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# Review of the General Conditions of Entitlement

Consultation on the general conditions  
relating to consumer protection

Consultation

Publication date: 20 December 2016

Closing Date for Responses: 14 March 2017

## About this document

This is a consultation about changes that we are proposing to make to the General Conditions of Entitlement – the regulatory rules that all communications providers must follow in order to operate in the UK.

The aim of this review is to ensure that the General Conditions remain fit for purpose in today's market and are aligned to our current policy priorities. We are seeking to make the rules clearer and more practical, remove any redundant rules, and make compliance simpler. This should also make it easier for us to enforce the rules in the interests of citizens and consumers.

This consultation focusses on consumer protection issues. We consulted on proposals relating to the more technical conditions earlier this year.

We have identified a number of areas where we consider new or strengthened regulation is needed to protect consumers from harm in light of developments in technology and changes in consumer behaviour. Key areas of focus include the handling of complaints by communications providers and the needs of vulnerable consumers and end-users with disabilities.

The changes we are proposing are set out in this document. We invite stakeholders to respond to this consultation by **14 March 2017**. We are aiming to publish a final statement and the revised conditions later in the year.

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## Section 1

# Summary

- 1.1 We are carrying out a review of the 'General Conditions of Entitlement', which are the regulatory conditions that apply to all providers of electronic communications networks and services that operate in the UK.
- 1.2 This review of the General Conditions follows on from Ofcom's Strategic Review of Digital Communications. In our February 2016 statement setting out our initial conclusions from that Strategic Review,<sup>1</sup> we said we would focus on gauging the right level of regulation. This led us to initiating a review of the General Conditions, with a view to making the rules clearer, making it easier for companies to comply with them, and removing any redundant rules.
- 1.3 The General Conditions cover a wide range of issues which broadly fall into three main categories: network functioning; numbering and/or technical matters; and consumer protection. We consulted on proposed changes to the first two categories of conditions in August. This second part of the consultation focuses on the remaining conditions, which mainly deal with consumer protection issues.

## Our approach

- 1.4 The aim of reviewing the General Conditions is to make them fit for purpose in today's market, and to reflect our current policy priorities. We want to make the General Conditions clearer and more practical, which in turn should make it easier for communications providers to comply with them. We also believe that this should make enforcement easier in the event of non-compliance.
- 1.5 In this second consultation, we set out proposals to put in place effective, clear, up-to-date requirements that will provide an appropriate and proportionate level of protection for consumers.
- 1.6 To achieve these objectives, we have identified seven main policy areas for consumer protection, which we think should continue to be addressed by the General Conditions. These policy areas are:
  - a) contract requirements;
  - b) information publication and transparency requirements;
  - c) billing requirements;
  - d) complaints handling and access to alternative dispute resolution;
  - e) measures to meet the needs of vulnerable consumers and end-users with disabilities;
  - f) tackling nuisance calls and provision of calling line identification facilities, and
  - g) rules on switching and mis-selling.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/digital-comms-review/DCR-statement.pdf>

- 1.7 We have considered what changes might be needed in each of these policy areas to make sure the General Conditions continue to reflect our current consumer protection policy priorities, keeping pace with market developments. We have also considered the proportionality of the proposed revised conditions and whether there is any opportunity for clarifying and simplifying regulation.
- 1.8 We have actively considered opportunities for deregulation but have come to the view that most of the consumer protection conditions discussed in this second consultation are not good candidates for significant deregulation, because consumers need protecting from the potential harm that might arise in these areas in the absence of regulatory protection. Nevertheless, there is scope to improve the clarity of these conditions, and to update them and ensure they are fit for purpose.
- 1.9 In a number of areas, we are proposing to extend the scope of the conditions, so as to ensure that consumers are adequately protected from harm in light of developments in technology and changes in consumer behaviour. Our provisional view in relation to each of these policy areas, on which we are seeking stakeholders' views, is summarised below (paragraphs 1.15-1.22).
- 1.10 The changes we are proposing to make in each of the policy areas identified above aim to meet the following objectives.

### **Updating regulation and strengthening protection for consumers**

- 1.11 In some areas, we consider it appropriate to update existing regulation where in light of changes since the conditions were set. Our proposals therefore take account of developments in technology and changes in consumer behaviour and expectations. In a number of cases, this includes strengthening protection for consumers to address those areas where there is the greatest potential for harm, which we have identified in light of recent enforcement activities, complaints data and Ofcom's wider consumer protection strategy.
- 1.12 We are proposing to significantly strengthen the rules on complaints handling to ensure that communications providers deal with complaints from consumers promptly and effectively. We are also proposing to introduce a new obligation requiring communications providers to establish policies to ensure they take account of the needs of all vulnerable consumers. We are proposing to extend the current rules on the provision of calling line identification facilities, such as caller display, including proposals to improve the accuracy and availability of the calling line identification data presented to call recipients. We also intend to require the blocking of calls with invalid calling line identification data – a feature of many nuisance calls – to help prevent them from getting through to consumers. We are also proposing to extend certain conditions which currently apply only to call services to other forms of electronic communications services, in particular the provisions on billing and measures to meet the needs of end-users with disabilities.

### **Simplifying regulation**

- 1.13 We are seeking to simplify and consolidate regulation where possible. For example, in relation to price transparency measures, we are proposing to replace the various codes of practice annexed to the current GC 14<sup>2</sup> with direct obligations in the

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<sup>2</sup> GC 14 currently deals with price transparency for non-geographic calls, codes of practice and dispute resolution in a single condition.

proposed revised condition. This would serve to consolidate all the main information publication and transparency requirements in one place. In some cases, we are seeking to simplify regulation by removing provisions which are no longer needed, or by introducing less prescriptive rules.

## **Making the rules clearer**

- 1.14 For all the consumer protection conditions, we think there are changes we should make to simplify the rules to make them clearer. We are approaching this review as an opportunity to streamline and consolidate drafting that has built up bit by bit over a decade or more, and we are seeking to deliver a set of General Conditions that is much more user-friendly and easier to understand and navigate.

## **Overview of our main proposals**

### **Contract requirements**

- 1.15 Consumers need protection from potential harm in relation to the contracts they enter into for communications services. They should be provided with certain minimum information before entering into a contract with a communications provider and should have a right to terminate the contract in certain circumstances. We are not proposing any significant policy changes in this area, but we think the condition could be improved by making it clearer and easier to understand. We are also proposing to simplify regulation by revoking the current separate guidance on the meaning of “material detriment” under GC 9.6 in relation to price rises and notification of contract modifications.<sup>3</sup> Instead, we intend to specify Ofcom’s approach to price rises in the condition itself.

### **Information publication and transparency requirements**

- 1.16 Consumers need access to adequate, up to date, comparable information on prices, tariffs and terms and conditions so that they can easily compare the offers and services available in the market and choose the right product for them. We consider that the information publication and transparency requirements set out in the General Conditions should be retained. However, we note that the current requirements are set out in various places across different General Conditions (and annexes) and this can make them difficult for both providers and consumers to navigate and understand. We therefore propose to consolidate the various information publication requirements across the General Conditions into a single condition and to simplify and clarify the requirements where possible, particularly in relation to price transparency. We are proposing to revoke the separate condition on the publication of quality of service information, as we consider this will no longer be necessary as a result of legislative changes.<sup>4</sup>

### **Billing requirements**

- 1.17 The General Conditions contain rules on the accuracy of bills, the provision of itemised bills and fair debt collection and disconnection procedures for non-payment of bills. We consider that these conditions are still necessary to protect consumers from being overcharged or treated unfairly. We are proposing to re-draft the

<sup>3</sup> Guidance on “material detriment” under GC9.6 in relation to price rises and notification of contract modifications: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/29682/guidance.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/29682/guidance.pdf)

<sup>4</sup> See the Digital Economy Bill: <https://services.parliament.uk/bills/2016-17/digitaleconomy.html>

conditions to make them simpler, and we are also proposing to extend the scope of some of these rules in response to market developments since they were put in place. In particular, in the light of the progressive growth in the take up and importance of broadband services, we are proposing to extend the current rules on billing accuracy (i.e. the “metering and billing scheme”), debt collection and disconnection procedures for non-payment of bills to data services in addition to voice call services.

### **Complaints handling and access to alternative dispute resolution**

- 1.18 When things go wrong, consumers should be treated fairly and have their complaints resolved in an effective and timely manner. Although communications providers are required to adhere to a code of practice on complaints handling and to sign up to an approved alternative dispute resolution scheme, recent experience has shown that our current complaints code of practice is not working as effectively as it should. We are proposing a new code that contains strengthened provisions on the transparency of the complaints process, the provision of information to consumers at different stages of the process, more effective signposting of access to alternative dispute resolution when complaints become deadlocked, and improved record-keeping and monitoring requirements for communications providers.

### **Meeting the needs of vulnerable consumers and end-users with disabilities**

- 1.19 We highlighted in our Digital Communications Strategic Review statement that consumers in vulnerable circumstances often find it particularly difficult to engage in the market. In light of this, we are proposing to introduce a new requirement for communications providers to put in place clear and effective policies for identifying vulnerable consumers to ensure they are treated fairly and appropriately. We also consider that we should update the existing regulatory protections for end-users with disabilities, which currently apply only in relation to voice call services, by extending them so as to cover all public electronic communications services. This reflects the commitment we made in our Digital Communications Strategic Review statement to ensure that the protections which already exist for end-users with disabilities are updated to take account of changes in technology and usage.

### **Nuisance calls and calling line identification**

- 1.20 Calling line identification – which allows someone receiving a call to see the caller’s number – has proved to be an increasingly useful tool for consumers to combat the problems of nuisance calls. As such, we believe it is appropriate to maintain the current regulation requiring the provision of calling line identification facilities and to extend regulation to improve the accuracy of the provision and display of the calling party’s telephone number to end-users. We propose to do this by including a new obligation on communications providers to ensure that where calling line identification data is provided, it is valid, diallable and uniquely identifies the caller. We are also proposing to include additional new requirements on communications providers to inform their customers if calling line identification facilities are not available, to provide calling line identification facilities at no additional charge to their customers and to take reasonable steps to identify and block calls on which invalid or non-diallable calling line identification is provided.

### **Switching and mis-selling**

- 1.21 Customers should be protected throughout the process when switching from one provider to another, which includes ensuring that the processes themselves do not

create unnecessary difficulties or act as a deterrent for customers to switch provider. The General Conditions already contain detailed rules on switching between retail providers who rely on BT's or KCOM's fixed wholesale networks, which were fully implemented at the end of June 2015. We are currently looking in separate projects at, first, reviewing the rules in relation to switching between mobile providers<sup>5</sup>, and secondly, introducing rules in relation to switching between providers who operate on different platforms.<sup>6</sup> The General Conditions also contain essential provisions on tackling erroneous transfers and prohibitions on mis-selling of fixed (landline and broadband) and mobile communications services, which include both general prohibitions and more specific protections, e.g. to prevent so-called 'slamming'. Due to the ongoing policy work on switching and the link between the switching and mis-selling provisions, we will review these general conditions further after the conclusion of the separate mobile switching and cross-platform switching projects.

- 1.22 In relation to the provisions on number portability, we are not proposing any significant change to the current rules as part of this review. These rules require communications providers to allow customers who are switching provider to take their number with them. We said in our Digital Communications Strategic Review statement that we would allow industry to reach consensus on how improvements could be made to the way fixed numbers are ported before changing the current rules.<sup>7</sup> We continue to consider that progress is possible and that consequently the onus remains, in the first instance, on industry to reach that consensus.

## Structure of the consultation and the revised conditions

- 1.23 Sections 2 and 3 of this consultation document set out our overall approach to the review and the common issues which affect the conditions as a whole. In Sections 4 to 12 of this document, we set out the specific changes that we propose to make to each of the consumer protection conditions, the effects of those changes, and the reasons for our proposals, including why we consider that our proposals meet the relevant legal tests. A table summarising the changes we are proposing for consultation is set out at Section 13 and certain consequential changes to other regulatory requirements are explained at Section 14.
- 1.24 The revised text that we propose to put in place for the conditions discussed in this second consultation is set out at Annex 12 to this consultation as a separate document, which also shows the changes that we proposed to make to the conditions that we considered in our August 2016 consultation.
- 1.25 A marked-up version of the proposed revised conditions which are discussed in this second consultation showing tracked changes from the current conditions is also included for reference (Annex 13).

## Deadline for consultation responses and next steps

- 1.26 We invite stakeholders to respond to this consultation by **14 March 2017**.
- 1.27 We are planning to publish our final statement and the revised conditions later in the year. Although we are consulting in two parts, our intention is for all of the revised conditions to come into effect at the same time at the end of that process.

<sup>5</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/mobile-switching-jul16>

<sup>6</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/making-switching-easier>

<sup>7</sup> See paragraphs A1.408-A1.409

## Section 2

# Introduction

2.1 In February 2016, we published a statement setting out the initial conclusions of our Strategic Review of Digital Communications (the “**DCR Statement**”),<sup>8</sup> in which we announced that we had started work on a comprehensive review of the “General Conditions of Entitlement” (“**GCs**”, “**general conditions**” or “**conditions**”). As we said in the DCR Statement, our focus on gauging the right level of regulation has led us to initiate a review of the general conditions, which will seek to make the rules clearer, reduce the cost of compliance, and remove any redundant rules.

## Overview of the process

- 2.2 The GCs are the regulatory conditions that all providers of electronic communications networks and services (“**communications providers**” or “**CPs**”) must comply with if they want to provide services in the UK. The GCs broadly fall into three main categories: network functioning conditions; numbering and other technical conditions; and consumer protection conditions. We are carrying out our review of the GCs in two parts. We published a consultation on our proposals in relation to the first part of the review in August (the “**August 2016 consultation**”), which focused mainly on the first two categories of conditions, that is the network functioning and numbering and/or technical conditions.<sup>9</sup> Non-confidential responses to the August 2016 consultation are available on our website and we are in the process of considering them.<sup>10</sup> We have not made any final decision on our proposals in relation to these conditions.
- 2.3 This second consultation focuses on the remaining conditions,<sup>11</sup> which mainly deal with consumer protection issues.
- 2.4 In formulating the proposals set out in this second consultation, we have taken account of those comments received in response to the August 2016 consultation which are relevant to common issues, for example, comments on our proposed overall approach to the revised structure of the GCs and the use of common definitions.
- 2.5 We have also taken account of any comments relating to the issues covered by this part of the review which stakeholders provided in response to our draft Annual Plan 2015/16<sup>12</sup>, our DCR Consultation<sup>13</sup>, Ofcom’s Proposed Annual Plan 2016/17<sup>14</sup> and

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<sup>8</sup> Ofcom’s DCR Statement (paragraphs 1.67 and 8.23-8.26):

<http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/digital-comms-review/DCR-statement.pdf>

<sup>9</sup> Specifically, the August 2016 consultation sets out the changes that we proposed to make to conditions 1 to 6, 8, 17, 19 and 20.

<sup>10</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions>

<sup>11</sup> Conditions 9 to 16, 18 and 21 to 23.

<sup>12</sup> <http://stakeholders.ofcom.org.uk/consultations/draft-ann-plan-15-16/>

<sup>13</sup> <http://stakeholders.ofcom.org.uk/consultations/dcr-discussion/>

<sup>14</sup> [http://stakeholders.ofcom.org.uk/consultations/annual\\_plan\\_2016-17/](http://stakeholders.ofcom.org.uk/consultations/annual_plan_2016-17/)

any supplementary submissions from stakeholders.<sup>15</sup> We followed the same approach in our August 2016 consultation (paragraphs 2.21-2.27).

- 2.6 We have been mindful that Ofcom's strategy in relation to certain policy areas for consumer protection includes other related policy projects which will proceed in parallel to this review of the GCs and which may result in further changes to the regulatory requirements on CPs in the short, medium or longer term. For instance, we committed in the DCR Statement to consulting on the introduction of automatic compensation for consumers and small businesses and issued a call for inputs on 10 June 2016. We have also recently published consultation documents setting out proposals on consumer switching in relation to both mobile and cross-platform products and services. While this consultation sets out our proposals in relation to all of the consumer protection GCs, the main substantive thinking on policy areas such as automatic compensation and switching will continue to take place within separate policy projects which will proceed in parallel to this overall general review. We will consult on these and any other further changes to the GCs in the usual way.
- 2.7 We invite stakeholders to respond to this consultation by **14 March 2017**. We are planning to publish our final statement and the revised conditions later in the year. Although we are consulting on our proposed changes to the GCs in two separate parts, our intention is for all of the revised conditions to be put in place and to come into effect at the same time at the end of that process.

### Our approach to this review

- 2.8 The aim of this review is to ensure that the General Conditions reflect our current policy priorities, and that they are fit for purpose in today's market. Our objectives include making the GCs clearer and more practical, making it easier for businesses to ensure compliance. We consider that this should also make it easier for us to enforce compliance in the interests of the general public and consumers.
- 2.9 In this consultation, we set out proposals to put in place effective, clear, up-to-date requirements that will provide an appropriate level of protection for consumers. In doing so, we have considered whether each of our proposals is proportionate to what we are seeking to achieve.
- 2.10 We began our review of the consumer protection conditions by asking ourselves what our main policy priorities for consumer protection were. We considered this in terms of identifying the current areas of greatest potential harm to consumers, in light of our recent enforcement activities, complaints data, and wider Ofcom strategy. We then considered whether a general condition is the right route to tackle the problem, including whether it is enforceable; actively considering opportunities for deregulation; and looking to simplify and improve the clarity of the rules.
- 2.11 To achieve these objectives, we have identified seven main policy areas for consumer protection. These policy areas are: (i) contract requirements, (ii) information publication and transparency requirements, (iii) billing requirements, (iv) complaints-handling and access to alternative dispute resolution, (v) measures to meet the needs of vulnerable consumers and end-users with disabilities, (vi) tackling

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<sup>15</sup> For example, in addition to its main response to the August 2016 consultation, on 6 December 2016, BT provided supplementary comments relating to the second phase of our review of the GCs. We have taken those comments into account, where possible, in formulating our proposals set out in this consultation.

nuisance calls and provision of calling line identification facilities, and (vii) switching and mis-selling. The current GCs include provisions relevant to each of these policy areas.

- 2.12 We have actively considered opportunities for deregulation, but we have come to the view that most of the consumer protection conditions discussed in this second consultation are not good candidates for significant deregulation for the reasons discussed in the following sections. In relation to each of these consumer protection policy areas, we have considered what changes might be needed to make sure the general conditions continue to reflect our current consumer protection policy priorities and whether any changes in technology or consumer behaviour have taken place since the conditions were put in place which would justify a change in policy. In some cases, we are considering extending the scope of existing conditions to keep pace with market developments. For example, we have considered adding data services into specific conditions that currently apply only to call services.
- 2.13 The GCs set out rules which are specific to the electronic communications sector. They are intended to focus on specific consumer protection issues that arise in this sector in a way which is targeted at those particular issues and should not duplicate conditions which are applicable by virtue of national legislation of general application. Where there may be considered to be a degree of overlap between the current GCs and other national legislation, such as general consumer law, we have identified the sector-specific issue that the relevant conditions are intended to address, noting that some of the GCs reflect the minimum requirements required by the current EU Framework.
- 2.14 We have also considered whether the requirements of the conditions are sufficiently clear or could be improved. For all the consumer protection conditions, we think there are changes we should make to simplify the rules to make them clearer. This is an opportunity to streamline and consolidate drafting that has built up by a process of accretion over a decade or more, and we think that we can deliver a set of general conditions that is much more user-friendly and easier to understand and navigate.
- 2.15 We have also looked at whether the condition is a mandatory requirement under the current European common regulatory framework for electronic communications (the “**EU Framework**”) and therefore needs to be maintained (whilst noting this framework is itself currently under review).
- 2.16 In this consultation, we set out proposals to put in place effective, clear, up-to-date requirements that will provide an appropriate level of protection for consumers. We are proposing to significantly strengthen the rules on complaints handling to ensure that CPs deal with complaints from consumers promptly and effectively. We are also proposing to introduce a new obligation requiring CPs to establish policies to ensure they take account of the needs of all vulnerable consumers. We are proposing to extend the current rules on the provision of calling line identification (“**CLI**”) facilities to improve the accuracy and availability of the CLI data presented to call recipients and to require the blocking of calls with invalid CLI. We are also proposing to extend certain conditions which currently apply only to call services to other forms of electronic communications services, in particular the provisions on billing requirements and measures to meet the needs of end-users with disabilities.
- 2.17 The revised text that we propose to put in place for the conditions discussed in this second consultation is set out at Annex 12 to this consultation as a separate

document, which also includes the proposed revised conditions that we considered in our August 2016 consultation.<sup>16</sup> We have included all of the proposed revised conditions in Annex 12 to allow stakeholders to see what they would look like as a whole.

- 2.18 A marked-up version of the proposed revised conditions which are discussed in this second consultation showing tracked changes from the current conditions is also included for reference (Annex 13).
- 2.19 We have also included in these two annexes a substantively unchanged condition relating to “must-carry” obligations for broadcasting networks (reflecting the current GC 7). This condition gives Ofcom a direction-making power to require TV platform providers to carry public service programming; it does not impose any burden on industry. We are not proposing to make any substantive changes to this condition as part of this review.

### The general authorisation regime

- 2.20 The GCs were first introduced in July 2003 in the exercise of our powers in sections 45 to 64 of the Communications Act 2003 (the “**Act**”). The GCs are currently the main regulatory regime for undertakings that provide electronic communications networks and services<sup>17</sup> in the UK. The GCs apply to all CPs, or all CPs of a particular type. CPs must comply with the GCs, insofar as they apply to them, and Ofcom has statutory powers to take enforcement action in cases of breach under sections 96A to 100 of the Act, including the imposition of financial penalties of up to ten per cent of a CP’s annual turnover (plus daily penalties of up to £20,000 per day for continuing infringements).
- 2.21 Since their introduction, we have from time to time reviewed and amended specific GCs in order to ensure that they remained effective and fit for purpose. In addition, further regulatory conditions have been added over time and many of the conditions have been amended following specific policy projects, some on several occasions.
- 2.22 While an unofficial consolidated version of the GCs is available for reference on our website,<sup>18</sup> the only authoritative legal version of the GCs is the original legal notification of 9 July 2003 followed by each and every subsequent notification of modifications. Rather than further amending the existing GCs, we intend in this review to replace the current conditions with a comprehensive, new set of conditions, which will effectively consolidate all amendments made to date as well as those we are proposing in this review. That said, we expect the GCs to continue to be a living document and the conditions will continue to evolve and be amended in line with changes in the market and the needs of stakeholders and consumers. We also note that the current EU Framework is under review and that this may result in some consequential changes to the GCs.

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<sup>16</sup> Our August 2016 consultation closed on 11 October 2016. We will be considering the responses that we received to that consultation together with the responses to this consultation before taking decisions on our proposals.

<sup>17</sup> The terms “electronic communications network” and “electronic communications services” are defined in the Framework Directive (Art. 2), as interpreted in subsequent case-law.

<sup>18</sup> The version available as at the date of this publication shows all changes up to the most recent amendments made on 28 May 2015:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/86273/CONSOLIDATED\\_VERSION\\_OF\\_GENERAL\\_CONDITIONS\\_AS\\_AT\\_28\\_MAY\\_2015-1.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/86273/CONSOLIDATED_VERSION_OF_GENERAL_CONDITIONS_AS_AT_28_MAY_2015-1.pdf)

## Reviewing the regulatory burdens deriving from the GCs

- 2.23 We are required under section 6 of the Act to keep the carrying out of our functions under review, with a view to securing that regulation by Ofcom does not involve the imposition or maintenance of unnecessary burdens. In light of that duty, we are carrying out this review of the current GCs with a view to deregulating and simplifying, wherever possible, whilst maintaining the appropriate level of protection for consumers.
- 2.24 We have reviewed both the general structure of the GCs overall (including the definitions used) and each of the individual conditions under consideration in this consultation. We have considered, in particular, whether those conditions are still necessary, fit for purpose or could be improved upon. In going through this exercise, we have considered the regulatory burden which individual conditions impose on CPs and the benefits to consumers which they are intended to deliver.
- 2.25 In our July 2015 consultation on the Strategic Review of Digital Communications (the “**DCR Consultation**”),<sup>19</sup> we said we were interested in views on whether there is scope to simplify, remove or better target specific GCs in a manner which continues to provide appropriate protection for consumers and businesses. In response to the DCR Consultation, stakeholders provided a number of comments on the GCs, which we have taken into account, where relevant, in formulating the proposals set out in this document. This consultation offers stakeholders an opportunity to tell us what they think of the specific changes that we are now proposing.

## The legal framework and our duties

### Section 3 – general duties of Ofcom

- 2.26 When considering the appropriateness of the proposals set out in this consultation document, we have had regard to our duties under the Act.
- 2.27 In particular, section 3(1) of the Act sets out our principal duty in carrying out our functions under the Act, which is:
- a) to further the interests of citizens in relation to communications matters; and
  - b) to further the interests of consumers in the relevant markets, where appropriate by promoting competition.
- 2.28 We have also considered, among other things, the requirements in section 3(2) of the Act to secure the availability throughout the UK of a wide range of electronic communications services and we have had regard to the matters mentioned in section 3(4) of the Act that appeared to us to be relevant in relation to each specific GC.
- 2.29 In line with section 3(3) of the Act, we have had regard to the principles under which our regulatory activity should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, together with our regulatory

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<sup>19</sup> Ofcom’s document of 16 July 2015 entitled “Strategic Review of Digital Communications. Discussion document” (§ 14.53).

[http://stakeholders.ofcom.org.uk/binaries/consultations/dcr\\_discussion/summary/digital-comms-review.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/dcr_discussion/summary/digital-comms-review.pdf)

principles. These principles include, in particular, a bias against intervention and a commitment to seek the least intrusive regulatory mechanisms to achieve our policy objectives.

#### **Section 4 – duties for the purpose of fulfilling EU obligations**

2.30 Section 4 of the Act requires us to act in accordance with the six European Community requirements for regulation. These should be read in light of the policy objectives and regulatory principles as set out in Article 8 of the Framework Directive. Those relevant to this review include promoting the interests of citizens by:

- a) ensuring all citizens have access to a universal service;
- b) ensuring a high level of protection for consumers in their dealings with suppliers;
- c) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using public electronic communications services; and
- d) addressing the needs of specific social groups, in particular disabled users, elderly users and users with special needs.

#### **Section 47 – test for setting or modifying conditions**

2.31 Our powers to make general conditions are set out in sections 45 to 64 of the Act. Section 45 of the Act allows us to set various different types of conditions, namely general conditions, universal service conditions, access-related conditions, privileged supplier conditions and significant market power conditions. The general conditions are conditions which are of general application. We can impose them on all CPs or on all providers of networks or services of a particular description.<sup>20</sup> The matters that we can regulate through the general conditions are set out in sections 51, 52, 57, 58 and 64 of the Act (section 45(3) of the Act).

2.32 Under section 47 of the Act, we can set or modify a GC only where we are satisfied that the condition or modification is:

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

2.33 In the following sections, we have set out why we consider that the proposals set out in this consultation meet these tests.

2.34 Given the comprehensive nature of our overall review of the GCs, we consider that the clearest way to implement the changes that we are proposing to make is to revoke the current conditions and replace them by setting new conditions. We note that, pursuant to section 47(3) of the Act, the objective justification requirement in

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<sup>20</sup> We cannot impose general conditions on specific individual providers.

section 47(2)(a) applies only to the modification of existing conditions and not to the setting of new conditions. However, we acknowledge that, even though we are proposing to revoke and replace the current GCs, we are in effect proposing to consolidate all amendments made to the GCs to date and further modify them. Therefore, for completeness, we have explained in the following sections why we consider our proposals for each condition to be objectively justifiable.

## Impact assessment

- 2.35 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.

## Equality impact assessment

- 2.36 Annex 9 contains our Equality Impact Assessment (EIA) for the proposals set out in this consultation document. Ofcom is required by statute to assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 2.37 Where we have identified any particular impact of our proposals for amending certain GCs in relation to people with disabilities and other equality groups (including age), we have explained why we consider that our proposed changes would not be detrimental to these equality groups. Specifically, we do not envisage the impact of any outcome to be to the detriment of any particular group of society.
- 2.38 Nor have we seen the need to carry out separate EIAs in relation to the additional equality groups in Northern Ireland: religious belief, political opinion and dependants. This is because we anticipate that our proposals will not have a differential impact in Northern Ireland compared to consumers in general.

## The structure of this document

- 2.39 The remainder of this document is laid down as follows:
- **Section 3 (Common issues)** sets out certain thematic issues which concern the GCs as a whole (e.g. definitions);
  - **Section 4 (Contract requirements)** sets out the changes that we propose to make to GC 9;
  - **Section 5 (Information publication and transparency requirements)** sets out the changes that we propose to make to GCs 10, Annexes 1 and 2 to GC 14, and GC 21;
  - **Section 6 (Billing)** sets out the changes that we propose to make to GCs 11 (Metering and Billing), 12 (Itemised bills) and 13 (Non-payment of bills);
  - **Section 7 (Complaints handling and access to ADR)** sets out the changes that we propose to make to GC 14 (in particular, Annex 4);

- **Section 8 (Codes of practice)** sets out the changes that we propose to make to the various codes of practice which currently supplement the general conditions;
- **Section 9 (Measures to meet the needs of vulnerable consumers and end-users with disabilities)** sets out the changes that we propose to make to GC 15;
- **Section 10 (Calling line identification facilities)** sets out the changes that we propose to make to GC 16;
- **Section 11 (Switching)** sets out the changes that we propose to make to GCs 18 and 22;
- **Section 12 (Mis-selling)** sets out the changes that we propose to make to GCs 22 and 23;
- **Section 13 (Summary table)** contains a summary table of the proposed changes;
- **Section 14 (Consequential changes)** sets out the changes that we propose to make to the Numbering Plan, the PRS Condition and the Metering and Billing Direction;
- **Annexes 1 to 4** set out how to respond to this consultation, Ofcom's consultation principles, Ofcom's consultation response cover sheet and the questions on which we are consulting;
- **Annex 5 (Notification proposing to revoke existing conditions and set new General Conditions)** sets out our notification under sections 48(1) and 48A(3) of the Act;
- **Annex 6 (Notification of proposed modifications to the provisions of the Numbering Plan)** sets out our notification under section 60(3) of the Act;
- **Annex 7 (Notification of proposed modification to the Premium Rate Services Condition)** sets out our notification under section 120A(3) of the Act;
- **Annex 8 (Notification of proposed modifications to the Metering and Billing Direction)** sets out our notification under section 49A of the Act;
- **Annex 9 (Equality impact assessment);**
- **Annex 10 (Complaints handling and access to ADR)** sets out Ofcom's experience of monitoring and enforcing the rules on complaints handling and access to ADR;
- **Annex 11 (Glossary)** provides a glossary of terminology used in this document;
- **Annexes 12 and 13 (Draft revised conditions for consultation)**, which are available as standalone documents on our website, set out the draft revised GCs on which we are consulting; and
- **Annex 14 (Draft modifications to the Metering and Billing Direction)** sets out our proposed modifications to the Metering and Billing Direction.

## Section 3

# Common issues

- 3.1 Before turning to the individual conditions on which we are seeking stakeholders' views, we first set out in this section some specific issues which apply across the GCs as a whole. One of our aims in conducting this review is to produce a more coherent set of conditions which are easier to follow. In line with this objective, we have sought to rationalise the definitions used in the conditions, simplified the language used, and are proposing to add headings and explanatory recitals to aid overall comprehension.
- 3.2 We are also proposing some small changes to make the GCs easier to navigate, including:
- a) inserting short recitals to each of the GCs before each condition rather than in a general introductory section as we proposed in our August 2016 consultation;
  - b) adding a table of contents at the beginning of the GCs; and
  - c) renumbering all the conditions to reflect the proposed categorisation into three parts: Part A for "Network functioning conditions", Part B for "Numbering and technical conditions" and Part C for "Consumer protection conditions"). E.g. GC 1 would be renumbered as GC A1.

## Terminology

- 3.3 The GCs apply in the main to the providers of electronic communications networks and/or electronic communications services (also referred to as communications providers or "CPs"). There are currently 23 GCs, and the applicability of particular conditions varies depending on the type of network or service a CP is providing. While we use the term "CPs" as a shorthand for "communications providers" throughout this document, we note that the applicability of particular GCs (on CPs) depends on the type of networks or services that are being provided. CPs should therefore read carefully the proposed revised GCs that we set out in Annexes 12 and 13. As explained below, we are proposing to move away from having separate definitions of "Communications Provider" in each GC and to use the term "**Regulated Provider**" instead.
- 3.4 Annex 11 contains a glossary of some of the terms used in this document, including acronyms.

## Definitions

- 3.5 The GCs rely on a number of defined terms. At the moment, to understand any particular GC, a reader needs to refer to:
- a) any terms which are given a specific definition for the purpose of that particular condition;
  - b) any terms used in that condition which are defined for the purposes of all GCs in the upfront general definitions section of the GCs; and

- c) any terms used in the condition which are defined in the Act (if they are not given a particular definition in that condition or in the upfront general definitions section of the GCs).
- 3.6 For example, the current GC 9 (Requirement to offer contracts with minimum terms) contains terms that are defined in various sections of the Act (e.g. “End-User” and “Public Electronic Communications Services”), terms which are defined in GC 9 (“Express Consent” and “User”), and terms which are defined in the general definitions applying to all the GCs (e.g. “Public Communications Network” and “Subscriber”).
- 3.7 The need to refer to multiple sources for definitions is potentially confusing. We would like to minimise the need to refer to multiple sources, as far as possible, in this review.

### Ofcom’s proposals

- 3.8 In order to make the GCs easier to read and understand, we propose to move all the definitions to a separate Annex and to use a single definition across the GCs as a whole, wherever possible. For example, the current GCs contain separate definitions of “Mobile Service”, “Mobile Communications Service” and “Mobile Telephony Service”. We propose to replace these three terms with a single defined term, “Mobile Communications Service”.
- 3.9 In response to the August 2016 consultation, some stakeholders suggested that where certain terms are defined in the Act, we should replicate these statutory definitions within the general conditions. We have revised our initial proposals to implement this suggestion. We agree that this would contribute to making the general conditions capable of being understood on their face, without reference to additional information contained in other documents. We have therefore copied the definition from the Act into the general conditions. For example, “Public Electronic Communications Service” would be defined as “*any electronic communications service that is provided so as to be available for use by members of the public*”, rather than referring to section 151(1) of the Act.
- 3.10 As set out in the August 2016 consultation, where the corresponding definition in the Act is purely a reference to legislation (e.g. the definition of the terms “Framework directive”), we propose to refer directly to the relevant legislation.
- 3.11 We also considered whether we should take the same approach to terms which are defined in sources other than the Act, for example the National Telephone Numbering Plan<sup>21</sup> or the Premium Rate Services Condition (the “PRS Condition”).<sup>22</sup> We realise that this would contribute to making the GCs a standalone document, however, given that these sources are subject to change more frequently than the Act, and we want the definition in the GCs to remain up to date, we propose to continue to define these terms by reference to their original source. For example, the definition of “Geographic Number” will continue to refer to the National Telephone Numbering Plan.

<sup>21</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0016/36070/numbering\\_plan\\_july2015.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0016/36070/numbering_plan_july2015.pdf)

<sup>22</sup> The PRS Condition is set out in Annex 10 to Ofcom’s statement of 13 December 2013, entitled “Simplifying non-geographic numbers”. See [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/57753/annexes.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/57753/annexes.pdf)

- 3.12 The term “**Communications Provider**” is currently defined in both:
- a) the opening Definitions section of the GCs; and
  - b) the definitions paragraph of each individual condition, where it is used to identify the scope of providers to whom each GC applies.
- 3.13 We propose to align the general definition of “Communications Provider” with that in section 405(1) of the Act, so that it will be defined as follows:
- “**Communications Provider**” means, ~~unless the contrary intention appears,~~ a person who (within the meaning of section 32(4) of the Act) provides an Electronic Communications Network or ~~provides an~~ Electronic Communications Service”.
- 3.14 Then, rather than separately defining the term “Communications Provider” for each individual condition, we propose to set the scope of each condition in the opening paragraph by describing the category of CPs to which the condition applies (e.g. providers of publicly available telephone services or providers of electronic communications networks) and defining them as “**Regulated Providers**” for the purposes of that condition.
- 3.15 We think this approach to setting the scope of each condition is clearer than that currently used in the GCs, but we invite stakeholders to consider how this would work in practice by reference to the draft revised conditions annexed to this consultation and provide us with any comments they have on this approach.

## Recitals, guidance and codes of practice

- 3.16 We consider that the GCs should, wherever possible, be capable of being understood on their face, without reference to additional information contained in consultation documents, guidance or explanatory statements. To address this aim, we have proposed to add a short recital to each of the GCs, setting out briefly what the purpose of that condition is and what it is seeking to achieve. As suggested by stakeholders in response to our August 2016 consultation, we are proposing to make these further amendments:
- a) insert short recitals to each of the GCs before each condition rather than in a general introductory section; and
  - b) add a table of contents at the beginning of the GCs.
- 3.17 In some instances, it may be appropriate to include further detail in guidance or other materials. In those cases, we will include a footnote in the consolidated GCs indicating where stakeholders should refer to additional materials. So as to meet our objective for all relevant regulation to be available in one place, we will seek to keep reference to additional explanatory materials to a minimum in future.
- 3.18 Currently, the GCs (in particular GC 14) require CPs to comply with various codes that must conform with either Ofcom’s guidelines<sup>23</sup>, a standard code of practice

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<sup>23</sup> See GC 14.2, which requires CPs to establish, maintain and comply with Ofcom’s guidelines set out in Annexes 1 and 2 to GC 14.

approved by Ofcom<sup>24</sup> or the minimum requirements set out in an Ofcom's Code.<sup>25</sup> As part of our review, we have considered whether the regulatory requirements currently contained in these various annexes to the conditions should be retained and, if so, whether they should be moved to the main body of the GCs. Our initial view is that we should normally set out all binding regulatory obligations in the main body of the GCs, unless there is a clear reason for mandating the adoption of a particular code of practice. We may, for instance, continue to use codes of practice where this facilitates a self- or co-regulatory approach to a specific problem.

- 3.19 In this consultation, for instance, we are proposing to simplify regulation by replacing the requirement for CPs to have the codes of practice in relation to calls to premium rate services, number translation services, 0870 and personal numbers that conform with the Guidelines set out in Annexes 1 and 2 to GC 14 with direct obligations on information transparency in the main body of the revised relevant condition.

## Direction making powers

- 3.20 Some GCs impose a requirement on the persons to whom they apply to comply with such directions with respect to the matters to which the condition relates as may be given from time to time by Ofcom (or another person specified in the condition).<sup>26</sup>
- 3.21 The process for making directions and approvals for the purposes of regulatory conditions is set out at sections 49 to 49C of the Act and is similar to that for making new conditions or modifying existing ones. As a result, it is not clear that there is much practical benefit in maintaining direction-making powers which are not currently being used and which we do not envisage using in the near future.
- 3.22 In relation to each of the direction-making powers contained in the conditions we are currently reviewing, we have considered the extent to which Ofcom has used them, if at all, whether there are plans to use them in future and whether the policy concern underpinning the discretionary power to make directions is still valid. As a general approach to our review of the GCs, we propose to remove those direction-making powers that Ofcom has never used unless we consider that there is a compelling reason to retain them.

## Other presentational issues

- 3.23 We want the revised GCs to be a user-friendly regulatory tool. We have updated the formatting of the document, to bring it into line with other Ofcom publications. To make the conditions easier to read, we have added sub-headings where we consider it appropriate. As noted above, all definitions are contained in one place in the annex to the revised conditions, and the terms have been identified in bold text in the main body of the revised conditions so that the reader knows to check the definitions section for defined terms.
- 3.24 We are also proposing to break out the conditions into three separate parts: Part A containing network functioning conditions, Part B containing numbering and technical conditions and Part C containing consumer protection conditions. Individual

<sup>24</sup> See GC 14.4, which requires CPs to establish, maintain and comply with Ofcom Approved Code of Practice for Complaints Handling.

<sup>25</sup> See GC 14.6, which requires CPs to comply with the requirements set out in Ofcom's Code set out in Annex 3 to GC 14.

<sup>26</sup> These direction-making powers derive from section 45(10)(a) of the Act.

conditions would then also be numbered. For example, the condition relating to billing would be in Part C of the document, as it is a consumer protection condition and it would be number 4 as it is the fourth condition within Part C.

## Implementation period

- 3.25 We invite stakeholders to respond to this consultation by **14 March 2017**. We are planning to publish our final statement and the revised conditions later in the year. Although we are consulting on our proposals in two separate parts, our intention is for all of the revised conditions to come into effect at the same time at the end of that process. We recognise that CPs may require a short transitional period to bring their policies and practices into line with the revised regulatory requirements we are proposing. Our provisional view is that a transitional period of 3 to 6 months ought to be sufficient to allow industry to make all the necessary changes to their processes and procedures to ensure compliance with the revised conditions. If stakeholders disagree and think they would need a longer transitional period to implement any of the specific changes that we are proposing to make, we invite them to let us know in their response to this consultation, specifying the particular proposed change to the GCs which they think requires a longer period, the implementation period they think is necessary and their reasons for requiring it.

## Consultation questions

**Question 1:** *Do you agree with our overall approach to this review of the general conditions as set out in sections 2 and 3 of this consultation? Please give reasons for your views.*

**Question 2:** *Do you agree with our proposed implementation period for the revised general conditions of 3 to 6 months following publication of our final statement? If you think a longer implementation period is necessary, please explain why, giving reasons for your views.*

## Section 4

# Contract requirements

- 4.1 The general conditions (GC 9) require CPs, when entering into contracts for the provision of public electronic communications services or a connection to a public electronic communications network, to include certain minimum, specified terms and information for consumers and other end-users.
- 4.2 The overall policy objective of this condition is to protect consumers and end-users by ensuring that contracts for a connection to a public electronic communications network or for public electronic communications services include minimum terms and information. Specifically:
- a) GC 9.1 sets out the requirement for contracts between CPs and end-users to contain certain minimum terms;
  - b) GC 9.2 lists the minimum terms including details of: minimum service quality levels, any conditions limiting access and application, any restrictions on the use of the terminal equipment, the type of maintenance services and customer support offered, details of prices and tariffs and up to date charging information;
  - c) GC 9.3 requires that aside from a minimum initial period of commitment, contract termination procedures must not disincentivise end users from changing their CP and prohibits automatically renewable contracts;
  - d) GC 9.4 precludes CPs from including in contracts a requirement that an end-user must compensate the CP for terminating the agreement before the end of the agreed period where the compensation relates to more than the initial commitment period (which can be no longer than 24 months);
  - e) GC 9.5 provides that CPs must allow users to subscribe to a contract with a maximum duration of 12 months; and
  - f) GC 9.6 requires CPs to provide subscribers with a minimum of one month's notice of any modifications likely to be of material detriment to the subscriber and inform them of their right to terminate the contract without notice if the modification is not accepted.
- 4.3 In this section, we present the changes that we propose to make to this condition. In summary, we consider that consumers continue to need protection from harm in relation to the contracts they enter into for communications services. For example, consumers continue to need certain minimum information to be provided before they enter into a contract and need their rights to terminate a contract in certain circumstances to be protected. We also note that the current condition reflects the minimum requirements of the EU Framework. Therefore, we are not proposing any significant policy changes in this area, but we are proposing certain changes that we think would improve the condition by making it clearer and easier to understand. In particular, in relation to the requirement to provide advance notice of any contractual modifications likely to be of material detriment to subscribers, we are proposing to

clarify regulation by specifying Ofcom's approach to price rises in the condition itself, and remove the current guidance on "material detriment" under GC 9.6.<sup>27</sup>

## Stakeholder Responses

- 4.4 In response to the DCR consultation, EE suggested that: (i) GCs 9, 10, 22 and 23 should be combined to avoid duplication of some of the information requirements; and (ii) we should withdraw part of these conditions where there is overlap with general consumer law.<sup>28</sup>
- 4.5 In its supplementary submissions of 6 December 2016, BT made the following comments:
- a) it suggested that "*Ofcom should consider paying greater regard to the CMA guidance*" on unfair contract terms, and pointed specifically to the issue of price rises;
  - b) it argued that the removal of the current "*materiality provisions in the UK*" in light of the European Commission's proposal on the review of the current EU Framework "*would be highly disruptive to the UK market and would have a significant impact on CPs and on consumers*"; and
  - c) it also said that "GC 9 (and associated guidance on material detriment) should explicitly be stated to apply to pay TV services, just as Ofcom proposed to do in relation to switching)".

