



SKY'S RESPONSE TO OFCOM'S 'CONSULTATION ON END-OF-CONTRACT AND ANNUAL BEST TARIFF NOTIFICATIONS, AND PROPOSED SCOPE FOR A REVIEW OF PRICING PRACTICES IN FIXED BROADBAND'

EXECUTIVE SUMMARY

1. Sky supports Ofcom's proposals to alert customers when they are nearing the end of their contract and to offer them best tariff advice for their package.
2. It is critical however that the final requirements reflect two overarching objectives, both of which we think Ofcom would agree with:
 - The notifications must be simple for consumers to understand.
 - The notifications must be practical for providers to implement.
3. Neither of the above objectives will be met without changes to Ofcom's draft requirements and guidance. In broad terms this is because Ofcom's proposals (i) do not pay due regard to how pay TV, fixed line and mobile services are packaged, marketed and sold, and (ii) fail to recognise the complexity of producing accurate and timely customer notifications. Two specific factors lead us to this conclusion.
4. The first factor is the large number of offers and categories of offers that providers typically utilise. For example, in the last quarter of 2018 Sky added, on average, [X] new offers each week. Put simply, it will be impossible for Sky to map this frequency of change into a highly personalised and durable notification format. Requiring providers to do so will likely drive a much simplified offer strategy that will negatively impact customer choice.
5. The second factor is the genuine uncertainty we have from reading the draft requirements and guidance as to how different price elements – offer length, offer depth, one-off upfront charges and other customer incentive rewards – should translate into personalised advice about the cheapest tariff available. We note, for example, that one-off upfront charges are not mentioned at all in the section of the Consultation on best tariff advice.
6. To address this, the requirements should be simplified and clarified in three key respects:
 - Best tariff advice should be limited to market-wide discount offers. In Sky's case, this reflects the best deal taken by [X].
 - Ofcom should explain the interplay between one-off costs and monthly charges when determining the best tariff.
 - Ofcom should confirm that incentive rewards (such as gift vouchers or a free tablet or TV) do not need to be taken into account when determining the best tariff.
7. Sky also urges Ofcom to ensure that providers have maximum flexibility to design notifications that actually prompt consumer engagement and minimise the risk of

confusion. Three changes to the draft requirements will significantly improve outcomes in this respect:

- Providers should have the option to adopt a layered approach to information disclosure with core information in a 'durable' notification (similar to what Ofcom propose for SMS notifications) and further details available in the customer's online account or by calling.
 - Best tariff advice, i.e. the information that is most likely to trigger a response from the customer, should not need to appear at the end of the notification.
 - Providers should have the option to provide separate notifications for pay TV, fixed line and mobile even in cases where there are some linkages between those services.
8. Alongside our response we have included two annexes which contrast how the notifications could look in practice if implemented in line with Ofcom's draft requirements and guidance (Annex 1) compared to how they could look if the requirements and guidance are amended in line with Sky's recommendations (Annex 2). We firmly believe that a simplified more flexible approach will enable Ofcom to meet the two overarching objectives above.
9. Finally, Ofcom must recognise that the addition of best tariff advice (to its earlier proposals) adds significant complexity to implementation. Providers will need significantly longer to implement than the six months proposed by Ofcom. A minimum period of 15 months is more realistic.

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Introduction

1. This submission provides Sky's response to Ofcom's Consultation entitled 'Helping consumers to engage in communications markets – Consultation on end-of-contract and annual best tariff notifications, and proposed scope for a review of pricing practices in fixed broadband' published on 14 December 2018 ("Consultation")¹. This response supplements Sky's response to Ofcom's previous consultation.²
2. This response comprises three sections:
 - Section 1: Explains the complexity of providing personalised best tariff advice in a notification format.
 - Section 2: Explains why giving providers greater flexibility will help deliver simpler and more effective notifications for consumers.
 - Section 3: Sets out our comments on the scope of the proposals and the proposed time scales for implementation.
3. We have also included two annexes
 - Annex 1: A mocked-up example of an end of contract notification to a Sky customer that meets the requirements specified by Ofcom in the Consultation.
 - Annex 2: A mocked-up example of a simplified notification and related online journey that reflect the recommendations we have made in this response.
4. Our comments in this response on the notification requirements should be read as applying equally to end of contract notifications and annual best tariff notifications where relevant.
5. We have not included any comments on Ofcom's proposed review of price differentials in the fixed broadband market. We will of course co-operate fully with Ofcom as it carries out this review.

¹ All references to paragraphs, page numbers, figures, annexes and footnotes are to those in the Consultation unless stated otherwise.

