of proposed general conditions

5.56 As stated above, we propose to include the new general conditions under Part C1 of the General Conditions. Part C1 falls under the consumer protection conditions and applies to all providers of Public Electronic Communications Networks and/or Public Electronic Communications Services. Section 46(2)(a) of the Act states that general conditions may

[159] As well as electronic communications networks and associated facilities and services.
[160] Article 8(2)(a) and (b) of the Framework Directive.
[161] Article 8(4)(b) and (d) of the Framework Directive.

be applied generally to every person providing an electronic communications network or electronic communications service.

5.57 The term “electronic communications service” is defined in section 32(2) of the Act as: “…. a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.”

5.58 Article 2(c) of the Framework Directive contains a similar definition: “'electronic communications service' means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks.” So far as the General Conditions are concerned, the definition of “Electronic Communications Service” which applies is that set out in section 32(2) of the Act, which remains unchanged.

5.59 As we noted in our GC Review Statement and the consultation document of 29 July 2016 concerning cross-platform switching,[162] in the “UPC/Hilversum” case[163] and the “UPC/Hungary” case,[164] the Court of Justice of the European Union considered the application of the Framework Directive’s definition of an electronic communications service to pay TV services. The effect of these judgements is that the provision of such services falls within the definition in so far as they include the conveyance of signals on an electronic communications network. In the “UPC/Hilversum” case, the court said that is so even if:

a) those services are also provided with other services, such as content services, that fall outside the definition;

b) the costs charged to consumers incorporate payments made in respect of programme content.[165]

5.60 Accordingly, the proposed new general condition that we propose will apply to providers of landline, broadband, mobile and pay TV services.

Test for setting general conditions

5.61 As set out in Section 2, the test in section 47(2) of the Act must be met before we can set the proposed condition.

5.62 We are minded to consider that the setting of the proposed condition is:

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[162] Ofcom, *Making switching easier and more reliable for consumers. Proposals to reform landline, broadband and pay TV switching between different platforms*, July 2016: https://www.ofcom.org.uk/__data/assets/pdf_file/0030/58845/making-switching-easier.pdf. Paragraph 2.28

[163] Case C-518/11 *UPC Nederland BV v Gemeente Hilversum*, Judgment of 7 November 2013.

[164] Case C-475/12 *UPC v Hungary*, Judgment of 30 April 2014.

[165] See, in particular, paragraphs 35 – 47 and 65 of the court’s judgment in the “UPC/Hilversum” case. See also paragraphs 37 – 39 in the “UPC/Hungary” case.

- not unduly discriminatory as it would apply equally to all providers providing services to residential consumers and to those providing services to Small Businesses;
- proportionate in relation to our proposed end-of-contract and out-of-contract notifications that, as set out in section 4 and 5, taking account of our policy objectives, together with our assessment of the possible impacts, it would secure our objectives and the costs would be proportionate to the benefits that would be secured;
- transparent in that the proposed condition is set out in full in Annex 9 and explained in detail in this document. The proposed condition would also increase transparency by setting out a clear framework for the content, structure, format, timing and frequency for end-of-contract notifications and the one-off notification to customers who, on implementation, are already outside their minimum contract period;
- Finally, as part of our assessment of whether the proposed condition is proportionate, we also consider that it is objectively justifiable in that, for the reasons set out in sections 3 to 5 it seeks to address our concerns:

5.63 that providers do not inform their customers, at an appropriate time, when their minimum contract period is coming to an end and of any changes to price or services that will occur as a result, or that their minimum contract period has ended; and

5.64 about consumers' lack of awareness and/or uncertainty of contract status and the unexpected practices, including financial harm, that customers may face when they reach the end of their minimum contract period.

5.65 We welcome stakeholder comments on the following:

Question 8: Do you agree that our proposals are both effective and the minimum necessary to achieve our policy objectives?

Question 9: Do you agree with the impacts we identify, and the approach we take to quantify these impacts, in our assessment in Annex 6?

Question 10: Do you agree with our provisional assessment that the potential costs for providers are not disproportionate in order to achieve our policy objectives?

Question 11: Do you agree with our proposed implementation timescale for end-of-contract notifications and for the one-off notification to customers who are already outside of their minimum contract period?

Question 12: Do you have any comments on the draft condition set out in Annex 9 to this document?

Please provide evidence to support your views.

A1. Responding to this consultation

How to respond

A1.1 Ofcom would like to receive views and comments on the issues raised in this document, **by 5pm on 9 October 2018.**

A1.2 You can download a response form from https://www.ofcom.org.uk/consultations-and-statements/category-2/end-of-contract-notifications. You can return this by email or post to the address provided in the response form.

A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to improving.engagement@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet).

A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:

Carmen To
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:

- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
- Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.

A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)

A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.

A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.

A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

A1.10 If you want to discuss the issues and questions raised in this consultation, please contact Carmen To on 020 7981 3538, or by email to improving.engagement@ofcom.org.uk.