## Ofcom's proposals

- 4.6 Our provisional view is that the overall policy objective underlying the current condition remains important, and the specific protections which are afforded to consumers by the current condition remain fit-for-purpose to achieve that policy objective. Therefore, we propose to retain all the current requirements without any significant policy changes. We think, however, that the current condition can be improved to make it easier and clearer to understand. Below, we address EE's response to the DCR consultation and we set out the specific changes that we propose to make to improve the clarity of the condition.

### Structure of the conditions

- 4.7 We considered the overall structure of the GCs and whether there was scope to combine any of the requirements currently in GC 9 (requirement to offer contracts with minimum terms), GC 10 (transparency and publication of information), GC 22 (service migration and home moves) and GC 23 (sales and marketing of mobile telephony services), as suggested by EE.
- 4.8 There is some overlap between the information required to be provided in contracts under GC 9 and that required to be published by CPs on their websites under GC 10. Specifically, this overlap concerns the following information: the name of provider, services provided, types of maintenance and customer service, compensation/refunds, dispute resolution procedures.

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<sup>27</sup>Guidance on "material detriment" under GC9.6 in relation to price rises and notification of contract modifications: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/29682/guidance.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/29682/guidance.pdf)

<sup>28</sup> EE response p.26: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/37323/ee.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/37323/ee.pdf)

- 4.9 However, we also note that the information requirements which are currently set out in GC 9 and 10 serve different purposes:
- a) the information required to be published, and therefore made available to the general public, under GC 10 allows consumers to compare what is available when selecting a CP;
  - b) whereas GC 9 aims to ensure that CPs provide clear information to each individual consumer with whom they deal when a consumer is signing up for a service.
- 4.10 We are therefore proposing to retain the information requirements concerning the information to be provided in contracts (which is currently set out in GC 9) and the information to be published by CPs on their websites (which is currently under GC 10) in two separate conditions. As explained in Section 5 below, we are also proposing to combine the requirements for information transparency which are currently set out in GC 10 with other requirements relating to price transparency which are currently set out in GC 14 to create a single condition that would contain all the main information and pricing transparency requirements.
- 4.11 In relation to the potential overlap with GCs 22 and 23 suggested by EE, we consider that these conditions serve different, and more specific, purposes. The requirements on CPs to provide information in GC 22 only take effect when domestic and/or small business customers are switching between CPs.<sup>29</sup> They operate together with other consumer protection rules to ensure customers are protected throughout the switching process and are not switched to another provider against their will. The requirements on CPs to provide information in GC 23 are designed to protect domestic and/or small business customers from being mis-sold mobile call and text services by CPs or by their retailers.<sup>30</sup>
- 4.12 A further option that we considered was combining the Quality of Service (“QoS”) condition (GC 21) with the condition relating to contracts or transparency. The reasons we are not proposing this are discussed in more detail in section 5 below.

#### Relationship with general consumer protection legislation

- 4.13 As set out in paragraph 4.4 above, EE also suggested that we should withdraw part of these conditions where there is overlap with general consumer law.
- 4.14 The GCs set out rules which are specific to the electronic communications sector. They are intended to focus on specific consumer protection issues that arise in this sector in a way which is targeted at those particular issues and should not duplicate conditions which are applicable by virtue of national legislation of general application. We have considered the extent to which there may be considered to be a degree of overlap between GC 9 and general consumer law. However, since these provisions reflect the minimum requirements as currently set out in Art. 20 of the Universal Service Directive, we consider that they are necessary to address sector-specific issues.

<sup>29</sup> Specifically, when domestic and/or small business customers are switching providers of fixed-line services (comprising landline calls and/or broadband) who operate on the Openreach or KCOM networks. See section 12 below.

<sup>30</sup> See section 13 below.

- 4.15 We also note that the current EU Framework is under review and that this may result in some consequential changes to the GCs in future.

### Contractual changes

- 4.16 The current condition provides that CPs must give their subscribers a minimum of one month's notice of any modifications likely to be of material detriment to the subscriber and inform them of their right to terminate the contract without notice if the modification is not accepted. We published guidance on how we were likely to apply this condition in relation to certain price increases, which came into effect on 23 January 2014. In particular, this guidance sets out what Ofcom is likely to regard as price increases meeting the "material detriment" requirement and giving rise to the rights to notice and to terminate the relevant contract without penalty.<sup>31</sup>
- 4.17 We propose to clarify the drafting of the condition by specifying how this obligation applies to price rises in the condition itself. As a consequence, we think that Ofcom's guidance on how we are likely to apply GC 9.6 in relation to certain price increases would become redundant and we therefore propose to withdraw it. Our provisional view is that these proposals would make the requirements of the current condition clearer and easier to apply.
- 4.18 We propose to implement this proposal by inserting the following additional paragraph into the condition:

"In relation to changes to contractual prices:

- a) any increase to the sum that the **Subscriber** must pay to the **Regulated Provider** at monthly or other regular intervals under the contract; and/or
- b) the exercise at the discretion of the **Regulated Provider** of any contractual term or condition which would have the effect of increasing the sum that the **Subscriber** must pay to the **Regulated Provider** at monthly or other regular intervals under the contract

shall be deemed as likely to be of material detriment to a **Subscriber** for the purposes of paragraph C1.6(a)."

- 4.19 Whereas our Guidance on "material detriment" under GC 9.6 applies to Consumers and Small Businesses, we are proposing that this additional paragraph should apply to all subscribers, for consistency with the obligations in the USD. In considering cases under this proposed condition and whether subscribers have experienced material detriment, we will take into account the circumstances in which a larger business has entered into a contract and the nature of the contract. In particular, larger businesses may have stronger bargaining power in relation to CPs and may be able to negotiate terms with them. That being so, they may be less likely to suffer material detriment in the event of price increases, especially if the terms (including price variation terms) have been negotiated in bespoke contracts.

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<sup>31</sup> Ofcom's Guidance on "material detriment" under GC9.6 in relation to price rises and notification of contract modifications; see footnote 27.

- 4.20 We consider that the revised condition would reflect our existing policy currently set out in guidance. As we are not proposing any change to our existing policy towards mid contract prices rises, we do not envisage that our proposals would give rise to any additional burdens on CPs. Revising the condition as we are proposing, would also allow us to withdraw the current guidance on “material detriment”, making it easier for communication providers to set out processes for compliance, and to ensure compliance.
- 4.21 In relation to BT’s comment that that “*Ofcom should consider paying greater regard to the CMA guidance*” on unfair contract terms, we note that:
- a) we are proposing to specify how the revised condition would apply to price rises in the condition itself, and to withdraw our current guidance. As a general approach, we are proposing that GCs should, wherever possible, be capable of being understood on their face, without reference to additional information contained in guidance;
  - b) our provisional view is that, in line with our current guidance, the exercise at the CP’s discretion of any contractual term or condition which would make subscribers pay more than their monthly fees, should continue to be deemed as likely to be of material detriment to them.
- 4.22 In relation to BT’s comment that the removal of the current materiality provisions in the UK in light of the European Commission’s proposal on the review of the current EU Framework “*would be highly disruptive to the UK market and would have a significant impact on CPs and on consumers*” (paragraph 4.5), we note that the current EU Framework is under review and that this may result in some consequential changes to the GCs.

### Minimum information

- 4.23 We propose to amend the list of the minimum information that must be included in contracts, currently in GC 9.2, to make the list more consistent with the list of information that CPs are required to publish, currently in GC 10.2. Specifically, in addition to existing requirements, the proposed revised condition would require CPs to specify: the services provided and the content of each tariff element (with regard to charges for access, usage and/or maintenance), including details of any standard discounts applied, any special and targeted tariff schemes and any additional charges.
- 4.24 Our provisional view is that this proposal would not create an increased burden on CPs as there is already an existing obligation in GC 9.2(i) to include “details of prices and tariffs” in the contracts covered by the condition. The changes that we are proposing would make the condition clearer and easier to read, by setting out in full the information that is required to be provided in relation to prices and tariffs.

### Legacy contracts

- 4.25 The current condition (GC 9.2) specifies that it applies to contracts concluded after 25 May 2011. The condition further requires that contracts concluded before 26 May 2011 shall comply with the minimum requirements of GC 9.2 as it applied prior to 26 May 2011. We propose to simplify the condition by removing this wording on the basis that it is no longer necessary, since it is unlikely that large numbers of consumer contracts concluded before 26 May 2011 are still in existence. We would be interested to hear stakeholders’ views on this proposal.

### Automatically renewable contracts

- 4.26 The current condition GC 9.3 requires that, aside from a minimum period of initial commitment, termination procedures must not disincentivise end users from changing their CP. It cites automatically renewable contracts as one example of conduct which may act as a disincentive to switching (GC 9.3(a)(i) and(ii)). This example currently relates to fixed voice and broadband services only.
- 4.27 We propose to amend the provision so that it would relate, more generally, to all Public Electronic Communications Services (as defined in the GCs and the Act). Under the current condition, we would consider automatically renewable contracts to act as a disincentive to switching for any service to which they were applied. Therefore, we consider this change to be clarificatory and do not consider that it will give rise to any additional compliance burden for stakeholders.

### Definitions

- 4.28 We propose to remove the definition of “Communications Provider” set out in paragraph 9.7(a) and set out upfront, at the beginning of the revised condition, that it applies to all providers of public electronic communications services (referring to them as “Regulated Providers”). In relation to BT’s comment that “GC 9 (and associated guidance on material detriment) should explicitly be stated to apply to pay TV services” (paragraph 4.5), we consider that this is unnecessary given that this condition already applies to all “Public Electronic Communications Services” (as defined in the Act)<sup>32</sup> and the proposed scope of the revised condition would be clear to CPs on the face of the revised condition itself.
- 4.29 As a consequence of our proposed amendments to the provisions in paragraphs 9.3(a) and (b) on automatically renewable contracts, the definitions of “Fixed-Line Telecommunications Services” and “Narrowband” would no longer be necessary. Therefore, we propose to delete them.
- 4.30 We propose to clarify the drafting of the current condition relating to contract durations (GC. 9.4). To achieve this, we propose to add a definition of “Initial Commitment Period” that would read as follows:
- “a period beginning on the date that a contract between a **Regulated Provider** and a **Customer** takes effect and ending on a date specified in that contract during which the **Customer** may be required to pay a charge to terminate the contract”.
- 4.31 We further propose to replace the word “Users” with the word “Subscribers” in GC 9.5 and to remove the definition of “User” which is currently set out in GC 9.7(c). This is because we are aiming to use consistent terminology across the GCs as a whole, where possible, and we think that the specific definition of “User” in this condition is unnecessary as it can be substituted by the existing definition of Subscriber without materially affecting the condition.

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<sup>32</sup> The term “public electronic communications service” is defined at section 151 of the Act as “any electronic communications service that is provided so as to be available for use by members of the public”. The term “electronic communications service” is defined at section 32 of the Act and in the Framework Directive, as interpreted in subsequent case-law.

- 4.32 The proposed revised text of the condition that would replace the current GC 9 can be seen at Annex 12 (see Condition C1) and a marked up version showing the changes we are proposing to make can be seen at Annex 13.

## Legal tests

- 4.33 We consider that the changes we are proposing to make to this condition meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:
- a) **objectively justifiable** as we think that the right to a contract containing minimum terms and conditions remains important to protect the interests of consumers and other end-users. We think that our proposal to specify Ofcom's approach to price rises in the condition itself and withdraw Ofcom's guidance on how we are likely to apply the rule on material detriment in relation to certain price increases would result in a clearer standalone condition. The additional drafting changes that we are proposing to make in relation to minimum contract changes would also clarify existing requirements;
  - b) **not unduly discriminatory** since the proposed changes to this condition would ensure that the same regulatory measures apply in respect of all providers of electronic communications services which are made available to the public;
  - c) **proportionate** as our provisional view is that none of the proposed changes would introduce any additional regulatory burden on industry and a contract containing minimum terms and conditions remains important to provide transparency and protect the interests of consumers and other end-users; and
  - d) **transparent** as the reasons for the changes that we are proposing to make to this condition are explained above and the effects of the proposed changes would be clear to communication providers on the face of the revised condition itself.

## Consultation questions

**Question 3:** *Do you agree with our proposals in relation to contract requirements? If you consider that we should retain the regime applying to contracts concluded before 26 May 2011, please explain why, giving reasons for your views.*

**Question 4:** *Are there any other modifications to the proposed revised condition in relation to contracts requirements that you consider would be appropriate?*

## Section 5

# Information publication and transparency requirements

- 5.1 The GCs currently contain various information publication and transparency requirements set out in several separate conditions. These consist of general information publication requirements (GC 10), publication requirements relating to quality of service information (GC 21) and transparency requirements relating to unbundled tariff numbers (GC14), premium rate services (Annex 1 to GC 14), non-geographic numbers and personal numbers (Annex 2 to GC14). In addition, the GCs set out specific information that must be displayed on or around public pay telephones (GC 6.2), which we considered in our August 2016 consultation (paragraphs 5.5-5.7).
- 5.2 In this section, we present the changes that we propose to make to these conditions, except for the information requirements that are currently set out in:
- a) GC 14.4 and Annex 4 to GC 14 (concerning the “Codes of Practice for Complaints Handling”), which we consider in Section 7; and
  - b) GC 14.1 (concerning the “Basic Code of Practice regarding the provision of Public Electronic Communications Services”), which we consider in Section 8.
- 5.3 In summary, our provisional view is that information publication and transparency requirements are still necessary to ensure consumers have up to date comparable information and can manage their expenditure on services. However, having the current requirements set out in various places across various different conditions and annexes to conditions can make it difficult for CPs and their customers to understand what requirements apply in which circumstances. We therefore propose to consolidate the various information publication and transparency requirements across the GCs into a single condition and to simplify and clarify the requirements where possible, particularly in relation to price transparency.

### The current information publication and transparency requirements

- 5.4 The general policy aim underpinning these conditions is to ensure the availability of adequate, up-to-date, comparable information for consumers on the prices, tariffs, terms and conditions of communications services, any charges applicable on termination of their contract and quality of services (“**QoS**”), so as to enable consumers to easily compare the offers and services available in the market. In addition, the transparency provisions aim to ensure that pricing and charges relating to premium rate services, non-geographic numbers and personal numbers are clear. Specifically:
- a) GC 10.1 and 10.2 require communication providers to publish certain information including their name, office address, description of the publicly available telephone services offered, the details of services included in any charge rendered, standard tariffs including details of standard discounts and special targeted tariff schemes, any compensation or refund policy, the type of maintenance services and customer support offered, standard contractual terms including contract duration and any dispute resolution mechanisms;

- b) GC 10.3 sets out how the publication of the information in GC 10.2 must be effected;
- c) GC 14.1 requires all CPs to produce a basic Code of Practice which as a minimum provides the information required to be published under paragraph GC 10.2;
- d) GC 14.2 requires CPs providing Premium Rate services, NTS Calls<sup>33</sup>, calls to 0870 numbers and calls to Personal Numbers, as appropriate, to establish, maintain and comply with the appropriate Codes of Practice. These Codes of Practice must conform with Ofcom's guidance, which is set out in Annexes 1 and 2 to GC 14;
- e) GC 14.8 requires all CPs to publish their access charges for unbundled tariff numbers and to make them accessible to consumers (through published price lists and any advertising which refers to call pricing) and to give them equal prominence to charges for other call types;
- f) GC 14.9 requires CPs to give prominence to their access charges as part of tariff packages, specifically to set out how/if they are included in bundles and any other discounts/bundling arrangements that may apply to the Service charge;
- g) GC 14.10 and GC14.11 require CPs to include the service charge in a prominent position wherever they advertise or promote an unbundled tariff number which they use to provide a service to consumers;
- h) GC 14.12 requires CPs to put in place procedures to enable helpdesk staff to respond to complaints and enquiries about access charges and calls to unbundled tariff numbers and to monitor their compliance with the obligations in paragraphs 14.8 to 14.11;
- i) Annex 1 to GC 14 sets out guidelines for CPs for the code of practice for handling enquiries and complaints about Premium Rate Service Calls. CPs are required to establish, maintain and comply with a code of practice that conforms with Ofcom's guidelines (GC 14.2(a) and (c));
- j) Annex 2 to GC 14 sets our guidelines for CPs for the code of practice for the publication of prices of calls to Number Translation Services, 0870 calls and personal Numbers. CPs are required to establish, maintain and comply with a code of practice that conforms with Ofcom's guidelines (GC 14.2(b) and (c));
- k) GC 21.1 enables Ofcom to require CPs to publish comparable, adequate and up to date information on the quality of their services and GC 21.2 to 21.4 set out further details relating to this power.

## Stakeholder responses

5.5 In response to the DCR consultation, as outlined above in the previous section on contract requirements, EE suggested that GCs 9, 10, 22 and 23 should be combined to avoid duplication of some of the information requirements.

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<sup>33</sup> From 26 June 2015 "NTS Calls" is defined as calls to numbers identified in the National Telephone Numbering plan as Non-Geographic Numbers operating on the 08 number range (but excluding calls to 0844 04 numbers for Surfetime internet access service, calls to 0808 99 numbers for flat rate internet access call origination and calls to 0870 numbers and calls to 0500 numbers).

- 5.6 In its supplementary submissions of 6 December 2016, BT said made the following comments:
- a) the “*Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 require traders to give consumers certain information relating to products and services, much of which overlaps with the provisions in GC 10*”;
  - b) it questioned whether GC 21 is still needed because “*the powers given to Ofcom under the Digital Economy Bill in relation to gathering and publication of comparable performance metrics would seem to duplicate those given in GC 21*”.

## **Ofcom’s proposals**

### General publication requirements

- 5.7 The general information publication requirements are currently contained in a standalone condition that applies to all providers of Publicly Available Telephone Services, except public pay telephones (GC 10). We propose to retain these general publication requirements and combine them with the price transparency requirements (that also require information to be published) into a new condition.
- 5.8 In order to update regulation in light of recent market developments, we propose to extend the scope of the current condition from the providers of Publicly Available Telephone Services to all providers of Public Electronic Communications Services. This is because we consider that the need for transparency and for customers to have access to accurate information to ensure that they can make informed choices applies equally to all such services. We consider that our proposal would ensure consistency across the GCs, since the minimum contact requirements which are currently set out in GC 9 already apply to all providers of Public Electronic Communications Services. In addition, we note that our proposal would be in line with the provision of the EU Regulatory Framework from which GC 10 is derived.<sup>34</sup> We have also slightly revised the wording of this condition in places to bring it closer into line with the relevant provision of the EU Framework which it implements.
- 5.9 We do not anticipate that the proposed extension of the general transparency requirements would lead to any significantly increased costs for CPs as many CPs already publish much of this information in relation to all of the electronic communications services they provide publicly (going beyond the current requirement which is limited to Publicly Available Telephones Services, as defined in the GCs) and there is some overlap between the information required to be published for services covered by the current condition. For example, the name of the provider, major office address, any compensation or refund policy, the type of maintenance services and customer support offered, standard contractual terms including contract duration and any dispute resolution mechanisms are likely to be the same or similar for all services offered by a particular provider.

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<sup>34</sup> Art 21 of the Universal Service Directive provides that Member States should ensure that national regulatory authorities are able to oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to publish transparent, comparable adequate and up-to-date information on applicable prices and tariffs, on any charges due on termination of a contract and on and on standard terms and conditions in respect of access to, and use of, services provided by them to end-users and consumers in accordance with Annex II to the Universal Service Directive.

- 5.10 In relation to BT's comment on the potential overlap between GC 10 and general consumer protection law (paragraph 5.6), we note that the GCs set out rules which are specific to the electronic communications sector. They are intended to focus on specific consumer protection issues that arise in this sector in a way which is targeted at those particular issues and should not duplicate conditions which are applicable by virtue of national legislation of general application. We have considered the extent to which there may be considered to be a degree of overlap between GC 10 and general consumer law. However, since these provisions reflect the minimum requirements as currently set out in Art. 21 of the Universal Service Directive, we consider that they are necessary to address sector-specific issues.

### Transparency obligations in relation to calls to Unbundled Tariff Numbers, Number Translation Service, and Personal Numbers

- 5.11 Currently, GC 14 (GC 14.7-14.12), together with Annex 2 to GC 14, imposes certain price transparency requirements in relation to calls to Number Translation Services, other Unbundled Tariff Numbers, and Personal Numbers.
- 5.12 To update regulation, we propose that this condition (and related Annex) would no longer refer to calls to Number Translation Services ("**NTS Calls**"). The term "NTS Calls" is out of date as this definition was removed from the Numbering Plan following the introduction of the Unbundled Tariff that changed the structure of pricing for non-geographic calls.<sup>35</sup>
- 5.13 We note that "0500" numbers are included in the current definition of "NTS Calls" in Annex 2 to GC 14 and are not included within Unbundled Tariff Numbers. However, the 0500 number range is due to be withdrawn in June 2017.<sup>36</sup> Therefore, we consider that the definition of "NTS Calls" is longer necessary and we propose to remove it from this condition.
- 5.14 We also note that there are currently two overlapping regimes for price transparency:
- a) the requirements in the current GC 14 (GC 14.7-14.12) require CPs to provide consumers with certain information to in respect of Unbundled Tariff Numbers (certain types of Non-Geographic Numbers); and
  - b) GC 14.2(b) and Annex 2 to GC 14 require CPs to provide residential and small business customers with specific information in respect of certain Non-Geographic Numbers and calls to Personal Numbers.
- 5.15 We propose to simplify regulation by removing the overlap and creating a single set of requirements for price transparency in respect of Unbundled Tariff Numbers and Personal Numbers.
- 5.16 We propose to retain the existing requirements that apply to CPs in relation to consumers. In relation to small business customers, we propose to replace the existing detailed requirements with a general obligation to ensure price transparency and to notify small business customers where the tariff structures and prices applied

<sup>35</sup> An unbundled structure would reflect the two services provided through non-geographic numbers. An unbundled tariff separates the retail price of a non-geographic call into these two elements. The primary service and the 'access' service: <https://www.ofcom.org.uk/consultations-and-statements/category-2/simplifying-non-geo-no>

<sup>36</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/re-consultation-0500-freephone>

to their contracts differ from those that CPs are required to comply with in relation to consumers. We propose to implement this change by adding a new paragraph to the proposed condition, requiring that where a CP applies different tariffs for small business customers (compared to those applied to consumers), the CP must ensure that its pricing for small business customers is transparent and inform such customers of any differences in treatment that apply.

- 5.17 The basis for this proposal is that it would remove overlap and duplication and make the condition clearer. It would also reduce regulation by resulting in a less prescriptive regime in relation to small business customers.
- 5.18 We propose to replace the requirement for CPs to have codes of practice that ensure specified information is made available, with direct obligations to make the information available. These obligations would be included in the new single information publication and transparency condition. Therefore, we propose to move the current information requirements set out in paragraphs 3 and 4 of Annex 2 to GC 14 relating to Personal Numbers (which currently apply in relation to domestic and small and business customers) to the proposed condition, so that they would apply in relation to consumers only. The provisions relating to Unbundled Tariff Numbers are already set out in GC 14.7 -11, so we are proposing to remove duplication by omitting the overlapping provisions which are currently set out in Annex 2
- 5.19 Therefore, in addition to the transparency obligations in relation to Unbundled Tariff Numbers which are currently set out in GC 14.7 -11, the proposed condition would also include requirements that relate to how tariffs for Personal Numbers are published in price lists and websites (currently set out in paragraph 3 of Annex 2 to GC 14) and requirements that relate to how tariffs for Personal Numbers are advertised and promoted. We are proposing to remove the requirements in relation to material that must be provided to new customers (currently set out in paragraph 4 of Annex 2 to GC 14) on the basis that, in light of our proposals, this would be captured by the general transparency requirements which are currently set out in GC 14.7-14.10 (which we are proposing to extend to cover also calls to Personal Numbers).
- 5.20 To simplify regulation, where the provisions from paragraphs 3 and 4 of Annex 2 to GC 14 partly overlap with GC 14.7 – 11, we propose to remove the overlap.
- 5.21 For clarity, as to the other parts of the guidelines set out in Annex 2 to GC 14:
- a) we propose to remove paragraphs 1.1-1.2, 2.1-2.3 and 6.1 as the proposed removal of the guidelines would make these paragraphs unnecessary;
  - b) we deal with paragraphs 5.1-5.4 below, in a separate sub-section discussing the procedures that CPs are required to put in place to ensure helpdesk staff, and customer and advice agencies are aware of their information requirements.
- 5.22 In summary, by incorporating the revised paragraphs 3 and 4 of Annex 2 directly into the proposed new information and price transparency condition, it is no longer necessary to include a separate annex in the GCs containing a code of practice for the publication of prices of NTS calls, 0870 calls and Personal Numbers. We therefore propose to omit Annex 2 of GC 14.

### Premium Rate Services

- 5.23 Currently, GC 14.2(a) and (c) requires CPs to establish, maintain and comply with a code of practice for the provision of information relating to Premium Rate Services

(PRS)<sup>37</sup> for their domestic and small business customers which must conform with the guidelines set out in Annex 1 to GC 14.

- 5.24 We are proposing to retain these obligations on the basis that we consider that CPs continue to play a critical role in providing information and advice relating to PRS to their customers. However, to ensure that regulation is targeted at cases that give rise to the greatest potential harm to consumers, we propose to limit the information requirements in relation to PRS to “Controlled PRS” only, which are a subset of PRS in relation to which Ofcom has backstop powers under the PRS Condition.<sup>38</sup> These services include, for example, Chatline Services and Sexual Entertainment Services.
- 5.25 We are also proposing to change the way the requirements in relation to PRS are implemented by replacing the requirement for CPs to have codes of practice that ensure specified information is provided to their domestic and small business customers (which is currently set out in GC 14.2(a) and Annex 1 to GC 14), with direct obligations to make the information available to these customers. We propose to include these obligations in the main body of the proposed condition that would consolidate all the main information publication and transparency requirements. In addition, we propose to simplify regulation, where possible (e.g. by removing duplication). For ease of reference, we set out below how we propose to implement this proposal by considering each paragraph of the guidelines set out in Annex 1 to GC 14 in turn.
- a) we propose to remove paragraphs 1.1-1.2 and 2.1-2.3 of the guidelines, which provide a general introduction to the guidelines and specify their status. Given that we are proposing to remove the guidelines, these paragraphs would be no longer necessary;
  - b) we propose to remove paragraph 3.1, which requires the “*Originating Communication Provider that is responsible for the retail billing of PRS Calls to the end-user*” to publish the usage charges required to be published under GC 10.2(d)(ii) for PRS calls on its website, since this is already required by GC 10.2(d)(ii), which we are proposing to retain in the proposed new consolidated information and transparency condition.
  - c) we propose to update, clarify and simplify the existing obligations in relation to PRS calls currently set out in paragraphs 3.2 and 3.3(i) to (x). We propose to do this by:
    - i) removing the term “Originating Communications Provider” as CPs falling within this definition will also fall within the definition of Regulated Provider that we propose to introduce for the purposes of the new condition;
    - ii) adding a new paragraph at the start of the list of information to be provided to include information that customers would find helpful. We propose this will replace the information currently set out in paragraphs 3.3(v) –(vii), which we consider is no longer helpful or is now redundant due to the services (for example the Wireless Application Protocol, “WAP”) no longer existing.

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<sup>37</sup> Premium rate services are a form of micro-payment for paid for content, data services and value added services that are subsequently charged to a user’s telephone bill. The full definition of premium rate service is set out in section 151(1) of the Act.

<sup>38</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0031/82678/ngcs\\_revised\\_date\\_statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0031/82678/ngcs_revised_date_statement.pdf)

- iii) moving the provisions currently set out in paragraph 3.1 to make the structure of the condition clearer and easier to follow;
  - iv) updating the reference to the Phone Pay Plus to the Phone-paid Services Authority;
  - v) retaining the requirements currently in paragraph 3.3 (i) –(iv) and (viii) – (xi).
- d) we deal with paragraphs 4.1-4.4 below, in a separate sub-section discussing the procedures that CPs are required to put in place to ensure helpdesk staff, and customer and advice agencies are aware of their information requirements;
- e) paragraph 5.1 specifies that the terms used in the guidelines have the same meaning as set out in GC 14. As explained above, we are proposing to move all the definitions to a separate Annex. As a consequence, this specification would be no longer necessary.
- 5.26 As the changes that we are proposing aim to target regulation at a more limited set of PRS, in addition to rationalising and clarifying the current provisions, we do not anticipate that they would increase the burden on CPs.

### Processes and procedures

- 5.27 Paragraph 14.12 of GC 14 requires CPs to put in place procedures to enable enquiry and helpdesk staff to respond to enquiries about Unbundled Tariff Numbers and monitor compliance with the price transparency obligations set out in paragraphs 14.8-14.11 of the current condition. Paragraph 4.1 of Annex 1 to GC 14 and paragraph 5.1 of Annex 2 to GC 14 require CPs to have procedures in place to ensure helpdesk staff, and customer and advice agencies are aware of the requirements of the Codes of Practice currently required by GC 14.2.
- 5.28 We propose to retain the requirements for CPs to ensure that helpdesk staff and customer and advice agencies are aware of price transparency information as these remain necessary to ensure that customers have access to the information required to be provided under this condition. To simplify regulation, we propose to replace the requirements which are currently set out in Annexes 1 and 2 to GC 14 (i.e. in guidelines) with a direct obligation in the proposed condition that would consolidate all the main information publication and transparency requirements. The corresponding paragraph in the proposed condition would read as follows:

“**Regulated Providers** must have procedures in place to ensure that enquiry and helpdesk staff are aware of the existence and content of this condition in order for them to be able respond to complaints and enquiries and to monitor their compliance with the requirements”.

### Method of Publication

- 5.29 How information is to be published is currently set out in GC 10.3. This condition provides that CPs must send a copy of the information (or relevant parts of it) to any End-User who reasonably requests a copy and publish the information on their website. Where the CP does not have a website, a copy must be placed at every major office of the CP so that it can be viewed by members of the public free of charge during office hours. We propose to amend this requirement, so that where a CP does not have a website, they must publish the information required by the condition in such a manner as directed by Ofcom. We are proposing this change on

the basis that we expect the vast majority of CPs to have a website. Where a CP does not have a website, while it is still important that the information be published, we do not consider that publication at a major office will necessarily be helpful to customers. We therefore propose that a direction making power that will allow us to consider what would be most helpful to customers and provide the flexibility for us to change our approach over time if appropriate.

- 5.30 The existing requirements in relation to price transparency also require information to be sent to customers free of charge, on request. We propose to expand the requirement to provide the information free of charge to the information covered by the general publication requirements. This would ensure a consistent approach across the proposed condition that would consolidate all the main information publication and transparency requirements and make it easier to apply. We expect that the majority of customers will obtain the information via CPs' websites and there will be minimal additional costs arising as a result of this change. Further, we consider there are sound policy justifications for ensuring that customers without internet access are not precluded from accessing information that they need.

### Quality of service information

- 5.31 The GCs currently contain a separate condition relating to the publication of information related to Quality of Service (“**QoS**”) (GC 21). The condition enables Ofcom to require CPs to publish comparable, adequate and up to date information on the quality of their services. The condition is currently implemented by giving Ofcom a power to make directions about the publication of QoS information including the quality of service parameters to be measured, the content and form of the information and how it is to be validated and the manner and timing of publication. Currently, there are no such directions in force and we have no current proposals to use this direction-making power.
- 5.32 On 5 July 2016, the Digital Economy Bill (the “**Bill**”) was introduced into Parliament. The Bill contains provisions aimed at improving the availability of comparative information on quality and prices.<sup>39</sup> Specifically:
- a) Section 136(1) of the 2003 Act gives Ofcom the power to require a CP or a person who makes available associated facilities to provide Ofcom with information for the purpose specified in section 136(2). That purpose is the carrying out, with a view to publication and in the interests of the end-users of public electronic communications services, of comparative overviews of the quality and prices of such services. Clause 70 of the current draft Bill repeals section 136(2) of the 2003 Act and replaces it with a new section 134D, which will give Ofcom an express power to carry out and publish such comparative overviews. It also amends section 393(6) of the 2003 Act to provide that nothing in section 393 (general restrictions on the disclosure of information) limits the matters that may be published as part of such a comparative overview.
  - b) Clause 70 of the current draft Bill inserts new sections 137A and 137B into the 2003 Act. These sections set out the scope of Ofcom's powers to require CPs to collect, generate or retain information for the purpose of publication, either by the CP, or by Ofcom. These sections significantly strengthen Ofcom's power to require information from CPs. Subsection (1)(a) of new section 137A gives Ofcom power to require CPs to publish any information held by the provider.

<sup>39</sup> [http://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0087/cbill\\_2016-20170087\\_en\\_1.htm](http://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0087/cbill_2016-20170087_en_1.htm)

Subsection (1)(b) provides powers to require CPs to provide any such information to Ofcom, for the purposes of Ofcom publishing such material. Subsection (2) of new section 137A allows the requirements imposed under subsection (1) to include requirements to produce, generate or obtain information. Subsection (3)(a) to (c) of new section 137A contains a non-exhaustive list of some of the things that CPs might be required to do, including collect information, retain information or generate new information through analysis of data or information.

- 5.33 These new provisions in the Bill, which are aimed at improving the availability of comparative information on quality and prices, serve a wider purpose than that met by the current QoS GC. In our view, if they are enacted as currently proposed, the additional power under GC 21 to make directions relating to QoS would be no longer necessary. We therefore provisionally propose to remove this condition.<sup>40</sup>
- 5.34 If in light of any substantive amendment to the provisions of the Bill, we decide we need to retain the powers currently set out in GC 21, we would propose to move them to the proposed condition that would consolidate all the main information publication and transparency requirements. This is on the basis that we consider it would add clarity if all information and transparency requirements were contained in a single condition.

#### Public pay telephones

- 5.35 In the August 2016 consultation, we proposed to remove some of the requirements in relation to public pay telephones in the current GC 6. The requirements that we proposed to retain, as set out in Annexes 9 and 10 to the August 2016 consultation, relate to the information that must be provided to users by providers of public pay telephones.<sup>41</sup> We received a number of responses from stakeholders to our consultation on our proposals in relation to public pay telephones. If, having considered those responses, we decide to maintain a condition on public pay telephones which only contains information requirements, we would propose to incorporate those requirements into the proposed condition that would consolidate all the main information publication and transparency requirements. Again, this is on the basis that we consider it would add clarity if all information and transparency requirements were contained in a single condition.

#### Simplifying and clarifying regulation

- 5.36 We are proposing a number of other drafting changes to remove duplication (for example paragraph 3.1 of annex 1 to GC 14 imposes the same requirement as paragraph 10.2(d)(ii) of GC 10) and clarify the current drafting. We are also proposing to amend the requirement that CPs in relation to the information in paragraph 3.3 of annex 1 to GC 14 from a requirement to “provide” information to “provide on request” to provide additional clarity on when the obligation applies.

#### Basic Code of Practice regarding the provision of public electronic communications services

- 5.37 GC 14.1 requires all CPs to produce a basic Code of Practice which as a minimum provides the information required to be published under paragraph GC 10.2. Our proposals in relation to this requirement are set out in Section 8.

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<sup>40</sup> We note this is also in line with BT’s suggestion at paragraph 5.6.

<sup>41</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/79390/gc\\_review\\_annex\\_9\\_condoc.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/79390/gc_review_annex_9_condoc.pdf)

## Definitions

- 5.38 We propose to remove the definition of “Communications Provider” currently set out in paragraphs 10.4(a) and 14.13(b) and set out upfront, at the beginning of the revised condition, that the revised condition applies to all providers of public electronic communications services (referring to them as “Regulated Providers”).
- 5.39 We propose to remove the definition of “Consumer” currently set out in paragraph 14.13(d) and replace it with the following definition that would apply across all the general conditions:
- “Consumer”** means “any natural person who uses or requests a **Public Electronic Communications Service** for purposes which are outside his or her trade, business or profession”;
- 5.40 We propose to remove the definition of “Guidelines”, “NTS Calls”, “Originating Provider”, and “Terminating Communications Provider” on the basis that under the proposed revised drafting they would be no longer necessary.
- 5.41 As mentioned above (paragraph 5.25b)), we propose to remove the definition of “Originating Communications Provider” as CPs falling within this definition will also fall within the definition of “Regulated Provider” that we propose to introduce for the purposes of the proposed new condition.
- 5.42 We propose to insert a definition of “Controlled Premium Rate Service” to have the meaning given to it in the in the PRS Condition.
- 5.43 The term “Telephone Ombudsman Schemes” is currently used in the condition without being defined. We propose to replace this term with the term “Alternative Dispute Resolution Schemes” and define “Alternative Dispute Resolution Schemes” as meaning “any dispute procedures approved by Ofcom under section 54 of the Act for the resolution of disputes in relation to any Complaint between the Regulated Provider and its Domestic and Small Business Customers”.
- 5.44 The proposed revised text of the condition that would combine the current GC 10, and elements of GC 14 into the proposed new condition C2 can be seen at Annex 12 and a marked up version showing the changes we are proposing to make can be seen at Annex 13.

## **Legal tests**

- 5.45 We consider that the changes we are proposing to make to the information publication and transparency requirements currently set out in GC 10 and the GC 14 meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:
- a) **objectively justifiable** as we think that:
- i) the ability for customers to be able to access up to date information about services and prices remains important to protect the interests of customers and promote choice;
  - ii) limiting the information requirements in relation to PRS to “Controlled PRS” only would ensure that regulation is targeted at cases that give rise to the greatest potential harm to consumers;

- iii) the drafting changes that we are proposing to make to clarify the current requirements (including in particular those relating to PRS) would ensure the revised condition is more accessible and easier to apply;
  - iv) extending the general publication requirements (currently in GC 10) from Publicly Available Telephone Services to Public Electronic Communications Services serves to update regulation in light of market developments, in addition to being in line with the provision of the EU Framework from which this condition is derived;
  - v) our proposal to replace the requirement for CPs to have certain codes of practice that ensure specified information is made available, with direct obligations to make the same information available, together with our proposal to remove the overlap that currently exists in relation to price transparency, will make the obligations clearer and easier to apply;
  - vi) replacing the existing detailed price transparency requirements that apply in relation to small business customers with a general obligation for CPs to ensure price transparency and to notify small business customers where the terms and conditions applied to them differ from those that apply in relation to consumers will remove duplication, make the obligations clearer and will also result in a less prescriptive regime in relation to small business customers;
  - vii) amending the requirements in relation to the method of publication where a CP does not have a website ensures that in such cases information is still published in a way that will be helpful to customers. Expanding the requirement to provide information free of charge, on reasonable request, where it is required to be published under the general publication requirements will ensure that customers have access to information where they cannot access a website. This proposal will also ensure a consistent approach across the proposed new condition and make it easier to apply;
  - viii) removing the direction making power in relation to quality of service information (currently in GC 21) if the Digital Economy Bill provides sufficient powers for our purposes would remove unnecessary duplication of our powers in the Act and under GCs;
- b) **not unduly discriminatory** since the proposed changes to the information publication and transparency requirements would ensure that the same regulatory measures apply in respect of all providers of electronic communications services which are made available to the public;
  - c) **proportionate** as our provisional view is that none of the proposed changes would introduce any disproportionate regulatory burden on industry and the need for customers to be able to access information to make informed choices remains important to promote choice; and
  - d) **transparent** as the reasons for the changes that we are proposing to make to these provisions are explained above and the effects of the proposed changes would be clear to communication providers on the face of the revised condition itself.

## Consultation questions

**Question 5:** *Do you agree with our proposals in relation to information publication and transparency requirements, including removing the separate condition relating to publication of quality of service information?*

**Question 6:** *Do you agree with our proposal to replace the existing detailed requirements in relation to small businesses with a general obligation to ensure price transparency and to notify small business customers where the terms and conditions that apply to them differ from those that providers are required to comply with in relation to consumers?*

**Question 7:** *Are there any other modifications to the conditions relating to information publication and transparency requirements that you consider would be appropriate?*

## Section 6

# Billing requirements

- 6.1 There are currently three separate conditions in the GCs which deal with issues related to billing of customers:
- a) rules on the accuracy of bills (GC 11);
  - b) rules on the provision of itemised bills (GC 12); and
  - c) rules on the fairness of debt collection and disconnection procedures for non-payment of bills (GC 13).
- 6.2 The overall policy objective of these conditions is to ensure that end-users of electronic communications services are not overcharged and receive the services they are charged and pay for, can adequately control how much they spend on the usage of electronic communications services, and are protected from immediate or unfair disconnection from the network on the grounds of an unpaid bill.
- 6.3 In summary, our provisional view is that these conditions are still necessary to protect consumers from being overcharged and from being treated unfairly. We are proposing to re-write the conditions to make them simpler, and we are also proposing to extend the scope of certain rules in light of market developments. In particular, in the light of the progressive growth in the take up and importance of data services (e.g. broadband services), we are proposing to extend the current rules on billing accuracy (i.e. the “metering and billing scheme”), debt collection and disconnection procedures for non-payment of bills to data services in addition to voice call services.
- 6.4 In addition, whereas the conditions on billing accuracy and itemised billing already apply to both fixed and mobile telephony services, the rules on debt collection and disconnection procedures for non-payment of bills currently only apply to fixed services. On the basis of complaints data, we consider that also mobile users need protection from unfair debt collection/disconnection practices. Therefore, we are proposing to extend these rules to mobile services also.

## Billing accuracy

- 6.5 GC 11 protects consumers by ensuring that bills are as accurate as possible. Specifically:
- a) paragraph 11.1 prevents CPs<sup>42</sup> from overcharging for the services they provide to end-users;
  - b) paragraph 11.2 requires all CPs to keep records to demonstrate compliance with GC 11.1. This paragraph gives Ofcom the power to make directions to specify which records should be retained by CPs and for how long, and sets out a 15-month maximum limit on record retention;

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<sup>42</sup> For the purposes of GC 11.1 and 11.2, as currently in force, ‘CP’ means any person who provides Public Electronic Communications Services.