² 'Consultation on end-of-contract and out-of-contract notifications', Ofcom, 31 July 2018 (Available at: <https://www.ofcom.org.uk/consultations-and-statements/category-2/end-of-contract-notifications>) ("July Consultation"). Sky's response to the July Consultation has been published on the Ofcom website (Available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0024/127068/Sky.PDF) ("Sky July Response").

SECTION 1: THE COMPLEXITY OF PROVIDING PERSONALISED BEST TARIFF ADVICE IN A NOTIFICATION FORMAT

- 1.1 Ofcom’s guidance on best tariff advice is quite limited and Sky requests greater flexibility for providers when implementing Ofcom’s requirements. The draft guidance appears to assume a degree of simplicity around how products are priced and packaged that is not the case in practice.
- 1.2 The crux of this issue is uncertainty on what Ofcom means by the words “best tariff” in the context of how propositions for pay TV, fixed line and mobile are typically marketed and sold, and what information can realistically be provided to customers in a standardised notification format.
- 1.3 We note that there is no further clarity given on the meaning of “best tariff advice” in the European Electronic Communications Code (“EECC”). It is very important therefore that Ofcom (i) provides clear guidance on what is expected to ensure compliance, and (ii) that guidance is realistic regarding what is implementable by providers.
- 1.4 There are three features that give rise to a high degree of complexity when communicating best tariff advice to customers:
- (a) The variety of tariffs and types of offer available to consumers. This is a feature of highly competitive markets, such as for pay TV, fixed line and mobile, where multiple providers compete strongly at the retail level;
 - (b) The various price and price-related elements of a typical offer; and
 - (c) The steps needed to refresh notification templates.
- 1.5 Below we explain why, in light of these features:
- (a) Ofcom should limit best tariff advice to market-wide discount offers;
 - (b) Ofcom should clarify how different price elements (such as monthly charges, and one-off upfront costs) translate to best tariff advice;
 - (c) Ofcom should clarify that providers do not need to include different brands within the same corporate group as part of the best tariff advice; and
 - (d) Ofcom should be mindful of the process for producing accurate notification templates when finalising its requirements.

Ofcom should limit best tariff advice to market-wide discount offers

- 1.6 Below is a list of the types of tariffs and offers that Sky (and we assume other large providers) typically has available:
- (a) Pricing for legacy products that some customers have chosen to stick with;
 - (b) Standard list pricing for the current products sold;
 - (c) Market-wide discount offers for current products that are widely publicised and tend to be available for several weeks or months;
 - (d) Discount offers that are available in particular routes to market (e.g. in store specials);

- (e) Very short term discount offers or ‘flash’ sales that are available for only a few days (e.g., Black Friday specials);
- (f) Covert offers that are not marketed by a provider but which are part of an ‘offer toolkit’ that is available to sales agents when having conversations with customers;
- (g) Closed user group offers that are available to particularly groups – for example ‘blue light’ (emergency services) workers or friends and family of staff.

1.7 In respect of the offers across the range of categories (c) to (g) above, as at 11 January 2019:

- (a) [REDACTED].
- (b) [REDACTED].

1.8 Looking specifically at the offers taken by Sky’s new customers, the proportion of customers who joined in Q4 2018 on standard pricing or with an offer either in category (c) above (market-wide discounts) or with an equivalent discount was as follows:

Product	Proportion of new customers in Q4 2018 joining on standard pricing or with a market-wide discount offer or equivalent discount
Sky Broadband & Talk	[REDACTED]
Sky TV	[REDACTED]

Source – Sky internal data (January 2019).

1.9 [REDACTED].

1.10 Ofcom wants the notification to specifically explain that new customers may be eligible for better deals.³ It is right therefore that the notification including best tariff advice should focus on this comparison. We would also point out that the so-called ‘loyalty penalty’ in broadband, that Citizens Advice says is equal to £1.28bn a year, was calculated by comparing standard pricing to the cheapest offers available online for new customers.⁴

1.11 Given that the overwhelming majority of new customers join on market-wide discount offers, Sky considers that Ofcom’s guidance on best tariff advice should make clear that providers are expected to base that advice on that category of offers.

1.12 Furthermore, in its final statement Ofcom should explain that it does not expect providers to take into account the long tail of covert offers, closed user group offers and very-short term offers that may be available from time to time for defined groups or in defined customer scenarios. This is for three reasons:

³ This is reflected in Ofcom’s draft guidance on ‘options available’ that require providers to inform residential subscribers that some providers may offer new customers better deals (paragraph 6.36).