Confidentiality

A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.

A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.

A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.

A1.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at https://www.ofcom.org.uk/about-ofcom/website/terms-of-use.

Next steps

A1.15 Following this consultation period, Ofcom plans to publish a statement by March 2019.

A1.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see https://www.ofcom.org.uk/about-ofcom/latest/email-updates

Ofcom's consultation processes

A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.

A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.

A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.

A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.

A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.

A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.

A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation cover sheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing ☐

Name/contact details/job title ☐

Whole response ☐

Organisation ☐

Part of the response ☐

If there is no separate annex, which parts? ____

____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

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

Name Signed (if hard copy)

A4. Consultation questions

A4.1 This Annex lists the questions that we are consulting on.

Question 1: Do you agree with our assessment of harm relating to residential consumers and Small Businesses?

Question 2: Do you agree that providers should send both end-of-contract and out-of-contract notifications?

Question 3: Do you agree with our proposal that notifications should be sent to all residential and Small Business customers who take Public Electronic Communications Services?

Question 4: Do you agree with our proposals on the content of the end-of-contract notification?

Question 5: Do you agree with our proposals on the structure, method, timing and frequency of the end-of-contract notification?

Question 6: Do you agree with our proposals on the content of the out-of-contract notification?

Question 7: Do you agree with our proposals on the structure, method and frequency of the out-of-contract notification?

Question 8: Do you agree that our proposals are both effective and the minimum necessary to achieve our policy objectives?

Question 9: Do you agree with the impacts we identify, and the approach we take to quantify these impacts, in our assessment in Annex 6?

Question 10: Do you agree with our provisional assessment that the potential costs for providers are not disproportionate in order to achieve our policy objectives?

Question 11: Do you agree with our proposed implementation timescale for end-of-contract notifications and for the one-off notification to customers who are already outside of their minimum contract period?

Question 12: Do you have any comments on the draft condition set out in Annex 9 to this document?

Please provide evidence in support of your views.

A5. Glossary and abbreviations

Act: The Communications Act 2003

Billing system: A software tool that manages the billing of a customer's services.

Bundle: A combination of more than one service (e.g. broadband and landline, or pay TV and broadband) which is provided by a single communications provider.

Customer relationship marketing (CRM) tool: A software tool that allows marketing departments to see information relating to the customer's proposition.

Customer service agent (CSA) tool: A software tool that allows call centre agents to review customer account information.

Communications provider (or provider): 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.

Dual play: Landline and broadband services provided by a single communications provider.

Early termination charge: 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).

General Condition ('GC'): A general condition imposed by Ofcom under section 45(2)(a) of the Act.

In-contract refers to customers who are within the minimum contract period for any service provided by the communications provider.

Mbit/s: Megabits per second (1 Megabit = 1 million bits). A measure of bandwidth in a digital system.

Minimum contract period: The fixed period of time over which the communications provider and a customer have entered into an agreement for communications services and for which an early termination charge may be payable by the customer if they cancel their contract during this period.

Mobile: A mobile telephony subscription, i.e. a service including the provision of a SIM, which enables a customer to make and receive mobile voice calls and SMS, and/or use data services through a mobile handset.

Out-of-contract refers to customers who are outside of the minimum contract period but are still paying for a service (e.g. broadband, mobile, landline) provided by the provider (e.g. via a rolling monthly contract).

Pay TV: A subscription-based television service, usually charged at a monthly fee, offering multichannel television channels beyond those available free-to-air. It can be delivered through cable, satellite, digital terrestrial and/or the internet (IPTV).

Post-pay contract: A type of contract whereby customers are billed for their use of the provider's services on a monthly basis, based on either the terms of a contract or on the amount of services they have used.

Public electronic communications service (PECS): Any electronic communications service that is provided so as to be available for use by members of the public.

Quad play: Landline, broadband, pay TV and mobile provided by a single communications provider.

SIM-only: A contract between a mobile network provider and a customer whereby the customer is only paying for the monthly network service and not a handset.

Small business customer: A customer who carries on an undertaking for which no more than ten individuals work (whether as employees or volunteers or otherwise), but who is not himself a communications provider.

SMEs: Small and medium sized enterprises are businesses with 249 or fewer employees.

Standalone: Where customers take only a single service from a communications provider and not a bundled service. E.g. standalone mobile refers to where a customer only takes a mobile service from their communications provider.

Standard broadband: Broadband services that deliver download speeds of less than 30Mbit/s, typically over a copper telephone line.

Superfast broadband: Broadband services that deliver download speeds of 30Mbit/s or higher, typically over fibre-to-the cabinet connection or coaxial cable (on Virgin Media’s network).

Triple play: landline, broadband and pay TV services provided by a single communications provider.

Upgrade / Downgrade: Where customers change the service(s) received from their communications provider, or the terms on which they do so, but do not switch to another provider.