- c) paragraphs 11.3 and 11.4 require larger providers of voice call services (i.e. those whose relevant turnover exceeds £40m) to have their “total metering and billing system” approved by a third party assessor, appointed by Ofcom, against a prescribed standard which is currently set out in the Ofcom Metering and Billing Direction issued on 31 July 2014 (the “**2014 Direction**”)<sup>43</sup>;
- d) paragraph 11.5 sets out what CPs should do if they are required under paragraphs 11.3 and 11.4 to have their total metering and billing system approved but their system is either not approved or an approval is withdrawn;
- e) paragraph 11.6 defines the following terms for the purposes of this condition: “Approval”, “Approval Body”, “Bill”, “Communications Provider”, “Ofcom Metering and Billing Direction”, “Records”, “Relevant Turnover”, “Total Metering and Billing System”.

6.6 GC 11 was introduced in 2002 as a regulatory measure to protect consumers, reflecting the Oftel Metering and Billing Scheme, which formed part of the previous regulatory regime. It does not implement any specific requirement of the EU regulatory framework.

### Stakeholders’ responses

6.7 In response to the DCR consultation:

- a) EE<sup>44</sup> suggested that GC 11 should be combined with GCs 12 and 13; and
- b) BT<sup>45</sup> argued that it was not necessary for GC 11 to protect large businesses as well as consumers and SMEs as large businesses do not need this level of protection.

6.8 In addition, BT suggested in its supplementary submissions that “*Ofcom should consider how the presentation of consolidated prices on adverts, bills and elsewhere will affect consumer expectations about itemised billing*”.

### Ofcom’s proposals

#### Accurate billing

6.9 The current text of GC 11.1 prevents CPs from “rendering any bill” to an end-user unless such bill is accurate. For the reasons set out below, we propose the following clarificatory changes (the words underlined are those that we propose to insert, the words struck through are those that we propose to delete):

~~“The Communications~~Regulated Providers<sup>46</sup> shall not charge an End-User or render or make available any Bill to an End-User, in

<sup>43</sup> See Ofcom’s Statement of 31 July 2014, entitled ‘Review of the Metering and Billing Direction’:

<http://stakeholders.ofcom.org.uk/binaries/consultations/metering-billing-2014/statement/statement.pdf>

<sup>44</sup> EE’s response to Ofcom’s DCR consultation (p. 26, table 2):

[http://stakeholders.ofcom.org.uk/binaries/consultations/dcr\\_discussion/responses/EE.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/dcr_discussion/responses/EE.pdf)

<sup>45</sup> BT’s response to Ofcom’s DCR consultation, p. 150.

<sup>46</sup> As explained in paragraph 6.24 below, we also propose to remove the definition of ‘Communications Provider’ in GC 11.6(d) and specify at the beginning of the condition the categories of providers to which it applies (being referred to as “Regulated Providers” for the purposes of the condition).

respect of the provision of any Public Electronic Communications Services, unless every amount charged and/or stated in ~~that the~~ Bill represents and does not exceed the true extent of any such service actually provided to the End-User in question.”

6.10 We propose these changes for the following reasons:

- a) we propose to add the words “*charge an End-User or*” to make it clear that end-users should never be overcharged, even if the correct amount appears in their bill or statement;
- b) we propose to add the words “*or make available*” because end-users, especially pay-as-you-go (“**PAYG**”) customers, may be able to proactively check their bill by various methods instead of receiving it. Therefore, we think that the proposed drafting change would clarify that CPs must comply with GC 11.1 in respect of all the ways in which they may make billing and charging information available to their customers, including in relation to provision of the current balance of pre-paid accounts;
- c) both changes would make clear that GC11 is concerned to ensure that consumers are charged the correct amounts for services provided to them, the bills they receive or have made available to them accurately record those charges and that they receive the services they are charged and pay for.

6.11 As a consequential change, we propose to modify the definition of “Bill” used in this condition as follows (the words underlined are those that we propose to insert, the words struck through are those that we propose to delete):

““**Bill**” means the information issued, or made available, by a Communications Provider to an End-User of the charges levied and due for payment or the ~~information retained by a Communications provider for the purpose of recording and enabling~~ debits and credits to be applied to an End-User’s account including current balance information”.

6.12 We propose to remove the direction-making power that allows Ofcom to specify which records should be retained by CPs in order to demonstrate that they have not overcharged their customers because Ofcom has never considered it necessary to make any such direction. Therefore, it would remain up to individual CPs to determine what quality of records they should retain so as to be able to respond to potential billing disputes raised by their customers.

6.13 We also propose to remove the direction-making power that allows Ofcom to specify how long CPs must retain the necessary records for demonstrating that they have not overcharged their customers, and instead to specify a minimum retention period directly in the GC. We consider that doing so would make any future monitoring programme and enforcement action more effective as the current absence of a clear minimum requirement that would apply across industry might lead to a lack of suitable evidence being available for billing investigations. Our initial view is that a minimum period of 12 months would be a reasonable period. We note, in particular, that under the current Ofcom Metering and Billing Direction, larger CPs (i.e. those with a relevant turnover exceeding £40 million per year) must already measure the performance of their Total Metering and Billing Scheme over a rolling 12-month period.

- 6.14 As a consequential change, we propose to remove the 15-month maximum limit on record retention. Our initial view is that the 12-month minimum requirement on record retention that we are proposing would provide industry with more certainty and therefore make that maximum limit unnecessary.

### The Metering and Billing Approval Scheme

- 6.15 We have considered whether the requirement on larger providers of voice call services to obtain approval of their Total Metering and Billing Systems, which is currently set out in GC 11.3 and 11.4, is still necessary and fit-for-purpose. Our initial view is that the Metering and Billing Approval Scheme remains a useful regulatory measure to ensure that providers have the appropriate processes and controls in place to produce accurate bills for customers, and detect billing errors. This is because the number of services used and the complexity of billing can make it extremely difficult for a consumer to check that their bill is correct. Therefore, although consumers may be able to identify major errors, to a large extent many people have to take the bills they receive from CPs on trust. This is an important supplementary obligation to the requirement that all CPs must charge and bill customers correctly.
- 6.16 Currently, the mandatory requirement to obtain approval of the Total Metering and Billing Systems applies only in relation to voice call services and does not cover data services, such as broadband. The extension of the approval of a billing system to data services is done only on a voluntary basis at the moment.
- 6.17 Since we last considered the scope of application of the Metering and Billing Approval Scheme in 2013/2014<sup>47</sup>, Ofcom's complaints data shows a significant increase in the complaints related to the billing of data services.<sup>48</sup> In light of this rise in the number of complaints and the progressive growth in the take up and importance of data services, our provisional view is that the Metering and Billing Approval Scheme should no longer differentiate between voice call services and data services and should become mandatory in respect of both. We also note that this proposed extension would be in line with our proposals in relation to itemised billing and debt collection/disconnection practices, which are set out below.
- 6.18 As a consequential change, we propose to increase the current turnover threshold triggering the need for approval from £40m to £55m.<sup>49</sup> All CPs would be subject to the supplementary requirement to obtain approval for their Total Metering and Billing Systems save where their turnover falls below this threshold. We think this would continue to ensure protection for the majority of end-users without imposing a disproportionate burden on smaller providers who, like all relevant providers, are subject to the overall obligation to charge and bill customers correctly.
- 6.19 Currently, there are around thirty providers that fall within the mandatory Metering and Billing Scheme. We consider that extending the regime to data services and increasing the turnover threshold to £55m would have the effect of continuing to

<sup>47</sup> The review led to Ofcom's statement of 30 September 2014, entitled "Metering & Billing Direction": <http://stakeholders.ofcom.org.uk/binaries/consultations/metering-billing-2014/statement/statement.pdf>

<sup>48</sup> In 2012 less than 5% of billing complaints related to data services; in 2016 around 40% of billing complaints were about data services.

<sup>49</sup> From the data Ofcom receive, on average broadband services represent around a third of total fixed voice and fixed broadband revenues across all providers. The proposed change in the threshold is intended, approximately, to reflect the increase in revenues resulting from broadband services.

impose approval requirements on those providers whose subscribers account for the majority of end-users in the UK. Specifically, we would expect that:

- a) the large majority of those providers which already fall within the mandatory scheme would continue to do so. Given that the requirements for data services are the same or very similar to those for voice services and that all CPs are required to have accurate billing systems (which the more detailed requirements of the Direction reflect), our proposals should not result in significant additional costs to these providers;
- b) we estimate that one or two providers which are currently subject to the mandatory scheme might no longer be required to obtain approval of their metering and billing systems. However, they might decide to continue to have their systems approved on a voluntary basis; and
- c) *vice versa*, providers which are not currently subject to the mandatory scheme might start falling within the scheme. Those providers that do not currently apply the scheme on a voluntary basis would have to incur approximately the same costs as those associated with obtaining approval under the current scheme. We consider that these costs would not impose any disproportionate burden on regulated providers, noting that all CPs are currently required to have accurate billing systems (which the more detailed requirements of the Direction reflect) and the proposed increase of the turnover threshold would continue to exempt smaller providers from the mandatory metering and billing scheme.

6.20 To implement the proposed extension of the Metering and Billing Approval Scheme to data services and the proposed increase of the turnover threshold from £40m to £55m, we propose the following changes:

- a) set out the scope of application of the relevant provisions in the opening paragraph of the revised condition so that they would apply to any provider of publicly available telephone services “*and/or Publicly Available Internet Access Services*”, except for those providers whose “Relevant Turnover” in their most recent complete financial year is less than £55 million. For clarity, we also propose to specify that the condition applies to wholesale providers as well as retail providers;
- b) add the words “*and/or Publicly Available Internet Access Services*” in the provision corresponding to paragraph 11.4(a) and in the definition of “Relevant Turnover”;
- c) define a “Publicly Available Internet Access Service” as “*a service made available to the public that provides access to the internet*”. For clarity, this is a simplified version of the definition of “Internet Access Services” set out in Article 2(2) of Regulation (EU) 2015/2120; and
- d) amend the 2014 Direction in order to extend it to the provision of data services. The changes that we are proposing to make to this direction as set out in Section 14 of this document.

6.21 In respect of BT’s suggestion that it is not necessary for GC 11 to protect large businesses (see paragraph 6.7 above), we considered this issue when we reviewed the Metering and Billing Direction in 2013/2014 and we concluded that “*the*

*provisions on services for large businesses in the Direction should be mandatory and be the same as the requirements for other voice services*".<sup>50</sup> Our provisional view remains that services for large businesses should be subject to mandatory provisions in the Direction. The majority of CPs, the Approval Bodies and business stakeholders responding to the 2013/14 review supported retaining services for large businesses as mandatory under the Metering and Billing Direction. The business stakeholders argued that businesses needed the protection given by the Direction as they could not be sure that bills reflected usage and tariffs and they usually relied on CPs to identify errors.

- 6.22 The 2014 Direction replaced target-based provisions with process-based requirements which CPs pointed out would bring requirements in line with those used for their own internal audits and for ensuring billing accuracy, so compliance costs would be minimised. We therefore believe that maintenance of the provisions on services for large businesses should not lead to significant costs to CPs.
- 6.23 We also propose some drafting changes to simplify and clarify regulation:
- a) for clarity, we propose to specify upfront that Ofcom may from time to time issue a direction (i.e. the "Metering and Billing Direction") setting out the process, standards and other requirements that large providers must comply with to obtain approval of their metering and billing systems. As a consequential change, we would omit the definition of "Ofcom Metering and Billing Direction" (GC 11.6(e)) since it would be redundant;
  - b) currently, the last part of GC 11.4 contains the following specification: "For the avoidance of doubt, this obligation applies in respect of any Total Metering and Billing System, whether already in use or newly installed". It should now be clear to industry that any Total Metering and Billing System that is used by larger providers require approval, irrespective of when the regulated provider started (or intends to start) using it. To simplify regulation, we propose to delete this specification and clarify at the beginning of this provision that larger providers must apply to an approval body for approval of "any" Total Metering and Billing Systems they use in respect of their voice calls and data services. For clarity, we also propose to specify that the relevant application process is set out in Ofcom's Metering and Billing Direction;
  - c) we are proposing certain drafting changes to simplify GC 11.5, which specifies what CPs should do if their total metering and billing system is not approved. In particular, we are proposing to require CPs to proactively inform Ofcom of their timetable for obtaining approval or withdrawing the metering and billing scheme which has not been approved in any case, rather than only "on request". This is because we consider that the timetable for any action that CPs intend to take is an important element of the information to be provided to Ofcom. The revised paragraph corresponding to GC 11.5 would read as follows:

"Where an **Approval Body** does not grant or withdraws **Approval** from all or part of a **Regulated Provider's Total Metering and Billing System**, that **Regulated Provider** shall, as soon as is reasonably practicable, either take the action recommended by the

<sup>50</sup> Ofcom's statement of 31 July 2014 entitled 'Review of the Metering and Billing Direction. A statement on the revisions to the Direction', §§ 3.33-3.37:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0032/58838/statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0032/58838/statement.pdf)

Approval Body to obtain **Approval** or cease use of that **Total Metering and Billing System** (or that part of it), and, in either case, inform **Ofcom** of the date by which it shall do so”.

### Other proposed changes

- 6.24 As set out above, we propose to set out at the beginning of this condition the categories of providers to which each paragraph of this condition applies (being referred to as “Regulated Providers”), so that paragraphs 11.6(d) (i.e. the definition of “Communications Provider”) and paragraph 11.3 could be removed.
- 6.25 We propose to amend the definition of “Approval Body” as the British Approvals Board for Telecommunications has changed its name to TÜV SÜD BAPT.
- 6.26 In line with EE’s suggestion, we also propose to combine the current GC 11 (Metering and Billing), GC 12 (Itemised bills) and GC 13 (Non-payment of bills) into a single condition headed “Billing requirements”, so that all the main requirements concerning billing would be set out in the same place.
- 6.27 Except for the definition of “Communications Provider” and “Ofcom Metering and Billing Direction”, which we proposed to omit as they would become redundant, we propose to move all the other definitions set out in GC 11.6 into the combined “Definitions” Annex.

### Access to billing information

- 6.28 GC 12 imposes certain requirements on CPs<sup>51</sup> to ensure that users of voice call services can monitor their expenditure. Specifically:
- a) paragraph 12.1 requires CPs to provide to their subscribers, on request, itemised billing at no extra charge or for a reasonable fee;
  - b) paragraph 12.2 requires CPs to ensure that itemised bills for their subscribers who are consumers include an appropriate breakdown of the charges that apply in respect of any calls to an unbundled tariff number;
  - c) paragraph 12.3 gives Ofcom the power to direct the minimum level of itemisation;
  - d) paragraph 12.4 requires CPs to ensure that calls that are free of charge, including calls to helplines, are not identified in bills;
  - e) paragraph 12.5 makes an exemption for pre-paid services, if subscribers have alternate and free of charge means to monitor usage and expenditure;
  - f) paragraph 12.6 defines the terms “Applicable Access Charge”, “Communications Provider”, “Consumer”, “Effective Date”, “Subscriber” and “Unbundled Tariff Number”, for the purposes of this condition, linking some of these definitions to the definitions set out in GC 17.
- 6.29 In 2002, Oftel imposed the rules on itemised billing set out in GC 12 as a general condition on all providers of voice call services. In addition to this general condition

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<sup>51</sup> For the purposes of GC 12, as currently in force, ‘Communications Provider’ means any person who provides Publicly Available Telephone Services.

for consumer protection, in 2003 Oftel imposed specific universal service obligations on BT and KCOM which require them to provide to each of their subscribers a basic level of itemised billing “at no extra charge”.<sup>52</sup>

## Ofcom’s proposals

### Proposed extension to data services

- 6.30 In light of the growth in data services, the increase in complaints about billing services (noted in paragraph 6.17 above) and the increased availability and take-up of inclusive tariff packages where consumers have an allowance of calls and/or data in exchange of a fixed fee, our initial view is that we should update regulation by extending the regulatory requirements on billing transparency to cover also these services. We are therefore proposing that this condition should apply more generally to all providers of voice call and also data services, rather than binding only the providers of call services (i.e. the providers of “publicly available telephone services” or “PATs”).
- 6.31 To implement this proposal, we propose to revise the scope of application of the requirements for billing transparency so that they apply more generally to “*any provider of Publicly Available Telephone Services and/or Publicly Available Internet Access Services*”. For consistency with our proposals concerning the metering and billing scheme, we propose to adopt the same definition of “Publicly Available Internet Access Service”.
- 6.32 As a consequential change, we propose to simplify regulation by removing reference to the use of “*a Public Communications Network and/or related Publicly Available Telephone Services*” in paragraph 12.1(a) because the proposed revised condition would apply, more generally, in respect of voice call and data services. In addition, the scope of application of the revised condition would be clear from the first paragraph of the combined condition; therefore, any further specification would become redundant.

### Access to adequate billing information for free

- 6.33 Currently, GC 12 allows providers to charge a reasonable fee for providing a basic level of itemised billing. In order to update regulation in light of the proposed extension to data services, we propose to amend this condition to ensure that subscribers can request “*access to adequate billing information*” to monitor their expenditure at no extra charge (unless subscribers request a printed bill, as discussed below). Our provisional view is that the requirement to provide “*access to adequate billing information*” would allow industry to tailor billing information to the specific needs of users of voice and data services. For example, while users of voice call services might be interested in verifying how much they have been charged for each call they have made (including the time, duration and dialled number of the call), users of data services who pay for a maximum data allowance might be interested in verifying if and how they have exceeded their data allowance. This proposal appears broadly in line with BT’s suggestion that “*Ofcom should consider how the presentation of consolidated prices on adverts, bills and elsewhere will affect*”

<sup>52</sup> Condition 6 of the universal service conditions imposed on BT and Condition 5 of the universal service conditions imposed on KCOM:

[http://webarchive.nationalarchives.gov.uk/20040104233440/http://www.ofcom.org.uk/static/archive/ofel/publications/eu\\_directives/2003/uso0703.pdf](http://webarchive.nationalarchives.gov.uk/20040104233440/http://www.ofcom.org.uk/static/archive/ofel/publications/eu_directives/2003/uso0703.pdf)

*consumer expectations about itemised billing*". However, we consider that consumers who buy voice and data services from the same CP should be given the same level of transparency as those who buy these services from different CPs.

- 6.34 Our provisional view is that access to billing information remains an important element of consumers' protection and it should normally be made available for free. Where subscribers specifically request a printed bill, we provisionally propose to continue to allow their providers to charge a reasonable fee.
- 6.35 We estimate that mandating "access to adequate billing information" (on request and at no extra charge, and extending this requirement to the provision of data services (in addition to voice call services) would not impose any significant costs on industry. This is because CPs do normally already provide access to billing information on request.
- 6.36 We propose these further consequential changes:
- a) we propose to remove Ofcom's direction-making power under GC 12.3 in relation to the minimum level of itemisation, noting that we have never considered it necessary to exercise this power; and
  - b) we propose to remove the exemption relating to pre-paid services set out in paragraph 12.5. This is because we consider that our proposal to require CPs to provide, on request, "access to adequate billing information" at no extra charge would make that exemption redundant.

#### Non-itemisation of calls which are free of charge

- 6.37 Currently, the general conditions (GC 12.4) require CPs to ensure that calls which are made from a subscriber's telephone which are free of charge, including calls to helplines, are not identified in the subscriber's itemised bill. To keep pace with technological developments and ensure that consumers (especially vulnerable parties, who may or may not be the subscriber) can continue to make these communications in confidence, we propose to update regulation by extending the current requirement as follows:
- a) from calls only to calls and text messages; and
  - b) from itemised bills to any itemisation which is made available to subscribers, including records showing only consumption data.
- 6.38 We propose to implement our proposals by amending the current requirement as follows:
- ~~"The Communications Regulated Providers shall ensure that calls and Short Messages which are made from a Subscriber's telephone which are free of charge to that Subscriber, including calls and Short Messages to helplines, shall be not identified in the Subscriber's itemised bill-Bills or any other Records that Regulated Providers make available to the Subscriber"~~.
- 6.39 Our provisional view is that these proposals would not impose a disproportionate burden on industry, especially in light of the important social policy considerations underpinning this condition.

## Definitions and other proposed changes

- 6.40 As explained above, we propose to combine GCs 11, 12 and 13 as they all concern billing.
- 6.41 We propose the following changes to paragraph 12.2, which specifies that the billing information to be provided after 1 July 2015 must include any access charge for calls to unbundled tariff numbers:
- a) we propose to remove the words “on or after the Effective Date” in GC 12.2, which is defined in GC 17.33(m) as the 1st of July 2015. This is because that date has already passed and so we no longer need to refer to it. As explained in the August 2016 consultation (paragraph 7.5), we have also proposed to remove the definition of “Effective Date” in GC 17.33(m); and
  - b) as explained below, we propose to remove the definition of “Applicable Access Charge” set out in paragraph 12.6(a) and use a general definition of “Access Charge” that would apply to all the GCs. We propose certain drafting changes in the paragraph corresponding to GC 12.2 to clarify which is the relevant access charge for the purposes of that provision.
- 6.42 We propose the following changes to the definitions currently set out in paragraph 12.6:
- a) we propose to remove the definition of “Applicable Access Charge” set out in paragraph 12.6(a) and use a general definition of “Access Charge” that would apply to all the GCs;
  - b) we propose to remove the definition of “Communications Provider” set out in paragraph 12.6(b) and set out upfront, at the beginning of the revised condition, the categories of providers to which each paragraph shall apply (referring to them as “Regulated Providers”);
  - c) we propose to remove the definition of “Effective Date” set out in paragraph 12.6(d) as the changes proposed at paragraph 6.41 above would make that definition unnecessary;
  - d) in light of the proposed extension of the requirements for billing transparency to data services, we propose to remove the specific definition of “Subscriber” set out in paragraph 12.6(e), which limits the scope of GC 12 to call services only (i.e. “publicly available telephone services”) and adopt, instead, a general definition of “Subscriber” that would encompass the provision to the public of any electronic communications services (including data) and apply to all the GCs;
  - e) we propose to adopt a general definition of “Consumer” and “Unbundled Tariff Number” that would apply to all the GCs; and
  - f) we propose to move the definitions to the “Definitions” Annex.

## **Debt collection/disconnection policies**

- 6.43 GC 13 requires providers of fixed-line voice call services (“**Fixed-Line Providers**”) to comply with specific requirements prior to taking any measures for debt collection and/or disconnection due to the non-payment of a telephone bill. Specifically:

- a) paragraph 13.1 requires that where a subscriber fails to pay a bill, any measures taken by the Fixed-Line Provider to effect payment or disconnection must be proportionate and non-discriminatory, give due warning before disconnection or service interruption (other than in cases of fraud) and confine any interruption to the service as far as technically feasible;
- b) paragraph 13.2 requires Fixed-Line Providers to send details of measures they may take to effect payment or disconnection to any subscriber who may request it and publish such details on their websites; and
- c) paragraph 13.3 defines “Communications Provider” and “Subscriber” for the purposes of this condition, referring to the provision of voice call services at a fixed location.

6.44 In 2002, Oftel imposed these measures as a general condition for consumer protection on all persons who provide voice call services at a fixed location.

### **Ofcom’s proposals**

6.45 GC 13 currently requires providers of fixed-line call services to comply with specific requirements prior to taking any measures to effect payment or disconnection due to the non-payment of a telephone bill.

6.46 Since 2003, we have seen growth in the importance of mobile and data services. Currently more consumers use mobile services than landline services<sup>53</sup> and the proportion of adults using the internet has almost tripled since 2000.<sup>54</sup>

6.47 Given this significant change in the proportion of consumers using fixed, mobile and data services, we have looked at industry policies and complaints data to consider whether the requirements in relation to debt collection and disconnection practices for non-payment of bills should be extended to mobile and data services.

6.48 The four largest mobile providers (providing mobile voice and mobile internet services, usually as part of a package) publish their debt collection and disconnection policies on their websites. However, these are normally included in their terms and conditions instead of being published as a standalone document and they do not typically provide full details (e.g. the timescales of the collection process and the amount of penalty charges are not specified). Landline providers (whether providing fixed voice, fixed broadband or typically both as part of a bundle) generally provide more details.

6.49 Ofcom receives a significantly higher number of complaints about mobile providers’ debt management and disconnection policies than fixed providers. The majority of

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<sup>53</sup> For example, in 2000, 71% of households had a mobile phone and 94% a fixed line phone; in 2015, 95% had a mobile phone and 85% a fixed line. Moreover, 15% of households have only a mobile service. This information is taken from the Ofcom’s publication entitled ‘The Consumer Experience of 2015 – Technology Tracker, slides 3 and 12:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/74152/technology\\_tracker\\_h2\\_2015\\_chart\\_pack.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/74152/technology_tracker_h2_2015_chart_pack.pdf).

<sup>54</sup> In 2000, 30% of adults used the internet, rising to 86% by 2015. See figure 18 -

<http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/research1.pdf> and slide 3 of Technology Tracker, H2 2015 (July-August) ([http://stakeholders.ofcom.org.uk/binaries/research/statistics/2015oct/technology\\_tracker\\_H2\\_2015\\_chart\\_pack.pdf](http://stakeholders.ofcom.org.uk/binaries/research/statistics/2015oct/technology_tracker_H2_2015_chart_pack.pdf)).

the complaints to Ofcom about debt management relate to failure to give due warning to consumers of outstanding payments<sup>55</sup> and failure to deal fairly with cases where the bill or debt is disputed (e.g. consumers claim that their providers have not investigated the issue and/or have not suspended debt collection pending resolution of disputes). Other frequent complaint types include seeking the recovery of charges incurred after a service had been cancelled and seeking recovery from the wrong person (for example when a request for change of an account holder's details has not been actioned).

- 6.50 We note that Citizens Advice has identified consumer debt in relation to mobile phones as a concern from cases brought by consumers to its advice centres. In particular, they highlighted problems around disproportionate and inflexible debt collection processes by mobile providers, the poor handling of disputes about debt and inadequate communication with consumers. They have argued that the impact of these problems is increased as low income households are more than five times more likely not to have a fixed line phone than the highest earning households with one in three people also relying on their mobile phone as their primary means to access the internet. They recommended that we extend GC 13 to mobile phone providers and issue guidance on debt collection<sup>56</sup>.
- 6.51 In light of the above, we are now proposing to extend the scope of the current requirements on the debt collection and disconnection policies for non-payment of bills from fixed telephony providers only to all providers of fixed and mobile telephony and data services.
- 6.52 The debt management policies of the four largest mobile providers are published on their websites; these apply to all services (i.e. including voice calls, SMS and data) provided by mobile operators and provide information about how they will go about debt recovery. In addition, fixed broadband services are typically supplied as part of a bundle with fixed voice services<sup>57</sup> and the same debt management and disconnection practices apply. Therefore, our provisional view is that the proposed extension of GC 13 to mobile calls and data services should not result in significant additional costs. The aim of the proposed extension would be to allow Ofcom to address problems when mobile and internet service providers adopt debt collection or disconnection procedures that are not proportionate or transparent and to help ensure customers of these providers have adequate opportunities to contact their provider to settle or raise concerns about the debt.
- 6.53 In respect of mobile voice and data services, we believe that our proposal would principally affect mobile (pay monthly) contract services as disconnection for PAYG services would normally be as a result of a consumer choosing not to top up their account; debt recovery is clearly not an issue for services which are paid for up front.

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<sup>55</sup> For example, some consumers claim that they have changed their provider of mobile call services without receiving their final bills and they have subsequently discovered marks on their credit reports months or even years later. Other consumers claim that they have received letters from debt collection agencies out of the blue and/or without being able to obtain any explanation.

<sup>56</sup> January 2016, "Falling behind. An assessment of debt collection practices in the mobile phone market". See <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/consumer-policy-research/consumer-policy-research/falling-behind/>

<sup>57</sup> For example, Ofcom research shows that in 2015 60% of fixed line customers had broadband as part of their package. Slide 56; [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/74152/technology\\_tracker\\_h2\\_2015\\_chart\\_pac\\_k.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/74152/technology_tracker_h2_2015_chart_pac_k.pdf)

- 6.54 In order to implement the proposed extension of GC 13 to the provision of mobile call services and data services, we propose to make the following changes:
- a) we propose to revise the scope of application of the requirements for debt collection/disconnection so that they would apply more generally to “any provider of Publicly Available Telephone Services and/or Publicly Available Internet Access Services”. For consistency with our proposals concerning the metering and billing scheme, we propose to adopt the same definition of “Publicly Available Internet Access Service”;
  - b) we propose to add reference to bills for “Publicly Available Internet Access Services” in the proposed provision corresponding to GC 13.1;
  - c) we propose to omit the definition of “Communications Provider” (GC 13.3 (a)), which limits the scope of application of this condition to providers of fixed-line call services (i.e. publicly available telephone services provided at a fixed location) and set out upfront, at the beginning of the revised condition, the categories of providers to which each paragraph shall apply (referring to them as “Regulated Providers”).
- 6.55 We are not proposing any substantive change to GC 13.2, which requires regulated providers to send details of the measures they may take to effect payment or disconnection to any subscriber who may request it and publish such details on their websites.
- 6.56 As to the definitions set out in GC 13.3, we are proposing the following changes:
- a) as set out above, we propose to remove the definition of “Communications Provider” set out in paragraph 13.3(a); and
  - b) in light of the proposed extension to mobile calls and data services, we propose to remove the specific definition of “Subscriber” set out in paragraph 13.3(b), which limits the scope of GC 13 to call services only (i.e. “publicly available telephone services”) and adopt, instead, a general definition of “Subscriber” that would encompass the provision to the public of any electronic communications services (including data) and apply to all the GCs.

## Legal tests

- 6.57 We consider that the changes we are proposing to make to GCs 11, 12 and 13 meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:
- a) **objectively justifiable** as we think that:
    - i) complaints data and the growth in the take up and importance of data services justify the proposed extension of the requirements for billing accuracy, billing transparency and the fair treatment of customers in case of non-payment of bills to data services. In addition, complaints data suggests that mobile users need protection from unfair debt collection/disconnection practices;
    - ii) requiring providers to retain the necessary records to demonstrate that they have not overcharged their customers for at least 12 months (and removing the current maximum limit of 15 months) would make any future monitoring

programme and enforcement action more effective and provide industry with more certainty;

- iii) it remains important that end-users can control how much they spend on electronic communication services. Requiring providers of voice calls and data services to provide to each of their subscribers, on request and at no extra charge, “access to adequate billing information” would allow end-users to control their expenditure and provide industry with an appropriate level of flexibility;
  - iv) we no longer need the power to direct the minimum level of itemisation to be provided and we could reinsert it in future if necessary;
- b) **not unduly discriminatory** since the proposed changes to GCs 11, 12 and 13 would ensure that the same regulatory measures apply in respect of the provisions of any voice call and data services which are made available to the public;
- c) **proportionate** as our provisional view is that none of the proposed changes would introduce any disproportionate regulatory burden on industry. In this respect, we note in particular that smaller providers would continue to remain exempted from the mandatory Billing and Metering Scheme, all providers would retain some flexibility as to: the appropriate records to be retained to demonstrate that they have not overcharged end-users, the appropriate information to be provided to ensure that end-users have access to adequate billing information and fair debt collection/disconnection policies; and
- d) **transparent** as the reasons for the changes that we are proposing to make to GCs 11, 12 and 13 are explained above and the effects of the proposed changes would be clear to CPs on the face of the revised condition itself.

6.58 The proposed revised text of the condition that would combine the current GCs 11, 12 and 13 into the proposed new condition C4 can be seen at Annex 12 and a marked up version showing the changes we are proposing to make can be seen at Annex 12.

## Consultation questions

**Question 8:** *Do you agree with our proposals for updating the current conditions that relate to billing? In particular, do you agree with our proposals to extend the current protections for end-users in relation to billing so that they would apply, more generally, to fixed and mobile voice call and data services?*

**Question 9:** *Do you agree with our provisional assessment that our proposals to extend the regulatory requirements for billing to fixed and mobile voice call and data services does not impose a disproportionate burden on industry? Do you have any further information on the likely costs of these proposals?*

**Question 10:** *Are there any other modifications to the billing conditions that you consider would be appropriate?*

## Section 7

# Complaints handling and access to ADR

- 7.1 We need to ensure that when customers feel the need to complain, they can contact their CP easily and also be confident that their CP will treat them fairly and try to resolve their complaint in an effective and timely manner. This comes from our duty under the Act to “*secure so far as [we] consider appropriate*” that procedures for the handling and resolution of complaints are easy to use, transparent and effective and that domestic and small business customers can access these procedures free of charge.<sup>58</sup>
- 7.2 In order to ensure complaints are properly addressed, there are currently rules in place in the GCs requiring CPs to have complaints handling procedures that comply with prescribed minimum standards, and to be members of an independent Alternative Dispute Resolution (“**ADR**”) scheme to which unresolved complaints can be referred.
- 7.3 Our experience of monitoring and enforcing these rules in the last few years, together with research we and others have conducted<sup>59</sup>, has revealed two main concerns:
- a) deficiencies in the scope and clarity of the current rules; and
  - b) very low awareness amongst customers of their CP’s complaints handling procedures and their rights when complaining, in particular when they can take their complaint to ADR.
- 7.4 As explained in more in detail in this section, effective complaints handling procedure are a very important part of the service customers should receive from their CP. We consider the concerns revealed by our experience of monitoring and enforcing these rules, need to be addressed if customers are to be confident that their CP will treat them fairly and try to resolve their complaint in an effective and timely manner.
- 7.5 We are therefore proposing to strengthen the current rules by increasing the minimum standards CPs’ complaints handling procedures must comply with, ultimately to ensure that complaints are resolved effectively and in a timely manner by CPs. In particular, we propose to:
- a) ensure that CPs’ complaints handling procedures are accessible to all consumers, including consumers with disabilities and vulnerable consumers, via both online and telephone means;
  - b) improve the transparency of the procedures for handling, and closing, complaints for customers by requiring CPs to provide certain information to the customer at particular points in the complaints procedure;
  - c) prevent CPs from unilaterally deciding to close complaints without informing the customer; and

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<sup>58</sup> See section 52 of the Act.

<sup>59</sup> See Annex 10.

- d) improve both levels of compliance by CPs and effective enforcement by Ofcom in the event of non-compliance, by requiring CPs to:
  - i) self-monitor compliance (and take steps to address instances of non-compliance);
  - ii) retain more comprehensive records of complaints and store these for at least twelve months instead of the current six months.

- 7.6 We recognise that sometimes a complaint cannot be resolved to the satisfaction of the customer by CPs and, where this is the case, we continue to believe that independent ADR schemes play an important consumer protection role. Accordingly, we are proposing to retain the requirement for CPs to be members of an ADR scheme and to comply with its decisions.
- 7.7 We are also proposing to remove what we consider to be unnecessary obstacles currently preventing unresolved complaints from being referred to ADR, specifically by removing the requirement for the customer to request a deadlock letter, and replacing it with an obligation on the CP to issue an ADR letter whenever a complaint reaches deadlock.
- 7.8 Complaints should ordinarily be resolved within eight weeks<sup>60</sup> after which they can be referred to ADR if they remain unresolved. Some stakeholders have suggested this eight-week period should be shortened. However, for the reasons set out further below, we are not proposing to reduce this eight-week period. In summary, complaints should only go to ADR where they cannot be resolved to the customer's satisfaction. We consider that by improving the procedures according to which CPs handle complaints, we should observe complaints being resolved in a timelier manner without also having to reduce the maximum period of time within which those procedures should be carried out. And, as mentioned above, where complaints reach deadlock, we are proposing to remove what we consider to be unnecessary obstacles currently preventing unresolved complaints from being referred to ADR, specifically by removing the requirement for the customer to request a deadlock letter, and replacing it with an obligation on the CP to issue an ADR letter whenever a complaint reaches deadlock. We consider that, taken together, these proposals would deliver speedier resolution of complaints.

## Structure of the section

- 7.9 This section is structured as follows:
- a) we provide a brief explanation of the current rules requiring CPs to have complaints handling procedures that comply with prescribed minimum standards, and to be members of an independent ADR scheme to which unresolved complaints can be referred;
  - b) we set out the principal challenges to ensuring that complaints are resolved effectively and in a timely manner by CPs, or if not, are promptly referred to ADR, based on our experience of monitoring and enforcing the rules and research. In addition, we set out why we consider these challenges exist;

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<sup>60</sup> Or sooner in the event of deadlock.

- c) we set out our proposals to introduce a new GC and Code of Practice that would strengthen the minimum standard requirements with which CPs' complaints handling procedures would need to comply, and would continue to require CPs to be members of an independent ADR scheme to which unresolved complaints can be referred;
- d) we summarise the key changes arising out of our proposals where what is expected of CPs would be different from what they are currently required to do to comply with the current Ofcom approved code of practice for complaints handling;
- e) we set out how we propose to work with CPs to take our proposals forward, including our provisional view on how our proposals would be implemented; and
- f) finally, we set out why we consider our proposals meet the test for setting or modifying conditions set out in section 47(2) of the Act.

7.10 In addition, at Annex 10:

- a) we set out our experience of monitoring and enforcing these rules, both formally and informally;
- b) we provide a brief summary of stakeholder comments on the current rules; and
- c) we summarise research we have conducted in light of stakeholders' comments, as well as research conducted by certain stakeholders themselves.

## The rules on complaints handling and access to ADR

### The rules

- 7.11 The rules on complaints handling and access to ADR are contained in GCs 14.4 and 14.5, and in a code of practice (the "**Current Ofcom Code**") annexed to GC 14.<sup>61</sup> These rules require CPs to have procedures for handling complaints that conform to the Current Ofcom Code and to be a member of a recognised ADR scheme. They apply to CPs who provide public electronic communications services to domestic and small business customers where these customers make a complaint to the CP about those services.
- 7.12 The Current Ofcom Code sets out the minimum standards with which CPs' complaints handling procedures must comply. These minimum standards are designed to ensure CPs have complaints handling procedures that are transparent<sup>62</sup>, accessible<sup>63</sup>, effective<sup>64</sup>, facilitate appropriate access to ADR<sup>65</sup>, and ensure that CPs retain appropriate records of contact with complainants.<sup>66</sup>
- 7.13 In order to secure effective protection for customers, the scope of application of the Current Ofcom Code to complaints that must be handled by CPs according to the

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<sup>61</sup> See Annex 4 to GC14.

<sup>62</sup> See paragraph 1 of the Current Ofcom Code.

<sup>63</sup> See paragraph 2 of the Current Ofcom Code.

<sup>64</sup> See paragraph 3 of the Current Ofcom Code.

<sup>65</sup> See paragraph 4 of the Current Ofcom Code.

<sup>66</sup> See paragraph 5 of the Current Ofcom Code.

rules, is intentionally broad and includes, for example, complaints about the complaints-handling procedure itself.<sup>67</sup>

### When and why the rules were introduced

- 7.14 The rules were published in 2010 with Ofcom’s statement entitled “*A Review of Consumer Complaints Procedures*” (the “**2010 Statement**”)<sup>68</sup>, and came fully into force on 22 July 2011.
- 7.15 The rules were introduced to address Ofcom’s concerns with the then current industry standards on complaints handling. These concerns fell into two main categories:
- a) a significant number of complainants experiencing considerable and avoidable detriment from trying to make and pursue their complaint with their CP;
  - b) low awareness of ADR undermining the effectiveness of ADR as a remedy of last-resort for customers<sup>69</sup>.

### Experience of monitoring and enforcing the current rules

- 7.16 In Annex 10 we set out the main findings derived from our experience of monitoring and enforcing the current rules on complaints handling and access to ADR, as well as research carried out by us and stakeholders. We have taken account of this information in arriving at our proposals.
- 7.17 In summary, we opened a monitoring and enforcement programme to assess whether providers were complying with GC 14.4 in February 2013<sup>70</sup>. Under this programme we have to date opened investigations into Hutchison 3G Limited (trading as Three), EE Limited (trading as EE, Orange and T-Mobile) and Vodafone. This resulted in penalties being imposed against all three CPs of £250,000, £1 million, and £925,000, respectively.
- 7.18 As a result of our concerns around the level of compliance industry-wide with the current rules on complaints handling, we carried out a review of a sample of complaint cases that had gone to ADR (“**ADR Study**”),<sup>71</sup> which highlighted low levels of compliance. We commenced an informal compliance programme with those CPs which, in our view, had been identified as warranting further engagement in order to drive significant improvements in performance.
- 7.19 We consider research carried out by stakeholders demonstrates the importance of effective complaints handling to consumers. Research published by Consumer Panel (“**CCP**”) in October 2013,<sup>72</sup> highlighted that older people, and people with a disability, seemed to be at a particular disadvantage in their dealings with CPs with negative experiences when contacting their provider to make a complaint and getting their complaint resolved. It also showed that some CPs seem to be poor at telling

<sup>67</sup> The scope of the Current Ofcom Code is not limited to complaints relating to contractual conditions or to the performance of the contract that the customer has with its CP.

<sup>68</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0028/58690/statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0028/58690/statement.pdf)

<sup>69</sup> See paragraph 2.10.

<sup>70</sup> [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw\\_01101](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01101)

<sup>71</sup> We commissioned Mott MacDonald (“**MM**”) to carry out the review.

<sup>72</sup> <http://www.communicationsconsumerpanel.org.uk/downloads/going-round-in-circles.pdf>

customers about ADR. A research report *Understanding Consumer Experiences of Complaint Handling* published by Citizens Advice in June 2016<sup>73</sup> noted that telecoms was the most complained about sector and highlighted key problems (common across all sectors<sup>74</sup>), including:

- a) The journey for a complainant was often problematic – including for instance difficulties with registering a complaint and navigating complaints procedures, and being passed around an organisation; and
- b) There were difficulties with seeking redress through ADR services – including a lack of awareness of ADR for complaints and a belief that using ADR will not make a difference to the outcome of their complaint.

## Provisional view

7.20 Our experience of monitoring and enforcing the current rules on complaints handling and access to ADR, as well as research carried out by us and stakeholders, has led us to identify the following principal challenges to ensuring complaints are resolved effectively and in a timely manner by CPs, or if not, are promptly referred to ADR:

- a) inconsistent level of recognition amongst CPs of when a complaint is made as well as logging when the complaint was first received;
- b) following on from the above, there is no requirement on CPs to acknowledge when a complaint has started, often resulting in there being no clear start date for complaints;
- c) there is a lack of clarity in terms of whether complaints which are resolved at first contact should be considered a complaint and therefore whether they should be logged at all as a complaint;
- d) there is a lack of clarity as to who should have the competence to determine whether a complaint is in or out of the scope of the relevant CP's ADR scheme;
- e) ensuring CPs send ADR letters, either where the complaint reaches deadlock or remains unresolved eight weeks after it was first received. Based on our experience to date, this has proven to be a major concern. Failing to receive these notifications means not only that customers' complaints are not being dealt with, but also that CPs would not be complying with important regulatory obligations designed to ensure customers have appropriate access to ADR;
- f) there is a lack of a formalised process for resolving and closing complaints. This includes the absence of any requirement for CPs to keep evidence of consent that the customer is happy that a complaint can be closed. In addition, the rules do not give any indication of the appropriate steps CPs should take when they are unable to contact complainants, which has led in a number of instances where we would consider there to be inadequate efforts to contact customers before closing complaints;

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<sup>73</sup> [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling\\_DJS%20report%20final\\_June2016%20\(2\)%20\(1\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20(2)%20(1).pdf)

<sup>74</sup> Such as energy, financial services as well as telecoms.

g) concerns with records management and the minimum period of time for which the records should be stored. The quality of records retained has been variable across the industry, which has impacted on the effectiveness of our enforcement programme as it hinders our ability to establish whether there have been breaches of the rules. Moreover, complaints can take several months to be resolved, especially if the complaint is then referred to ADR (which consumers can do anytime within 12 months of receiving the written notification from their CP). However, CPs are only required to retain records for a minimum of six months, which has again meant in a number of instances that the scope of our investigation is determined not by the period over which the alleged breach may have occurred, but by how long records have been retained by the CP under investigation.