⁴ Appendix A, ‘Excessive prices for disengaged consumers: A super-complaint to the Competition and Markets Authority’, Citizens Advice (Available at: <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/consumer-policy-research/consumer-policy-research/excessive-prices-for-disengaged-consumers-a-super-complaint-to-the-competition-and-markets-authority/>).

- (a) First, a likely provider response to having to include these as part of best tariff advice will be to withdraw such offers. This will chill the dynamism that exists today in the pay TV, fixed line and mobile markets, to the detriment of consumers. For example, if a provider has a special offer available for sales agents to give to customers who have received poor service, the provider may prefer to withdraw the offer rather than explain it as part of best tariff advice. This benefits no-one.
- (b) Second, as explained above, most new customers do not in fact join with these offers.
- (c) Thirdly, given the large number of such offers and the frequency with which they change, including them within the scope of best tariff advice would make the exercise of producing accurate advice for consumers unworkable in practice and, further, risks causing confusion and frustration for customers. For example, a short-term Black Friday offer may be available to the customer if they read and act on the notification the day they receive it (forcing the customer to respond very quickly), but may not be if they delay doing so for a day or two (causing frustration).

1.13 If Ofcom has concerns about consumers potentially missing out on deeper offers (compared to the standard market-wide offers available) then this could be addressed with a simple statement included alongside the best tariff advice along the lines of “Depending on your circumstances other offers may also be available to you – call us on XXX to discuss”.

Ofcom should clarify how different price elements translate to best tariff advice

1.14 Any particular offer to a customer may comprise several price and pricing-related elements:

- (a) The monthly price during the offer period;
- (b) The length of the offer period;
- (c) Upfront charges associated with the offer. This could include charges for making package changes or, where the offer is for a different product, installation or activation charges or delivery charges for kit; and
- (d) Incentives provided as part of the offer. For example, in the past Sky has offered customers incentives including gift vouchers, pre-paid credit cards, Sky Store vouchers or free or discounted kit such as tablets, TVs or games consoles. These change regularly to help manage demand and, in the case of free goods, in response to available stock levels.

1.15 The above variables can make it difficult to objectively compare offers for the purposes of determining the “cheapest tariff available”.⁵ The table below includes examples where it is unclear which of Tariff 1 and Tariff 2 should be considered the better tariff.

Tariff 1 available on Product X	Tariff 2 available on Product X
£10 a month for 12 months plus £50 upfront	£15 a month for 12 months with no upfront charge

⁵ Paragraphs 6.66 to 6.71.

£15 a month for 18 months (post-offer price £20 per month)	£12.50 a month for 12 months (post-offer price £20 per month)
£15 a month for 18 months with a free tablet (RRP £100)	£12 a month for 18 months with no free tablet

- 1.16 The examples above give an indication of the difficulties inherent in providing best tariff advice that is “*precise, specific and complete*”⁶ for individual customers. Therefore, to help providers deliver best tariff advice that balances the needs of consumers and the realistic operational capabilities of providers we would ask Ofcom to clarify its guidance on best tariff advice as follows:
- (a) To explain the interplay between one-off costs and monthly charges when determining the best tariff.
 - (b) To confirm that incentive rewards do not need to be taken into account when determining the best tariff. We note that consumers will be alerted to the possibility that new customers are eligible for extra benefits as part of the required ‘options available’ advice,⁷ and we would welcome clarification from Ofcom that this is sufficient.

Ofcom should clarify that providers do not need to include different brands under the same group within best tariff advice

- 1.17 Ofcom says it has considered whether best tariff advice should include information about tariffs available from other providers and concludes that it should not.⁸ Ofcom acknowledges that keeping up to date with other providers tariffs would be a complex undertaking and prone to inaccuracies and misunderstandings.
- 1.18 Ofcom should also clarify that best tariff advice does not need to include information about tariffs available under other brands that are part of the same wider corporate group.
- 1.19 Sky for example provides pay TV and fixed line services under both the ‘Sky’ brand and the ‘NOW’ brand.⁹ [⌘]. Furthermore, and more importantly from a customer perspective, the customer propositions are not interchangeable. In the case of pay TV the underlying proposition offered by Sky is fundamentally different from that offered by NOW.¹⁰ In the case of fixed line services, whilst the underlying product inputs are purchased from Openreach in both cases, the overall customer proposition remains very different with regards product features (like router functionality, security, or parental controls) and the customer service model.

⁶ Paragraph 6.43.

⁷ Paragraph 6.33.

⁸ Paragraph 6.46.

⁹ Another example is BT that provides fixed line services under both the ‘BT’ and ‘Plusnet’ brands.