7.21 Again on the basis of our experience of monitoring and enforcing the current rules, as well as research, we consider these challenges have arisen on account of deficiencies in the scope and clarity of the rules. We have also found that the impact of the deficiencies in the scope and clarity of the rules has been compounded by consistently low awareness on the part of customers with regard to CPs complaints handling procedures, including their rights under the Current Ofcom Code. As a result, our provisional view is that GCs 14.4 and 14.5 and the Current Ofcom Code are not currently securing sufficiently effective protection for domestic and small business customer of CPs.

## Ofcom's proposals

7.22 We are proposing to put in place a new GC for complaints handling and access to ADR ("**Proposed Condition**"), together with a new Code of Practice ("**Proposed Ofcom Code**").

7.23 Our proposals are designed to address the challenges identified by our experience of enforcing the rules, and to take on board the lessons learned from the ADR Study<sup>75</sup> and other research, in the most proportionate way. These challenges and lessons have, as summarised above, revealed two main concerns:

- a) deficiencies in the scope and clarity of the rules; and
- b) very low awareness amongst customers of their CP's complaints handling procedures and their rights when complaining, in particular when they can go to ADR.

7.24 We continue to consider that the procedural rules with which CPs must comply when handling complaints should impose minimum standards – in this respect, we consider CPs should continue to have the opportunity to use their complaints handling procedures as a competitive differentiator. However, in order to address the two main concerns, we consider it is necessary to strengthen the current minimum standards.

7.25 Our proposals would have the following effect:

- a) extending the types of complaint that CPs would be required to handle in accordance with the procedures set out in the Ofcom Proposed Code;

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<sup>75</sup> See Annex 10 for more information on the ADR Study.

- b) improving the transparency and accessibility of CPs' complaints handling procedures;
- c) improving the effective and timely resolution of complaints by CPs;
- d) facilitating prompt access to ADR when the complaint cannot be resolved;
- e) strengthening record-keeping requirements;
- f) introducing specific obligations to train staff;
- g) ensuring CPs monitor their compliance with the obligations introduced by the Proposed Condition and the Proposed Ofcom Code;
- h) ensuring CPs continue to be members of an independent ADR scheme.

7.26 In our view, our proposals should better enable us to secure that CPs' complaints procedures are transparent, accessible, effective and promote access to ADR, consistent both with the original policy aims as set out in the 2010 Statement<sup>76</sup> and with how we carry out our duties under section 52 of the Act.

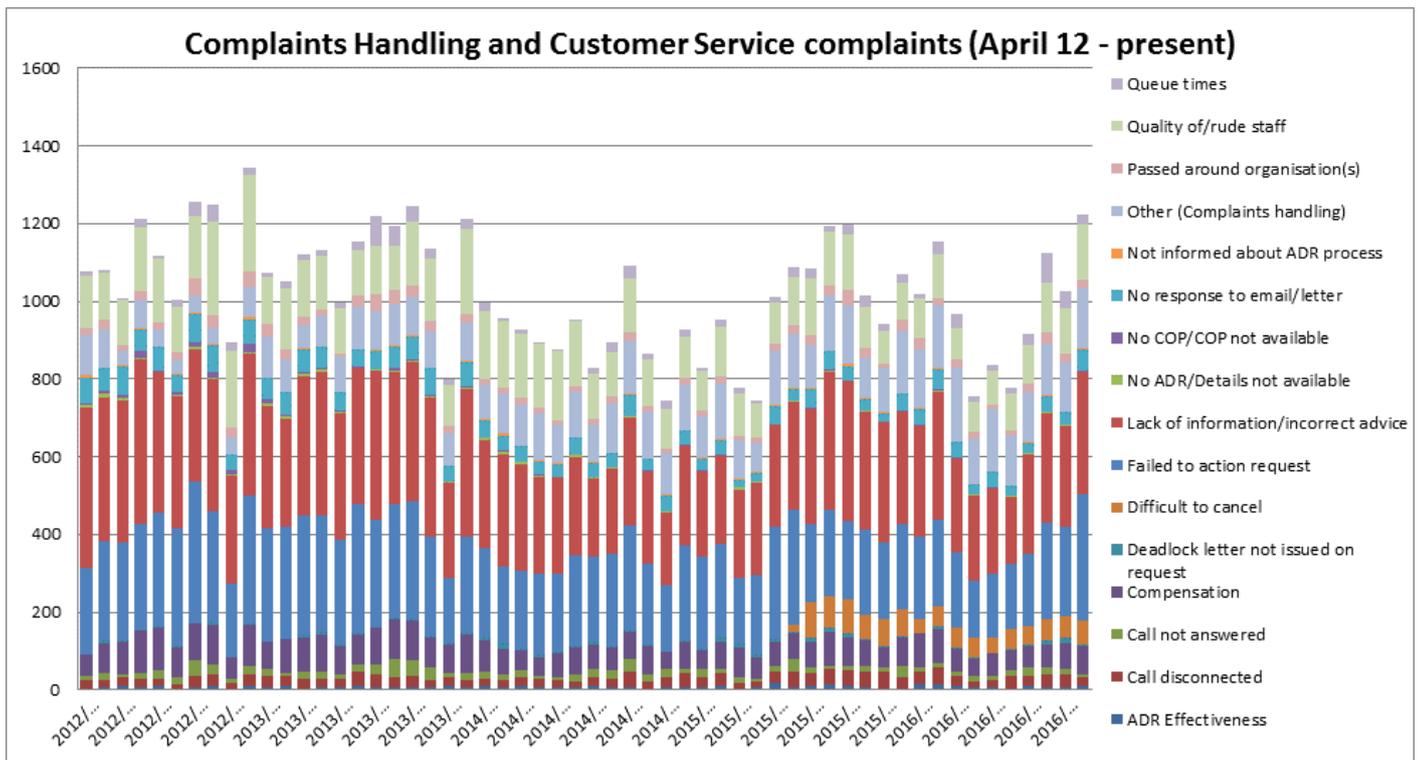
### **Scope of the Proposed Ofcom Code**

- 7.27 We consider that the Proposed Condition, together with the Proposed Ofcom Code, should continue to apply to those CPs who provide public electronic communications services to domestic and small business customers. In the Proposed Condition and the Proposed Ofcom Code, we refer to any such CP as a "Regulated Provider" and domestic and small business customers as "Relevant Customers".<sup>77</sup>
- 7.28 Consistent with the scope of the Current Ofcom Code, in our view it remains necessary for securing effective protection for customers that the Proposed Ofcom Code should not be limited to complaints relating to contractual conditions or to the performance of the contract that the customer has with its CP.
- 7.29 However, we note that complaints about general customer service, distinct from the customer service experience during the complaint-handling process, are not covered by the Current Ofcom Code.
- 7.30 Levels of customer service, irrespective of the reason for which the customer has contacted (or been contacted by) the CP, can, in themselves, be the cause for complaints. Our research shows that complaints to Ofcom's consumer contact team about customer service remain high in absolute terms and also as a percentage of overall complaints. Specifically, as the chart below shows, complaints to Ofcom's consumer contact team about complaints handling and customer services have remained consistently high, ranging between 800 to 1,200 over recent years.

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<sup>76</sup> See paragraph 4.15 of the 2010 Statement:  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0028/58690/statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0028/58690/statement.pdf)

<sup>77</sup> Paragraphs C5.1 and C5.2 of the Proposed Condition.



7.31 Consumer Communications Panel’s research<sup>78</sup> has highlighted negative customer journeys experienced by customers when contacting their CP. The Which? annual mobile satisfaction survey<sup>79</sup> showed that mobile network operators are performing poorly in the area of customer service. In addition, we note that other regulators have imposed varying means of requiring operators to meet general customer service standards.<sup>80</sup>

7.32 We are proposing to extend the scope of complaints that CPs should handle according to the procedures set out in the Proposed Ofcom Code, to include complaints about general customer service. To effect this, we propose to amend the definition of “Complaint” used in the current condition so that it would also include “an expression of dissatisfaction made by a Relevant Customer to a Regulated Provider related to...the level of customer service experienced by the Relevant Customer”.

7.33 In its response to our DCR Consultation, Three commented that, in practice, the result of the “*broad and all-encompassing*” definition of complaint “*can often mean negative outcomes, resulting either from the unnecessary escalation of their complaint, or the diversion of operator resources from outcomes to outputs which are simply not in the interests of consumers*”.<sup>81</sup> We consider it is not the definition of complaint but the manner in which the customer is treated by the CP that determines a positive or negative outcome. Our proposed change to the definition of complaint ensures that both customers and CPs understand that customer service is important. Should the level of service experienced be so poor as to drive the customer to

<sup>78</sup> Going Round in Circles.

<sup>79</sup> <http://press.which.co.uk/whichpressreleases/vodafone-and-ee-still-failing-for-customer-satisfaction/>

<sup>80</sup> For example, Ofgem, ORR, Ofwat, FCA and the CAA.

<sup>81</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/40558/three.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/40558/three.pdf)

complain, then the customer (and the CP) should understand that the complaint will be taken seriously and, more specifically, it will be handled in accordance with the Proposed Ofcom Code.

## Improving transparency

### Customer Complaints Code

- 7.34 Under the Current Ofcom Code, CPs are required to have complaints handling procedures that are transparent. CPs must have a written code for handling complaints (“**Customer Complaints Code**”) that complies with certain criteria set out in the Current Ofcom Code<sup>82</sup>. These criteria seek to secure minimum standards of transparency.
- 7.35 We propose to maintain the requirement for CPs to have a Customer Complaints Code and that it should comply with certain criteria securing minimum standards of transparency.<sup>83</sup>
- 7.36 We propose to maintain the same criteria set out in the Current Ofcom Code but with clarifications to make them easier to understand. These are contained in Section 2 of the Proposed Ofcom Code, at paragraphs 16 and 17.

### Providing information about process and timelines

- 7.37 We propose to require CPs to proactively provide relevant information to the customer, instead of it being the responsibility of the customer to look for that information, as is currently the case.
- 7.38 We propose to require this:
- a) first, after the CP has received the complaint (paragraph 6 of the Proposed Ofcom Code);
  - b) secondly, when the CP tells the customer of the outcome of having investigated the complaint, we propose that the CP should also provide the following additional information (paragraphs 8 to 10 of the Proposed Ofcom Code), including where requested, in writing:
    - i) that unless the customer says otherwise, the CP may conclude that the complaint has been resolved;
    - ii) the latest date by when the customer must come back to the CP if they are not satisfied;
    - iii) where the customer can find a copy of the CP’s Customer Complaints Code on their website.
  - c) thirdly, we propose to extend the obligation to provide certain information on ADR in every paper bill, to all bill formats except where the bill is provided by text.<sup>84</sup> We propose to require CPs to provide the same information but with clarifications to

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<sup>82</sup> See paragraph 1.

<sup>83</sup> Paragraphs C5.2(b) of the Proposed Condition.

<sup>84</sup> Paragraph C5.3(d) of the Proposed Condition.

make it easier to understand. In addition, we propose that CPs also include a reference to their Customer Complaints Code and, where possible, provide its web address. These proposed changes are set out in the Proposed Condition and at paragraph 26 of the Proposed Ofcom Code.

### Ofcom's reasoning

- 7.39 We continue to consider that there should be minimum standards of transparency around how CPs receive and handle complaints. The requirement for CPs to have a Customer Complaints Code, and that it should comply with certain criteria securing minimum standards of information and transparency, has played a key role in ensuring those standards are secured. Moreover, we consider that the information required to be included in the Customer Complaints Code remains the minimum necessary to ensure customers can be sufficiently informed about the complaints handling process.
- 7.40 Regarding our proposals to require CPs to proactively provide relevant information to the customer:
- a) We continue to observe very low awareness amongst customers of the formal complaints handling process, including the obligations it imposes on CPs and the rights it affords to customers;
  - b) Ofcom's monitoring and enforcement programme as well as the ADR Study<sup>85</sup> have revealed instances of:
    - i) CPs giving the customer the impression that the proposed solution is the final offer and that the customer should accept it;
    - ii) CPs prematurely closing complaints, irrespective of the outcome, because customers did not indicate that they consider the complaint remained unresolved without informing the customer of the period of time within which to come back to the CP;
    - iii) CPs circumventing the application of the obligations in the Current Ofcom Code designed to facilitate access for the customer to ADR, which was made possible on account of deficiencies in the drafting of the obligations together with low awareness on the part of customers of their rights under the Current Ofcom Code.
- 7.41 We consider that handling complaints effectively includes managing customers' expectations and that this would be better achieved if customers understand what the process is and the timeline according to which CPs aim to conduct their complaints-handling process. In this respect, our provisional assessment leads us to consider that CPs should take on more responsibility for ensuring that customers are aware of the process and timelines – and this should include telling the customer that if they remain unhappy, they should let the CP know.
- 7.42 We recognise that requiring CPs to provide the customer with the actual date by when they should come back if they are unhappy would require CPs to be able to track the timeline of each complaint. However, we consider that this is something CPs should already be doing in order to comply with the obligation in the Current

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<sup>85</sup> See Annex 10 for information about the ADR Study.

Ofcom Code to send a letter to the customer informing them of their right to take the complaint to ADR if, “eight weeks after the Complaint is first brought to the attention of the CP”, the complaint remains unresolved<sup>86</sup>. In this context, our proposal reinforces the need to track the timeline of each complaint and, in so doing, also addresses one of the principal challenges revealed by our monitoring and enforcement programme which is ensuring CPs send written notifications when they should be sent. We remain of the view that written notifications should be sent promptly where the complaint is unresolved, either once they reach deadlock or after eight weeks<sup>87</sup>. And being able to track the timeline of the complaint should address the risk of failing to comply with this very important consumer protection rule.

- 7.43 Regarding our proposal that certain information on ADR should now be included in all bill formats (except where the bill is provided by text), this is designed to ensure that the original policy aim of increasing awareness of, and facilitating access to, ADR amongst customers continues to be met. We recognise this will necessitate changes to bill templates but we consider the likely generic nature of the additional information should mean implementation costs would be limited to the necessary one-off changes.

## **Improving accessibility**

### Customers with disabilities and those who are vulnerable

- 7.44 Under the Current Ofcom Code, CPs’ complaints handling procedures “must be sufficiently accessible to enable consumers with disabilities to lodge and progress a Complaint”<sup>88</sup>. We propose to extend this obligation to include vulnerable customers, which we propose to describe as “Relevant Customers [Domestic and Small Business Customers] who may be vulnerable due to circumstances, including but not limited to, age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement or divorce”.<sup>89</sup>

### Increasing minimum means by which a complaint can be made

- 7.45 Under the Current Ofcom Code, CPs must accept at least two of three prescribed means of making a complaint. The three means are: (i) a ‘free to call’ number or a number charged at the equivalent of a geographic call rate; (ii) a UK postal address; or (iii) an email address or internet web page form.
- 7.46 We are proposing that CPs should accept at least all three of these means of making a complaint.<sup>90</sup>
- 7.47 We are also proposing that CPs should continue to ensure that the means by which a CP accepts complaints should not unduly deter customers from making a complaint, as well as ensuring that these means are well publicised and readily available.<sup>91</sup>

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<sup>86</sup> Paragraph 4(d) of the Current Ofcom Code.

<sup>87</sup> Unless deadlock has already occurred.

<sup>88</sup> Paragraph 2(b) of the Current Ofcom Code.

<sup>89</sup> Paragraph 2 of the Proposed Ofcom Code. This is consistent with description we use in the new condition C6 to describe consumers who may be vulnerable.

<sup>90</sup> Paragraph 4 of the Proposed Ofcom Code.

<sup>91</sup> Paragraph 5 of the Proposed Ofcom Code.

## Customer Complaints Code

- 7.48 Under the Current Ofcom Code, CPs must comply with certain obligations to ensure their Customer Complaints Code “is well publicised and readily available”<sup>92</sup>. We propose that CPs should continue to comply with these obligations. These obligations are set out in paragraph 18.a. to c. of the Proposed Ofcom Code.
- 7.49 In addition, we propose to extend the current obligation to provide a hard copy on request free of charge, to include an obligation for CPs to ensure that their complaints handling code is “made available on request, free of charge and in a format reasonably acceptable to any Relevant Customer who is blind or whose vision is impaired. An acceptable format would, for these purposes, consist of print large enough for those Relevant Customers to read, Braille or electronic format appropriate to the reasonable needs of the Relevant Customer”.<sup>93</sup>

## Ofcom’s reasoning

- 7.50 As set out in the 2010 Statement<sup>94</sup>, we continue to consider that customers should be able to find out about how to make a complaint and how that complaint will be handled, as well as ensuring that CPs are not establishing barriers to deter those customers who wish to complain. We consider paragraph 5 of the Ofcom Proposed Code does not require CPs to take steps additional to those which they should already have taken in order to comply with the Current Ofcom Code. Importantly, though, paragraph 5 does serve a necessary complementary role alongside our other proposals to improve accessibility, so as to ensure that the original aims continue to be achieved.
- 7.51 Regarding our proposal to ensure CPs’ complaints handling procedures are also sufficiently accessible to enable customers who are vulnerable to lodge and progress a complaint, this proposal is consistent with our commitments in the DCR Statement to provide more support to consumers in vulnerable circumstances<sup>95</sup> and with our proposal to have polices to identify and consider the needs of such consumers.<sup>96</sup> We consider it is preferable to include our proposal in the Proposed Code itself since our intention would be that customers should be able to find the information they need about how their complaints will be handled, in one place.
- 7.52 We recognise that there may be some increased burden on CPs in meeting this requirement. However, we consider it should be limited by the fact that CPs should already have procedures and processes in place to ensure they adequately identify and consider the needs of end-users with disabilities. We would expect CPs should be able to adapt or use these procedures and process as an appropriate model to formulate equivalent policies and practices to the meet the needs of vulnerable consumers.
- 7.53 Regarding our proposal to increase the minimum means by which a complaint can be made:

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<sup>92</sup> Paragraph 2(a) of the Current Ofcom Code.

<sup>93</sup> Paragraph 18(d) of the Proposed Ofcom Code.

<sup>94</sup> See paragraph 4.72.

<sup>95</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0016/50416/dcr-statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0016/50416/dcr-statement.pdf) at paragraphs 7.2, 7.11 and 7.47 to 7.51.

<sup>96</sup> See Section 9.

- a) We consider that procedures that seek to provide timely and effective resolution of complaints should include acceptance of complaints via means that facilitate this process, and also take into account up-to-date means of communication. In this respect, we note that while telephone dominates as a preferred method of contact with CPs at the complaint stage, when it comes to ADR, for example, the majority of cases are made by email or web page form;<sup>97</sup>
- b) We consider CPs should continue to allow customers to contact them by letter as some consumers, in particular elderly consumers, may not have online access or may have difficulties using other means of contacting CPs. We consider it relevant in the circumstances to have regard to the needs of the elderly,<sup>98</sup> as a result of which we propose that CPs should continue to enable customers to lodge their complaints via letter;
- c) We consider the most proportionate way to improve accessibility in this respect is to increase the minimum number of means of contact but in respect of online access to retain the option for CPs to choose between enabling access via email or web page form, recognising that some CPs currently offer one online option but not both;
- d) Insofar as some CPs may be required to provide either an email or web page form where they were not doing so previously, we note that in any event CPs who provide information society services have an existing statutory obligation under the E-Commerce Regulations<sup>99</sup> to have an email address which their customers can use to contact and communicate with them directly and effectively. Consequently, we consider compliance should be more an exercise of adapting the existing online presence to accept complaints (as well as general enquires), as opposed to creating an online presence in the first place.

7.54 Regarding our proposal to extend the current obligation to provide a hard copy of the CP's Customer Complaints Code on request free of charge, to include the provision of a copy in a format reasonably acceptable to any customer who is blind or whose vision is impaired, we consider this is a necessary and appropriate complement to the existing obligation on CPs to enable customers with disabilities to make and progress a complaint (which we are proposing to retain).

### **Improving effective and timely resolution of complaints**

7.55 Under the Current Ofcom Code, CPs are under an obligation to “ensure the fair and timely resolution of Complaints”<sup>100</sup>. We are proposing to clarify this obligation as well as set out certain procedures with which CPs must comply in order to improve effective and timely resolution of complaints. Specifically, we propose that CPs would be required to try to resolve a complaint to the customer's satisfaction until it has been either resolved or closed. At the same time, we propose that CPs should only be able to regard a complaint as resolved or closed where it meets the circumstances set out in the Ofcom Proposed Code:

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<sup>97</sup> For instance, of initial contacts made to Ombudsman Services during April to December 2015, 52% of these were by email: [https://www.ombudsman-services.org/downloads/AR2015\\_Comms\\_FINAL.pdf](https://www.ombudsman-services.org/downloads/AR2015_Comms_FINAL.pdf)

<sup>98</sup> See section 3(4)(i) of the Act.

<sup>99</sup> The Electronic Commerce (EC Directive) Regulations 2002, Regulation 6(1)(c).

<sup>100</sup> Paragraph 3(a).

“Closing Complaints

14. The **Regulated Provider** must not close a **Complaint** unless:
- a. the **Complaint** has been resolved in accordance with the circumstances set out in paragraph 15 below;
  - b. an **ADR Letter** has been issued to the **Complainant** in accordance with paragraphs 11 or 12 above; or
  - c. it is reasonable for the **Regulated Provider** to consider the **Complaint** to be frivolous or vexatious.
15. A **Complaint** has been resolved where:
- a. the **Complainant** has expressly agreed that the **Complaint** has been resolved to the **Complainant’s** satisfaction;
  - b. it is reasonable for the **Regulated Provider** to conclude that the **Complaint** has been resolved to the **Complainant’s** satisfaction because:
    - i. the **Regulated Provider** has informed the **Complainant** of the outcome of its investigation (see paragraph 8) and complied with its obligations under paragraph 9; and
    - ii. the **Complainant** has not come back to them by the **Relevant Date** to say that they consider the **Complaint** remains unresolved (see paragraph 9.a.).”

Ofcom’s reasoning

- 7.56 In the 2010 Statement,<sup>101</sup> we said that we imposed a very high-level obligation on CPs to ensure the fair and timely resolution of complaints rather than taking a more prescriptive approach, “*so that CPs have significant freedom in meeting their customers’ expectations*”, noting that we would take appropriate enforcement action in instances where consumers are not being treated fairly.
- 7.57 Our proposal to clarify the obligation on CPs to ensure the fair and timely resolution of complaints is designed to ensure that this obligation achieves the original aim for which it was introduced, as set out above.
- 7.58 However, as mentioned above, our monitoring and enforcement programme as well as the ADR Study have revealed instances of CPs prematurely closing complaints. In order, therefore, to achieve the aim of fair and timely resolution of complaints, and taking into account the challenges revealed by our monitoring and enforcement programme, we now consider it necessary to set out what certain procedures should entail.

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<sup>101</sup> Paragraphs 4.82 and 4.83.

- 7.59 The Current Ofcom Code does not prevent CPs from closing complaints and nor does it set out a process that must be followed if CPs wish to close a complaint. Our proposed obligation on CPs to “promptly take, and continue to promptly take, active steps to resolve the Complaint to the Complainant’s satisfaction until the Complaint has been resolved or closed” operates together with our proposal:
- a) to set out the circumstances in which a CP may close a complaint, which are set out in paragraph 14 of the Proposed Ofcom Code;
  - b) to set out when a complaint has been resolved, which is set out in paragraph 15 of the Proposed Ofcom Code.
- 7.60 In the first instance, we consider these proposals merely serve to formalise the current informal process whereby:
- a) if a complaint has been resolved to the customer’s satisfaction then the CP should be able to close it;
  - b) if a complaint has been referred to ADR then again, the CP should be able to close it since in this instance the role of the CP moves from seeking to resolve the complaint to complying with the eventual decision of the ADR Scheme.
- 7.61 Secondly, by formalising the process for resolving and closing complaints, we consider there would be less scope for complaints to be closed prematurely which has been an area of concern arising from our experience of enforcing and monitoring the current rules. We recognise that CPs may be required to keep some complaints open for longer than they would have done absent our proposals – principally from customers who are then uncontactable and do not respond to the CP’s communications. However, we consider these customers should constitute a very small minority of those customers who complain since in our view it would appear reasonable to assume it would be in the interests of those customers who are genuinely seeking resolution of their complaint to remain readily contactable by the CP to whom they have complained.

### **Facilitating prompt access to ADR where the complaint cannot be resolved**

- 7.62 As mentioned above, the main aim sought to be achieved by the Proposed Condition and the Proposed Ofcom Code is to improve the effective resolution of complaints, in a timely manner, by the CPs themselves. However, we recognise this may not always be possible, in which case ADR performs an important and necessary role in resolving the complaint.
- 7.63 Under the Current Ofcom Code, a customer can take their complaint to ADR if it remains unresolved eight weeks after the complaint was first made – CPs are currently required to ensure prompt written notification where this situation arises<sup>102</sup>. In addition, if at any time the complaint reaches deadlock prior to that point, the customer can request what is called a Deadlock Letter in which the CP agrees to earlier referral to ADR<sup>103</sup>.
- 7.64 Both the obligation to inform the customer of the right to go to ADR after eight weeks and the obligation to do so at any time in the event of deadlock are each subject to

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<sup>102</sup> Paragraph 4(d).

<sup>103</sup> Paragraph 4(c).

three prescribed exceptions – these are set out further below at paragraphs 7.74 and 7.75.

7.65 We are proposing:

- a) to retain both the obligation to inform the customer of the right to go to ADR after eight weeks and the obligation to do so at any time in the event of deadlock;
- b) to change when the obligation arises to inform the customer of the right to go to ADR at any time in the event of deadlock – this proposed change will be in the Proposed Ofcom Code itself, as opposed to in a defined term;
- c) to remove all the three prescribed exceptions to both the obligation to inform the customer of the right to go to ADR after eight weeks and the obligation to do so at any time in the event of deadlock as we consider these are no longer necessary for the reasons given below, taking into account the other changes we are making;
- d) that only the obligation to inform the customer of the right to go to ADR after eight weeks should have an exception – we propose that exception would be where the CP has already informed the customer of their right to go to ADR because there is deadlock.<sup>104</sup>

7.66 We are also proposing that to ensure that the written notification customers receive of their right to take the complaint to ADR should be made in the same format, whether it is sent after eight weeks or in the event of deadlock. To effect this, we propose to remove the defined terms “Deadlock Letter” and “Written Notification” and replace them with a single definition of “ADR Letter”.<sup>105</sup>

7.67 Finally, we are clarifying that CPs must ensure their customers have the right to use ADR free of charge.

### Ofcom’s reasoning

7.68 We consider that our proposals to facilitate prompt access to ADR where the complaint cannot be resolved are appropriate for securing that CPs establish and maintain procedures for the resolution of complaints and effective protection for their customers<sup>106</sup>.

7.69 We have considered whether to propose reducing the eight-week period after which the CP must inform the customer of the right to go to ADR where the complaint remains unresolved. We note, for example, that some stakeholders have advocated reducing this down to four weeks. However, we are minded to keep the period at eight weeks:

- a) we consider the cumulative effect of our proposals should be, primarily, to ensure that complaints are resolved more quickly by CPs or, in what we consider would be the minority of cases, our proposals should make it clear more quickly that a

<sup>104</sup> Paragraphs 11 to 13 of the Ofcom Proposed Code.

<sup>105</sup> Our proposed definition of ADR Letter also takes into account the relevant requirements of The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, in particular Regulation 19(2).

<sup>106</sup> See, in this respect, sections 52(2)(b) and (e) of the Act.

complaint cannot be resolved and an ADR Letter must be issued by the CP so the complaint can be referred to ADR;

- b) currently, we do not consider we have sufficient evidence to justify proposing a shorter period – in this respect, the additional record keeping requirements we are proposing to impose should assist us in understanding whether a shorter period may be warranted and, if so, what that period might be;
- c) the eight-week period is consistent with the approach taken in other regulated sectors (e.g. energy and financial services);
- d) our proposals are meant to be minimum standards – CPs would not be prevented from imposing their own higher standards such as, for example, a commitment to refer complaints to ADR if they have not been resolved with a period of time that is less than eight weeks.

7.70 Our intention would also be review the records that we are proposing CPs should retain to determine the proportion of cases that are being closed or resolved before eight weeks and assess whether the proposed requirement that CPs take prompt steps to resolve complaints, and issue ADR Letters as soon as a case is deadlocked, are indeed leading to quicker resolution of complaints or prompt referral to ADR where they are deadlocked.

7.71 With regard to our proposed changes relating to when the customer should be informed of their right to go to ADR when a complaint reaches deadlock, these changes are based on Ofcom’s monitoring and enforcement programme. As mentioned above, our experience has highlighted instances of CPs not informing customers of their rights to go to ADR when complaints had reached deadlock<sup>107</sup>, due to deficiencies in the wording about when deadlock had been reached. With regard to deadlock, there are two key deficiencies we are proposing to address:

- a) the obligation to issue a Deadlock Letter only applies where the customer requests it. We consider the need for the customer to make the request has been a significant contributing factor to the low levels of Deadlock Letters we have seen;
- b) the definition of Deadlock Letter includes the need for the CP to agree that the complaint can be referred to the ADR scheme. We have seen instances of CPs not willing to give this agreement, and so circumvent the application of the customer’s right to go ADR.

7.72 Our proposed changes are *not* designed to encourage instances of deadlock – as mentioned above, we consider the cumulative effect of our proposals should be, primarily, to ensure that complaints are resolved more quickly by CPs. Instead, our proposed changes are designed to remove the current obstacles preventing complaints that have reached deadlock from rightly being referred promptly to ADR.

7.73 With regard to our proposals to remove all the three prescribed exceptions to both the obligation to inform the customer of the right to go to ADR after eight weeks and

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<sup>107</sup> For example, the ADR Study referred to so-called Final Position letters sent by CPs to customers that did not meet the necessary criteria either for a “Deadlock Letter” or for a “Written Notification” as defined in the Current Ofcom Code.

the obligation to do so at any time in the event of deadlock exceptions, on balance our view is that these no longer appear necessary.

- 7.74 As mentioned above, both the obligation to inform the customer of the right to go to ADR after eight weeks and the obligation to do so at any time in the event of deadlock are each subject to three prescribed exceptions. The obligation to inform the customer of the right to go to ADR after eight weeks applies unless:
- a) it is reasonable to consider the complaint has been resolved;<sup>108</sup>
  - b) it is reasonable to consider the complaint to be vexatious;<sup>109</sup>
  - c) the subject-matter of the complaint is outside the jurisdiction of the CP's ADR scheme.<sup>110</sup>
- 7.75 The obligation to inform the customer of the right to go to ADR at any time in the event of deadlock applies unless:
- a) the CP has genuine and reasonable grounds for considering that the complaint will be resolved in a timely manner and subsequently takes active steps to do so;<sup>111</sup>
  - b) it is reasonable to consider the complaint to be vexatious;<sup>112</sup>
  - c) the subject-matter of the complaint is outside the jurisdiction of the CP's ADR scheme.<sup>113</sup>
- 7.76 Regarding the exception that it is reasonable to consider the complaint has been resolved, we are proposing to set out in the Ofcom Proposed Code when a complaint can be considered to be resolved, so an exception is no longer needed.<sup>114</sup>
- 7.77 Regarding the exception that the CP has genuine and reasonable grounds for considering that the complaint will be resolved in a timely manner and subsequently takes active steps to do so, as set out above, our proposed changes to when the obligation arises to inform the customer of the right to go to ADR at any time in the event of deadlock, would mean that the current exception as drafted could not apply.<sup>115</sup>
- 7.78 Regarding the exception that it is reasonable to consider the complaint to be vexatious, under our proposals, CPs will be able to close complaints that are "frivolous or vexatious"<sup>116</sup>, which means, in practice, the current vexatious exception

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<sup>108</sup> See paragraph 4(d)(i) of the Current Ofcom Code.

<sup>109</sup> See paragraph 4(d)(ii).

<sup>110</sup> See paragraph 4(d)(iii).

<sup>111</sup> See paragraph 3(d)(i) of the Current Ofcom Code.

<sup>112</sup> See paragraph 3(d)(ii).

<sup>113</sup> See paragraph 3(d)(iii).

<sup>114</sup> See paragraph 15 of the Ofcom Proposed Code.

<sup>115</sup> The current exception in paragraph 4(c)(i) applies where "the CP has genuine and reasonable grounds for considering that the Complaint will be resolved in a timely manner and subsequently takes active steps to do so".

<sup>116</sup> "frivolous or vexatious" is one of the exhaustive grounds on which an ADR entity would be able to refuse to take the complaint on, under The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (see paragraph 13 of Schedule 3).

will continue to apply (albeit in a different form) and should continue to be interpreted as it has been done to date.

- 7.79 Regarding the exception that the subject-matter of the complaint is outside the jurisdiction of the CP's ADR scheme, we consider responsibility for determining whether the subject-matter of the complaint is outside the jurisdiction of the CP's ADR scheme should rest with the relevant ADR scheme. CPs should be aware of the complaints that their respective ADR schemes are competent to deal with and could make their customers aware of this, but we do not consider that they should take the decision as to what the ADR scheme is competent to deal with on behalf of that ADR scheme. We recognise there is a potential risk of gaming on the part of certain customers who might seek to use their ability to go to ADR as a means of achieving a better offer from the CP. Our proposal is not designed to encourage such activity and we note, in this respect, that in the same way CPs will be able to close complaints that are frivolous or vexatious, one of the grounds on which the ADR schemes may refuse to deal with unresolved complaints referred to them is where they are frivolous or vexatious.
- 7.80 Regarding our proposal that the written notification customers receive of their right to take the complaint to ADR should be made in the same format, whether it is sent after eight weeks or in the event of deadlock, we consider this removes the current need to send communications which achieve the same aim but are required unnecessarily to comprise two different templates.
- 7.81 Finally, regarding our clarification that CPs must ensure their customers have the right to use ADR free of charge, our experience of monitoring and enforcing the current rules has revealed instances of CPs seeking to charge customers for the costs incurred by that CP as a result of the complaint having gone to ADR but ultimately decided in favour of the CP. Under the Act, we have a duty to "*secure so far as [we] consider appropriate*" that procedures for the handling of complaints and resolution of disputes are easy to use, transparent and effective and that domestic and small business customers can access these procedures free of charge.<sup>117</sup> If a CP seeks to oblige its customers to pay its costs if the ADR scheme rules in favour of the CP, then in such a scenario the customer would not have used the procedures free of charge. In this context, we would note that our clarificatory proposal should not impose any cost on CPs since they should not be charging their customers for use of ADR scheme. However, it does ensure any lack of clarity under the current rules is removed.

### **Strengthening record keeping requirements**

- 7.82 Under the Current Ofcom Code, CPs are required to "retain written records collected through the complaints handling process for a period of at least six months including, as a minimum, written correspondence and notes on its customer record management system".
- 7.83 Our proposals fall into two main categories:
- a) We propose to set out in more detail the types of records CPs must retain:
    - i) For each complaint, we are proposing that CPs retain certain information, including a record of the date on which the complaint was received, a

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<sup>117</sup> See section 52 of the Act.

description of what the complaint is about, all communications between the CP and the customer, and the date on which the complaint was resolved or closed;

- ii) CPs should also aggregate some of the records on a monthly basis, specifically the number of complaints received, the number of ADR Letters sent, and the number of complaints resolved or closed.
- b) We propose to require CPs to retain their records “in an appropriate format”;
  - c) We propose to extend the minimum period for which the records must be retained from six to twelve months.

### Ofcom’s reasoning

7.84 In the 2010 Statement<sup>118</sup>, in deciding to impose the current requirement for CPs to retain the necessary records to demonstrate compliance for at least six months, we said that we were “*satisfied that it is necessary for CPs to retain all written records collected through the complaint handling process including, as a minimum, written correspondence to/from consumers and notes on customer record management systems*”.

7.85 Ofcom’s monitoring and enforcement programme has revealed the following major concerns:

- a) Inconsistent levels of record keeping amongst CPs, which has had two main detrimental consequences:
  - i) a negative impact on CPs’ ability to monitor compliance, in particular the need to send written notification to the customer if their complaint reached deadlock or remains unresolved after eight weeks;
  - ii) a negative impact on our ability to monitor compliance and on the timeliness and effectiveness of any enforcement by us.
- b) The six-month retention period has proven inadequately short where it has been necessary for us to investigate alleged breaches that extended back beyond six months.

7.86 To address these concerns, we are proposing that CPs should continue to retain all written records collected through the complaint handling process. In addition, we consider it is now necessary to set out what, as a minimum, those written records should comprise. An important aspect of our proposals in this regard is to require CPs not just to retain certain records for each complaint, but also to aggregate some of those records on a monthly basis.<sup>119</sup> This proposal is based on the lessons we learnt from the subsequent informal compliance programme we opened with those CPs we considered it necessary to engage with further in light of ADR Study.

7.87 We recognise that our proposed minimum requirements go into more explicit detail than the current record keeping requirement under the Current Ofcom Code.

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<sup>118</sup> Paragraphs 6.12 and 6.14 to 6.15.

<sup>119</sup> See paragraph 23 of the Proposed Ofcom Code.

However, at the same time, we would have expected CPs to already be keeping these types of records, although not necessarily for each complaint. In addition, we are not requiring CPs to retain records in any particular format since we consider CPs would be best placed to identify what is the most cost-effective means for them of implementing and complying with the record-keeping requirements.

- 7.88 We are also proposing to extend the record-retention period from six to twelve months, which we consider is the minimum period necessary to enable us to conduct effective investigations. Where our investigations have revealed cause for concern, this has invariably necessitated investigating conduct that extends back beyond the current six-month period. This is because evidence from the ADR schemes forms a crucial part of our investigations (together with evidence from the CPs themselves). However, the time taken from when the complaint was first made to the CP through to referral to ADR and then resolution by the ADR scheme can vary significantly, in particular because customers have up to year from receipt of their written notification from the CP of their right to take their unresolved complaint to ADR, to exercise that right.
- 7.89 On a number of occasions, we have been given partial evidence from the ADR scheme about particular complaints, but found that the CP in question no longer holds any associated records. This has hampered our ability to conduct effective investigations. We provisionally consider that a record-retention period of twelve months strikes the appropriate balance between, on the one hand, ensuring we have the necessary tools to conduct effective enforcement, and, on the other hand, ensuring CPs are not required to incur disproportionate costs in order to comply.

### **Introducing specific obligations to train staff**

- 7.90 Under the Current Ofcom Code, CPs are obliged to “ensure that front-line staff are fully informed of the right of consumers to use Alternative Dispute Resolution”.<sup>120</sup> We consider CPs should continue to be under such a broad obligation. However, we also consider certain specific responsibilities are warranted.<sup>121</sup> We are proposing that:
- a) CPs must ensure that relevant staff receive training on how to identify a complaint;
  - b) CPs must ensure that relevant staff understand their CP’s Customer Complaints Code and know where to access it on the CP’s website.

### **Ofcom’s reasoning**

- 7.91 Ofcom’s monitoring and enforcement programme has revealed inconsistent interpretations by CPs of the current definition of complaint, which has sometimes led to customers’ complaints not being handled at all. In this context, we continue to accept that there will often be an element of subjectivity in determining whether a customer is making a complaint.<sup>122</sup> However, our provisional view is that the definition of “Complaint”, together with our proposal to extend its scope to include complaints about customer service, is still the most suitable for capturing those scenarios where customers: (i) are unhappy with the service they have received; and (ii) require their CP to take positive steps to address their concerns.

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<sup>120</sup> See paragraph 4(a).

<sup>121</sup> Paragraphs 3 and 19 of the Proposed Ofcom Code.

<sup>122</sup> See paragraph 4.26 of the 2010 Statement.

- 7.92 Our monitoring and enforcement programme has also revealed that greater compliance would be achieved by CPs providing appropriate training to their relevant staff. We consider this to be the most proportionate way to improve levels of recognition across the industry of when a complaint is made, as opposed to seeking to amend the current two-part definition, since in the absence of any appropriate training we consider the same risk of inconsistent interpretation would continue to arise.
- 7.93 Regarding our proposal to ensure that relevant staff understand their CP's Customer Complaints Code and know where to access it on the CP's website, this is designed to support our proposals to improve transparency. We consider front line staff should be informed not only of the right of customers to use ADR, but also of the process and timeline that customers' complaints will follow before their right to use ADR arises – especially since ultimately we are seeking to ensure complaints are resolved effectively and timely by CPs and therefore without recourse to ADR.

### **Ensuring CPs monitor their compliance**

- 7.94 The Current Ofcom Code does not require CPs to monitor their own compliance with the obligations it imposes. We are proposing to require CPs to monitor their compliance with the obligations imposed by the Proposed Condition and the Proposed Ofcom Code; and take appropriate steps to prevent the recurrence of any problem(s) identified.<sup>123</sup>

#### Ofcom's reasoning

- 7.95 Our monitoring and enforcement programme has revealed inconsistent levels of compliance by CPs with the obligations imposed by the Current Ofcom Code, which suggests a lack of sufficient internal monitoring. In our view, it is necessary to ensure that responsibility for ensuring continued compliance should be carried out not just by Ofcom but also by the CPs themselves.
- 7.96 As a general rule, we would expect CPs to take the appropriate steps to ensure compliance with their regulatory obligations. We would also expect this to include taking steps to address areas of non-compliance. In this context, our proposal does not change the status quo. However, where the CP is not aware of areas of non-compliance, it will not be in a position to address them and, as noted above, our monitoring and enforcement programme suggests a lack of sufficient internal monitoring on an ongoing basis. This was particularly shown to be the case during our informal compliance programme which we commenced with those CPs which, in our view, had been identified in the ADR Study as warranting further engagement in order to drive significant improvements in performance. Moreover, when these CPs invested the time to check their internal compliance, we observed improvements. However, as mentioned previously, it was a concern that it should be necessary for us to have had to engage extensively with CPs before improvements in compliance levels were observed. We also note that we have imposed the same obligation on CPs to monitor their compliance with the rules which cover the sale, marketing and provision of fixed-line services (comprising landline calls and/or broadband) by CPs, who operate on the Openreach/KCOM networks, to domestic and small business customers who are switching between such CPs.<sup>124</sup>

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<sup>123</sup> Paragraph C5.4 of the Proposed Condition.

<sup>124</sup> These rules are contained in GC 22. See Section 12 below.

- 7.97 We consider our proposal should ensure CPs are aware of the extent of their internal compliance without us having to first engage with the threat of formal enforcement. We consider our proposals should also improve CPs' understanding of, and compliance with, all the obligations in the Proposed Ofcom Code and therefore facilitate the aim of securing that CPs' complaints procedures are transparent, accessible, effective and promote access to ADR.