¹⁰ For example, with regards the channels available, the user experience, the picture quality and the ways of watching.

- 1.20 Customers select a brand for a variety of reasons other than price. Best tariff advice should not be expected to second-guess that customer choice where brands are part of the same corporate group.¹¹

Ofcom must be mindful of the process for producing accurate notification templates when finalising its requirements

- 1.21 At Sky, notifications that are sent in large batches (such as a price rise notification) are typically treated as a 'campaign', whereas notifications that are triggered by a customer or account-driven event (such as a customer upgrade or downgrade), and which therefore need to be sent on a rolling basis, are treated as 'transactional communications'. End of contract notifications are likely to be in the latter category as they are triggered by an action on the customer's account, i.e. the customer nearing the end of their contract.¹²
- 1.22 Changes to transactional communications typically take [X] to implement for small copy changes and [X] for more substantive changes to either the information that needs to be pulled in from other systems (such as best tariff information) or changes to the structure of how the information is displayed (for example the number of best tariff options displayed due to the current offers available). This is the time it takes to ensure, via testing, that data is pulled across correctly and the communications display correctly across multiple formats (letter, SMS, email) and different devices (email, for example, displays differently on mobile devices and large screen devices).
- 1.23 The position will be further complicated by the requirement to produce notifications in alternative formats (such as braille or large print) where the customer has registered to receive bills in one of those formats.¹³
- 1.24 The upshot of this is that any requirement that will in practice require providers to make regular changes to notification templates will be very hard for providers to implement in an accurate and timely manner. We urge Ofcom to be mindful of these practicalities when finalising its requirements, and to take account of suggestions made by providers to simplify the process as much as possible whilst still ensuring that consumers receive the necessary information. Section 2 of this response includes a number of suggestions from Sky in this regard.

¹¹ The ICO recognises this in the marketing context ("*If you are a single entity trading under several different names, you should not assume that a customer opting in to marketing from one brand is consenting to marketing from all your brands. Consent must be informed, and customers may not even be aware of any connection between the brands*"). See 'Using marketing lists', ICO (Available at: <https://ico.org.uk/for-organisations/guide-to-pecr/electronic-and-telephone-marketing/using-marketing-lists/>).

¹² It may be more feasible to send annual best tariff notifications in batches, particularly if the first round of these are sent to all out of contract customers within a short window, in which case the 'campaign' option may be more appropriate for these.

¹³ Paragraphs 7.62 to 7.64

SECTION 2: FLEXIBILITY TO PROVIDE SIMPLER AND MORE EFFECTIVE NOTIFICATIONS

- 2.1 As we explained in our response to the July Consultation, Ofcom should be mindful of any aspects of its proposals that risk causing customer confusion.¹⁴ Providers such as Sky market to and interact with millions of customers every week and we are well placed to offer insight into what (i) actually prompts consumer engagement; and (ii) causes consumer confusion and mistrust.
- 2.2 Below we explain that the notifications envisaged by Ofcom will be highly complex in practice, and we suggest how Ofcom can make it easier for consumers to navigate end of contract and best tariff information.

The complexity of the notification in practice

- 2.3 The illustrative example notification included in the Consultation fits (just) on one side of A4.¹⁵ However, that example is for a simple single-product customer scenario.
- 2.4 In practice, the guidance given by Ofcom on how it expects providers to comply with the requirements means that complex and highly personalised notifications are required. These will be lengthy, dense with detail, and contain large amounts of pricing, product and contractual information.
- 2.5 The length of the notifications is predominantly caused by the number of different requirements they must include and how these requirements map to various facets of pay TV, fixed line and mobile customer propositions. However, some specific aspects of Ofcom's guidance for residential subscribers exacerbates the situation:
- (a) The requirement to list other contracts taken by the consumer where there is a financial link or interdependency between the core contract and the other contract.
 - (b) The requirement to give best tariff advice in respect of "bundles" where the services are provided under different contracts but those contracts are financially linked or inter-dependent. The guidance on best tariff advice requires between one and three tariffs to be given. Where multiple services are covered by single notification (e.g., pay TV, fixed line and mobile), but where each service is priced independently – as is the case with Sky – we assume that number increases proportionately.
 - (c) The requirement to provide details of the applicable notice periods and details of how to cancel. These are unlikely to be standardised across services given the various industry switching process for broadband and mobile that overlay the basic contractual notice requirements. This means that where a notification needs to cover multiple services (because they are financially linked or inter-dependent) several paragraphs may be needed to explain these aspects.
- 2.6 In addition, Ofcom should be mindful that where a customer is on a legacy package and the best tariff advice includes details of newer packages available, it will not be sufficient to simply include price (tariff) information for the newer package. Details of how the new products differ from the old products and any specific new requirements that apply will

¹⁴ Paragraph 3.5, Sky July Response.

¹⁵ Page 74.

also need to be set-out to ensure providers comply with other legal requirements.¹⁶ This inevitably increases the length and complexity of the notification.

- 2.7 Attached as Annex 1 is a mocked-up example showing how complex these notifications could become in practice for Sky when applying Ofcom's guidance for residential subscribers.¹⁷ We do not consider that the average consumer receiving such a notification will be minded to wade through the detail, putting at risk Ofcom's goal of assisting consumers in understanding their options and the deals available to them at the end of their fixed commitment period.
- 2.8 The FCA has carried out extensive research into effective consumer communications and we consider that the lessons the FCA has learnt are useful and should guide Ofcom when finalising the requirements for the notifications.¹⁸ Important conclusions reached by the FCA that are highly relevant in this context include:
- (a) Disclosure information has typically been provided in paper-based format with little consideration of whether consumers actually read, process and ultimately incorporate that information into their decision-making process. When disclosure gets too much, it can lead to "*information overload*".¹⁹
 - (b) A predominately paper-based disclosure may not meet today's consumer information needs. The FCA signals clear support for "*interactive tools*" such as online portals.²⁰
 - (c) The FCA's work on insurance renewal communications shows that a simple data point (such as last years' premium) is far more likely to prompt engagement than descriptive disclosure.²¹
- 2.9 The remainder of this section sets out our practical suggestions for the delivery of simpler more effective notifications to consumers.

Providers should have the option to provide separate notifications for pay TV, fixed line and mobile

- 2.10 Requiring full best tariff advice across all services is likely to cause information overload for consumers and significant operational complexity for providers who will have to develop separate notification templates for every possible combination of services. Therefore providers should have the option to provide separate notifications for pay TV, fixed line and mobile, including in cases where there is a linkage between the products.
- 2.11 In broad terms, there are two types of linkage to consider:

¹⁶ For example, Regulations 5 and 6 of the Consumer Protection from Unfair Trading Regulations 2008.

¹⁷ This example has been manually created and is for illustrative purposes only.

¹⁸ See, e.g., 'Smarter Consumer Communications', FCA, FS16/10, October 2016 (Available at: <https://www.fca.org.uk/publication/feedback/fs16-10.pdf>).

¹⁹ *Id.*, paragraph 1.2.

²⁰ *Id.*, paragraph 2.25.

²¹ See 'Encouraging consumers to act at renewal: Evidence from field trials in the home and motor insurance markets', FCA, Occasional Paper No. 12, December 2015 (Available at: <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-12.pdf>).

- (a) *A price linkage:* This is where the customer must take the product that the notification relates to in order to receive discounts on other products from the same provider.²² In this case we completely agree that the existence of that price dependency should be made clear in the notification.²³ However, the requirement should be limited to this. A requirement to combine products for the purpose of the notification may lead to providers removing those linkages, thus reducing pricing options to the detriment of consumers.
- (b) *A product dependency:* In some cases there may be a technical dependency between the services. For example, some pay TV services are only available over the same provider's broadband service. In such cases "bundled" best tariff advice may be appropriate and providers should have the option to provide the customer with this. But some providers do not have any product dependencies between their pay TV, fixed line and mobile services, and in circumstances where these services are provisioned independently, under separate contracts and with separate price points, billing arrangements and customer management systems,²⁴ it is important that the provider has the option to send a separate notification for each service.

Providers should have the option to adopt a layered approach to information disclosure with core information in a 'durable' notification and further details available in the customer's online account or by calling

- 2.12 Ofcom acknowledges that basic information in the notification about other services provided can be a suitable prompt for customers to find out further information if they want to.²⁵
- 2.13 Sky welcomes this change in approach compared to the proposals in the July Consultation which envisaged a detailed list of others services taken, and considers that such an approach should be adopted more widely in Ofcom's guidance for residential subscribers.
- 2.14 Specifically, Ofcom should give providers the option to provide a simple notification with 'core' information in a durable format, such as a letter or email, with more detailed information available in the customer's online account. The notification would prompt the customer to access their online account or call the provider to seek out that further information.
- 2.15 Ofcom is satisfied that this approach is sufficient in the case of notifications sent by SMS.²⁶ There is no reason why the same approach could not be adopted for notifications sent by letter or email. Indeed, as explained above, there are compelling reasons why simplified emails and letters are preferable.
- 2.16 Customers are increasingly turning to digital tools which can be used to provide information in more engaging ways as well as being easier to keep updated. The FCA, for

²² In the example notification included at Annex 1 the price linkage is two-fold: (1) free calls and texts for Sky Mobile customers who take Sky TV; and (2) a £5 per month discount on Sky Broadband for Sky TV customers taking Sky Sports.