### **CPs must continue to be members of an independent ADR scheme**

- 7.98 Currently CPs are required to be members of an independent ADR scheme, and to comply with the scheme's decisions regarding the complaints that are referred to them for resolution.<sup>125</sup>
- 7.99 We are proposing to retain these requirements<sup>126</sup> since we continue to consider it appropriate to meet our statutory duty to secure that CPs have procedures for dealing with unresolved complaints by setting a condition requiring CPs to be members of an independent ADR scheme, and to comply with the scheme's decisions regarding the complaints that are referred to them for resolution.

### **Summary of proposed changes**

- 7.100 We set out below the main changes arising out of our proposals that would be different from what CPs are currently required to comply with under the Current Ofcom Code.
- a) the types of complaint that CPs would be required to handle in accordance with the procedures set out in the Ofcom Proposed Code would be expressly extended to include complaints about general customer service;
  - b) CPs would be required to accept complaints lodged by, at least, all of the following means: phone; letter; and either email or a webpage form;
  - c) after having received a complaint, CPs would have a responsibility to proactively inform the customer about the process according to which the complaint would be handled and the timeline for that process;
  - d) CPs would have a responsibility to proactively provide the following information to customers if they are not happy with the CP's offer:
    - i) what the latest date is by when they can come back to the CP to let the CP know they remain unhappy; and
    - ii) that the CP can consider the complaint resolved if they do not tell the CP they remain unhappy by the latest date.
  - e) CPs would have a responsibility to try to resolve a complaint to the customer's satisfaction until it has been either resolved or closed. At the same time, CPs would only be able to regard a complaint as closed or resolved where it meets the circumstances set out in the Ofcom Proposed Code;

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<sup>125</sup> See GC 14.5. This requirement derives from the Universal Service Directive and was imposed in accordance with section 52 of the Act.

<sup>126</sup> Paragraph C5.3 of the Proposed Condition.

- f) CPs would have a responsibility to keep specific types of records for each complaint for a minimum period of 12 months, on the basis of which CPs would also be required to produce certain aggregated types of records of their complaints on a monthly basis;
- g) CPs would have a responsibility to provide the information about access to ADR currently provided on all paper bills, in all bill formats excluding bills sent in a text;
- h) CPs would have a responsibility to train staff who handle complaints, specifically on:
  - i) how to identify a complaint; and
  - ii) what is in the CP's Customer Complaints Code and where it can be found on the CP's website.
- i) CPs would have a responsibility to monitor compliance with all obligations introduced in the Proposed Condition and in the Ofcom Proposed Code.

7.101 The tables below set out the complaints journey, first, under the current rules and then, secondly, as a result of our proposals.

Current requirements				
	Complaint Journey	Action required by provider	Can the complaint be closed?	Can the consumer go to ADR?
Step 1	Complaint can be made by: <ul style="list-style-type: none"> <li>• phone</li> <li>• letter</li> <li>• web form or email<sup>127</sup></li> </ul>	A CP must provide a copy of their complaints procedure if requested	N/A <sup>128</sup>	No
Step 2	Provider conducts an investigation into the complaint	Provider must ensure the fair and timely resolution of complaints, and have clearly established timeframes and a clear and reasonable escalation process for dealing with complaints <sup>129</sup>	N/A	No
Step 3 (pre 8 weeks)	Provider concludes investigation prior to 8 weeks and consumer is happy with outcome	The provider should implement any actions agreed as part of the resolution but no specific regulations on next steps	N/A	No
	Provider is unable to contact consumer to discuss their complaint	No regulations specifying what steps should be taken other than “Provider must ensure the fair and timely resolution of Complaints”	N/A	Dependent on circumstances
	Provider concludes investigation prior to 8 weeks and consumer is unhappy with outcome	A CP must promptly issue a written Deadlock Letter when requested by a complainant, unless it: <ul style="list-style-type: none"> <li>(i) has genuine and reasonable grounds for considering that the complaint will be resolved in a timely manner and subsequently takes active steps to do so; or</li> <li>(ii) it is reasonable to consider the complaint to be vexatious; or</li> <li>(iii) the subject-matter of the complaint is outside the jurisdiction of the CP’s ADR scheme</li> </ul>	N/A	Yes
Step 4 (post 8 weeks)	The complaint remains unresolved after 8 weeks of the date on which it was first received	A Written Notification must be issued to the consumer informing them of their right to go to ADR unless: <ul style="list-style-type: none"> <li>(i) it is reasonable to consider the Complaint has been resolved; or</li> <li>(ii) it is reasonable to consider the Complaint to be vexatious: or</li> <li>(iii) the subject-matter of the Complaint is outside the jurisdiction of the CP’s ADR scheme</li> </ul>	N/A	Yes

<sup>127</sup> NB: CPs must accept complaints via at least two of the three options.

<sup>128</sup> There are currently no specific rules on when a complaint can be closed other than that the “Provider must ensure the fair and timely resolution of Complaints” which would be unlikely to be satisfied if complaints were closed prematurely.

<sup>129</sup> NB: Requirement is for these processes to be detailed in the complaints procedure, not to be relayed to the consumer.

Proposed requirements				
	Complaint Journey	Action required by provider	Can the complaint be closed?	Can the consumer go to ADR?
Step 1	Complaint can be made by: <ul style="list-style-type: none"> <li>• phone</li> <li>• letter</li> <li>• web form or email</li> </ul>	Provider must inform the consumer of the process it will follow to investigate the complaint, and the timeframes it will aim to do this in	No	No
Step 2	Provider conducts an investigation in to the complaint	Provider must promptly take, and continue to promptly take, active steps to resolve the complaint to the complainant's satisfaction until the complaint has been resolved or closed	No	No
Step 3	Provider notifies consumer of outcome of investigation	Provider must inform the consumer that it may consider the complaint to be resolved to the consumer's satisfaction unless the consumer advises them otherwise by a specific date. It must also tell the consumer where a copy of its complaints procedure can be found, and the contact details for its ADR provider. Where requested, it must provide all of the above in a durable medium	No	No
Step 4 (pre 8 weeks)	Consumer informs the Provider they are happy with the outcome of the investigation or does not respond by the specified date	The provider should implement any actions agreed as part of the resolution and may close the complaint	Yes	No
	Provider is unable to contact consumer to confirm resolution of complaint	Provider may close the complaint if the consumer has not come back to them by the relevant date (as specified in Step 3) to say that they consider the complaint remains unresolved	Yes	No
	Consumer informs the Provider that they are not satisfied with the outcome of the investigation	The provider must immediately issue an <b>ADR letter</b> if it does not intend to take additional steps to resolve the complaint to the complainant's satisfaction that would produce a different outcome	Yes	Yes
Step 5 (post 8 weeks)	The complaint remains unresolved after 8 weeks of the date on which it was first received.	An <b>ADR letter</b> must be issued to the consumer unless one has already been issued in line with step 4. The complaint may be closed once an ADR letter has been issued.	Yes	Yes

## Proposed implementation period

7.102 We recognise CPs will need to take steps to modify their current complaints handling policies and procedures in order to comply with the Proposed Condition and the

Proposed Ofcom Code. We also recognise that the extent of the steps required may well differ between CPs depending, for example, on the types of processes CPs already have in place to comply with the Current Ofcom Code.

- 7.103 Subject to further engagement with stakeholders, we currently envisage that a transition period of six months following our final statement setting out the final revised conditions is likely to allow industry sufficient time to comply with the proposed requirements set out in this document.

## Legal tests

- 7.104 We consider that the Proposed Condition and the Proposed Ofcom Code meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:

- a) **objectively justifiable** as they are designed to address the deficiencies in the scope and clarity of the rules in the Current Ofcom Code and improve awareness on the part of customers with regard to procedures CPs follow when handling complaints, including the rights of customers and obligations on CPs under the Current Ofcom Code. In so doing, our proposals should better enable us to secure that CPs' complaints procedures are transparent, accessible, effective and promote access to ADR in a timely manner and so achieve effective protection for domestic and small business customer of CPs.
- b) **not unduly discriminatory** since all CPs will continue to be required:
  - i) to ensure complaints from the domestic and small business customers are handled in accordance with at least the minimum standards set out in the Proposed Ofcom Code;
  - ii) to be members of, and comply with the decisions of, an independent ADR scheme.
- c) **proportionate** as we consider that:
  - i) the Current Ofcom Code does not secure effective protection for domestic and small business customers. The Proposed Condition and the Proposed Ofcom Code should better enable us to secure that CPs' complaints procedures are transparent, accessible, effective and promote access to ADR in a timely manner and so achieve effective protection for domestic and small business customers of CPs;
  - ii) by proposing what are in our view the minimum standards necessary, CPs will continue to have the opportunity to go beyond the minimum standards, for example in relation to the amount of time that must elapse before the customer may take their unresolved complaint to ADR, and so use their complaints handling procedures as a competitive differentiator;
  - iii) the Proposed Condition and the Proposed Ofcom Code should not only raise the minimum standards according to which complaints must be handled by CPs, but they should also improve compliance, in particular as a result of the obligation to train relevant staff, the increased record-keeping requirements which should improve internal transparency with regard to how complaints are being handled, and the obligation on CPs to monitor their compliance; and

- d) **transparent** as the reasons for the Proposed Condition and the Proposed Ofcom Code are explained above and the effects of the proposed changes would be clear to communication providers on the face of the revised condition itself.

## Consultation questions

**Question 11:** *Do you consider that our proposed revised condition for complaints handling and access to alternative dispute resolution, together with our proposed revised code of practice on complaints handling, will improve the transparency, accessibility and effectiveness of communications providers' complaints handling procedures, and improve access to alternative dispute resolution? If not, please give reasons, including alternative suggestions.*

**Question 12:** *Do you have any other comments on our proposals in relation to complaints handling and access to alternative dispute resolution?*

## Section 8

# Codes of practice

- 8.1 In this section we set out the changes we are proposing to make to the requirement in GC 14.1 for CPs to produce a basic code of practice regarding the provision of public electronic communications services and the Annexes 1, 2, 3 and 4 to GC 14, which concern other codes of practice that CPs are required to establish, maintain and comply with.
- 8.2 As set out in paragraph 3.18, our initial view is that we should normally set out all binding regulatory obligations in the main body of the GCs, unless there is a clear reason for mandating the adoption of a particular code of practice. In general:
- a) where we consider that the rules set out in a code of practice are still necessary, we are proposing to move these requirements into the general body of the conditions, simplifying these rules where possible; and
  - b) where we consider that one or more requirements currently set out in a code of practice is no longer necessary, or is duplicative of a requirement already in the main body of a condition, we are proposing to remove it.

## Basic Code of Practice regarding provision of Public Electronic Communications Services (GC 14.1)

- 8.3 GC 14.1 requires all CPs to “produce a basic Code of Practice for [their] Domestic and Small Business Customers which sets out at least where such customers may avail themselves of the information required to be published under [GC] 10.2”.
- 8.4 CPs are required to publish the information in GC 10.2 and to do so in accordance with the requirements set out in GC 10.3<sup>130</sup>, and we are proposing to retain these general publication requirements.<sup>131</sup> Therefore, we propose to remove the obligation in GC 14.1 to produce a Code of Practice that merely informs customers of where to go to find the information, since we do not consider it provides any additional information transparency benefit to customers of CPs.

## Handling customer enquiries and complaints about Premium Rate Services (Annex 1 of GC 14)

- 8.5 GC 14.2 requires CPs to establish, maintain and comply with a code of practice for the provision of information relating to Premium Rate Services (“**PRS**”) for their domestic and small business customers which must conform with the guidelines set out in Annex 1 of GC 14 (“Guidelines for codes of practice for handling customer enquiries and complaints about Premium Rate Services”).
- 8.6 We have set out our proposals in relation to Annex 1 of GC 14 in paragraph 5.25 of this consultation document.

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<sup>130</sup> This includes providing a copy to anyone who asks for it, and putting a copy of such information on the CP’s website.

<sup>131</sup> See Section 5 above.

## Publication of prices of calls to Number Translation Services, 0870 calls and Personal Numbers (Annex 2 of GC 14)

- 8.7 GC 14.7 – 14.12, together with Annex 2 of GC 14, impose certain price transparency requirements on CPs in relation to calls to number translation services, other unbundled tariff numbers, and personal numbers. In particular, GC 14.2 requires CPs to establish, maintain and comply with a code of practice for NTS Calls, 0870 calls and calls to Personal Numbers for their domestic and small business customers which conforms with the guidelines set out in Annex 2 to GC 14.
- 8.8 We have set out our proposals in relation to Annex 2 of GC 14 (“Guidelines for codes of practice for the publication of prices of calls to Number Translation Services, 0870 calls and Personal Numbers”) in paragraphs 5.11 – 5.21 of this consultation document.

## Information requirements in relation to the provision of VoIP services (Annex 3 of GC 14)

- 8.9 Annex 3 to the current version of GC 14 (“**Annex 3**”) contains a number of specific information requirements that apply to VoIP providers.
- 8.10 In the August 2016 consultation,<sup>132</sup> we outlined our proposals in relation to paragraphs 5 to 7 and 10 to 12 of Annex 3, which set out certain requirements on VoIP providers about network availability and access to emergency calls. In this consultation, we set out our proposals in relation to the requirements set out in the remaining paragraphs of Annex 3 (in particular, paragraphs 13 to 15). In addition, we clarify how we would implement the proposals that we set out in our August 2016 consultation, if we decided to implement such proposals following consideration of stakeholders’ responses.

## Requirements concerning service reliability and access to emergency calls

### Requirements that we proposed to remove in the August 2016 consultation

- 8.11 In the August 2016 consultation,<sup>133</sup> we proposed to remove certain requirements on VoIP providers about network availability and access to emergency calls on the grounds that they now go beyond what is necessary to achieve the original policy objectives of providing additional information to VoIP customers in order to ensure that they are aware of the specific characteristics of the services they buy.
- 8.12 In summary, the requirements which we proposed to remove are contained in the following paragraphs of Annex 3:
- a) paragraphs 5 – 7;
  - b) paragraph 10;
  - c) paragraph 11(b) – (d); and
  - d) paragraph 12(c) and (d).

<sup>132</sup> Paragraphs 4.38-4.40 and 4.57-4.61.

<sup>133</sup> Paragraphs 4.40 and 4.60-4.61.

### Clarification on the requirements that we proposed to retain in the August 2016 consultation

- 8.13 In the August 2016 consultation,<sup>134</sup> we proposed to retain certain requirements which are currently set out in Annex without any substantive change to them. In accordance with our objective of moving all of the rules into the body of the conditions, we proposed to move these requirements into the proposed condition that would combine GCs 3 and 4 (GC A3, as re-numbered).
- 8.14 Specifically, the requirements which we proposed to retain and move to GC A3 are the following paragraphs of Annex 3:
- a) paragraph 11(a), which requires VoIP providers whose customers can make calls to national/international numbers to inform their Domestic and Small Business Customers that access to emergency calls may cease if there is a power cut or power failure or a failure of the broadband connection;
  - b) paragraph 12(a), which requires VoIP providers to require their Domestic and Small Business Customers to register their location if the VoIP service is to be used principally at a single fixed location; and
  - c) paragraph 12(b), which requires VoIP providers to recommend that their Domestic and Small Business Customers update their location information if the VoIP service is to be accessed from several locations.
- 8.15 In the August 2016 consultation, we proposed to implement these proposals through the proposed revised text set out in paragraphs 3.3 and 3.7 of the proposed condition that would combine GCs 3 and 4, which could be seen at Annexes 9 and 10 to that consultation document. BT and Microsoft have sought clarifications in relation to the proposed revised text for those paragraphs:
- a) BT said that “*BT would welcome Ofcom’s confirmation that new GC3.3 and 3.7 only apply to CPs providing services to Consumers and Small Businesses*”;<sup>135</sup> and
  - b) Microsoft suggested that replaced the word “customer” with “Domestic and Small Business Customers” in paragraphs 3.3 and 3.7 since it believes that “*these provisions are intended to clarify, but not expand, the scope of regulatory obligations currently set forth in the GCs*”.<sup>136</sup>
- 8.16 To clarify, we confirm that we are not proposing to expand the scope of any of these requirements. Therefore, we have revised the text of the proposed condition that would combine GCs 3 and 4 to limit the scope of application of the relevant paragraphs (A3.3 and A3.7) to Domestic and Small Business Customers. The proposed revised text can be seen at Annex 12.

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<sup>134</sup> Paragraphs 4.39 and 4.57-4.59.

<sup>135</sup> BT’s response to the August 2016 consultation (p. 6).

<sup>136</sup> Microsoft’s response (p. 5).

## Proposals in relation to the other information requirements

- 8.17 We set out below our proposals in relation to the rest of Annex 3, which imposes further information requirements on VoIP providers in relation to their Domestic and Small Business Customers.

### Ability to port numbers

- 8.18 Paragraph 13 of Annex 3 requires VoIP providers to make their Domestic and Small Business Customers aware when they do not offer the ability to port numbers. We propose to remove this requirement because it is primarily concerned with VoIP providers who assign telephone numbers to their customers to allow them to receive calls on such numbers and we consider that these VoIP providers are already obliged to provide number portability under the current rules (GC 18). Therefore, we consider that the information requirement in relation to number portability in Annex 3 is no longer necessary.

### Other information for customers

- 8.19 Paragraph 14 of Annex 3 requires VoIP providers to make their Domestic and Small Business Customers aware when the following facilities or features are not available: (a) access to a Directory Enquiry Facility, (b) access to operator assistance services (as currently described in GC 8.1), (c) calling line identification facilities, (d) provision of a printed directory on request, (e) special measures for end users with disabilities (as currently described in GC 15) and (f) the non-itemisation of calls which are made from a subscriber's telephone which are free of charge. In the following paragraph, we go through each of these provisions in turn, setting out the reasons why we are now proposing to remove the information requirements which is currently set out in paragraph 14 of Annex 3.
- 8.20 We propose to remove the information requirements which are currently set out in paragraph 14 of Annex on the basis of that:
- a) Access to a Directory Enquiry Facility – In the August 2016 consultation (paragraphs 6.9-6.14), we proposed to remove the requirement for CPs to ensure that any end-user can access a comprehensive directory enquiry service, which is currently set out in GC 8.1(b), on the basis that such obligation could be subsumed within the broader obligation to ensure that end-users in any part of the EU are able to access and use all non-geographic numbers which the CP adopts (which is currently set out in GC 20.1(a)). We consider that, as a consequential amendment, the specification in relation to access to a Directory Enquiry Facility which is currently set out in Annex 3 would be no longer necessary;
  - b) Access to operator assistance services – In the August 2016 consultation (paragraphs 6.5-6.8), we proposed to remove the requirement for CPs to ensure that any end-user can access operator assistance services (e.g. making reverse charges calls or requesting alarm calls), which is currently set out in GC 8.1(a). We consider that, as a consequential amendment, the specification in relation to access to operator assistance services which is currently set out in Annex 3 would be no longer necessary;
  - c) Calling line identification facilities – As set out in paragraph 10.25, we are proposing to amend the scope of the condition that currently regulates the provision of CLI facilities (GC 16) so that it applies to all providers of Publicly

Available Telephone Services and Public Electronic Communications Networks over which Publicly Available Telephone Service are provided. We are also proposing to insert a new provision requiring CPs to inform their customers if CLI facilities are not available on service they are providing. We consider that, as a consequential amendment, the specification in relation to the provision of calling line identification facilities which is currently set out in Annex 3 would be no longer necessary;

- d) Provision of a printed directory on request – In the August 2016 consultation (paragraphs 6.15-6.16), we proposed to retain the requirement on CPs which assign telephone numbers to provide a printed directory to each subscriber who requests it (which is currently set out in GC 8.2) as an important back-stop power, noting that in practice this obligation is satisfied by the annual delivery of local directories provided by BT and KCOM free of charge to all end-users. VoIP providers who assign telephone numbers to their customers to allow them to receive calls on such numbers would continue to be subject to the same backstop power. Therefore, we consider that the information requirement in Annex 3 would be no longer necessary. In addition, we note that users of VoIP services are more likely to have access to CD-ROMs or on-line directories as alternatives to paper directories;
- e) Special measures for end users with disabilities – In this consultation, we are proposing to update regulation by extending the current protections for end-users with disabilities, which currently apply only in relation to telephony services, to cover all public electronic communications services, including broadband services. In light of this proposed extension of regulation, we consider that the information requirement in Annex 3 relating to special measures for end users with disabilities would be no longer necessary;
- f) Non-itemisation of free calls – When this provision was initially put in place, we were concerned with VoIP providers whose customers can make calls to national/international numbers. We consider that these VoIP providers are already obliged to ensure that calls that are made from a subscriber's telephone which are free of charge (including calls to helplines) are not identified in the subscriber's itemised bills under the current rules (GC 12.4). Therefore, we consider that the information requirement in relation to the non-itemisation of free calls in Annex 3 is no longer necessary.

8.21 Paragraph 15 of Annex 3 requires VoIP providers to make their Domestic and Small Business Customers aware of any restrictions on the number ranges and country codes that can be called using the service. We propose to remove this requirement because we consider that VoIP providers should make their customers aware of any such limitation under the general information requirements set out in the general conditions.

### Summary of our proposals

8.22 Therefore, in light of the changes that we proposed in the August 2016 consultation and the further changes that we are proposing in this second consultation, we propose to remove Annex 3 to GC 14 except for the requirements relating to network availability and access to emergency calls that are currently set out in paragraphs 11(a), 12(a) and 12(b), which we propose to move into the proposed condition that would combine GCs 3 and 4.

## The Ofcom Approved Code of Practice for Complaints Handling (Annex 4 of GC 14)

- 8.23 Under the current conditions (GC 14.1), CPs must have, and comply with, procedures that conform to the Ofcom Approved Code of Practice for Complaints Handling (which is set out in Annex 4 to GC 14) when handling complaints made by domestic and small business customers about their public electronic communications services.
- 8.24 We have set out our proposals in relation to complaints handling, including the replacement of Annex 4 of GC 14, in Section 7 of this consultation document.

### Consultation question

**Question 13:** *Do you agree with our proposals in relation to the codes of practice that communications providers are currently required to establish, maintain and comply with – including replacing these with direct obligations to make information available, where appropriate?*

## Section 9

# Measures to meet the needs of vulnerable consumers and end-users with disabilities

- 9.1 The general conditions contain provisions (currently set out in GC 15) which require CPs to adopt certain special measures for end-users with disabilities.
- 9.2 The overall policy objective of this condition is to ensure that end-users with disabilities are able to obtain comparable access to voice call services to that of non-disabled people, that their particular needs are given sufficient consideration by CPs and that their access to voice call services is protected when they have a genuine need. Specifically:
- a) paragraph 15.1 requires CPs to consult with the Communications Consumer Panel<sup>137</sup> from time to time to ensure that the interests of end-users with disabilities are fully taken into account;
  - b) paragraph 15.2 requires the provision of free directory enquiry services and directory information in an appropriate form, where end-users are unable to use a printed directory;
  - c) paragraphs 15.3-15.5 require CPs to provide a text relay service for end-users who, because of their disability, need to use such a service to make calls;
  - d) paragraph 15.6 requires CPs to provide a priority fault repair service for any end-user with disabilities who has a genuine need for urgent repair;
  - e) paragraph 15.7 requires CPs to offer a nominee scheme for subscribers with disabilities to allow another person to receive bills, pay bills and deal with billing enquiries on their behalf;
  - f) paragraph 15.8 requires mobile network operators to provide end-users with hearing or speech impairments with SMS access to the emergency services;
  - g) paragraph 15.9 requires the provision of contract terms and bills in an accessible form for end-users with impaired vision free of charge on request;
  - h) paragraph 15.10 requires CPs to ensure that the services they provide to comply with this condition are widely publicised. This requirement is accompanied by guidance, which sets out the reasonable steps that we expect CPs to take to ensure that the special measures available to end-users with disabilities are widely publicised.<sup>138</sup>
- 9.3 In this section, we present the changes that we propose to make to this condition.

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<sup>137</sup> <http://www.communicationsconsumerpanel.org.uk/>

<sup>138</sup> Ofcom's document of 9 August 2016, entitled "A guide to publicising services available to disabled people": [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/81132/guidance.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/81132/guidance.pdf)

- 9.4 In summary, our provisional view is that we should:
- a) include a new requirement for CPs to put in place a policy in relation to vulnerable users; and
  - b) update existing regulation by extending the current protections for end-users with disabilities, which currently apply only in relation to telephony services, to cover all public electronic communications services, including broadband services.
- 9.5 These proposed changes reflect the concern we expressed in the DCR Statement that many consumers in vulnerable circumstances find it particularly difficult to engage in the market without assistance and therefore may require additional support in understanding what is available to them from suppliers and protection targeted at their specific needs. They also follow the commitment we made in our DCR Statement to ensure that the protections which already exist for end-users with disabilities are updated to take account of changes in technology and usage.<sup>139</sup>

### Stakeholder responses

- 9.6 In response to the DCR Consultation a number of respondents, including the South East LEP, the Communications Consumer Panel and the Advisory Committee for Older and Disabled People (“**ACOD**”) called for Ofcom to focus on the needs of consumers in vulnerable circumstances, including elderly, disabled, and disengaged consumers, in setting its policy.<sup>140</sup>
- 9.7 Vodafone commented that “consumer protection regulation is creating opportunities for monopoly wholesale supply: for instance, the obligation to provide Next Generation Text Relay and Emergency Calls means that the monopoly provider has a captive market”. Vodafone argued that “the provision of Next Generation Text Relay (NGTR) is a prime example of the dangers of allowing BT to engineer a monopoly position for crucial consumer services of clear social value ...BT leveraged its existing commercial relationships with operators prior to the launch of the new service, locking CPs into it with BT the sole supplier in the market.”<sup>141</sup>
- 9.8 TalkTalk commented that the definitions within GC 15 on special measures for end-users with disabilities need to be clarified to ensure a consistent application across industry.<sup>142</sup>
- 9.9 In its supplementary submissions, BT sought clarifications in relation to the scope of application of the current GC 15, which currently refers to “Subscribers” and “End-Users”, and suggested that “there must also be an obligation on the employer to provide facilities to assist their employee in their working day, rather than the obligation being on the CP”.

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<sup>139</sup> DCR Statement, § 7.49.

<sup>140</sup> Communications Consumer Panel and ACOD response, pp. 2 and 20-22  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/80815/communications\\_consumer\\_panel\\_and\\_acod.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/80815/communications_consumer_panel_and_acod.pdf) ; South East LEP response, pp. 2 and 7  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0034/55798/south\\_east\\_lep.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0034/55798/south_east_lep.pdf).

<sup>141</sup> Vodafone main response, p12:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/45934/vodafone.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/45934/vodafone.pdf)

<sup>142</sup> TalkTalk main response p 66:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/45196/talktalk.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/45196/talktalk.pdf)

## Ofcom's proposals

### Policy in relation to vulnerable consumers

- 9.10 The current GC 15 sets out measures that providers of voice call services must apply in relation to end-users with disabilities.
- 9.11 In addition to end-users with disabilities there are people whose particular circumstances may make them more vulnerable.<sup>143</sup> These circumstances may be temporary, for example serious illness or bereavement. Such circumstances may also be permanent, for example, communication difficulties or age-related conditions. Consumers whose circumstances make them vulnerable may need additional protection.
- 9.12 Ofcom has received complaints that raise concerns about the way CPs consider (or fail to consider) the needs of vulnerable consumers. Some examples include:
- a) complaints about CPs not being aware of signs of potential consumer vulnerability (e.g. when customers mention that they have a “care alarm”);
  - b) complaints about CPs insisting on speaking directly to the customer when this is not possible because of factors such as stroke, confusion or hearing impairment, or where a power of attorney is in place; and
  - c) complaints about CPs not offering alternative security checks when a customer cannot remember a password because of a head injury or learning disability.
- 9.13 We propose to broaden the scope of this GC to include a new requirement for CPs to take account of, and have procedures to meet, the needs of consumers whose circumstances may make them vulnerable to ensure that their needs are adequately considered by CPs. This proposal is consistent with our commitments in the DCR Statement to provide more support to consumers in vulnerable circumstances.<sup>144</sup>
- 9.14 Instead of imposing detailed, specific requirements, we propose to implement the proposed new obligation by requiring all providers of public electronic communications services to establish, publish and implement clear and effective policies and procedures for the fair and appropriate treatment of consumers whose circumstances may make them vulnerable.
- 9.15 In addition to requiring CPs to establish, publish and implement policies and procedures in relation to consumers whose circumstances may make them vulnerable, we propose to specify that such policies and procedures must include, as a minimum:

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<sup>143</sup> We note in this regard that other regulators have recently highlighted this issue, for example the Office of Gas and Electricity Markets has committed to a programme aiming at implementing measures to improve outcomes for consumers whose circumstances may make them vulnerable:

[https://www.ofgem.gov.uk/sites/default/files/docs/2013/07/consumer-vulnerability-strategy\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2013/07/consumer-vulnerability-strategy_0.pdf)

The Financial Conduct Authority has also taken steps to address the risk of harm resulting from customer vulnerability: <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-8-exec-summary.pdf>

<sup>144</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0016/50416/dcr-statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0016/50416/dcr-statement.pdf) at §§ 7.2, 7.11 and 7.47 – 7.51.

- a) practices for ensuring the fair and appropriate treatment of consumers who may be vulnerable due to circumstances, including but not limited to, age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement or divorce;
  - b) the reasonable steps that will be taken to identify consumers who may be vulnerable;
  - c) in respect of those consumers that the CPs have identified as being in circumstances that make them vulnerable, how information about their needs will be recorded and the different channels by which these consumers will be able to make contact with, and receive information from, the CPs;
  - d) how all staff are made aware of the policies and procedures and appropriately trained, including (if applicable) how to refer consumers to specialist teams or members of staff who have received additional training; and
  - e) how the impact and effectiveness of the policies and procedures will be monitored and evaluated.
- 9.16 We consider it likely that there will be some increased costs for industry to meet the proposed requirement for CPs to have a policy in relation to vulnerable consumers. However, CPs are already required to have procedures and processes in place to ensure they adequately identify and consider the needs of end-users with disabilities. Therefore, any incremental cost of broadening these procedures and processes to consider also the needs of vulnerable consumers should not be disproportionate. In addition, we consider that any incremental costs would be proportionate since the way in which we are proposing to implement this new requirement is the least intrusive mechanism to achieve the intended purpose.
- 9.17 As set out in paragraph 3.25 above, we recognise that CPs may require a short transitional period to bring their policies and practices into line with the revised regulatory requirements we are proposing. Our provisional view is that an implementation period of 3 to 6 months ought to be sufficient to allow industry to make all the necessary changes to their processes and procedures to ensure compliance with the revised conditions.

### Measures for end-users with disabilities

- 9.18 There are currently six main requirements for CPs in relation to end-users with disabilities: (i) the obligation to ensure access to directory information; (ii) the provision of text relay services; (iii) the obligation to give priority to the requests for fault repair from end-users with disabilities who are dependent on voice services; (iv) the obligation to make available third party bill management; (v) the obligation to provide bills and contracts in alternative formats (e.g. in braille); and (vi) the obligation to ensure SMS access to emergency services. In addition, there is a requirement to take all reasonable steps to ensure that such measures are widely publicised. At the moment, all these measures apply only in relation to the provision of voice call services.
- 9.19 We propose to retain all these requirements because we consider that these measures remain important to ensure equality of access and choice of services for people with disabilities. In addition, where people with disabilities are dependent on services it is important that this access is safeguarded. Although the general duty to

make reasonable adjustments under the Equality Act 2010 may give consumers with disabilities a remedy in some individual cases, we think specific measures are needed to ensure equivalence of access and choice for people with disabilities. For clarity, the duty on service providers to make reasonable adjustments in section 29 of the Equality Act 2010 is a general duty, which leaves service providers to implement their own measures (and what is required can differ from provider to provider and from individual to individual). Mandating the specific measures that apply to all providers in the general conditions ensures consistency across CPs and provides certainty for CPs in terms of their obligations.

- 9.20 As we are proposing to retain the requirement to publicise the measures for end-users with disabilities, we propose to retain our current guidance which sets out the reasonable steps that we expect CPs to take to ensure that the special measures available to end-users with disabilities are widely publicised.<sup>145</sup>
- 9.21 We propose to amend the current requirement to ensure that end-users who are “unable” to use a printed directory due to visual impairment or other disability have access to directory information and directory enquiries facilities free of charge (GC 15.2) so that this requirement would apply to any end-users who are “unable to easily use” a printed directory due to visual impairment or other disability. This is on the basis that there will be end-users who can use a printed directory but because they can only do so with difficulty, relying on a printed directory would impair their access to these services. As stated above, we consider that equality of access and choice of services for people with disabilities is an important policy aim.
- 9.22 In addition, in order to update regulation in light of recent market development, we propose to extend the requirements for measures for people with disabilities to all public electronic communications services, including data services (such as broadband), where applicable, as well as all other types of services that fall within the category of public electronic communications services, to ensure that these important protections for consumers apply consistently across the sector. These measure include: (i) priority fault repair; (ii) third party bill management; and (iii) bills and contracts in accessible formats. This is in line with our commitment in the DCR Statement to ensure that “protections which already exist are updated to take account of changes in technology and usage”.<sup>146</sup>
- 9.23 We note that when we last considered the scope of application of these measures in 2012<sup>147</sup> we concluded that an extension to broadband services was not appropriate at that time. However, there has been significant growth in importance of data services in recent years. The proportion of adults using the internet has almost tripled since 2000.<sup>148</sup> Internet access is now seen as essential or important by most consumers, enabling consumers to communicate and participate in society, and to

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<sup>145</sup> Ofcom’s document of 9 August 2016, entitled “A guide to publicising services available to disabled people”: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/81132/guidance.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/81132/guidance.pdf)

<sup>146</sup> Paragraph 7.49 of the DCR Statement.

<sup>147</sup> Improving access to electronic communications services for disabled people”, December 2012, <http://stakeholders.ofcom.org.uk/consultations/access-electronic-services/>

<sup>148</sup> In 2000, 30% of adults used the internet, rising to 86% by 2015. See figure 18 - <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/research1.pdf> and slide 3 of Technology Tracker, H2 2015 (July-August) ([http://stakeholders.ofcom.org.uk/binaries/research/statistics/2015oct/technology\\_tracker\\_H2\\_2015\\_c\\_hart\\_pack.pdf](http://stakeholders.ofcom.org.uk/binaries/research/statistics/2015oct/technology_tracker_H2_2015_c_hart_pack.pdf)).

access information, education and key services easily at home.<sup>149</sup> These factors resulting in internet access being regarded as an essential service are particularly applicable to end-users with disabilities as their means of participating in society, accessing information, education and key services outside the home can be more limited.

- 9.24 We also note that, according to Government, broadband connectivity can provide social and economic opportunities (e.g. by saving money on household bills), facilitate access to services without the need to travel (e.g. work, shop and communicate) and reduce social isolation and exclusion from government services which are increasingly becoming “digital by default”.<sup>150</sup>
- 9.25 We would not generally expect the likely costs of this proposed extension (if any) to be significant for the following reasons:
- a) Billing - Broadband services (both fixed and mobile broadband) are typically supplied as part of a bundle with voice services<sup>151</sup> (fixed calls or mobile calls respectively) and a single bill is normally supplied. The increased burden on stakeholders to provide the bill in an accessible form or send the bill to a nominee should therefore be minimal, as in the majority of cases a bill will already be sent in an accessible format due to the existing requirement in relation to voice calls. Extending the requirements which are currently set out in GC 15.7 and 15.9 to broadband might result in additional costs for CPs in respect of those customers with disabilities who buy broadband-only services (e.g. dongles or a fixed-line broadband connection only). Also in these cases, we would not expect any additional cost to be significant<sup>152</sup>;
  - b) Priority fault repair - Any additional burden in respect of fault repair would in most cases only apply where the issue was not caused by a fault with the fixed line or mobile connection. Problems caused by the fixed line or mobile connection are already subject to priority fault repair due to the existing requirement, which applies in relation to voice call services (GC 15.6). In addition, priority fault repair is only required to be provided to end-users who can show that they have a genuine need for urgent repair. This limitation would be retained under the proposed extension.

### Simplifying and clarifying regulation

- 9.26 We propose to replace the existing requirement in GC 15.1 for CPs to consult with the Communications Consumer Panel “from time to time” with a clearer obligation for

<sup>149</sup> See Ofcom’s publication entitled ‘*Results of research into consumer views on the importance of communications services and their affordability*’, paragraphs 4.28-4.30:

[http://stakeholders.ofcom.org.uk/binaries/research/affordability/affordability\\_report.pdf](http://stakeholders.ofcom.org.uk/binaries/research/affordability/affordability_report.pdf).

<sup>150</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/562484/USOStatementofIntentfinal11October\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562484/USOStatementofIntentfinal11October_2_.pdf)

<sup>151</sup> For example, Ofcom research shows that in 2015, 68% of fixed line customers had broadband as part of their package.

<sup>152</sup> In the Call for Inputs that we published on 12 December 2012 on “Improving access to electronic communications services for disabled people”, we noted that Braille bills are the most expensive (after the Easy Read format) at £3.50 a page. However, we also noted that only 5% of blind and partially sighted people use braille and disabled consumers requesting accessible bills is estimated at 0.01%, the equivalent of 23,000 people. In 2012, 27% of people had broadband bundled with voice, which reduces the figure further. See paragraphs 3.16-3.20 of the Call for Inputs:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/38592/condoc.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/38592/condoc.pdf)

CPs to consult with the Communications Consumer Panel “on request”. In addition, we are proposing to expand the consultation requirement to include the obligation to consult in respect of the requirements and interests of consumers whose circumstances make them vulnerable as the Communications Consumer Panel’s remit already includes all consumers and common principles can arise as outlined above.

- 9.27 We propose to replace the word “Subscriber” with “End-User” in the proposed provisions corresponding to GC 15.3 (text relay) and GC 15.6 (priority fault repair) to clarify that CPs must make text relay and priority fault repair available to people with disabilities who normally use the services, including when they are not the subscriber; for example, family members. We think this proposal addresses BT’s comment (see paragraph 9.9).
- 9.28 We propose to remove the reference to “18 April 2014” in GC 15.5 (text relay) since this date has now passed, so that reference has become redundant.
- 9.29 We propose to change the heading of this condition to “Measures to meet the needs of vulnerable consumers and end-users with disabilities”.
- 9.30 We are also proposing some other drafting changes to make the condition easier to read and remove repetition.

### Definitions

- 9.31 We propose to remove the definition of “Communications Provider” set out in paragraph 15.11(b) and set out upfront, at the beginning of the revised condition, that the revised condition applies to all providers of public electronic communications services (referring to them as “Regulated Providers”).
- 9.32 We propose to move the technical requirements that relay services must meet (currently set out in GC 15.3(c), (e) and (h)) to the definition of “Relay Service” in the “Definitions” Annex. While we are not proposing to make substantive changes to these requirements, we think this proposal will make the condition clearer. We propose to retain the other requirements which are currently set out in GC 15.3 without any substantive change.
- 9.33 In order to implement the proposed extension of the requirements in relation to measures for end-users with disabilities to all Public Electronic Communications Services, we propose to remove the specific definition of “Subscriber” set out in paragraph 15.11(g), which limits the scope of GC 15 to call services only (i.e. “Publicly Available Telephone Services”) and adopt, instead, a general definition of “Subscriber” that would encompass the provision to the public of any electronic communications services (including data services) and apply to all the GCs.
- 9.34 The proposed revised text of the condition that would correspond to GC 15 (C6) can be seen at Annex 12 and a marked up version showing the changes we are proposing to make can be seen at Annex 13.

### **Legal tests**

- 9.35 We consider that the changes we are proposing to make to this condition meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:

- a) **objectively justifiable** as we think that:
- i) consumers whose circumstances make them vulnerable are at particular risk of harm and requiring CPs to take account of the needs of such consumers in policies and procedures will reduce this risk and ensure fair treatment;
  - ii) it is necessary to extend the requirements to provide measures for people with disabilities to all public electronic communications services to update current regulation to reflect recent market development.
- b) **not unduly discriminatory** since the proposed changes to GC 15 would ensure that the same regulatory measures apply in respect of all providers of electronic communications services which are made available to the public;
- c) **proportionate** as our provisional view is that none of the proposed changes would introduce any disproportionate regulatory burden on industry. In particular, we note that the extensions to all public electronic communications services of the measures in relation to end-users with disabilities would only apply where the nature of the end-user's disability means that the measure is necessary. In addition, in relation to billing, any additional burden on industry would be mitigated by the increase in take-up of bundles; and
- d) **transparent** as the reasons for the changes that we are proposing to make to GC 15 are explained above and the effects of the proposed changes would be clear to CPs on the face of the revised condition itself.

## Consultation questions

**Question 14:** *Do you agree with our proposals to introduce a new requirement for communications providers to take account of, and have procedures to meet, the needs of consumers whose circumstances may make them vulnerable?*

**Question 15:** *Do you agree with our proposals to update regulation by extending the current protections for end-users with disabilities, which currently apply only in relation to telephony services, to cover all public electronic communications services?*

**Question 16:** *Are there any other modifications to the proposed revised condition on measures to meet the needs of vulnerable consumers and end-users with disabilities that you consider would be appropriate?*

## Section 10

# Calling line identification facilities

- 10.1 GC 16 requires all providers of public communications networks to provide tone dialling and calling line identification (“**CLI**”) facilities over their networks, subject to technical feasibility and economic viability.
- 10.2 CLI facilities enable the telephone number of the party making a call to be displayed to the recipient of the call. This gives consumers an opportunity to identify the person or organisation who is calling them, and to make an informed decision about how to handle incoming calls.
- 10.3 CLI facilities also provide benefits to regulators and enforcement bodies in assisting in the tackling of nuisance calls. Unsolicited calls and texts cause significant nuisance, annoyance and in some cases distress for consumers. Ofcom estimates that consumers receive nearly 5 billion nuisance or unwanted calls each year. Consumers who use CLI facilities are able to note the telephone numbers of the people making those calls (provided the number is not withheld) and report those telephone numbers to the relevant authorities for potential investigation.
- 10.4 This section sets out the changes we are proposing to make to this condition. In summary, we no longer think it is necessary to require CPs to provide tone dialling and we are proposing to remove this requirement. In contrast, the importance of ensuring accurate provision of CLI data has grown in recent years, most notably in connection with the detection and prevention of nuisance calls. As such, we believe it is appropriate to maintain the current regulation requiring the provision of CLI facilities and to extend regulation so as to ensure that where CLI data is provided, it is valid and any telephone number presented or displayed to the called party diallable and uniquely identifies the caller (we explain what we mean by these terms below).
- 10.5 We are proposing to add new conditions requiring CPs to inform their subscribers if CLI facilities are not available and preventing CPs from levying additional charges for access to or use of CLI Facilities. Finally, we are proposing to require that all CPs should take reasonable steps to identify and block calls on which invalid or non-diallable CLI is provided, in order to reduce the number of nuisance calls being made on which invalid or non-diallable CLI is used.