²³ Paragraph 5.55.

²⁴ In these circumstances data relevant to the notification is likely to be stored across disparate systems and databases.

²⁵ Paragraph 5.58 (explaining why details of the specific services provided under different contracts do not need to be set out in the notification itself, it being "sufficient itself for the contract to be highlighted").

²⁶ Paragraphs 7.47 to 7.50.

example, has recognised that prescriptive disclosure rules can inhibit digital innovation that could improve the effectiveness of firms' communications.²⁷

- 2.17 In Sky's case, we devote significant resource developing our digital destinations and making them more accessible for our customers. Every customer has access to an online account where they can see information about their products and services, their usage and the offers available to them. This account is accessible in various ways and is used by a significant proportion of our customer base, as shown in the table below:

Means of accessing customer account	Estimated proportion of Sky's customer base (c10m+ customers) accessing by this means in 2018
Sky.com	[X]
MySky app	[X]
Interactive TV (e.g. via set top box)	[X]

Source – Sky internal data (January 2019).

- 2.18 With regards SMS notifications, Ofcom says:

*"It is important that certain core information must be provided in the body of the message to ensure that recipients understand the purpose of the message and can decide whether they need to seek out further information. It should be clear from the SMS where the other information is available"*²⁸

- 2.19 Core information would include the following:

- (a) the date on which the fixed commitment period for that contract will end;
- (b) the monthly subscription price currently paid by the subscriber;
- (c) the monthly subscription price that will come into effect once the fixed commitment period ends;
- (d) details of the options available at the end of the fixed commitment period; and
- (e) a message that further information, including the provider's best tariffs, is available and where it is available.²⁹

- 2.20 Sky supports this approach and considers that Ofcom should give providers the option to apply it across all notifications types, irrespective of the means by which they are sent to customers.

- 2.21 There are numerous advantages with this approach:

- (a) Information in an online account remains accessible and is not reliant on the customer remembering where they put a letter (if indeed they kept it) or stored an email.

²⁷ See 'Feedback Statement on Call for Input: Regulatory barriers to innovation in digital and mobile solutions', FCA, FS16.2, March 2016 (Available at: <https://www.fca.org.uk/publication/feedback/fs16-02.pdf>).

²⁸ Paragraph 7.31.

²⁹ Paragraph 7.50.

- (b) It is easy to layer information online, for example through links, expandable sections or pop-up boxes. These can be used to help customers navigate best tariff advice which will be complex in many cases.
- (c) The 'call to action' to elicit a customer response (e.g., "*click here*") can be more easily integrated to the information presented than in other formats such as a letter (e.g. "*call us on XYZ*").
- (d) It will facilitate having a standardised notification template that can be used across all customer groups, including those who have opted-out of receiving marketing from their provider.³⁰ This will greatly simplify operational delivery and reduce or avoid the need for providers to continually make judgements as to whether the best tariff advice in the notification itself strays into impermissible direct marketing.³¹
- (e) For customers who have recently changed their package there may be a discrepancy between the very latest information available online (which is likely to be updated in near real-time) and information included in a durable notification (which may have been extracted from systems days or weeks before the notification is actually received and read by the customer). Therefore from a customer experience perspective, it is preferable to direct customers to a single source for this information, i.e., the online information providers already make available or can enhance to meet Ofcom's the final requirements.
- (f) From an operational perspective, simpler notification templates with less personalised information are easier to administer and update with less testing required and a lower risk of errors in the information included.

Best tariff advice should not need to appear at the end of the notification

- 2.22 Ofcom refers to evidence from its consumer research that consumers consider it (i) "*essential*" that the end of contract notification should lead with the date that the contract ends, and (ii) "*crucial*" to be told about any price change at the end of the contract.³² Ofcom also points to anecdotal feedback that a notification that "*leads*" with an offer may be discarded or overlooked because it would be perceived as marketing.³³
- 2.23 Ofcom therefore proposes that the contract end date and price change information appears at the start of the notification and the best tariff advice appears at the end after all other information.
- 2.24 Sky agrees that contract end date and price change information should appear prominently at or near to the start of the notification. This information is the key trigger for contacting the customer in the first place. However, we disagree that best tariff advice must appear after all other information. The best tariff advice is the information that is most likely to trigger a response from the customer. To require it to be after all other information – including operational information like how to cancel – is likely to lead to the

³⁰ As Ofcom acknowledges, elements of the proposed end of contract notifications, particularly the best tariff advice, are "*likely to be considered*" direct marketing (paragraph 6.87).