## Stakeholder responses

- 10.6 In our draft annual plan for 2015/16, we highlighted that protecting consumers from harm, including through tackling nuisance calls, was a priority for Ofcom. We said we would engage with UK and international bodies to promote further improvements to the information available to users of CLI facilities, particularly when calls pass between networks
- 10.7 In its response to that consultation, BT commented that it supports our efforts on tackling nuisance calls and it is pleased to see that tackling these has been highlighted as a priority for Ofcom.<sup>153</sup>

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<sup>153</sup> BT response to Ofcom draft annual plan for 2015/16, p3  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/46936/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/46936/bt.pdf)

- 10.8 Which? also welcomed our commitment to taking action against nuisance calls, and noted that Ofcom's work with UK and international bodies to promote improvements in CLI and to improve means of tracing nuisance calls across networks will be key to ensuring the Government's intention to introduce mandatory CLI for marketing calls.<sup>154</sup>
- 10.9 The Communication Workers Union (CWU) urged us to increase efforts to identify and tackle organisations responsible for nuisance calls, and welcomed our work with international organisations on technical approaches to addressing this.<sup>155</sup> It also urged us to focus on taking enforcement action against those generating silent and abandoned calls.<sup>156</sup>
- 10.10 Vodafone said it supported our commitment to take action against nuisance calls. However, it urged us to exercise caution in adding specific requirements to what information must be provided to customers at point of sale, given the detrimental impact this may have on the overall customer experience.<sup>157</sup>
- 10.11 An individual respondent suggested that it should be made a criminal offence for incoming telecoms companies to forward international calls with UK CLIs, or (after a short time for the relevant equipment changes) with a CLI for any country other than that from which the call is originating.<sup>158</sup>
- 10.12 The CCP and the ACOD welcomed our work on nuisance calls and noted that it is vital that any penalties imposed by Ofcom as a result of non-compliance are meaningful in terms of their impact. They also encouraged Ofcom to support the provision of free CLI for consumers.<sup>159</sup> ACOD also noted that older people are significantly more likely to be affected by the incidence of nuisance calls.<sup>160</sup>
- 10.13 The CFC commented that the introduction of CLI "authentication" practices would be welcomed by consumers.<sup>161</sup>
- 10.14 Three commented that it supports our work on tackling nuisance calls, but that too much is expected from technical solutions that will not always capture nuisance contact. It noted that overemphasising the potential of technical solutions has also lead to Ofcom having a heavy-handed approach towards CPs who are already committed to tackling nuisance calls. It suggested that instead our focus should also

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<sup>154</sup> Which? response to Ofcom's draft annual plan for 2015/16, p2/3

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<sup>155</sup> CWU response to Ofcom's draft annual plan for 2015/16, p5

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/51717/cwu.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/51717/cwu.pdf)

<sup>156</sup> CWU response to Ofcom's draft annual plan for 2016/17, p5

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<sup>157</sup> Vodafone response to Ofcom's draft annual plan for 2015/16, p5/6

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<sup>158</sup> Mr Gilliver response to Ofcom's draft annual plan for 2015/16, p2

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<sup>159</sup> CCP and ACOD response to Ofcom's draft annual plan for 2015/16, p4/5

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<sup>160</sup> CCP and ACOD response to Ofcom's draft annual plan for 2016/17, p7

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<sup>161</sup> CFC response to Ofcom's draft annual plan for 2015/16, p2

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0017/80810/consumer\\_forum\\_for\\_communications.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0017/80810/consumer_forum_for_communications.pdf)

be on long term solutions to empower and better protect consumers. It said that the Telephone Preference Service (TPS) will play a key role in this.<sup>162</sup>

- 10.15 TalkTalk welcomed our commitment to tackling nuisance calls, and suggested we could strengthen our annual plan by banning providers charging for privacy tools (including CLI facilities) and requiring providers to block nuisance calls at a network level at no extra cost to customers.<sup>163</sup>
- 10.16 In response to the DCR Consultation, Mediahawk submitted that the current processes for identifying, reporting, blocking, and preventing nuisance calls in the UK are too slow and ineffective to address the growing problem, and Citizens Advice raised concerns about silent and nuisance calls. An individual respondent urged that overseas marketing calls and auto-dialling systems should be banned.<sup>164</sup>
- 10.17 In our final Annual Plan for 2015.16, we noted that the volume of nuisance calls remained high and was likely to rise, aided by the rapidly decreasing costs of generating calls. At the same time, new technologies are enabling callers to alter their CLI so as to obscure their identities. We explained that we have been working with the NICC<sup>165</sup> and communications providers to improve ways of tracing nuisance calls across networks and that a longer-term goal was the introduction of CLI 'authentication' practices. We said we would continue to engage with UK and international bodies to promote further improvements to the information available to users about who is calling them. We are taking some of these matters forward in the proposals set out in this consultation.
- 10.18 In its supplementary submissions of 6 December 2016, BT suggested that GC 16 could be removed since all networks now support tone dialling as standard and the obligation to provide CLI facilities could, if necessary, be incorporated in GC 3 (which concerns the availability of services and access to emergency services).

## Ofcom's proposals

### Provision of tone dialling

- 10.19 GC 16 currently requires all providers of public communications networks to provide, where technically feasible and economically viable, tone dialling or dual-tone multi frequency operation, such that the network supports the use of DTMF Tones<sup>166</sup> for end-to-end signalling throughout the network (GC 16.1(a)). The condition allows for Ofcom to direct that the obligation to provide those facilities should not apply in certain areas on the basis that there is sufficient access to those facilities in the areas in question.
- 10.20 Tone dialling is now ubiquitous on all (or virtually all) networks in the United Kingdom. Even in the absence of regulation, we consider it unlikely that any major network

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<sup>162</sup> Three response to Ofcom's draft annual plan for 2016/17, p11

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<sup>163</sup> TalkTalk response to Ofcom's annual plan for 2016/17, p3

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<sup>164</sup> Annex 1 to Ofcom's February 2016 initial conclusions from the strategic review of digital communications document, p57

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/47852/dcr\\_annexes.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/47852/dcr_annexes.pdf)

<sup>165</sup> NICC is a technical forum for the UK communications sector that develops interoperability standards.

<sup>166</sup> As defined by ETSI in ETSI Technical Report 207.

would cease to provide tone dialling facilities, for reasons of practicality including the expectations of consumers and interconnecting network providers. As such, and subject to responses to this consultation, we consider it appropriate to propose removal of the regulatory obligation to provide those facilities.

- 10.21 If our prospective analysis of the likelihood of CPs continuing to provide tone dialling facilities in the absence of a regulatory requirement to do so turns out to be incorrect, we would consider re-intervening at an appropriate point so as to re-introduce equivalent regulatory requirements if and when necessary.

### Provision of calling line identification facilities

- 10.22 The GCs also currently require providers of public communications networks to provide CLI facilities, where technically feasible and economically viable to do so, and in accordance with the requirements of data protection legislation (GC 16.1(b)).
- 10.23 CLI facilities enable the telephone number of the calling party to be displayed to the called party prior to the connection of the call. As such, they provide benefits to all end-users in that the called party can determine whether to accept or reject a call, taking into account whether they recognise the number of the person who is calling them. CLI facilities also benefit regulatory and enforcement bodies, in particular in connection with the identification, tracing and prevention of unwanted nuisance calls.
- 10.24 CLI facilities are widely available in the United Kingdom and, as with tone dialling facilities, the current GC allows Ofcom to direct that the requirement to provide those facilities should not apply in so far as they are widely available in particular areas of the country. However, unlike tone dialling, we do not think it would be appropriate to remove the obligation on CPs to provide CLI facilities at present. We consider it important that any information presented to the recipient of a call which purports to identify the person making the call should be as accurate as possible. Since calls can be routed through a number of different CPs on their end-to-end journey from the originating calling party to the call recipient, ensuring the accuracy of any CLI data presented to the call recipient relies on accurate initial population of the CLI data by the originator of the call and each of the CPs involved in the transmission of the call playing their part in the passing on of accurate CLI data along the chain of delivery. We are concerned that in the absence of a regulatory requirement to provide CLI facilities, the accuracy or availability of CLI data could be reduced and this could have the potential to seriously undermine our efforts (and those of other regulatory and enforcement bodies) to tackle unwanted nuisance calls.
- 10.25 Moreover, for the sake of clarity, and in order to ensure that consumers are fully protected irrespective of the type of electronic communications network or service they are using, we are proposing to amend the scope of the condition so that it applies to all providers of Publicly Available Telephone Services and Public Electronic Communications Networks over which Publicly Available Telephone Service are provided. This is to ensure that any telephone number which is presented to the call recipient as identifying the calling party is as accurate as possible even if one of the CPs in the chain of delivery is not a network provider (e.g. if the originating or terminating provider is a service provider that does not operate its own network).
- 10.26 Given our concerns outlined above, we are proposing to remove the provision (GC 16.2) which provides for Ofcom to direct that that the requirement to provide CLI facilities should not apply in areas where there is already sufficient access to those facilities. We have also amended the wording of the condition to make it clearer that

CLI facilities must be provided unless the CP concerned can show that it is not technically feasible or economically viable to do so. We think this is necessary to facilitate the provision of accurate CLI data throughout the call chain. For the same reasons, we are proposing to insert a new provision requiring CPs to inform their customers if CLI facilities which enable the number of the calling party to be displayed to the called party are not available on the service they are providing to end-users. Provision of CLI facilities will remain subject to the requirements of data protection legislation.

- 10.27 We note BT's suggestion that the obligation to provide CLI facilities could be incorporated into the current GC 3 (or the proposed GC A3, on the availability of services and access to emergency services). However, due to the changes we are proposing to make to this condition, including the proposed additional requirements set out below, we consider it preferable to keep the requirements relating to the provision of CLI facilities in a separate standalone condition.
- 10.28 The current condition on CLI facilities is supplemented by Ofcom guidelines on the provision of CLI facilities and other related services (the "**CLI Guidelines**").<sup>167</sup> These guidelines set out a series of principles that should be respected by CPs in the provision of CLI facilities and the conveyance of CLI data, in order to establish a consistent approach to the handling of CLI data from call origination through to call termination. So as to strengthen the protections available to consumers and to assist with the prevention and detection of nuisance calls, we are proposing to incorporate certain aspects of the current (non-binding) guidelines into (binding) conditions. In particular, we are proposing to require that where CLI facilities are provided, regulated providers must ensure that any CLI data provided with or associated with a call includes a valid, diallable telephone number which uniquely identifies the caller.
- 10.29 In setting this new requirement, we would propose to take the following approach to defining its scope:
- a) We are proposing to define CLI Data as meaning "the contents of all signalling messages used between CPs and/or between CPs and End-Users which can be used to signal the origin of the call and/or the identity of the calling party, including any associated privacy markings". For calls on legacy PSTN networks, this would include both the telephone number or other identifier used at the network level (the network number) as well as any number nominated or provided by the caller which can be used to make a return call (the presentation number). For IP-based calls, it would include all relevant equivalent fields which represent the origin of the call or the identity of the caller.
  - b) For CLI Data to be "valid" for these purposes any telephone number included in the CLI Data must be either a UK telephone number from the National Telephone Numbering Plan or an international telephone number which conforms to the international public telecommunication numbering plan contained in ITU Recommendation ITU-T E.164, with sufficient digits to be routable according to published or observed national numbering plans.
  - c) In order to be "diallable" the number presented to the called party must either be a number from the National Telephone Numbering Plan in a range which has

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<sup>167</sup> <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-industry-guidance/calling-line-identification>

been allocated to a CP and is routable by other CPs or a valid international number

- d) In order for the CLI data to “uniquely identify the caller” it should be correctly populated<sup>168</sup> by the originating CP, or the calling party under appropriate contractual arrangements with the originating CP, be faithfully carried by any intermediate CPs and the appropriate number should be presented to the terminating CP’s customer if they take a CLI display service, in accordance with any relevant privacy markings. Any interworking issues should be handled in accordance with relevant technical standards and Ofcom’s CLI Guidelines.

10.30 We propose that the new condition will apply to all CPs involved in the origination, transit and termination of a call, although what is expected of a CP will depend on its position in the chain of transmission. In most cases, we would expect the onus of ensuring compliance with this provision to fall largely on the originating and terminating providers. Originating providers should be able to ensure that any CLI Data provided in connection with a call originating on their networks (including the network number and any presentation number) complies with the above requirements. Terminating providers should be able to identify calls that are terminating on their networks with invalid or malformed CLI, and take appropriate action. We recognise that it may be more difficult for a CP to identify invalid CLI data on a call which is merely transiting through its network. However, transit CPs should ensure that at the very least any CLI Data associated with a call when it enters their network is accurately passed on to the next CP in the chain. All CPs should take note of and follow any relevant applicable technical standards, such as NICC ND1016<sup>169</sup>, including when interconnecting with networks in other countries.

10.31 Finally, we are proposing to include a provision in this condition requiring CPs to respect the privacy choices of end-users when providing CLI facilities. This reflects the position as currently set out in our CLI Guidelines and means, for example, that where a caller elects to withhold their number it should not be displayed to the call recipient.<sup>170</sup>

10.32 These changes, if implemented, would require us to update our CLI Guidelines. We will consult separately on changes to those guidelines in due course.

### Charges for the provision of CLI facilities

10.33 As we have noted above, the provision of CLI facilities benefits consumers because they give consumers the opportunity to attempt to identify the person or organisation who is calling them, and to make an informed decision about how to handle incoming calls. CLI facilities are one of the tools available to help consumers mitigate the annoyance caused by these calls. With standard CLI facilities, for example, consumers are able to see the number that is being used to call them.

<sup>168</sup> See, for further information, the guide to the use of presentation numbers set out in Annex 1 to Ofcom’s CLI Guidelines.

<sup>169</sup> NICC ND1016, *Requirements on Communication Providers in relation to Customer Line Identification display services and other related services*, NICC Standards Limited: see <http://www.niccstandards.org.uk/publications/public-net.cfm>.

<sup>170</sup> We note in this regard that callers making direct marketing calls are not permitted to withhold their numbers under the Privacy and Electronic Communications Regulations (EC Directive) 2003, as amended.

- 10.34 While most CPs provide basic CLI or caller display facilities to their customers for free (or at no additional charge<sup>171</sup>), a small number of CPs charge separately for access to these services. We are concerned that charging customers for these facilities separately may lead to their underuse, which impacts on our ability to tackle the harm caused by nuisance calls. As mentioned above, in its response to our draft Annual Plan for 2015/16, TalkTalk suggested that we should look at banning providers from charging for privacy tools. In our recent consultation on the Narrowband Market Review,<sup>172</sup> we noted that caller display services can offer consumers some protection against nuisance calls and we said that, as such, we think that it should be provided at no additional charge to the retail line (as is the case for most retail providers) and we were considering how this policy objective might be achieved.
- 10.35 The requirement in the current GCs to provide CLI facilities is subject to the proviso of economic viability. This reflects the wording of the relevant provision of the EU Framework from which this obligation is ultimately derived.<sup>173</sup> However, we note that the cost of providing basic CLI facilities to end-users is low<sup>174</sup> and since a number of CPs already provide the basic features of CLI facilities without levying any additional separate charges to their subscribers, we consider that it must be economically viable to provide basic CLI facilities without charging separately for them, and that any CP which currently does not provide these services for free should be able to do so.
- 10.36 We believe that all CPs ought to be able to provide standard CLI facilities on an economically viable basis without levying additional, separate charges for doing so. We are therefore proposing to add a new requirement to the GCs prohibiting separate or additional charges for access to or use of standard CLI facilities as we believe that basic CLI facilities should be provided to all end-users at no additional cost.
- 10.37 BT is one of the companies which currently charges some<sup>175</sup> of its retail customers for access to CLI facilities. During our Fixed Access Market Review consultation process<sup>176</sup> in 2013/14, BT suggested that significantly reducing its wholesale charge for the service would cause such an increase in use of the facilities that it would cause an unacceptable level of failures of the service due to capacity limitations of the platform. As we said at the time, we do not find this line of argument, or the evidence BT supplied, to be convincing.<sup>177</sup> Occasional unavoidable technical failures of the CLI display service may occur in any event and, based on the data provided by BT, our analysis suggested that even at 100% take-up, the incidence of such failures is likely to remain extremely low. We believe that the small incremental risk of CLI

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<sup>171</sup> i.e. by including the provision of basic CLI facilities in any standard monthly or other recurring charges for the main service provided.

<sup>172</sup> Narrowband Market Review consultation of 1 December 2016,

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0016/95011/Narrowband-Market-Review.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0016/95011/Narrowband-Market-Review.pdf)

<sup>173</sup> See Article 29 of the Universal Service Directive.

<sup>174</sup> We looked at the cost of the wholesale caller display service provided by BT in the 2014 Fixed Access Market Reviews, see paragraphs 4.244 to 4.257 of the Fixed Access Market Reviews 2014 Statement, Vol. 2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0032/78836/volume2.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0032/78836/volume2.pdf)

<sup>175</sup> The separate charge is waived if the customer signs up to a 12-month line rental contract.

<sup>176</sup> See <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/narrowband-broadband-fixed> and [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/76497/fixed-access-markets.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/76497/fixed-access-markets.pdf)

<sup>177</sup> See paragraphs 4.200 to 4.241 of the Fixed Access Market Reviews 2014 Statement, Vol. 2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0032/78836/volume2.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0032/78836/volume2.pdf)

failing to be displayed for some calls is an acceptable trade-off for the benefits of wider availability and take-up of the service.

- 10.38 For these reasons, we are proposing to add a new provision to this condition requiring that where CPs provide CLI facilities, they must not levy an additional or separate fee for access to or use of those facilities. Given the minimal cost involved in providing these facilities to end-users and the benefits to consumers that result, we believe that the costs of provision ought to be already covered by CPs' standard line rental or network access charges.

#### Blocking invalid and non-diallable CLI

- 10.39 We are also proposing to add a new provision to this condition requiring CPs to take reasonable steps to identify calls on which invalid or non-diallable CLI data is provided and to block those calls, where technically feasible.
- 10.40 As noted above, Ofcom estimates that UK consumers receive around 5 billion nuisance calls per year. Some of the people behind these calls manipulate the CLI presented with their calls in order to hinder their identification by consumers, law enforcement agencies, and regulators. Some ways in which they may do so include rendering the CLI Data invalid or non-diallable. Indeed, information available to Ofcom from the largest CPs in the UK indicates that there are millions of calls presented with invalid or non-diallable CLIs that traverse their networks each day. If CPs blocked these calls at the network level, they would be prevented from reaching consumers, yielding significant benefits to consumers in the form of reduced nuisance and annoyance.

#### Defined terms used in the condition

- 10.41 We are retaining the definition of "Calling Line Identification Facilities" used in the current General Condition.
- 10.42 We are proposing to delete the definition of "DTMF Tones", in consequence of our proposal to remove the obligation currently set out at GC 16.1(a) to provide tone dialling.
- 10.43 We have introduced a new defined term of "CLI Data", which is used in connection with the proposed new requirement to ensure that CLI Data associated with a call is valid, diallable and uniquely identifies the caller.
- 10.44 We propose to delete the definition of "Communications Provider" in GC 16 and replace this with a new scope provision which sets out who the revised condition applies to.

#### Overall analysis of our proposals in relation to CLI facilities

- 10.45 We have set out above the proposals we are making in relation to extending regulation in respect of the provision of CLI facilities. We expect the additional costs of compliance with these provisions to be relatively limited, as much of these proposed changes reflect what is already set out in our guidelines and most CPs already comply with those guidelines.
- 10.46 The new provision prohibiting separate or additional charges for access to CLI facilities will have some impact on the small number of CPs who currently charge for these services separately. However, we consider that not charging for these services

separately does not prevent them from being economically viable, since most CPs already provide them for free.

- 10.47 As to the costs of the proposed requirement to block calls with invalid or non-diallable CLIs, we note that some CPs already block various forms of nuisance calls on a voluntary basis.
- 10.48 We believe that all of these proposed changes will bring benefits for consumers in the accurate provision of CLI data to call recipients, enabling consumers to choose when to accept or reject calls and facilitating the work we undertake to tackle the harm caused by nuisance or unwanted calls.
- 10.49 In summary, while these proposals may entail some additional costs for those CPs who do not currently follow Ofcom's CLI guidelines or block calls on a voluntary basis, we consider that those costs are outweighed by the benefits for all consumers.
- 10.50 We consider that an implementation period of three to six months (as set out at paragraph 3.25 above) ought to be sufficient to allow providers to bring their practices and procedures into line with our proposed revised condition on CLI facilities.

## Legal tests

- 10.51 We consider that the changes we are proposing to make to this condition meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:
- a) **objectively justifiable** in that they will ensure that CLI facilities are made available for all consumer who need them and that CLI data is valid and accurate wherever possible. This will bring direct benefits to consumer, in particular in helping to tackle unwanted or nuisance calls;
  - b) **not unduly discriminatory** because they will apply equally to all CPs who provide networks or voice call services and will benefit all consumers equally;
  - c) **proportionate** in that they go no further than is necessary to achieve the objectives of ensuring that all consumers benefit from the provision of services and facilities which enable them to identify the persons calling them;
  - d) **transparent** as the reasons for the changes that we are proposing to make to this condition are explained above and the effects of the proposed changes would be clear to CPs on the face of the revised condition itself.
- 10.52 The proposed revised text of the proposed new condition C7 can be seen at Annex 12 and a marked up version showing the changes we are proposing to make can be seen at Annex 13.

## Consultation questions

**Question 17:** *Do you agree with our proposal to remove the condition relating to the provision of tone-dialling? Please give reasons for your views.*

**Question 18:** *Do you agree with the changes we are proposing to make in relation to the provision of calling line identification facilities, including the new requirements we are proposing to add? Please give reasons for your views.*

## Section 11

# Switching

- 11.1 This section is about what happens when consumers want to move from their current CP to another CP, for example, because the consumer thinks the other CP is offering a better price or perhaps because the consumer thinks the other CP is offering better services. In this section we also cover number portability. Number portability has a formal definition in the GCs but can be summarised as the consumers' ability to keep their phone numbers with them when they switch to a different landline or mobile provider.
- 11.2 The GCs currently cover the processes for:
- a) switching between mobile providers; and
  - b) switching between providers of fixed-line services (comprising landline calls and/or broadband) who operate on the Openreach or KCOM networks.
- 11.3 In this section, we present the changes that we propose to make to these conditions (GCs 22 and 18), including our provisional position on number portability. We also explain how our proposed changes fit in the context of Ofcom's ongoing switching projects.
- 11.4 In summary, we propose to carry out the review of the process for switching between mobile providers and between providers of fixed-line services (comprising landline calls and/or broadband) who operate on the Openreach or KCOM networks, in two stages. The first stage will be conducted as part of this review – i.e. as part of the Review of the General Conditions. The second stage will be conducted so that it aligns with Ofcom's ongoing assessment of Cross-platform switching and of mobile switching.
- 11.5 In this review, for GC 22, we propose to:
- a) remove provisions which are out of date and therefore no longer apply;
  - b) simplify drafting and definitions, but without changing the original scope;
  - c) remove the prohibition on reactive save activity, which applies when providers of fixed-line services who operate on the Openreach or KCOM networks are required by GC 22 to communicate with customers who are switching away from them.
- 11.6 In relation to number portability:
- a) we are proposing to simplify drafting and definitions in GC 18, without any substantive change;
  - b) mobile number portability is covered by Ofcom's ongoing switching projects;
  - c) in relation to fixed number portability, in our DCR Statement we expressed the following view: *"In the first instance, we would like to see industry reach consensus on how improvements could be made, for example through the relevant OTA forums. However if progress is not possible, then we will welcome*

*more detailed proposals from stakeholders on particular improvements to the current system that could be made*.<sup>178</sup> We continue to consider that progress is possible and that consequently the onus remains, in the first instance, on industry to reach consensus.

## The current switching rules

### Switching between mobile providers

- 11.7 The rules covering the process for switching between mobile providers are contained in GC 18. More specifically, these rules apply where the customer wishes to keep their mobile phone number when they move to their new provider.<sup>179</sup>
- 11.8 The customer is required to obtain what is called a Porting Authorisation Code (“**PAC**”) from the current provider (the losing provider or “**LP**”) and give this to their new provider (the gaining provider or “**GP**”) who initiates the transfer. The process can be summarised as follows:
- a) all mobile providers are required, on request, to port a customer’s number within the shortest possible time;<sup>180</sup>
  - b) the LP must allow the customer to request a PAC over the phone;<sup>181</sup>
  - c) where a phone request is made, the LP is required to provide the PAC immediately over the phone or by SMS (text) within two hours of the request;<sup>182</sup>
  - d) porting and activation of the mobile number must be completed within one business day from receipt by the GP of the customer’s request to port to them;<sup>183</sup>
  - e) both the LP and GP are obliged to provide the necessary facility to ensure porting can happen between them;<sup>184</sup>
  - f) should there be any direct charges to customers for providing a porting service, those charges must not act as a disincentive to customers changing their provider;<sup>185</sup>
  - g) the customer must be informed of the date on which their number will be ported;<sup>186</sup>

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<sup>178</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/47852/dcr\\_annexes.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/47852/dcr_annexes.pdf), paragraph A1.409.

<sup>179</sup> This is referred to as porting. Where the customer wishes to change mobile provider but does not wish to port (i.e. keep) their number, the process mandated under GC 18 does not apply. Instead, the customer would terminate their contract with their current provider and enter into a contract with their new provider.

<sup>180</sup> GC 18.1.

<sup>181</sup> GC 18.2(a).

<sup>182</sup> GC 18.2(b).

<sup>183</sup> GC 18.3(a).

<sup>184</sup> GC 18.5. Any charges levied between the LP and GP should be made in accordance with certain principles set out in this paragraph of the GC.

<sup>185</sup> GC 18.5(e).

<sup>186</sup> GC 18.8.

- h) where the provider delays the porting of the mobile number for more than one business day or abuses the porting process, the provider must provide reasonable compensation to the customer.<sup>187</sup>
- i) all providers must provide details on compensation, and how it will be paid, and do so in a clear, comprehensive and easily accessible form.<sup>188</sup>

11.9 The obligations imposed on mobile providers in GC 18 where the customer wishes to keep their mobile phone number when they move to their new provider, come from the EU regulatory framework which sets out minimum requirements with which the process for porting of both landline and mobile numbers must comply.<sup>189</sup>

### **Switching between fixed-line services – the Openreach/KCOM reforms**

11.10 There are rules in the GCs which cover the sale, marketing and provision of fixed-line services (comprising landline calls and/or broadband) by CPs, who operate on the Openreach/KCOM networks, to domestic and small business customers who are switching between such CPs.

11.11 These rules, which are contained in GC 22, were amended in 2013 and 2015 (the “**Openreach/KCOM reforms**”).<sup>190</sup> The switching process covered by these rules is led by the gaining provider (i.e. it is a GP-led process<sup>191</sup>) according to which the customer goes to the CP to whom they want to switch, informs the CP they want to switch and that CP carries out all the necessary work to make the switch happen (including contacting the CP away from whom the customer wants to switch, referred to as the LP).

11.12 The rules are designed to ensure that consumers’ experiences of switching, encompassing both moving between providers and moving house, are easy and hassle free, and that consumers are well protected, including not being switched to another provider against their will (known as “slamming”).<sup>192</sup> We explain the rules contained in the Openreach/KCOM reforms in more detail below.

### Regarding selling and marketing

11.13 There are high-level obligations in the Openreach/KCOM reforms which serve to prohibit CPs from engaging in dishonest, misleading, deceptive or aggressive conduct, or contacting customers in an appropriate manner, when selling and/or marketing their fixed-line services. These high-level obligations include a prohibition on slamming.<sup>193</sup>

11.14 There are more detailed obligations which:

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<sup>187</sup> GC 18.9.

<sup>188</sup> GC 18.10.

<sup>189</sup> See Article 30(1) to (4) of the USD.

<sup>190</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/consumer-switching-review/statement/update-jun-15>

<sup>191</sup> The rules apply where the GP agrees to handle the switching process on behalf of the customer who wants to switch.

<sup>192</sup> The power to impose rules to protect the consumer during the switching process comes from Art 30(4) of the USD.

<sup>193</sup> GC 22.3.

- a) require the GP to provide certain information at point of sale to customers who want to switch;<sup>194</sup>
- b) allow customers a certain period of time from agreeing to enter into a contract, to terminate the contract without charge, and to allow termination to be effected by, at least, telephone, email and post;<sup>195</sup>
- c) require the GP to keep records of each customer's consent to switch;<sup>196</sup>
- d) require both the GP and the LP to provide the customer with a so-called Notification of Transfer letter which sets out factual information regarding the impending switch (e.g. what fixed-line services are being switched and when, and the right of the customer to terminate the contract).<sup>197</sup>

### Regarding provisioning

- 11.15 Where the GP is carrying out a switch of both landline calls and broadband services, the GP must ensure the switch occurs with minimal loss of service.<sup>198</sup>
- 11.16 The LP may only cancel the order from the GP for the switch to occur in certain prescribed instances.<sup>199</sup>
- 11.17 Where the LP is required by the rules in GC 22 to communicate with the customer, the LP is prohibited from engaging in any communication which may induce the customer to terminate their contract with the GP and/or remain in a contract with the LP.<sup>200</sup> At the same time, both the LP and GP must ensure the switching customer is not required to contact the LP in order for the switch to be carried out.<sup>201</sup>
- 11.18 There are obligations on both the GP and LP to take measures aimed at minimising risks of erroneous transfers in circumstances where a customer is moving property and wishes any one of their fixed-line services to be transferred.<sup>202</sup>
- 11.19 Where the GP is not co-ordinating a switch involving broadband, both the GP and LP must nonetheless facilitate the switch in a fair and reasonable manner, within a reasonable period and with minimal loss of service.<sup>203</sup>
- 11.20 Finally, all CPs are required to ensure their staff are appropriately trained to comply, and must monitor their compliance, with the rules set out in GC 22.<sup>204</sup>

## **Stakeholder responses**

- 11.21 In response to the DCR consultation and Ofcom's consultations on its Annual Plan for 2015/2016 and its Annual Plan for 2016/2017, stakeholders made a number of

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<sup>194</sup> GC 22.4.

<sup>195</sup> GCs 22.5 and 6.

<sup>196</sup> GC 22.8.

<sup>197</sup> GCs 22.10 – 22.13.

<sup>198</sup> GC 22.14.

<sup>199</sup> These instances are set out in Annex 1 to GC 22.

<sup>200</sup> GC 22.15.

<sup>201</sup> GC 22.18.

<sup>202</sup> These obligations are set out in Annex 2 to GC 22.

<sup>203</sup> GC 22.25.

<sup>204</sup> GC 22.27 and 28.

comments about switching and number portability. Separately, on 6 December 2016 BT provided supplementary comments in advance of our publication of this review. We deal with BT's comments below (paragraph 11.24) insofar as they relate to our proposals as part of this review. We deal with the comments from the Internet Telephony Services Providers Association on number portability in the sub-section further below on number portability (paragraph 11.48). We are dealing with all other stakeholders' comments as part of our ongoing assessments in the Cross-platform switching consultation and in our proposed mobile switching experience and process reforms.

## Ofcom's related switching projects

### Consumer switching – mobile switching experience and process reforms

11.22 We are currently consulting on reforms to existing processes for changing mobile provider. One option is the so-called "Automated PAC" process, aimed at simplifying the current PAC switching process. The other option is a GP led process, which would simplify switching by enabling the new provider to co-ordinate the switch on behalf of the customer.<sup>205</sup>

### Proposals to reform landline, broadband and pay TV switching between different platforms

11.23 In July 2016 we published our provisional view on the difficulties consumers currently experience when they switch, or consider switching, one or more of landline, fixed broadband and pay TV between the Openreach, KCOM, Virgin cable and Sky satellite platforms ("**Cross-platform switching consultation**").<sup>206</sup> The Cross-platform switching consultation also sets out our provisional assessment of two main options for reform to reduce these difficulties and deterrents, making switching easier and more reliable for consumers: option 1 is enhanced cease and re-provide ("**EC&R**"); and option 2 is a GP led process.

### Aligning any significant policy changes to the Openreach/KCOM reforms with Ofcom's related switching projects

11.24 We consider that it is preferable to align an assessment of any significant policy changes to the Openreach/KCOM reforms with our ongoing assessment of Cross-platform switching and of mobile switching.<sup>207</sup> In carrying out our overall assessment, we will also be able to take into account stakeholders' cumulative responses to the DCR consultation and to draft Annual Plans for 2015/16 and 2016/17 which focused on our mobile switching experience and process reforms and our proposals in the Cross-platform switching consultation.

<sup>205</sup> We issued our consultation on proposals to reform switching of mobile communications services in March 2016 ([https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/82636/consumer-switching-mobile-consultation.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/82636/consumer-switching-mobile-consultation.pdf)). In July 2016 we issued a further consultation on an additional proposal to enhance the mobile switching process reforms we proposed in March, to address the effect of notice periods within the switching process

([https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/83453/Consumer-Switching-Further-proposals-to-reform-switching-of-mobile-services-July-2016.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/83453/Consumer-Switching-Further-proposals-to-reform-switching-of-mobile-services-July-2016.pdf)).

<sup>206</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/making-switching-easier>

<sup>207</sup> We note, in this respect, BT's comments in its supplementary submissions, in particular, that updates to the switching rules relating to the Openreach/KCOM networks should be conducted as appropriate once the consultation process in relation to Cross-platform switching has concluded.

## Ofcom's proposals in this review

11.25 Our proposals in this review concern the rules in GC 22 which cover the provisioning of fixed-line services (comprising landline calls and/or broadband) by CPs who operate on the Openreach/KCOM networks, to retail customers who are switching between such CPs.

### Removing the reactive save prohibition

11.26 Where the LP is required to communicate with the switching customer in order to comply with the rules introduced by the Openreach/KCOM reforms, the general conditions (GC 22.15) provide that the LP “*must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Provider and/or remain in a contract with the [LP]*” (“**Reactive Save Prohibition**”). The Reactive Save Prohibition prevents the LP from making counter-offers to customers that it has been made aware, as a result of the information it receives as part of the switching process, intend to switch. We refer to this activity on the part of the LP as reactive save activity.

11.27 The Openreach/KCOM reforms require the LP to communicate with the switching customer in certain instances:

- a) in order to comply with their obligation to inform the switching customer of the implications of switching and to provide the necessary notification letter<sup>208</sup>;
- b) where the so-called “Cancel Other” applies, which basically means the ability of the LP, during a certain period, to cancel an order placed by the GP for the switching customer to be switched<sup>209</sup>;
- c) where the switching customer is moving to a location currently served by the LP.<sup>210</sup>

11.28 In all instances, the requirement on the LP to communicate with the switching customer is a consumer protection measure. For example, the obligation on the LP, and on the GP<sup>211</sup>, to each send the switching customer a notification letter serves two important consumer protection purposes, namely:

- a) to mitigate the risk of customers being slammed<sup>212</sup>; and
- b) to inform customers of the implications of their impending switch.

11.29 GC 22.11 and 22.12 of the current condition list what the LP’s notification letter must “set out in clear, intelligible and neutral terms”, which includes, amongst other things, “an explanation...that no contact is required with the [LP] to cancel their existing service”.<sup>213</sup> The information, set out in clear, intelligible and neutral terms, that the switching customer receives from the LP in the notification letter is an important

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<sup>208</sup> See current paragraphs 22.11 to 22.13.

<sup>209</sup> See the current Annex to GC 22.

<sup>210</sup> See the current Annex 2 to GC 22.

<sup>211</sup> The obligation on the GP to send the notification letter is in the current paragraph 22.10.

<sup>212</sup> Being slammed basically means being moved to an alternative provider against the customer’s wishes.

<sup>213</sup> See current paragraph 22.12(a).

feature of the Openreach/KCOM reforms, and we are not proposing any changes to the requirement to send a notification letter, or its contents, as part of this review.

- 11.30 As explained in the Cross-platform switching consultation (paragraphs 3.51-3.52), consumer experience was mixed as regards contact with their old provider, during which their old provider might try to persuade them to stay. Some consumers actively look to benefit from contacting their current provider where this leads to a better deal and mutual satisfaction. Although we remain concerned about reactive save discussions when they are unwanted or imposed on consumers and which make the switching experience more difficult, we are generally less concerned about the effects of reactive save activity than was previously the case.
- 11.31 Consequently, we are proposing to remove the express prohibition on reactive save in the current paragraph 22.15. We note, as we have done also in the Cross-platform switching consultation, that GC 1.2<sup>214</sup> requires CPs to treat any information obtained in confidence before, during or after negotiations for network access as confidential and to use such information solely for the purpose for which it was acquired. In our August 2016 consultation<sup>215</sup> we did not propose to make any substantive change to GC 1.2 (now re-numbered as GC A1.3).
- 11.32 In its response to the August 2016 consultation, Virgin Media quoted paragraphs 4.43 and 4.44 of the Cross-platform consultation<sup>216</sup> and said that “*it would be appropriate at this stage for Ofcom to confirm that GC 1.2 does not prohibit reactive save*”. As we noted in the Cross-platform consultation, GC 1.2 has been found by the UK courts to be sufficiently broad as to apply to certain switching scenarios where customer information is passed onto the LP from the GP.<sup>217</sup> However, insofar as it does apply to reactive save activity generally, we do not plan to make the enforcement of GC 1.2 an administrative priority in the absence of evidence of consumer harm.

### Simplifying and clarifying

- 11.33 A number of the rules in GC 22 apply prior to the so-called “Harmonisation Date”. This date was 20 June 2015, which was the date on which full implementation of the Openreach/KCOM reforms took effect. We propose to remove these rules because they are now historical. For example, the need for a so-called Migration Authorisation Code (“**MAC**”) in order to switch broadband provider. Specifically, we are proposing to remove the rules which are currently set out in GCs 22.21, 22.23, 22.24 and Annex 3 to GC 22.
- 11.34 We are also proposing some drafting changes to simplify and clarify GCs 22.1 and 22.2 (“Scope and Effect”), GC 22.14 (“Simultaneous transfers”), GCs 22.16 to 22.20 (“Communications Provider Migrations without change of location within Openreach or KCOM’s Access Network”), GC 22.22 (“Home-moves within Openreach’s or KCOM’s Access Network”), GC 22.25 (“Other Migrations of Broadband Services”), GCs 22.26 to 22.29 (“General requirements”), and Annexes 1 and 2 to GC 22.

<sup>214</sup> GC 1.2 implements obligations contained in Art. 4(3) of the Access Directive. See Condition A1.3.

<sup>215</sup> See paragraph 4.4.

<sup>216</sup> Our document of 29 July 2016, entitled ‘Making switching easier and more reliable for consumers’: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/58845/making-switching-easier.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/58845/making-switching-easier.pdf)

<sup>217</sup> British Telecommunications PLC v Office of Communications (CPS save activity), case number 1025/3/3/04 <http://www.catribunal.org.uk/files/Jdg1025BT091204.pdf>

Finally, we are proposing to remove GC 22.30 (“Definitions”) and place all definitions in a separate annex to the GCs.

## Mis-selling

11.35 We discuss in the following section the changes that we are proposing to make to the rules covering the selling and marketing of fixed line services, which are currently set out in GC 22.3 to 22.13.

## Definitions

- 11.36 We propose to amend the definition of “Access Charge” to reflect our proposal to have one definition of this defined term in the GCs.
- 11.37 We propose to clarify the definition of “Broadband Service” to avoid any uncertainty regarding what might be regarded as “*high data transfer speeds*”, by making clear that the service is within scope where the speed is greater than a dial-up connection. This proposed clarification does not change the current scope of the definition since dial-up connection would not be able to provide the recipient with data at high data transfer speeds.
- 11.38 We propose to remove the defined term “Communications Provider” and set out upfront, at the beginning of the revised condition, that the revised condition applies to all CPs who provide landline calls and/or broadband services on the Openreach/KCOM networks to domestic and small business customers who are switching between such CPs (referring to them as “Regulated Providers”). We also propose to remove the defined term “Communications Services” which is defined as landline calls and/or broadband services. We propose to set out upfront, at the beginning of the revised condition, that landline calls and/or broadband services are referred to as “Relevant Communications Services”.
- 11.39 The process by which domestic and small business customers switch between Regulated Providers is called a “Communications Provider Migration”. We propose minor additions to make this definition clearer and to remove historical parts of the definition.
- 11.40 We propose to replace the definition of the defined term “Durable Medium” with the definition given in the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. This is the same definition we propose to use in the Proposed Ofcom Code (which is the proposed new Code of Complaints) and in Condition C9 (Sale and marketing of mobile communications services).
- 11.41 We propose to remove the definition of “End-User”, which is defined for the purposes of GC 22 as a domestic and small business customer<sup>218</sup> whose contract with the CP is for the provision of landline calls and/or broadband services. The term “Customer” is currently defined in GC 22 as either a domestic and small business customer of a “different Communications Provider” or a person who wants to become a customer of a CP. We propose to incorporate the definitions of “End-User” and “Customer” into one defined term called “Switching Customer”.

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<sup>218</sup> As per the statutory definition in section 52(6) of the Act.

- 11.42 The term “Migration” is currently defined to comprise of one or more of four different processes. We propose to remove the wholesale switching process since this was relevant to the now historical MAC process for switching broadband.
- 11.43 We are also proposing to replace references to the term “Public Communications Network” with “Public Electronic Communications Network”, which also means other defined terms whose definitions currently include “Public Communications Network” would incorporate this minor change accordingly (e.g. the definition of “Narrowband”).
- 11.44 We propose to clarify the definition of “Transfer Order” to include reference to KCOM. We also propose to clarify the definition of “Transfer Period” which is the period of 10 working days during which the switching customer has the ability to cancel their contract with their GP without incurring any liability for doing so. Currently, the definition does not indicate when the period of 10 working days starts. In practice, the period starts when Openreach notifies both the GP and the LP, or when KCOM notifies the LP, that the switching customer’s order will be activated.<sup>219</sup> We propose to incorporate this into the definition of the term.

## Number portability

- 11.45 Number portability concerns the right of anyone who has been assigned a phone number from the National Telephone numbering plan to retain that number when they switch to a new phone provider.<sup>220</sup> However, in order for that right to be exercised, CPs need to offer the requisite functionality to enable the port to take place between CPs.
- 11.46 The rules for porting both mobile and landline numbers are currently set out in GC 18. The Internet Telephony Services Providers’ Association considers that the number porting system needs a complete overhaul<sup>221</sup>, as the regime set out in GC 18 is ambiguous and abused regularly.<sup>222</sup>
- 11.47 With regard to the porting of mobile numbers, as mentioned above, we are currently consulting on reforms to existing processes for changing mobile provider. These reforms include proposed changes to the process for porting of mobile numbers.
- 11.48 With regard to the porting of landline numbers, we note the response of the Internet Telephony Services Providers’ Association to the DCR Consultation where it considered that the number porting system needs a complete overhaul<sup>223</sup>, as the regime set out in GC 18 is ambiguous and abused regularly.<sup>224</sup> In our subsequent DCR Statement we expressed the following view: “*In the first instance, we would like*

<sup>219</sup> Openreach notifies the GP and the LP simultaneously. KCOM notifies the LP first and then the GP.

<sup>220</sup> This implements a mandatory requirement of the Universal Service Directive.

<sup>221</sup> ITSPA response to Ofcom’s draft annual plan for 2016/17, p1

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/33467/itspa.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/33467/itspa.pdf)

<sup>222</sup> Annex to ITSPA’s response to Ofcom’s strategic review of digital communications: discussion document, p3

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/83443/internet\\_telephony\\_service\\_providers\\_association\\_annex.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/83443/internet_telephony_service_providers_association_annex.pdf)

<sup>223</sup> ITSPA response to Ofcom’s draft annual plan for 2016/17, p1

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/33467/itspa.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/33467/itspa.pdf)

<sup>224</sup> Annex to ITSPA’s response to Ofcom’s strategic review of digital communications: discussion document, p3

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/83443/internet\\_telephony\\_service\\_providers\\_association\\_annex.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/83443/internet_telephony_service_providers_association_annex.pdf)

*to see industry reach consensus on how improvements could be made, for example through the relevant OTA forums. However if progress is not possible, then we will welcome more detailed proposals from stakeholders on particular improvements to the current system that could be made”.*<sup>225</sup> We continue to consider that progress is possible and that consequently the onus remains, in the first instance, on industry to reach consensus.

- 11.49 In this review, we are proposing some minor drafting changes to GC 18 in order to ensure consistency with the approach that we are proposing in relation to the other general conditions. In particular, we are proposing to include a Recital to explain what the Condition is about, and a “Scope” sub-section to identify the CPs to whom it applies (referring to them as “Regulated Providers”) and the persons who can port their number or numbers (referring to these persons as “Relevant Subscribers”).
- 11.50 We are proposing to replace “Office of Communications” with “Ofcom” and clarify the definition of “SMS”. Given all defined terms will be moved to a single place, we are also proposing to add the word “Porting” to the term “System Set-Up Costs” to make it immediately clear to the reader that the definition is about porting.
- 11.51 We are proposing to have one single definition of mobile services in the GCs, which would be under the defined term “Mobile Communications Service”. Our proposed definition requires us to make minor clarificatory changes to the current definition of “Mobile Communications Service” in GC 18.
- 11.52 We are proposing to amend the definition of “Transit Provider” to incorporate the definition of “Point of Connection” since this latter defined term is only used within the definition of “Transit Provider”. We are therefore proposing to remove “Point of Connection” as a defined term.
- 11.53 Finally, we are proposing to change the definition of “Subscriber”, which is currently unique to GC 18, to the standard definition. The standard definition used throughout the Conditions is “any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services”. The definition of “Subscriber” that is unique to GC 18 incorporates the standard definition with the additional requirement that the person has “a number or numbers from the National Telephone Numbering Plan”. We propose to use the standard definition and clarify in the “Scope” sub-section that this Condition covers Subscribers “with a number or numbers from the National Telephone Numbering Plan”. As explained above, we propose to refer to such Subscribers as “Relevant Subscribers”.

## Legal tests

- 11.54 We consider that the changes we are proposing to make to the current rules in GC 22 that give effect to the Openreach/KCOM reforms, as well as the minor drafting changes to GC 18, meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:
- a) **objectively justifiable** because, with regards number portability, they ensure consistency with the approach that we are proposing in relation to the other general conditions, and with regards to switching, they should ensure the condition continues to achieve the consumer protection aim pursued by the Openreach/KCOM reforms – i.e. to ensure that customers are protected

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<sup>225</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/47852/dcr\\_annexes.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/47852/dcr_annexes.pdf), paragraph A1.409.

throughout the switching process and are not switched to another provider against their will. In particular:

- i) we consider the removal of the Reactive Save Prohibition would update regulation by bringing it into line with our reduced concern about the effects of reactive save activity; and
  - ii) we consider our proposals to simplify and clarify the rules implementing the Openreach/KCOM reforms by removing historical rules, amending some definitions and making some further drafting changes, should allow both CPs and customers to understand what the relevant rules are and what obligations they impose and rights they create.
- b) not unduly discriminatory** since, with regards number portability they do not change the current scope of the condition, and with regards switching, the proposed changes apply in respect of all CPs who operate on the Openreach/KCOM networks and who sell, market and provide fixed-line services to domestic and small business customers switching between such CPs, which is consistent with the current scope of the Openreach/KCOM reforms;
- c) **proportionate** as our provisional view is that none of the proposed changes would introduce any additional regulatory burden on industry, having regard to the consumer protection aim they seek to achieve;
- d) **transparent** as the reasons for the changes that we are proposing to make to these conditions are explained above and the effects of the proposed changes would be clear to CPs on the face of the revised conditions themselves.

11.55 The proposed revised text of the proposed new conditions B3 and C8 can be seen at Annex 12 and a marked up version showing the changes we are proposing to make can be seen at Annex 13.

## Consultation questions

**Question 19:** *Do you have any comments on our proposals in relation to the proposed revised general condition on switching?*

**Question 20:** *Do you agree with our proposal to remove the current provision which expressly prohibits so-called 'reactive save' activity (in GC 22.15)?*

## Section 12

# Mis-selling

- 12.1 This section is about the rules in the GCs which are designed to protect consumers from suffering harm and distress caused as a result of being mis-sold services by CPs.
- 12.2 The GCs contain conditions covering the selling and marketing of:
- a) fixed line services (comprising landline calls and/or broadband) by CPs, who rely on the Openreach or KCOM wholesale networks, to provide retail services to domestic and small business customers that are switching between such CPs; and
  - b) mobile call and text services to domestic and small business customers.
- 12.3 As explained further below, our experience of enforcement and engagement with CPs has shown that the majority of instances of alleged mis-selling arise in the context of the switching process. In the previous section we described the switching processes currently covered by the GCs (the Openreach/KCOM reforms in GC 22), as well as those we are consulting on. We also set out our intention to align an assessment of any significant policy changes to the Openreach/KCOM reforms with our ongoing assessment of Cross-platform switching and of mobile switching.
- 12.4 Our provisional view is to include consideration of any significant policy changes to the selling and marketing rules as part of the overall assessment of the switching processes.
- 12.5 As part of this review, in summary, we propose to make certain limited changes to the current rules to ensure that the conditions will continue to provide adequate protection to consumers and to make them easier to enforce in case of non-compliance. To effect this, our proposals:
- a) focus on what previous enforcement under the current rules, and engagement with CPs, has demonstrated to us to be a key cause of mis-selling of both fixed-line and mobile services, and place domestic and small business customers in a position to make more informed purchasing decisions.
  - b) aim to produce mis-selling rules that are clearer, as a result of which CPs understand what they should and should not do when selling and marketing their fixed line and/or mobile services, which should make compliance easier; and
  - c) simplify drafting and definitions.

## The current rules

### Fixed-line services

- 12.6 GC 22 contains the rules covering the selling and marketing of fixed line services by CPs, who operate on the Openreach or KCOM networks, to domestic and small business customers that are switching between such CPs.

- 12.7 We explained in the preceding section on Switching that these rules comprise high-level obligations and more detailed obligations.
- 12.8 The high-level obligations serve to prohibit CPs from engaging in dishonest, misleading, deceptive or aggressive conduct, or contacting customers in an appropriate manner, when selling and/or marketing their fixed-line services. These high-level obligations include a specific prohibition on slamming.<sup>226</sup>
- 12.9 The more detailed obligations:
- a) require the GP to provide certain information at point of sale to customers who want to switch<sup>227</sup>;
  - b) allow customers a certain period of time from the completion of sale date, to terminate the contract without charge, and to allow termination to be effected by, at least, telephone, email and post<sup>228</sup>;
  - c) require the GP to keep records of each customer's consent to switch<sup>229</sup> and;
  - d) require both the GP and the LP to provide the customer with a so-called Notification of Transfer letter which sets out factual information regarding the impending switch, including any consequential implications arising from the switch (e.g. what fixed-line services are being switched and when, the right of the customer to terminate the contract, any outstanding liabilities e.g. ETCs).<sup>230</sup>
- 12.10 With the exception of the requirement on the GP to keep records of each customer's consent to switch, both the high-level and more detailed obligations were first introduced in 2009 as consumer protection measures against the mis-selling of landline services.<sup>231</sup>
- 12.11 In 2013, Ofcom strengthened the existing rules through introducing a number of changes, including an additional requirement on the GP to keep records of each customer's consent to switch. Ofcom also extended the rules to cover the sale and marketing of broadband services.

### Mobile call and text services

- 12.12 GC 23 contains the rules covering the selling and marketing of mobile call and text services to domestic and small business customers.
- 12.13 The rules were introduced in 2009<sup>232</sup> to address harms caused to domestic and small business customers by:

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<sup>226</sup> GC 22.3. Being slammed basically means being moved to an alternative provider against the customer's wishes.

<sup>227</sup> GC 22.4.

<sup>228</sup> GCs 22.5 & 6.

<sup>229</sup> GC 22.8.

<sup>230</sup> GCs 22.10 – 22.13.

<sup>231</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/74526/statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/74526/statement.pdf)

<sup>232</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/51390/statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/51390/statement.pdf). All the obligations imposed by the rules are consumer protection rules designed to address the risk of customers being mis-sold mobile call and text services.

- a) CPs providing mis-leading information about their mobile call and text services, as well as omitting to provide important information and applying unacceptable pressure to switch providers; and
- b) cashback mis-selling by retailers selling CPs' mobile call and text services, which consisted of onerous terms and conditions that had to be complied with in order to redeem the cashback offer, refusal on the part of retailers to honour the cashback even when the terms and conditions were complied with, and retailer insolvency.

12.14 Like the rules for fixed services explained above, they require CPs to comply with certain high-level obligations regarding how they seek to sell and market their mobile call and text services. These obligations prohibit CPs from engaging in dishonest, misleading, deceptive or aggressive conduct, or contacting customers in an appropriate manner, when selling and/or marketing their mobile call and text services.<sup>233</sup>

12.15 There are then further more detailed obligations, including certain minimum standard provisions in respect of the sales and marketing behaviour of their retailers, which can be summarised as follows:

- a) CPs must make a comprehensive summary of their obligations imposed by the Condition available on their websites<sup>234</sup>;
- b) CPs must use reasonable endeavours to ensure that where its services are sold via a retailer:
  - i) the retailer is aware of GC 23;
  - ii) provisions are in place imposing the same prohibitions on the retailer as are imposed on the CP under paragraph 23.2;
  - iii) the CP must monitor the retailer's compliance with those provisions and also appropriately sanction non-compliance.<sup>235</sup>
- c) CPs must comply with a number of requirements regarding the provision of information when a customer expresses a positive intention to take out a new contract or amend an existing contract<sup>236</sup>;
- d) CPs must produce and keep records regarding the sales of their mobile call and text services for at least 6 months from the date the record was created<sup>237</sup>;
- e) CPs must use reasonable endeavours to ensure that processes are in place assuring that CPs' retailers are appropriately trained to comply with the Condition<sup>238</sup>;
- f) CPs must carry out a number of due diligence checks in respect of new retailers through which they sell their mobile call and text services<sup>239</sup>;

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<sup>233</sup> GC 23.2.

<sup>234</sup> GC 23.3.

<sup>235</sup> GC 23.4.

<sup>236</sup> GC 23.5.

<sup>237</sup> GC 23.6.

<sup>238</sup> GC 23.7.

- g) CPs are prohibited from using information acquired from their retailers other than for the purpose of monitoring compliance with the Condition<sup>240</sup>;
- h) where their retailers offer sales incentives to customers, CPs must ensure the terms and conditions of those sales incentives are not unduly restrictive and that the customer is provided certain information in a clear, comprehensible and accurate manner.<sup>241</sup>

## Stakeholder responses

12.16 In its response to the DCR Consultation, EE expressed concern that both GCs 22 and 23 overlap with the Consumer Rights Act 2015, and suggested that we withdraw elements of the GC where such overlap occurs. In addition, EE considered that regulation in GC 23 in relation to sales and marketing of mobile telephony services was disproportionate because Ofcom could have used existing legislation under the Enterprise Act. However, EE agreed that the regulation of sales and marketing of fixed telephony services was proportionate, although it considered that some of the information (around termination rights and procedures) required to be provided at Point of Sale to be overly onerous.

## Ofcom proposals

12.17 In formulating our proposals, which are set out below, we have taken account of a number of relevant factors, including EE's comments<sup>242</sup>, our experience of enforcing the selling and marketing rules, and Ofcom's ongoing switching projects (as described in the preceding Switching section).

## Enforcement

12.18 Since their introduction in 2009, we have formally investigated under, and found breaches of, the selling and marketing rules on nine separate occasions<sup>243</sup>. We have also engaged with a number of CPs outside the scope of formal enforcement where we have identified compliance concerns relating to the selling and marketing rules. This has enabled us to resolve issues informally, including addressing any potential compliance concerns, to the benefit of consumers, without having to open formal investigations.

12.19 From this experience of enforcement and engagement with CPs, we consider that:

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<sup>239</sup> GC 23.8.

<sup>240</sup> GC 23.9.

<sup>241</sup> GC 23.10.

<sup>242</sup> As set out in paragraph 2.13, the GCs are intended to focus on specific consumer protection issues that arise in this sector in a way which is targeted at those particular issues and should not duplicate conditions which are applicable by virtue of national legislation of general application. Where there may be considered to be a degree of overlap between the GCs and general consumer law (as suggested by EE), we have identified the sector-specific issue that the relevant GCs are intended to address.

<sup>243</sup> Vodafone Limited in relation to GC23.2(a), October 2016. The following in relation to GC 24 (now revoked) which protected consumers from mis-selling of fixed line telecommunications services: Universal Utilities (trading as Unicom), July 2015; Supatel Ltd (trading as TimeTalk), June 2013; Axis Telecom Ltd, May 2013; Docklands Telecom Centre Limited, September 2011; Sensim Telecoms Ltd, September 2011; TalkTalk Group, May 2011; Save Money on Calls.net Ltd, April 2011; Continental Telecom, November 2010.

- a) most importantly, both domestic and small business customers continue to need the protection afforded them by the current rules, especially the rules imposing the high-level obligations;<sup>244</sup>
- b) the majority of instances of alleged mis-selling arise in the context of the switching process;
- c) both compliance and enforcement could be improved by making the rules clearer;
- d) regarding the selling of mobile calls and text services, the more detailed obligations continue to perform an important consumer protection role, in particular, in deterring retailers from otherwise engaging in selling and marketing activities that would cause consumers to suffer the harm and distress that led to the introduction of the obligations in the first place.

### **Ofcom's switching projects**

12.20 As described in the preceding Switching section, we are proposing to conduct an assessment of any significant policy changes to the selling and marketing rules as part of our overall assessment of switching processes, which is taking place within separate policy projects that are proceedings in parallel to this review of the general conditions.

12.21 Our experience of enforcement and engagement with CPs has, as noted above, shown that the majority of instances of alleged mis-selling arise in the context of the switching process. Therefore, an overall assessment of the switching process necessarily involves an assessment of the selling and marketing of the services for which the customer is seeking to switch between CPs. Moreover, any significant policy changes to the selling and marketing rules proposed at this stage would be on the basis of the current switching processes, which are currently under review within separate projects. Our provisional view is to include consideration of any significant policy changes to the selling and marketing rules as part of the overall assessment of the switching processes.

### **Ofcom's proposals**

12.22 Our proposals in this review focus mainly on the high-level obligations and are designed to ensure that:

- a) domestic and small business customers continue to be protected from the key drivers of mis-selling, both fixed-line and mobile, as highlighted through our experience to date, specifically relating to the provision of accurate information by CPs to their customers at the point of sale;
- b) domestic and small business customers are aware of the protection afforded by the rules, which we consider means they should understand both what CPs should and should not do, but also what rights they enjoy when being sold or marketed to;

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<sup>244</sup> See, for example, our investigation into Vodafone where we recently concluded that, amongst other things, Vodafone breached the prohibition in GC 23.2(a) which prohibits CPs from engaging in dishonest, misleading or deceptive conduct: [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_01160](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01160)

- c) CPs understand what they should and should not do when selling and marketing their fixed line and/or mobile services, which should make compliance easier.

### Proposals regarding the high-level obligations

12.23 When selling and marketing both fixed-line services<sup>245</sup> and mobile services, CPs are currently prohibited from:

- a) engaging in dishonest, misleading or deceptive conduct;
- b) engaging in aggressive conduct;
- c) contracting the customer in an inappropriate manner.<sup>246</sup>

12.24 We propose to replace these prohibitions with rules that focus on the information that CPs give to the customer when selling or marketing their both fixed-line or mobile services and ensure that customers are in a sufficiently informed position when they make their purchasing decision. Previous enforcement under the current rules, and engagement with CPs, has demonstrated to us that the absence of the appropriate information has been a key cause of mis-selling of both fixed-line and mobile services:

- a) we consider it necessary to require CPs to ensure that information they provide to their domestic and small business customers relating to the fixed-line or mobile services being sold or marketed, is accurate and should not be mis-leading;<sup>247</sup>
- b) CPs should offer to provide customers with the information in writing (e.g. on paper or by email) and should do so if the particular customer accepts that offer. Currently, customers' first opportunity to read any information in writing comes at the point at which they are about to sign the contract<sup>248</sup>. We consider our proposed consumer protection rule would provide an appropriate, and necessary, link between the related selling and marketing stage and the actual subsequent sale by seeking to improve the level of information with which the customer then proceeds to the point of sale.

12.25 We consider that by focusing on the provision of information when selling or marketing their fixed-line and mobile services, our proposals should:

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<sup>245</sup> As mentioned at the start of the section, the rules covering the selling and marketing of fixed line services to domestic and small business customers, apply to CPs who operate on the Openreach or KCOM networks.

<sup>246</sup> See GC 22.3 for fixed-line services and GC 23.2 for mobile calls and text services.

<sup>247</sup> Our enforcement experience has demonstrated that this consumer protection rule has proven necessary to address the harm caused by CPs where the information they provided, or not provided, has led the customers to an incorrect understanding of the impact of buying the services. For example, our investigation into Universal Utilities (trading as Unicom) which concluded in July 2015 that Unicom had provided mis-leading information to prospective business customers.

<sup>248</sup> We note here that the obligation on CPs is to "take all reasonable steps" to provide the information where it is a contract for fixed-line services, and to "use reasonable endeavours" to provide the information where it is a contract for mobile services. Further, where the contract for mobile services is entered into during a sales call, the CP is currently obliged to "use reasonable endeavours to ensure that this information is sent to the Customer in good time following the call in paper or another Durable Medium".

- a) continue to prevent CPs from engaging in dishonest, misleading or deceptive conduct;
- b) make it clearer for both CPs and their customers what activity would, and would not, be allowed, which should facilitate both compliance by CPs and enforcement by us.

12.26 Regarding the high-level obligations for fixed-line services, we are also proposing to make it clear that CPs can only use Cancel Other in the circumstances set out in Annex 2 to GC 22. This obligation already exists. However, we consider that moving it up front would make the condition clearer. We are not proposing to remove the prohibition on slamming.

12.27 To give effect to our proposals we have re-drafted the high-level obligations for fixed-line services as follows:

“Obligations to prevent mis-selling

When selling or marketing Communications Services, the Regulated Provider that is the Gaining Provider must ensure that:

~~(a) engage in dishonest, misleading or deceptive conduct;~~

~~(b) engage in aggressive conduct;~~

~~(c) contact the Customer in an inappropriate manner; or~~

~~(d) engage in Slamming.~~

a) it does not engage in Slamming;

b) it only uses Cancel Other in the circumstances set out in Annex 1;

c) any information it provides to the Existing or Potential Relevant Customer is accurate and not misleading, including information about:

(i) its Relevant Communications Services;

(ii) the impact on other Relevant Communications Services which the Existing or Potential Relevant Customer is currently receiving, as a result of buying the Relevant Communications Services being sold or marketed by the Gaining Provider;

(iii) the impact on the Existing or Potential Relevant Customer’s existing contractual obligations with other Regulated Providers, as a result of buying the Relevant Communications Services being sold or marketed by the Gaining Provider.

d) it asks Relevant Customers if they also want the information provided in a Durable Medium and, if they do, the Regulated Provider must provide the information in that form.”

12.28 To give effect to our proposals we have re-drafted the high-level obligations for mobile services as follows:

“Obligations to prevent mis-selling

When selling or marketing ~~Mobile Telephony~~ Relevant Mobile Services, ~~the Mobile Service Provider~~ Regulated Providers must ~~not~~ensure that:

- ~~(a) engage in dishonest, misleading or deceptive conduct;~~
- ~~(b) engage in aggressive conduct; or~~
- ~~(c) contact the Customer in an inappropriate manner.~~
- a) any information they provide to Relevant Customers is accurate and not mis-leading;
- b) they ask Relevant Customers if they also want the information to be provided in a Durable Medium and, if they do, Regulated Providers must provide the information in that form.”

Proposals regarding the more detailed obligations for fixed-line services

12.29 We are proposing minor drafting changes to incorporate proposed new definitions into, and to simplify and clarify, the more detailed obligations for the selling and marketing of fixed-line services:

- a) in GC 22.4 (“Information at point of sale”);
- b) in GCs 22.5 and 22.6 (“Customer’s termination rights”);
- c) in GC 22.7 (“Records Retention”);
- d) in GCs 22.8 and 22.9 (“Record of consent”);
- e) in GCs 22.10 to 22.13 (“Notification Letters”).

Proposals regarding the more detailed obligations for mobile calls and text services

12.30 These are the main changes that we are proposing in relation to the more detailed obligations for mobile calls and text services:

- a) as explained above, CPs must use reasonable endeavours to ensure that provisions are in place imposing the same obligations on the retailer as are imposed on the CP under paragraph 23.2.<sup>249</sup> We consider therefore that our proposed changes to the high-level obligations should be mirrored, for consistency, in the more detailed obligations that CPs have with regards to their retailers.
- b) as explained above, CPs must carry out a number of due diligence checks in respect of new retailers through which they sell their mobile call and text services. We are proposing that these due diligence checks should also include checking

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<sup>249</sup> See GC 23.4(b).

whether any directors of the new retailers have been subject to a period of disqualification from being a director. By including checks on the directors themselves, we consider our proposal provides a necessary complement to the current requirement to check whether any director “has not been a director of a third party that has filed for bankruptcy or gone into administration”.<sup>250</sup>

- c) we are proposing to introduce a new obligation on CPs to ensure that their customers receive the mobile call and text services that they have bought. We would consider it reasonable to expect CPs to readily comply with such an obligation, however our experience of enforcement, in particular the recent Vodafone investigation<sup>251</sup>, leads us to consider it necessary for such an obligation to be explicit in order to ensure sufficient protection for customers. The proposed new obligation is set out below:

“(c) **Regulated Providers** must ensure that each **Relevant Customer** receives the **Relevant Mobile Services** that they have contracted with the **Regulated Provider** to receive.”

12.31 In line with our proposals in relation to GC 10.3 (see paragraph 5.29 above), we are proposing to remove the obligation in GC 23.3(a) for CPs to make the comprehensive summary of their obligations under GC 23 “*available in [their] registered office during normal office hours for inspection free of charge by members of the general public*” where they do not have a website. We expect the vast majority of CPs to have a website. Where a CP does not have a website, while it is still important that the information be published, we do not consider that publication at the registered office will necessarily be helpful to customers. Therefore, where a CP does not have a website, we propose that the CP is obliged to publish the comprehensive summary “in such manner and form as directed by Ofcom”. A direction making power will provide the flexibility for us to change our approach over time if appropriate.

12.32 We are also proposing minor drafting changes to incorporate proposed new definitions into, and to simplify and clarify, the more detailed obligations for the selling and marketing of mobile calls and text services:

- a) in GC 23.3(b) (“Publication of relevant obligations”);
- b) in GC 23.4 (“Obligations with regards to Mobile Service Retailers”);
- c) in GC 23.5 (“Mobile Service – Information at Point of Sale”);
- d) in GC 23.6 (“Records retention”);
- e) in GC 23.7 (“Training”);
- f) in GC 23.8 (“Due diligence”);
- g) in GC 23.9 (“Use of information for the purpose of monitoring compliance”); and
- h) in GC 23.10 (“Sales Incentives – Information at Point of Sale”).

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<sup>250</sup> See GC 23.8(b).

<sup>251</sup> [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_01160](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01160)

## Definitions

- 12.33 For reasons of clarity, and without changing their respective meanings, we propose to use the definitions of “Access Charge”, “Consumer” and “Unbundled Tariff Number” that have been proposed in the August 2016 consultation.
- 12.34 Also for reasons of clarity, we are proposing to:
- a) replace the definition of “Durable Medium” with the definition given in the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. This is the same definition we propose to use in the Proposed Ofcom Code (which is the proposed new Code of Complaints).
  - b) have one single definition of mobile services in the GCs, which would be “Mobile Communications Service”. Therefore, for example, in the mis-selling condition we propose to substitute this new defined term for the current term “Mobile Telephony Service”.<sup>252</sup>
- 12.35 “Customer” is currently defined in GC 23.11(c) according to the statutory definition of domestic and small business customer. We are proposing to remove this definition and set out upfront, at the beginning of the revised condition in the Scope subsection, that the revised condition applies to any CP that provides a Mobile Communications Service to Domestic and Small Business Customers. For brevity, for the purposes of the revised condition, we propose to refer to any such: CPs as “Regulated Providers”; Mobile Communications Services as a “Relevant Mobile Services”; and Domestic and Small Business Customers as “Relevant Customers”.
- 12.36 In light of our proposed changes to definitions above, we are also proposing changes to the definitions of “Prepaid Mobile Telephony Service”, “Mobile Service Provider” and “SIM Only Contract”. In addition, we are proposing some changes to the definition of “SIM Only Contract” to make it clearer.
- 12.37 We are proposing to remove “Effective Date” as a defined term because it is no longer required. Finally, we are proposing to remove GC 23.11 (“Definitions”) and place all definitions in a separate annex to the GCs.

## **Legal tests**

- 12.38 We have set out above the changes we are proposing to make to the rules which cover the selling and marketing of:
- a) fixed line services (comprising landline calls and/or broadband) by CPs, who operate on the Openreach or KCOM networks, to domestic and small business customers that are switching between such CPs; and
  - b) mobile call and text services to domestic and small business customers.
- 12.39 We consider that these changes meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:

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<sup>252</sup> We would also propose to use this revised definition of “Mobile Communications Service” in lieu of “Mobile Service” in proposed condition GC A3, on which we consulted in the August 2016 consultation.

- a) **objectively justifiable** as we think our proposals:
  - i) focus on what previous enforcement under the current rules, both formally or informally, has demonstrated to us is a key cause of mis-selling of both fixed-line and mobile services, and place domestic and small business customers in a position to make more informed purchasing decisions;
  - ii) aim to produce mis-selling rules that are clearer as a result of which: CPs understand what they should and should not do when selling and marketing their fixed line and/or mobile services, which should make compliance easier.
- b) **not unduly discriminatory** since, consistent with the scope of the current rules, the proposed changes apply in respect of:
  - i) all CPs who operate on the Openreach/KCOM networks and who sell, market and provide fixed-line services to domestic and small business customers switching between such CPs; and
  - ii) all CPs who provide mobile calls and text services to domestic and small business customers.
- c) **proportionate** as our provisional view is that none of the proposed changes would introduce any significant additional regulatory burden on industry, having regard to the consumer protection aim they seek to achieve.
- d) **transparent** as the reasons for the changes that we are proposing to make to GCs 22 and 23 are explained above and the effects of the proposed changes would be clear to CPs on the face of the revised conditions themselves.

12.40 The proposed revised text of the proposed new condition C9 can be seen at Annex 12 and a marked up version showing the changes we are proposing to make can be seen at Annex 13.

## Consultation questions

**Question 21:** *Do you agree with our proposal to replace the current mis-selling provisions with rules that focus on the information that communications providers give to customers when selling or marketing fixed-line or mobile communications services? Please give reasons for your views.*

## Section 13

# Summary table of proposed changes

## Introduction

13.1 The following table shows how we are proposing to revise and consolidate the conditions addressed by this consultation (current GCs 7, 9-16, 18, 21, 22 and 23). It sets out for each paragraph of the proposed new conditions, the corresponding paragraph(s) of the current GCs, a brief description of the changes we are proposing for consultation and includes a cross-reference to the relevant section of this consultation document where the proposed changes are explained.

## Table

Proposed revised condition	Corresponding paragraph in the current condition	Brief description of proposed changes	Relevant paragraphs in this consultation document
<b>GC 7 (Must-carry obligations)</b>			
A5.1	N/A	Inserted (scope)	2.19
A5.2	GC 7.1	Minor drafting changes	2.19
A5.1	GC 7.2	Minor drafting changes	2.19
Definitions Annex	GC 7.3	Definition of “CP” replaced by “Regulated Provider” and definition of “Appropriate Network” moved to the Definitions Annex	2.19
<b>GC 9 (Contract requirements)</b>			
C1.1	N/A	Inserted (revised scope of application)	4.28
C1.2	GC 9.1	Minor drafting changes, removal of historical wording	4.23
C1.2	GC 9.2	Amended for consistency with (current) GC 10.2	4.23-4.25
C1.3	GC 9.3	Redrafted to apply more generally to PECS	4.26-4.27
C1.4	GC 9.4	Amended for clarity	4.30
C1.5	GC 9.5	Amended definitions	4.31

<b>Proposed revised condition</b>	<b>Corresponding paragraph in the current condition</b>	<b>Brief description of proposed changes</b>	<b>Relevant paragraphs in this consultation document</b>
C1.6	GC 9.6	Minor drafting changes	4.16-4.20
Definitions Annex	GC 9.7	Definitions moved to the Definitions Annex, with some changes	4.28-4.31
C1.7	N/A	Inserted for clarity and remove the need for guidance	4.18
<b>Combined GC 10 and GC 14 (Publication of Information and price transparency)</b>			
C2.1	N/A	Inserted (scope)	5.8
C2.2	GC 10.1	Minor drafting changes	5.7-5.9
C2.3	GC 10.2	Minor drafting changes	5.7-5.9
N/A	GC 10.4	Omitted (definitions)	5.38-5.43
N/A	GC 14.1 – 14.3 and 14.7	Omitted	5.18, 5.23-5.25, 8.1-8.8
C2.4	GC 14.8	Amended	5.11-5.22
C2.5	GC 14 Annex 2, paragraph 3.2	Inserted to bring requirements currently in paragraph 3.2 of GC 14 Annex 2 into the main condition	5.11-5.22
C2.6	GC 14.9	Amended	5.11-5.22
N/A	GC 14.10	Consolidated	5.11-5.22
C2.7	GC 14.11	Drafting changes	5.11-5.22
C2.8	N/A	Inserted to implement the new transparency requirement in relation to small business customers	5.16-5.17
C2.9	GC 14, Annex 1, paragraph 3.2	Amended	5.23-5.26, 8.5-8.6
C2.10	GC 14, Annex 1, paragraph 3.3	Amended	5.23-5.26, 8.5-8.6
C2.11	GC. 10.3	Amended	5.29-5.30

<b>Proposed revised condition</b>	<b>Corresponding paragraph in the current condition</b>	<b>Brief description of proposed changes</b>	<b>Relevant paragraphs in this consultation document</b>
C2.12	GC 14.12, GC 14 Annex 1 paragraph 4 and GC 14 Annex 2 paragraph 5	Amended	5.27-5.28
Definitions Annex	GC 14.13	Definitions moved to the Definitions Annex, with some changes	5.38-5.44
<b>Combined GC 11, GC 12 and GC 13 (Billing requirements)</b>			
C4.1	N/A	Inserted (revised scope of application)	6.24
C4.2	GC 11.1	Retained with drafting changes	6.9
C4.3	GC 11.2	Shortened and simplified	6.12-6.14
N/A	GC 11.3	Omitted	6.24
C4.4	N/A	Inserted (direction-making power)	6.23
C4.5	GC 11.4	Amended to give effect to the proposed extension to data services, simplified and split into three separate sub-paragraphs	6.17-6.23
C4.6	GC 11.5	Shortened and simplified	6.23
Definitions Annex	GC 11.6	Definitions moved to the Definitions Annex, with some changes	6.11, 6.20, 6.24, 6.25, 6.27
C4.7	GC 12.1	Amended	6.33-6.35
C4.8	GC 12.2	Minor drafting changes	6.41
C4.9	N/A	Inserted	6.34
N/A	GC 12.3	Omitted (direction-making power)	6.36
C4.10	GC 12.4	Amended	6.37-6.39
N/A	GC 12.5	Omitted	6.36

<b>Proposed revised condition</b>	<b>Corresponding paragraph in the current condition</b>	<b>Brief description of proposed changes</b>	<b>Relevant paragraphs in this consultation document</b>
Definitions Annex	GC 12.6	Definitions moved to the Definitions Annex, with some changes	6.31, 6.42
C4.11	GC 13.1	Drafting changes to give effect to the proposed extension to data services and mobile services	6.46-6.54
C4.12	GC 13.2	Retained (with minor drafting changes)	6.55
Definitions Annex	GC 13.3	Definitions moved to the Definitions Annex	6.56
<b>GC 14 (Price transparency, codes of practice and dispute resolution)</b>			
C5.1	N/A	Inserted (scope)	9.20
N/A	GC 14.1	Removed	8.3-8.4
N/A	GC 14.2	Removed	5.18, 5.23-5.25, 8.5-8.8
N/A	GC 14.3	Removed	5.18, 5.23-5.25, 8.5-8.8
C5.2	GC 14.4	Drafting changes to give effect to proposed new condition on complaints handling and dispute resolution	9.20
C5.3	GC 14.5	Drafting changes to give effect to proposed new condition on complaints handling and dispute resolution	7.99
N/A	GC 14.6	Removed	
N/A	GC 14.7	Removed	5.11-5.22, 8.7-8.8
C2.4	GC 14.8	Amended	5.11-5.22
C2.6	GC 14.9	Amended	5.11-5.22
N/A	GC 14.10	Consolidated	5.11-5.22

<b>Proposed revised condition</b>	<b>Corresponding paragraph in the current condition</b>	<b>Brief description of proposed changes</b>	<b>Relevant paragraphs in this consultation document</b>
C2.7	GC 14.11	Drafting changes	5.11-5.22
C2.12	GC 14.12	Amended	5.27-5.28
N/A	GC 14.13	Definitions moved to the Definitions Annex, with some changes	5.38-5.44
C2.9-10, C2.12	Annex 1	Removed, incorporating certain provisions into the revised condition	8.5-8.6
C2.5, C2.12	Annex 2	Removed, incorporating certain provisions into the revised condition	8.7-8.8
A3.3 and A3.7	Annex 3	Removed, incorporating certain provisions into the revised condition	
Annex to C5	Annex 4	Removed and replaced with proposed new Code of Practice	7.22-7.101
<b>GC 15 (Special measures for vulnerable consumers and end-users with disabilities)</b>			
C6.1	N/A	Inserted (scope) to extend the scope of application from PATS to PECS	9.22-9.25
C6.2	N/A	Inserted (new requirements in relation to vulnerable users)	9.10-9.16
C6.3	N/A	Inserted (new requirements in relation to vulnerable users)	9.10-9.16
C6.4	GC 15.10	Drafting changes	9.19-9.20
C6.5	GC 15.2	Amended	9.21
C6.6	GC 15.3	Amended	9.18-9.19, 9.32
C6.7	GC 15.4, GC15.5	Drafting changes	9.18-9.19, 9.32
C6.8	GC 15.8	Minor drafting changes	9.18-9.19

<b>Proposed revised condition</b>	<b>Corresponding paragraph in the current condition</b>	<b>Brief description of proposed changes</b>	<b>Relevant paragraphs in this consultation document</b>
C6.9	GC 15.6	Minor drafting changes	9.18-9.19
C6.10	GC 15.7	Minor drafting changes	9.18-9.19
C6.11	GC 15.9	Minor drafting changes	9.18-9.19
C6.12	GC 15.1	Amended	9.26
Definitions Annex	GC 15.11	Definitions moved to the Definitions Annex, with some changes	9.31-9.33
<b>GC 16 (Provision of calling line identification facilities)</b>			
C7.1	N/A	Inserted (scope)	10.25
C7.2	GC 16.1	Part amended and part omitted	10.19-10.26
C7.3	N/A	Inserted (requirement to inform customers if CLI facilities not available)	10.26
C7.4	N/A	Inserted (requirement to ensure CLI data is valid, dial-able and uniquely identifies the caller)	10.28-10.32
C7.5	N/A	Inserted (prohibition of separate charges for CLI facilities)	10.33-10.38
C7.6	N/A	Inserted (blocking of calls with invalid CLI)	10.39-10.40
C7.7	GC 16.1(b)	Inserted (compliance with data protection legislation)	10.26
N/A	GC 16.2	Omitted	10.26
Definitions Annex	GC 16.3	Definitions moved to the Definitions Annex; definition of "DTMF Tones" omitted; new definition of "CLI Data" added	10.41-10.44

<b>Proposed revised condition</b>	<b>Corresponding paragraph in the current condition</b>	<b>Brief description of proposed changes</b>	<b>Relevant paragraphs in this consultation document</b>
<b>GC 18 (Number Portability)</b>			
B3.1	N/A	Inserted (scope)	11.49
B3.2	N/A	Inserted (scope)	11.49
B3.3	GC 18.1	Minor drafting changes	11.49-11.50
B3.4	GC 18.2	Minor drafting changes	11.49-11.50
B3.5	GC 18.3	Minor drafting changes	11.49-11.50
B3.6	GC 18.4	Minor drafting changes	11.49-11.50
B3.7	GC 18.5	Minor drafting changes	11.49-11.50
B3.8	GC 18.6	Minor drafting changes	11.49-11.50
B3.9	GC 18.7	Minor drafting changes	11.49-11.50
B3.10	GC 18.8	Minor drafting changes	11.49-11.50
B3.11	GC 18.9	Minor drafting changes	11.49-11.50
B3.12	GC 18.10	Minor drafting changes	11.49-11.50
Definitions Annex	GC 18.11	Definitions moved to Definitions Annex, with some changes.	11.51-11.53
<b>GC 21 (Quality of service)</b>			
N/A	GC 21.1	Omitted	5.31-5.34
N/A	GC 21.2	Omitted	5.31-5.34
N/A	GC 21.3	Omitted	5.31-5.34
N/A	GC 21.4	Omitted	5.31-5.34
<b>GC 22 (Service migration)</b>			
C8.1-C8.2	GC 22.1	Amended (scope)	11.34 and 11.38
C8.1-C8.2	GC 22.2	Amended (scope)	11.34 and 11.38
C8.3	GC 22.3	Amended	12.23-12.27
C8.4	GC 22.4	Drafting changes	12.29

<b>Proposed revised condition</b>	<b>Corresponding paragraph in the current condition</b>	<b>Brief description of proposed changes</b>	<b>Relevant paragraphs in this consultation document</b>
C8.5	GC 22.5	Minor changes to defined terms	12.29
C8.5	GC 22.6	Minor changes to defined terms	12.29
C8.6	GC 22.7	Minor changes to defined terms	12.29
C8.7	GC 22.8	Minor changes to defined terms	12.29
C8.8	GC 22.9	Minor changes to defined terms	12.29
C8.9	GC 22.10	Minor changes to defined terms	12.29
C8.10	GC 22.11	Minor changes to defined terms	12.29
C8.11	GC 22.12	Minor changes to defined terms	12.29
C8.12	GC 22.13	Minor changes to defined terms	12.29
C8.13	GC 22.14	Minor changes to defined terms	11.34
N/A	GC 22.15	Omitted (reactive save prohibition)	11.26 to 11.32
N/A	GC 22.16	Omitted and re-inserted with drafting changes	11.34
N/A	GC 22.17	Omitted and re-inserted with drafting changes	11.34
N/A	GC 22.18	Omitted and re-inserted with drafting changes	11.34
N/A	GC 22.19	Omitted and re-inserted with drafting changes	11.34
N/A	GC 22.20	Omitted and re-inserted with drafting changes	11.34
C8.14	N/A	Re-drafted for clarity	11.34

<b>Proposed revised condition</b>	<b>Corresponding paragraph in the current condition</b>	<b>Brief description of proposed changes</b>	<b>Relevant paragraphs in this consultation document</b>
N/A	GC 22.21	Omitted	11.33
N/A	GC 22.22	Omitted and re-inserted with drafting changes	11.34
C8.15	N/A	Re-drafted for clarity	11.34
N/A	GC 22.23	Omitted	11.33
N/A	GC 22.24	Omitted	11.33
C8.16	GC 22.25	Minor changes to defined terms	11.34
C8.17	GC 22.26	Minor changes to defined terms	11.34
C8.18	GC 22.27	Minor changes to defined terms	11.34
C8.19	GC 22.28	Minor changes to defined terms	11.34
C8.20	GC 22.29	Minor changes to defined terms	11.34
N/A	GC 22.30	Definitions moved to the Definitions Annex, with some changes	11.34
Annex 1 to GC C8	Annex 1 to GC 22	Drafting changes	11.34
Annex 2 to GC C8	Annex 2 to GC 22	Drafting changes	11.34
N/A	Annex 3 to GC 22	Omitted	11.33
<b>GC 23 (Mis-selling of mobile services)</b>			
C9.1	GC 23.1	Amended (scope)	12.35
C9.2	GC 23.2	Amended	12.23-12.28
C9.3	GC 23.3	Minor drafting changes	12.31 and 12.32
C9.4	GC 23.4	Amended	12.30

<b>Proposed revised condition</b>	<b>Corresponding paragraph in the current condition</b>	<b>Brief description of proposed changes</b>	<b>Relevant paragraphs in this consultation document</b>
C9.5	GC 23.5	Amended	12.32
C9.6	N/A	Inserted	12.30
C9.7	GC 23.6	Minor drafting changes	12.32
C9.8	GC 23.7	Minor drafting changes	12.32
C9.9	GC 23.8	Amended to reflect proposal to extend extent of due diligence checks	12.30 and 12.32
C9.10	GC 23.9	Minor drafting changes	12.32
C9.11	GC 23.10	Minor drafting changes	12.32
Definitions Annex	GC 23.11	Definitions moved to the Definitions Annex, with some changes	12.37

## Section 14

# Consequential changes

## Introduction

14.1 Our proposed amendments to the GCs and, in particular to GCs 11, 17 and 18, would require certain consequential amendments to be made to the National Telephone Numbering Plan (the “**Numbering Plan**”), the Premium Rate Services Condition (the “**PRS Condition**”) and Ofcom’s Metering and Billing Direction.

## Changes to the Numbering Plan

14.2 In the August 2016 consultation (paragraphs 9.2-9.4), we noted that our proposed amendments to the GCs would require the following consequential amendments to be made to the Numbering Plan:

- a) an amendment to the definitions of “Access Charge”, “Service Charge” and “Portability” so that they cross-refer to the proposed definitions Annex of the new GCs (rather than, as at present, to the definitions of those terms in GC 17 and GC 18);
- b) an amendment to paragraph 2(i) of the “Definitions and Interpretation” section so that it cross-refers to the proposed definitions Annex of the new GCs (rather than, as at present, to the definitions in Part 1 of the GCs);
- c) amendments to references throughout the Numbering Plan to specific paragraphs of GC 17, to reflect our proposed deletion of paragraphs from GC 17 and subsequent renumbering of sub-paragraphs.

14.3 However, we did not formally consult on changes to the Numbering Plan at that time, in case the proposals set out in this second consultation on the remaining GCs would result in GC 17 and GC 18 being renumbered in their entirety, which would then necessitate further amendments to the Numbering Plan. We therefore said that we would consult on our proposed amendments to the Numbering Plan as part of this second consultation, which we are now doing.

14.4 As noted in section 3 above, we are now proposing to reorganise and renumber the GCs so that GC 17 becomes General Condition B1 and GC 18 becomes General Condition B3. We therefore also propose to amend any cross-references in the Numbering Plan to GC 17 and GC 18 accordingly.