³¹ We note that Ofcom's only comment on this issue – which in practical terms is real and significant one – is that it "*expect[s] the provider to send [the] customer an end-of-contract or annual best tariff notification that contains as many of the required elements as possible*" (paragraph 6.87).

³² Paragraph 7.52.

³³ Paragraph 7.53.

best tariff advice being overlooked in many cases, thus frustrating Ofcom's goal of using these notifications to prompt consumer engagement.

- 2.25 Put simply, providers are better placed than Ofcom to structure notifications in ways that are more likely to elicit a response from customers. Ofcom should give providers latitude to do this. This means the guidance on the positioning of best tariff advice should be removed, with guidance on positioning limited to the contract end date and price change information.
- 2.26 Subject to our comments above, Sky supports the fact that Ofcom does not propose to prescribe the actual words or language to be used in relation to the information to be provided in the notification.³⁴ Providers should be entitled to talk about their products and services in a way that is consistent with how they talk about them elsewhere. Any requirement to depart from that is unnecessary.

Further clarity is needed on what is expected by way of a notification in the case of dependent contracts with different contract end dates

- 2.27 In our response to the July Consultation we explained our view that an end of contract notification should not be required for a product (Product A) if the customer has another product (Product B) that remains in-contract and customer must keep Product A to be able to use Product B. We explained that in that scenario the customer would be required to pay an early termination charge ("ETC") on Product B if they chose to end their subscription for Product A upon receipt of the notification, and that this would be a confusing message for customers in a notification that explains to the customer that they are now free to leave Product A without incurring ETCs.
- 2.28 We illustrated this scenario with the following example:

"A Sky TV subscription has a minimum contract term (typically 18 months) and if a customer chooses to take Sky Multiscreen that is a separate subscription with its own separate minimum term³⁵. A customer needs to maintain a Sky TV subscription in order to use their Sky Multiscreen subscription. This means that if a customer takes Sky TV on an 18 month contract and at month nine adds Sky Multiscreen on an 18 month contract then, if the customer ends their Sky TV subscription at the end of Sky TV contract the Sky Multiscreen subscription would automatically terminate at the same time and the customer would need to pay an ETC for the remaining nine months of the Sky Multiscreen subscription."³⁶

- 2.29 Accordingly, a notification for the Sky TV subscription that included a statement that ETCs no longer apply³⁷, whilst correct for the core product, could be wrong in respect of any linked products. Although the customer would be told at the point of cancellation about any ETCs payable, this sort of scenario clearly has scope to cause unnecessary confusion and wasted time for consumers.
- 2.30 We requested that Ofcom clarify what it expects in this scenario, and, whilst the Consultation refers to our example above,³⁸ it remains unclear to us how Ofcom expects

³⁴ Paragraph 5.18.

³⁵ Sky Multiscreen may also require separate equipment and installation services which are often subsidised in exchange for a minimum term commitment.

³⁶ Paragraph 3.7, Sky July Response.

³⁷ Per the requirements summarised in paragraph 4.121.

³⁸ Footnote 64.

such scenarios to be handled. We request further clarification from Ofcom on this and recommend that in scenarios such as this, the provider is able to send a single combined notification when the contract for the last linked product is ending.³⁹

A simplified notification

2.31 Attached as Annex 2 is a mocked-up example showing a simplified notification together with an illustrative example of how further details could be presented to a customer online.⁴⁰ This example shows how the notifications could be delivered if the requirements were updated to reflect the recommendations we have made in this section.

³⁹ Applying this approach to the example used throughout this sub-section would mean that a single notification covering Products Sky TV and Sky Multiscreen would be sent between 10 and 40 days before the end of the contract for Sky Multiscreen.

⁴⁰ These examples have been manually created and are for illustrative purposes only.

SECTION 3: SCOPE AND IMPLEMENTATION TIME SCALES

The proposed new General Condition cannot be applied to standalone pay TV services

- 3.1 As we have explained previously, Ofcom’s analysis of pay TV as an “*electronic communications service*” (ECS) is legally incorrect and inconsistent with its practice to date. Ofcom does not have the legal authority to apply the proposed condition to pay TV provided as a standalone service. We refer Ofcom to Annex 3 of Sky’s response to the July Consultation for a detailed explanation of Sky’s position.
- 3.2 The comments in the remainder of this response are without prejudice to our views on Ofcom’s analysis of pay TV as an ECS. In particular, Ofcom should not infer from any Sky TV examples or data included in this response that Sky accepts that the new requirements being added to General Condition C1 apply to Sky TV. Any such examples or data are included for illustrative purposes only.

The inclusion of best tariff advice means providers will need considerably longer than Ofcom is proposing to implement the requirements

- 3.3 In the July Consultation Ofcom stated that “*more complex [ECNs and OCNs] (for example, with more personalised information) would tend to need more systems development, and so would generate higher implementation costs for providers*”⁴¹. As explained above, the addition of best tariff advice adds a huge amount of complexity to end of contract notifications. Yet Ofcom has made no allowance for this when proposing the implementation period. Ofcom proposes just six months to implement, which is no different from what was proposed in the July Consultation.⁴²
- 3.4 To deliver best tariff advice providers will need to design, build and test an entirely new “Best Tariff Engine” that takes a range of inputs to generate a best tariff output that can then be included in the customer notification. This new database / ‘decisioning’ engine will need to be able to accurately perform, amongst other things, the following assessments:
- (a) Whether a fixed line or mobile customer would save money by being on a different call plan. This will involve an assessment of each customer’s call history against a number of alternative tariffs. It will also need to factor in and adjust as necessary against changes to call rates over time.
 - (b) Whether, based on their broadband or mobile data usage, a fixed line or mobile customer would be better off on taking a capped broadband package (where available) or a mobile data plan with either a higher or a lower monthly data allowance.⁴³
- 3.5 None of this was contemplated by Ofcom in the July Consultation. For Ofcom to now say that it has not “*altered [its] estimate*” of how long end of contract notifications would take to implement suggests a lack of appreciation as to how complex in practice it will be to implement the new requirements.⁴⁴

⁴¹ Paragraph A6.8, annex 6, July Consultation.

⁴² Paragraph 9.8.

⁴³ In addition to the material systems development work initially, providers will also need to deploy additional resources for ongoing maintenance (e.g., adding new tariffs, removing old tariffs, changing usage caps and packages etc).

⁴⁴ Paragraph 9.8.

- 3.6 Ofcom appears to assume that the tweaks it has made to some of the proposals set out in the July Consultation (for example the removal of a requirement to include information about historical discounts) offsets the additional complexity created by the new requirement to include best tariff advice.⁴⁵ Ofcom should not make this assumption. The Best Tariff Engine referred to above is an entirely new system/database that will need to be built from scratch and will require far more development work than anything envisaged in the July Consultation
- 3.7 Sky considers that an implementation period of at 15 months from the date of Ofcom's final statement is realistic. This would be more consistent with the implementation period for other recent changes that require considerable back-end systems development work and changes to customer-facing communications and processes, such as the 'Communications Providers' Voluntary Code of Practice for an Automatic Compensation Scheme' (15 month implementation period)⁴⁶ and the 'Better Broadband Speed Information: Voluntary Code of Practice' (12 month implementation period).⁴⁷ Assuming Ofcom publishes its final statement in May/June 2019 as intended⁴⁸, this would still ensure implementation well before the deadline for implementing the EECC.

Ofcom will need to establish a clearer case for intervention in the event of a “no deal” Brexit

- 3.8 Ofcom has not carried out a full impact assessment of its revised proposals, and explains this in the following terms:

“Given the full harmonisation requirements of the EECC in relation to end-of-contract notifications, which we consider is appropriate to implement now rather than 2020, we have not updated our analysis on the potential size of the benefits”⁴⁹

In the event of a no deal Brexit, Sky would expect Ofcom to revisit this and fully assess the proportionality of its proposals.

Sky

February 2019

⁴⁵ Paragraph 9.11.

⁴⁶ 'Automatic Compensation Protecting consumers from service quality problems', Ofcom 10 November 2017 (Available at: https://www.ofcom.org.uk/data/assets/pdf_file/0026/107693/Statement-automatic-compensation.pdf).

⁴⁷ 'Better Broadband Speeds Information: Voluntary Codes of Practice', Ofcom, 1 March 2018 (Available at: https://www.ofcom.org.uk/data/assets/pdf_file/0024/111696/statement-broadband-speeds.pdf).

⁴⁸ Paragraph 2.21.

⁴⁹ Paragraph 10.9.

ANNEX 1: SKY EXAMPLE END OF CONTRACT NOTIFICATION



Sky sample
notification.pdf

ANNEX 2: SKY EXAMPLE END OF CONTRACT NOTIFICATION – SIMPLIFIED VERSION



Sky sample
notification - simplifier



Sample online
journey.pdf