14.5 In light of the proposed new GCs, we also propose to make the following additional amendments to the Numbering Plan:

- a) an amendment to the definition of the “General Conditions of Entitlement” so that it refers to the Notification to be issued by Ofcom setting new GCs at the conclusion of this project, rather than the Notification issued in July 2003 (to reflect the fact that we propose to revoke the existing GCs and set new GCs);
- b) a minor amendment to the definition of “Communications Provider” to make it consistent with the corresponding definition proposed for the GCs;

- c) the correction of an error in the definition of “Per Call Release of CLI”, which currently refers to “Caller” (which is undefined) instead of “Calling Party” (which is defined).
- 14.6 We consider that the changes we are proposing to make to the Numbering Plan meet the test set out in section 60(2) of the Act. Our proposed changes are:
- a) **objectively justifiable** because they are necessary as a consequence of the changes we are proposing to the GCs, or to correct minor drafting errors;
  - b) **not unduly discriminatory** since the proposed changes will apply equally to all CPs;
  - c) **proportionate** as the changes are not intended to make any substantive change to the scope of regulation;
  - d) **transparent** as the reasons for the changes that we are proposing to make to are explained above and the purpose of the changes is to ensure consistency between the GCs and the Numbering Plan, thereby increasing transparency for CPs.
- 14.7 We also consider that, by proposing these changes to the Numbering Plan, we are also complying with our general duty in relation to our numbering functions, as set out in section 63 of the Act. In particular, we consider that ensuring the Numbering Plan is easily understood and consistent with the GCs will assist industry and Ofcom in making best use of telephone numbers, and encouraging efficiency and innovation for that purpose.
- 14.8 A notification setting out all of our proposed amendments to the Numbering Plan is at Annex 6 of this document.

## Changes to the PRS Condition

- 14.9 In the August 2016 consultation (paragraphs 9.5-9.6), we proposed to make a minor amendment to the Premium Rate Services Condition (“**PRS Condition**”), which was consequential upon our proposed amendments to GC 17.
- 14.10 A confidential respondent to the August 2016 consultation<sup>253</sup> pointed out that the PRS Condition contains several provisions that are now obsolete and suggested that we should remove these redundant provisions at the same time as making our other proposed amendment. We agree that this would be expedient and are therefore proposing to make the following additional amendments to the PRS Condition:
- a) to delete sub-paragraph (i) of the definition of “Controlled Premium Rate Service”, which provides for services of a certain type to fall within that definition prior to “the Effective Date” (defined as 1 July 2015);
  - b) to delete the words “from and including the Effective Date” at the start of sub-paragraph (ii) of the definition of “Controlled Premium Rate Services”;

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<sup>253</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/94092/Confidential-Response-1-Annex.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/94092/Confidential-Response-1-Annex.pdf)

- c) to delete the reference to “Special Services Number” in sub-paragraph (iii) of the definition of “Controlled Premium Rate Service” as this category of number is no longer used in the Numbering Plan; and
  - d) to delete the definitions of “Effective Date” and “Special Services Number” in their entirety from the PRS Condition.
- 14.11 The confidential respondent also suggested that we should amend the definition of “PRS Number” (which is currently cross-referenced in sub-paragraphs (ii) and (iii) of the definition of a “Controlled Premium Rate Service”) to add a reference to 098 numbers. However, we consider this to be unnecessary as the 098 range is designated in the Numbering Plan for use by Sexual Entertainment Services and these are separately captured in the definition of a “Controlled Premium Rate Service” (at sub-paragraph (vi)).
- 14.12 We consider that the changes we are proposing to make to the PRS Condition meet the test set out in section 47(2) of the Act (applicable by virtue of section 120(5) of the Act). Our proposed changes are:
- a) **objectively justifiable** because they relate to the deletion of obsolete provisions that are no longer required;
  - b) **not unduly discriminatory** since the proposed changes will apply equally to all CPs;
  - c) **proportionate** as the changes are not intended to make any substantive change to the scope of regulation;
  - d) **transparent** as the reasons for the changes that we are proposing to make to are explained above and the purpose of the changes is to remove obsolete references from the PRS Condition, thereby increasing transparency for CPs.
- 14.13 A notification setting out our proposed amendments to the PRS Condition is at Annex 7 of this document.

## Changes to the Metering and Billing Direction

- 14.14 As set out in Section 6 above, GC 11 requires large providers of voice call services (i.e. those whose relevant turnover exceeds £40m) to have their “total metering and billing system” approved by a third party assessor, appointed by Ofcom, against a prescribed standard set out in the Ofcom Metering and Billing Direction.<sup>254</sup>
- 14.15 We are proposing to extend the Metering and Billing Scheme to cover data services in addition to voice call services and to increase the current turnover threshold triggering the requirement to obtain approval from £40m to £55m.
- 14.16 Consequently, we are proposing to amend the Metering and Billing Direction which is currently in force as set out below.

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<sup>254</sup> See Annex 2 to Ofcom’s Statement of 31 July 2014, entitled ‘Review of the Metering and Billing Direction’: <http://stakeholders.ofcom.org.uk/binaries/consultations/metering-billing-2014/statement/statement.pdf>

## Proposed changes to the direction

14.17 These are the main changes that we propose to make to the direction:

- a) omit the definition of “Mandatory Services” (i.e. “retail PATS and wholesale PATS that are subject to the requirements of the Direction”) and introduce the definition of “Regulated Services”, meaning “Publicly Available Telephone Services and/or Publicly Available Internet Access Services”. This is to implement the proposed extension of the mandatory metering and billing scheme to data services;
- b) amend paragraph 3.1 of the direction to reflect the new proposed £55m turnover threshold triggering the requirement to obtain approval;
- c) replace the references to the “2008 Ofcom Direction” (which have now become historical) with references to the “2014 Ofcom Direction” in the transitional provisions set out in paragraphs 3.2 and 3.3 of the direction. Consequently, the timing provisions for application and transfer of approval would apply in relation to any transfer from the 2014 Ofcom Direction, which is the direction that is currently in force;
- d) extend the example in paragraph 4.6.1 to clarify the level of description required in a tariff;

## Proposed changes to the Annexes to the direction

14.18 These are the main changes that we propose to make to the Annexes to the direction:

- a) in Annex A (“Definitions and Interpretations”):
  - i) add new definitions of the “2014 Ofcom Direction”, “Publicly Available Internet Access Services”, “Regulated Services”, “Retail Communications Provider” and “Wholesale Communications Provider”;
  - ii) replace the reference to “General Condition 11.7” in a number of definitions (“Approval”, “Approval Body”, “Bill”, “Communications Provider”, “Public Pay Telephones”, “Relevant Turnover” and “Total Metering and Billing System”) with a reference to “Annex 1 (“Definitions”) to the General Conditions of Entitlement”. This reflects our proposal to move all the definitions which are currently set out in the GCs to a separate Annex;
  - iii) remove the definitions of the “2008 Ofcom Direction” and of “Mandatory Services” and as they would be no longer necessary.
- b) in Annex B (“Retail Services”):
  - i) amend paragraph 1 of Annex B (“Retail Services”) to expand the scope of the Annex to retail providers of data services, and to specify that the requirement to prevent overcharging would become mandatory for retail providers of data services, while the requirement to prevent undercharging would remain voluntary;
  - ii) amend paragraph 2 of Annex B (“Retail Services”) so that the requirement on retail providers of voice call and data services to gain approval of their total

metering and billing system would be triggered by the new proposed threshold of £55m of relevant turnover per year;

- iii) amend paragraph 2.2 of Annex B (“Retail Services”) to clarify the process and requirements for making a voluntary application for approval. We are proposing to specify that CPs who are not required to seek approval can still seek approval voluntarily provided that their turnover in the most recent complete financial year was at least £5m; and (ii) CPs who decide to seek approval voluntarily can request an extension of the scope of that approval to cover a new product or service, provided that the new product or service generated at least £1m of turnover in its most recent financial year.

c) in Annex C (“Wholesale Services”):

- i) amend paragraphs 1 and 3 of Annex C to expand the scope of the direction to wholesale providers of data services, and to specify that the requirements to prevent both overcharging and undercharging would become mandatory for wholesale providers of data services and voice call services; and
- ii) amend paragraph 2.1 of Annex C so that the requirement to gain approval would apply to wholesale providers who meet the new proposed relevant turnover trigger of £55 million per year.

14.19 We have also proposed a number of minor drafting changes throughout the direction and its annexes to make the revised direction clearer.

14.20 As set out in paragraph 6.57, we consider that the proposed extension of the Metering and Billing Scheme to data services and the proposed increase of the turnover threshold from £40m to £55m are objectively justifiable, proportionate, not unduly discriminatory and transparent. Given that the proposed changes to the Ofcom Metering and Billing Direction are consequential amendments to implement these proposals (see paragraph 6.20), we consider these further amendments to be objectively justifiable, proportionate, not unduly discriminatory and transparent for the same reasons.

14.21 The marked-up text of the revised direction showing the changes we are proposing to make is set out in Annex 14.

**Question 22:** *Do you have any comments on the consequential changes we are proposing to make to the national telephone numbering plan, the premium rate services condition or the metering and billing direction*

**Question 23:** *Do you have any comments on our equality impact assessment?*

**Question 24:** *Do you have any other comments on the matters raised by this consultation?*

## Annex 1

# 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 **14 March 2017**.
- A1.2 We strongly prefer to receive responses via the online form at <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions-relating-to-consumer-protection>. We also provide a cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>) for responses sent by email or post; please fill this in, as it helps us to maintain your confidentiality, and speeds up our work. You do not need to do this if you respond using the online form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [gcreview@ofcom.org.uk](mailto:gcreview@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>). This email address is for this consultation only.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.  
Selene Rosso  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 If you would like to submit your response in an alternative format (e.g. a video or audio file), please contact Selene Rosso or Robert Wells on 020 7981 3000, or by email to [Selene.Rosso@ofcom.org.uk](mailto:Selene.Rosso@ofcom.org.uk) and [Robert.Wells@ofcom.org.uk](mailto:Robert.Wells@ofcom.org.uk).
- A1.6 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.
- A1.7 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.
- A1.8 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.
- A1.9 If you want to discuss the issues and questions raised in this consultation, please contact Selene Rosso or Robert Wells on 020 7981 3000, or by email to [Selene.Rosso@ofcom.org.uk](mailto:Selene.Rosso@ofcom.org.uk) and [Robert.Wells@ofcom.org.uk](mailto:Robert.Wells@ofcom.org.uk).

## Confidentiality

- A1.10 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](http://www.ofcom.org.uk), as soon as we receive them.
- A1.11 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.
- A1.12 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.
- A1.13 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 <http://www.ofcom.org.uk/terms-of-use/>

## Next steps

- A1.14 Following this consultation period, Ofcom plans to publish a statement in 2017.
- A1.15 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

- A1.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.17 If you have any comments or suggestions on how we manage our consultations, please call our consultation helpdesk on 020 7981 3003 or email us at [consult@ofcom.org.uk](mailto: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.
- A1.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:
- A1.19 Steve Gettings  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Tel: 020 7981 3601  
Email [steve.gettings@ofcom.org.uk](mailto:steve.gettings@ofcom.org.uk)

## Annex 2

# 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.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore, Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the “Consultations” section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

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	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	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)

## Annex 4

## Consultation questions

**Question 1:** Do you agree with our overall approach to this review of the general conditions as set out in sections 2 and 3 of this consultation? Please give reasons for your views.

**Question 2:** Do you agree with our proposed implementation period for the revised general conditions of 3 to 6 months following publication of our final statement? If you think a longer implementation period is necessary, please explain why, giving reasons for your views.

**Question 3:** Do you agree with our proposals in relation to contract requirements? If you consider that we should retain the regime applying to contracts concluded before 26 May 2011, please explain why, giving reasons for your views.

**Question 4:** Are there any other modifications to the proposed revised condition in relation to contracts requirements that you consider would be appropriate?

**Question 5:** Do you agree with our proposals in relation to information publication and transparency requirements, including removing the separate condition relating to publication of quality of service information?

**Question 6:** Do you agree with our proposal to replace the existing detailed requirements in relation to small businesses with a general obligation to ensure price transparency and to notify small business customers where the terms and conditions that apply to them differ from those that providers are required to comply with in relation to consumers?

**Question 7:** Are there any other modifications to the conditions relating to information publication and transparency requirements that you consider would be appropriate?

**Question 8:** Do you agree with our proposals for updating the current conditions that relate to billing? In particular, do you agree with our proposals to extend the current protections for end-users in relation to billing so that they would apply, more generally, to fixed and mobile voice call and data services?

**Question 9:** Do you agree with our provisional assessment that our proposals to extend the regulatory requirements for billing to fixed and mobile voice call and data services does not impose a disproportionate burden on industry? Do you have any further information on the likely costs of these proposals?

**Question 10:** Are there any other modifications to the billing conditions that you consider would be appropriate?

**Question 11:** Do you consider that our proposed revised condition for complaints handling and access to alternative dispute resolution, together with our proposed revised code of practice on complaints handling, will improve the transparency, accessibility and effectiveness of communications providers' complaints handling procedures, and improve access to alternative dispute resolution? If not, please give reasons, including alternative suggestions.

**Question 12:** Do you have any other comments on our proposals in relation to complaints handling and access to alternative dispute resolution?

**Question 13:** Do you agree with our proposals in relation to the codes of practice that communications providers are currently required to establish, maintain and comply with – including replacing these with direct obligations to make information available, where appropriate?

**Question 14:** Do you agree with our proposals to introduce a new requirement for communications providers to take account of, and have procedures to meet, the needs of consumers whose circumstances may make them vulnerable?

**Question 15:** Do you agree with our proposals to update regulation by extending the current protections for end-users with disabilities, which currently apply only in relation to telephony services, to cover all public electronic communications services?

**Question 16:** Are there any other modifications to the proposed revised condition on measures to meet the needs of vulnerable consumers and end-users with disabilities that you consider would be appropriate?

**Question 17:** Do you agree with our proposal to remove the condition relating to the provision of tone-dialling? Please give reasons for your views.

**Question 18:** Do you agree with the changes we are proposing to make in relation to the provision of calling line identification facilities, including the new requirements we are proposing to add? Please give reasons for your views.

**Question 19:** Do you have any comments on our proposals in relation to the proposed revised general condition on switching?

**Question 20:** Do you agree with our proposal to remove the current provision which expressly prohibits so-called 'reactive save' activity (in GC 22.15)?

**Question 21:** Do you agree with our proposal to replace the current mis-selling provisions with rules that focus on the information that communications providers give to customers when selling or marketing fixed-line or mobile communications services? Please give reasons for your views.

**Question 22:** Do you have any comments on the consequential changes we are proposing to make to the national telephone numbering plan, the premium rate services condition or the metering and billing direction?

**Question 23:** Do you have any comments on our equality impact assessment?

**Question 24:** Do you have any other comments on the matters raised by this consultation?

## Annex 5

# Notification proposing to revoke existing conditions and set new General Conditions

## Notification of Ofcom's proposals to revoke general conditions 7, 9 to 16, 18 and 21 to 23 and set new general conditions under sections 48(1) and 48A(3) of the Communications Act 2003

1. Ofcom, in accordance with sections 48(1) and 48A(3) of the Act, hereby makes the following proposals for:
  - a) revoking the current General Conditions 7, 9 to 16, 18 and 21 to 23 of the General Conditions of Entitlement, as set by the General Condition Notification; and
  - b) setting new General Conditions.
2. The new General Conditions that Ofcom is proposing to make are set out in the Schedule to this Notification, which is published as a separate Annex (Annex 12).
3. The effect of, and Ofcom's reasons for making, the proposals referred to in paragraph 1 above are set out in the accompanying consultation document.
4. Ofcom considers that these proposals comply with the requirements of sections 45 to 49C of the Act, insofar as they are applicable.
5. Ofcom considers that these proposals are not of EU significance pursuant to section 150A(2) of the Act.
6. In making these proposals, Ofcom has considered and acted in accordance with its general duties under section 3 of the Act, the six Community requirements set out in section 4 of the Act and its general duty as to telephone numbering functions under section 63 of the Act.
7. Any direction which is currently in force, made under the current General Conditions that Ofcom is proposing to revoke, will continue to have effect after revocation, unless Ofcom removes the relevant direction-making power from the corresponding General Condition that Ofcom is proposing to set.<sup>255</sup>
8. Representations may be made to Ofcom about the proposals set out in this Notification by **14 March 2017 (5pm)**.

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<sup>255</sup> Ofcom's direction under General Condition 17.9(a) set out in Annex 4 to the Ofcom's statement of 1 December 2014 entitled "Telephone number application form", as amended by Ofcom on 1 July 2015, will cease to have effect if Ofcom's proposal to remove General Condition 17.9(a), as set out in paragraphs 7.7-7.8 of the August 2016 consultation, is implemented.

9. If implemented, the new General Conditions that Ofcom is proposing to make shall enter into force on the date of publication of the final Notification or such later date as specified therein.
10. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with section 48C(1) of the Act.
11. In this Notification:
  - a) “**the Act**” means the Communications Act 2003;
  - b) “**General Conditions of Entitlement**” or “**General Conditions**” means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time;
  - c) “**Ofcom**” means the Office of Communications.
12. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
13. For the purposes of interpreting this Notification: (i) headings and titles shall be disregarded; and (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
14. The Schedule to this Notification shall form part of this Notification.

Signed by



Polly Weitzman

General Counsel

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

**20 December 2016**

## Annex 6

# Notification of proposed modifications to the provisions of the Numbering Plan under section 60(3) of the Act

1. In accordance with section 60 of the Act, Ofcom proposes to modify the provisions of the Numbering Plan. The draft modifications to the Numbering Plan are set out in the Schedule to this Notification.
2. Ofcom's reasons for making these proposals, and the effect of the proposed modifications, are set out in the accompanying consultation document.
3. Ofcom considers that the proposed modifications comply with the requirements of section 60(2) of the Act.
4. In making these proposals, Ofcom has considered and acted in accordance with their general duty as to telephone numbering functions under section 63 of the Act, their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
5. Representations may be made to Ofcom about the proposed modifications until **5pm on 14 March 2017**.
6. If implemented the modifications shall enter into force on a date to be specified in Ofcom's final statement in relation to these proposals.
7. In this Notification:
  - a) "**the Act**" means the Communications Act 2003;
  - b) "**Ofcom**" means the Office of Communications; and
  - c) "**Numbering Plan**" means the National Telephone Numbering Plan published by Ofcom pursuant to section 56(1) of the Act, and amended from time to time.
8. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
9. For the purposes of interpreting this Notification: (i) headings and titles shall be disregarded; and (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
10. The Schedules to this Notification shall form part of this Notification.



**Polly Weitzman**

General Counsel

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

20 December 2016

## SCHEDULE

The following proposed modification to the Numbering Plan shall enter into force on the date to be specified in Ofcom's final statement in relation to these proposals.

1. In paragraph 1 of the "Definitions and Interpretation" section, the following amendments highlighted and marked in bold shall be made to the definitions of "Access Charge", "Communications Provider", "General Conditions of Entitlement", "Mobile Service", "Per Call Release of CLI", "Portability" and "Service Charge":
  - i) "Access Charge" shall have the meaning ascribed to that term in **General Condition 17 of the General Conditions of Entitlement Annex 1 (Definitions) of the Schedule to the Notification issued by Ofcom on [date to be inserted – will be date on which notification setting new general conditions is issued]** setting general conditions under section 48(1) of the Act (as that Schedule may be modified from time to time);
  - ii) "Communications Provider" means a person who **(within the meaning of section 32(4) of the Act)** provides an Electronic Communications Network or an Electronic Communications Service;
  - iii) "General Conditions of Entitlement" means those conditions set by **the Director General of Telecommunications on 22 July 2003** Ofcom on **[date to be inserted – will be date on which notification setting new general conditions is issued]** by way of a Notification published pursuant to section 48(1) of the Act, and modified by Ofcom from time to time;
  - iv) "Per Call Release of CLI" means the ability to release the identity of the **Caller-Calling Party** in accordance with normal Calling Line Identification;
  - v) "Portability" shall have the meaning ascribed to that term in **General Condition 18 of the General Conditions of Entitlement Annex 1 (Definitions) of the Schedule to the Notification issued by Ofcom on [date to be inserted – will be date on which notification setting new general conditions is issued]** setting general conditions under section 48(1) of the Act (as that Schedule may be modified from time to time);
  - vi) "Service Charge" shall have the meaning ascribed to that term in **General Condition 17 of the General Conditions of Entitlement Annex 1 (Definitions) of the Schedule to the Notification issued by Ofcom on [date to be inserted – will be date on which notification setting new general conditions is issued]** setting general conditions under section 48(1) of the Act (as that Schedule may be modified from time to time);
2. In paragraph 2 of the "Definitions and Interpretation" section, sub-paragraph (i) shall be deleted and replaced with the following:

"(i) in Annex 1 (Definitions) of the Schedule to the Notification issued by Ofcom on **[date to be inserted – will be date on which notification setting new general conditions is issued]** setting general conditions under section 48(1) of the Act (as that Schedule may be modified from time to time);"
3. In paragraph 5 of the "Introduction" section, the following amendment highlighted and marked in bold shall be made to the last sentence:

"Part C should be read in conjunction with paragraph **17.3 B1.4** of General Condition **17 B1** of the General Conditions of Entitlement."

4. In Part A, Section A1 “Public Telephone Network Numbers”, the modifications marked in bold text and highlighted in yellow shall be made to the entries for:

- (i) 0843, 0844 and 0845 numbers

0843, 0844 and 0845	Non-Geographic Numbers	<p>Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs <b>17.24 – 17.30 B1.21 – B1.27</b> of the General Conditions of Entitlement.</p> <p>The applicable Service Charge must not exceed:</p> <ul style="list-style-type: none"> <li>• 5.833 pence per minute, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or</li> <li>• 5.833 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate.</li> </ul>
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- (ii) 0870, 0871, 0872 and 0873 numbers

0870, 0871, 0872 and 0873	Non-Geographic Numbers	<p>Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs <b>17.24 – 17.30 B1.21 – B1.27</b> of the General Conditions of Entitlement.</p> <p>The applicable Service Charge must not exceed:</p> <ul style="list-style-type: none"> <li>• 10.83 pence per minute, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or</li> <li>• 10.83 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate.</li> </ul>
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- (iii) 090 and 091 and 098 numbers

090 and 091 (except 0908 and 0909 – see Part C5)	Non-Geographic Numbers	Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in
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098	Non-Geographic Numbers: used to provide Sexual Entertainment Services	<p>paragraphs <del>17.24 – 17.30</del> <b>B1.21 – B1.27</b> of the General Conditions of Entitlement.</p> <p>The applicable Service Charge must not exceed:</p> <ul style="list-style-type: none"> <li>• 300 pence per minute, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or</li> <li>• 500 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate.</li> </ul>
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(iv) 118XXX numbers

118XXX	6-digit Non-Geographic Numbers used to access a Directory Enquiry Facility (“Type B Access Codes”)	Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs <del>17.24 – 17.30</del> <b>B1.21 – B1.27</b> of the General Conditions of Entitlement.
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5. In Part B, Section B3.2 “Non-Geographic Numbers”, the modification marked in bold text and highlighted in yellow shall be made to paragraph B3.2.5 b:

“b. deal with the request in accordance with the requirements of General Condition ~~18~~ **B3** of the General Conditions of Entitlement.”

6. In Part C, Section C5 “Public Communications Network Numbers which have been individually Allocated”, the modification highlighted and marked in bold shall be made to the entry for 0908 and 0909 numbers:

0908 and 0909	Non-Geographic Numbers used to provide Sexual Entertainment Services. These numbers are no longer available for Allocation, but numbers which have been Allocated may be Adopted or otherwise used.	<p>Retail charge to a Consumer of a call calculated by reference to the applicable Access Charge and Service Charge and in accordance with the tariff principles in paragraphs <del>17.24 – 17.30</del> <b>B1.21 – B1.27</b> of the General Conditions of Entitlement.</p> <p>The applicable Service Charge must not exceed:</p> <ul style="list-style-type: none"> <li>• 300 pence per minute, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or</li> <li>• 500 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate.</li> </ul>
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## Annex 7

# Notification of proposed modification to the Premium Rate Services Condition under section 120A(3) of the Act

1. Ofcom proposes to modify the PRS Condition. The draft modification is set out in the Schedule to this Notification.
2. Ofcom's reasons for making this proposal, and the effect of the proposed modification, are set out in the accompanying consultation document.
3. Ofcom considers that the proposal complies with the requirements of sections 47, 120 and 120A of the Act, insofar as they are applicable.
4. In making this proposal, Ofcom has considered and acted in accordance with their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
5. Representations may be made to Ofcom about the proposed modifications until **5pm on 14 March 2017**.
6. If implemented, the modification shall enter into force on a date to be specified in Ofcom's final statement in relation to this proposal.
7. A copy of this Notification and the accompanying consultation document is being sent to the Secretary of State.
8. In this Notification:
  - a) "**the Act**" means the Communications Act 2003;
  - b) "**Ofcom**" means the Office of Communications; and
  - c) "**PRS Condition**" means the condition set under section 120 of the Act by the Director General of Telecommunications on 23 December 2003, as amended from time to time.
9. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
10. For the purposes of interpreting this Notification: (i) headings and titles shall be disregarded; and (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
11. The Schedule to this Notification shall form part of this Notification.



**Polly Weitzman**

General Counsel

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

**20 December 2016**

## SCHEDULE

The modifications to the PRS Condition are made by the insertions and deletions marked in bold and highlighted in yellow for ease of reference in the text below:<sup>256</sup>

1. The Communications Provider and Controlled Premium Rate Service Provider shall comply with:
  - (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and
  - (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.
2. In this Condition,
  - (a) “Act” means the Communications Act 2003;
  - (b) “Approved Code” means a code approved for the time being under section 121 of the Act;
  - (c) “Communications Provider” means either:
    - (i) a person who:
      - (A) is the provider of an Electronic Communications Service or an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
      - (B) is a Controlled Premium Rate Service Provider in respect of that Controlled Premium Rate Service;
    - (ii) a person who:
      - (A) is the provider of an Electronic Communications Service used for the provision of a Controlled Premium Rate Service; and
      - (B) under arrangements made with a Controlled Premium Rate Service Provider, is entitled to retain some or all of the charges received by him in respect of the provision of the Controlled Premium Rate Service or of the use of his Electronic

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<sup>256</sup> On 2 August 2016, Ofcom consulted on the deletion of the definition of “Service Charge” in paragraph 2 of the PRS Condition and the insertion of the following alternative definition: **““Service Charge” shall have the meaning ascribed to that term in Annex 1 (Definitions) of the Schedule to the Notification issued by Ofcom on [date to be inserted – will be date on which notification setting new general conditions is issued] setting general conditions under section 48(1) of the Act (as that Schedule may be modified from time to time);”**. This proposed amendment has not yet been implemented and is expected to be implemented at the same time as the amendments proposed in this Schedule.

Communications Service for the purposes of the Controlled Premium Rate Service; or

- (iii) a person who:
  - (A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
  - (B) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of that Controlled Premium Rate Service with a Controlled Premium Rate Service Provider;
- (d) “Chatline Service” means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:
  - (i) each of them having agreed with each other; or
  - (ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted, in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service;
- (e) “Controlled Premium Rate Service” means a Premium Rate Service (other than a service which is only accessed via an International Call or a service which is delivered by means of an Electronic Communications Service and is provided by the person who is also the provider of the Electronic Communications Service) which falls within one or more of the following categories:
  - (i) — until the Effective Date, the service is obtained through a Special Services Number (except an 0843/4 number), and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 5 pence per minute for BT customers inclusive of value added tax;**
  - (i)(ii) — from and including the Effective Date,** the service is obtained through a PRS Number and the Service Charge for the call by means of which the service is obtained is a rate which exceeds 5.833 pence per minute or 5.833 pence per call, exclusive of value added tax;
  - (ii)(iii) — the service is obtained other than through a Special Services Number or** a PRS Number, and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per

minute inclusive of value added tax (and which also includes, for the avoidance of any doubt, a service delivered by means of an Electronic Communications Service which is charged by means of a Payment Mechanism and for which the charge exceeds 10 pence inclusive of value added tax);

**(iii)(iv)** the service is a Chatline Service;

**(iv)(v)** the service is Internet Dialler Software operated; or

**(v)(vi)** the service is a Sexual Entertainment Service;

- (f) “BT” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 and the Companies Act 2006;
- (g) “Controlled Premium Rate Service Provider” means a person who:
- (i) provides the contents of a Controlled Premium Rate Service;
  - (ii) exercises editorial control over the contents of a Controlled Premium Rate Service;
  - (iii) packages together the contents of a Controlled Premium Rate Service for the purpose of facilitating its provision; or
  - (iv) makes available a facility comprised in a Controlled Premium Rate Service;
- (h) “Dial-up Telephone Number” means the telephone number used by an end user's computer that connects it to the Internet;

**(i) — “Effective Date” means 1 July 2015;**

**(i)(j)** “Enforcement Authority” means, in relation to an Approved Code, the person who under the code has the function of enforcing it;

**(j)(k)** “Facility” includes reference to those things set out in section 120(14) of the Act;

**(k)(l)** “International Call” means a call which terminates on an Electronic Communications Network outside the United Kingdom;

**(l)(m)** “Internet Dialler Software” is software that replaces a Dial-up Telephone Number with a different Dial-up Telephone Number; other than where it is used so that:

- (i) an end-user's existing Internet Service Provider replaces the Dial-up Telephone Number; or
- (ii) an end-user moves from his existing Internet Service Provider to another Internet Service Provider or is so moved with his consent;

~~(m)(n)~~ “Internet Service Provider” means a person who provides end-users, by means of a Dial-up Telephone Number, with connection to the Internet in the ordinary course of its business;

~~(n)(e)~~ “National Telephone Numbering Plan” means a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act;

~~(o)(p)~~ “Non-Geographic Number” shall have the meaning ascribed to it in the National Telephone Numbering Plan;

~~(p)(q)~~ “Premium Rate Service” shall have the meaning ascribed to it by section 120(7) of the Act;

~~(q)(r)~~ “Payment Mechanism” is a mechanism whereby the charge for a service delivered by means of an Electronic Communications Service is paid to the Communications Provider providing the Electronic Communications Service;

~~(r)(s)~~ “PRS Number” means a Non-Geographic Number starting 087, 090, 091 or 118;

~~(s)(t)~~ “Service Charge” shall have the meaning ascribed to that term in General Condition 17 of the general conditions set by the Director General of Telecommunications on 22 July 2003 by way of a Notification published pursuant to section 48(1) of the Act, and modified by Ofcom from time to time;

~~(t)(u)~~ “Sexual Entertainment Service” means an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature; ~~and.~~

~~(v)~~ **“Special Services Number” means a telephone number designated by Ofcom in the National Telephone Numbering Plan as Special Services basic rate, Special Services higher rate or Special Services at a Premium Rate.**

3. For the purposes of interpreting this Condition, except in so far as the context otherwise requires, words or expressions shall have the same meaning as ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has been ascribed in the Act.

## Annex 8

# Notification of proposed modifications to the Metering and Billing Direction under section 49A of the Act

## Proposal to modify the Metering and Billing Direction

1. Ofcom proposes to modify the Metering and Billing Direction. The draft direction showing our proposed changes in mark-up is set out in Annex 14 of this consultation document (which is published as a separate Annex).
2. Ofcom's reasons for making this proposal, and the effect of the proposed modification, are set out in section 13 of this consultation document.
3. Ofcom considers that the proposal complies with the requirements of sections 49, 49A and 49C of the Act, insofar as they are applicable.
4. In making this proposal, Ofcom has considered and acted in accordance with its general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
5. Representations may be made to Ofcom about the proposal until **5pm on 14 March 2017**.
6. If implemented, the revised direction shall enter into force on a date to be specified in Ofcom's final statement in relation to this proposal.
7. A copy of this Notification and the accompanying consultation document is being sent to the Secretary of State in accordance with section 49C(1) of the Act.
8. In this Notification:
  - a) "**the Act**" means the Communications Act 2003;
  - b) "**Ofcom**" means the Office of Communications; and
  - c) "**Metering and Billing Direction**" means the direction issued by Ofcom using its power derived from General Condition 11 on 31 July 2014 and available [here](#).
9. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
10. For the purposes of interpreting this Notification: (i) headings and titles shall be disregarded; and (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.



Polly Weitzman  
General Counsel

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

**20 December 2016**

## Annex 9

# Equality impact assessment

## Introduction

- A9.1 Ofcom is required by statute to assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.<sup>257</sup> We refer to groups of people with these protected characteristics as “**equality groups**”.
- A9.2 We fulfil these obligations by carrying out an Equality Impact Assessment (“**EIA**”), which examines the potential impact our proposed policy is likely to have on people, depending on their personal circumstances. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity.
- A9.3 We have not considered it necessary to carry out separate EIAs in relation to the additional equality groups in Northern Ireland: political opinion and dependants. This is because we anticipate that our proposals would not have a differential impact in Northern Ireland compared to consumers in general.

## The aims of our Review of the General Conditions

- A9.4 Our review seeks to make the GCs fit for purpose in today’s market and reflect our current policy priorities and concerns. The objectives of this review are to make the GCs clearer and more practical, to make it easier for businesses to comply with them and to establish processes to ensure compliance. We think this should also make it quicker and easier for us to enforce the GCs, as and when necessary, so as to protect the interests of consumers. In light of these objectives, we expect that our review will bring benefits to UK consumers in general, including all of the equality groups.

## Equality impact assessment

- A9.5 We consider that the changes that we are proposing to make to the general conditions considered in this consultation document would have a positive impact on these equality groups:
- a) people with disabilities;
  - b) people whose age-related conditions may make them vulnerable, who we consider as a sub-category included in the “age” equality group; and
  - c) potentially, people belonging to these or other equality groups to the extent that people with the protected characteristics seek support and assistance by calling helplines (see paragraphs A9.15 - A9.16 below).

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<sup>257</sup> As defined in the Equality Act 2010.

- A9.6 Below, we summarise the proposals that we think would be more relevant to these equality groups.

### Measures to meet the needs of vulnerable consumers and end-users with disabilities

- A9.7 There are currently six main requirements for CPs in relation to end-users with disabilities (GC 15): (i) the obligation to ensure access to directory information; (ii) the provision of text relay services; (iii) the obligation to give priority to the requests for fault repair from end-users with disabilities who are dependent on voice services; (iv) the obligation to make available third party bill management; (v) the obligation to provide bills and contracts in alternative formats (e.g. in braille); and (vi) the obligation to ensure SMS access to emergency services. In addition, there is a requirement to take all reasonable steps to ensure that such measures are widely publicised. At the moment, all these measures apply only in relation to the provision of voice call services.
- A9.8 We are proposing to retain all these requirements because we consider that these measures remain important to ensure equality of access and choice of services for end-users with disabilities. In addition, in order to update regulation in light of recent market development, we are proposing to extend the requirements for measures for end-users with disabilities to all public electronic communications services, including data services (such as broadband), where applicable, to ensure they apply consistently across the sector. These measure include: (i) priority fault repair; (ii) third party bill management; and (iii) bills and contracts in accessible formats (paragraphs 9.18-9.25). We consider that this proposal would provide additional protection to end-users with disabilities.
- A9.9 We are also proposing to broaden the current scope of GC 15 to include a new requirement for CPs to take account of, and have procedures to meet, the needs of consumers whose circumstances may make them vulnerable, in order to ensure that such consumers' needs are adequately provided for by CPs (paragraphs 9.10-9.15). These circumstances may be:
- a) temporary, for example serious illness or bereavement; or
  - b) permanent, for example, communication difficulties or age-related conditions.
- A9.10 We are proposing this new requirement because consumers whose circumstances make them vulnerable may need additional protection. Given that age-related conditions and disabilities are circumstances which may make consumers vulnerable, we consider that our proposal would provide additional protection to these equality groups.

### Complaints-handling

- A9.11 The current conditions (GC 14.4 and Annex 4 to GC 14) require CPs to have procedures for handling complaints from domestic and small business customers that conform to the Ofcom Approved Code of Practice for Complaints Handling. The Ofcom Approved Code of Practice for Complaints Handling (which is currently set out in Annex 4 to GC 14) sets out the minimum standards with which CPs' complaints handling procedures must comply.
- A9.12 These minimum standards are designed to ensure that CPs have complaints-handling procedures that are transparent, accessible, effective, that facilitate

appropriate access to ADR, and that ensure that CPs retain appropriate records of contact with complainants.

A9.13 The accessibility requirements which are currently set out in the Ofcom Approved Code of Practice for Complaints Handling include:

- a) certain obligations to ensure that CP's codes of practice for complaints handling are "well publicised and readily available" (§ 2(a)). These obligations include a requirement for CPs to provide complainants, upon reasonable request and free of charge, with a copy of their complaints handling code "in hard copy or other format as agreed with the Complainant" (§ 2(a)(iii)); and
- b) a requirement for CPs' complaints handling procedures to be "sufficiently accessible to enable consumers with disabilities to lodge and progress a Complaint" (§ 2(b)).

A9.14 We consider that the proposals summarised below would have a positive impact on people with disabilities and people with age-related conditions that may make them vulnerable.

- a) Firstly, we are proposing to extend the current obligation for CPs to provide complainants, upon reasonable request and free of charge, with a copy of their complaints handling code "in hard copy or other format as agreed with the Complainant" (§ 2(a)(iii)), to include also an obligation for CPs to ensure that their complaints handling code is:

"made available on request, free of charge and in a format reasonably acceptable to any Relevant Customer who is blind or whose vision is impaired. An acceptable format would, for these purposes, consist of print large enough for those Relevant Customers to read, Braille or electronic format appropriate to the reasonable needs of the Relevant Customer" (paragraphs 7.49 and 7.54).<sup>258</sup>

We consider that this proposal would provide additional protection to people who are blind or whose vision is impaired, and therefore have a positive impact on them.

- b) Secondly, we are also proposing to extend the current accessibility requirement to include vulnerable customers, which we propose to describe as "Relevant Customers [Domestic and Small Business Customers] who may be vulnerable due to circumstances, including but not limited to, age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement or divorce" (paragraph 7.44 and 7.51).<sup>259</sup>

Given that age-related conditions and disabilities are circumstances which may make consumers vulnerable, we consider that our proposals would provide additional protection to these equality groups.

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<sup>258</sup> Paragraph 18(d) of the proposed Ofcom Code.

<sup>259</sup> Paragraph 2 of the Proposed Ofcom Code.

### Non-itemisation of bills

A9.15 Currently, the general conditions (GC 12.4) require CPs to ensure that calls which are made from a subscriber's telephone which are free of charge, including calls to helplines, are not identified in the subscriber's itemised bill. As set out in paragraphs 6.37 - 6.39, we are proposing to update regulation by extending the current requirement as follows:

- a) from calls only to calls and text messages; and
- b) from itemised bills to any itemisation which is made available to subscribers, including records showing only consumption data.

A9.16 The changes that we are proposing aim to ensure that, in light of technological developments, consumers (especially vulnerable parties, who may or may not be the subscriber) can continue to make these communications in confidence. We therefore consider that our proposals would provide additional protection to vulnerable people. Although these vulnerable people may or may not fall within any equality group, we consider that our proposal might have a positive impact on these groups, to the extent that people with the protected characteristics seek support and assistance by calling helplines.

### Tackling nuisance calls through the provision of calling line identification facilities

A9.17 Nuisance calls continue to be a serious problem in the UK. As noted above in paragraphs 10.3, we estimate that consumers receive nearly 5 billion nuisance or unwanted calls each year. We are proposing to strengthen the regulatory requirements relating to the provision of CLI facilities, in part to assist with tackling the consumer harm caused by nuisance calls.

A9.18 Consumers who use CLI facilities are able to note the telephone numbers of the people making those calls (provided the number is not withheld) and report those telephone numbers to the relevant authorities for potential investigation. We are proposing to require CPs to ensure that any telephone numbers included in CLI data are valid, diallable and identify the caller. We are also proposing to prevent CPs from levying additional charges for access to use of standard CLI facilities, to require CPs to inform their customers if CLI facilities are not available on the services they provide and to take reasonable steps to identify and block calls on which invalid or non-diallable CLI is used.

A9.19 We believe that these proposals will bring benefits to all consumers, through the reduction of nuisance calls and other calls with invalid or incorrect CLI data. They will particularly benefit consumers who spend more time at home, since they are more likely to be disturbed by a larger number of unwanted telephone calls. These proposals may therefore indirectly benefit certain equality groups in particular, including older consumers and end-users with disabilities, as well as benefitting consumers in general. We do not think these proposals will have a negative impact on any of the equality groups.

### Other proposals

A9.20 We do not think that any of the other changes which we are proposing for consultation would have any material impact on any of the equality groups.

## Provisional conclusions

- A9.21 We consider that our proposals would have a positive impact on people with disabilities, people whose age-related conditions may make them vulnerable, and potentially also on people belonging to other equality groups.
- A9.22 We do not believe that our proposals would have any detrimental impact on any of the relevant equality groups.

## Consultation question

**Question 23:** *Do you have any comments on our equality impact assessment?*

## Annex 10

# Complaints handling and access to ADR

## Experience of monitoring and enforcing the rules on complaints handling and access to ADR

### Background into Ofcom's monitoring & enforcement of GC 14.4

A10.1 In February 2013 we opened a monitoring and enforcement programme to assess whether providers were complying with GC 14.4.<sup>260</sup> Specifically, the programme, which remains open, aims to:

- a) ensure that CPs have a Code of Practice that complies with the Current Ofcom Code;
- b) identify any problems (including consumer concerns) in relation to CPs' compliance with GC 14.4; and,
- c) ensure that CPs are making consumers aware of ADR and, in particular, to address concerns that consumers may not be receiving the written notification that CPs are required to send to customers whose complaints remain unresolved after eight weeks.

A10.2 Under the programme, we have monitored the level of industry compliance with GC 14.4 through various different means. These include:

- a) desk-based research to review CPs' Codes of Practice, testing compliance with the transparency and accessibility requirements of GC 14.4;
- b) analysis of complaints received by Ofcom;
- c) gathering and assessing information and data from CPs, through a mixture of formal powers and informal requests, about CP's complaints handling procedures and the volume of formal written notifications sent where complaints have remained unresolved; and
- d) an industry-wide study which assessed whether the largest CPs were complying with certain GC 14.4 rules, based on a sample of cases that were referred to ADR (see further below).

### GC 14.4 investigations into CPs' compliance with the rules

A10.3 To date, we have opened three separate investigations under this programme, into Hutchison 3G Limited (trading as Three), EE Limited (trading as EE, Orange and T-Mobile) and Vodafone. This resulted in penalties being imposed against all three CPs of £250,000, £1 million, and £925,000, respectively.

A10.4 With regard to Three, the investigation identified the following contraventions:

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<sup>260</sup> [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw\\_01101](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01101)

- a) Applied in practice a definition of a “complaint” which was narrower than the definition set out in GC 14.4261;
- b) Closed complaints without establishing that they were resolved (i.e. closing complaints prematurely); and
- c) Sent paper bills to domestic customers that did not make reference to the fact that Three customers can utilise the ADR scheme at no cost to themselves<sup>262</sup>.

A10.5 With regard to EE, the investigation identified the following contraventions:

- a) Failure to send customers written notification of their right to go to ADR eight weeks after the complaint was first brought to the attention of the CP in a number of complaint cases<sup>263</sup>;
- b) Failure to send Deadlock Letters on request to customers in a number of complaint cases<sup>264</sup>;
- c) Sent paper bills to customers that did not make reference to the fact that they could utilise the ADR scheme at no cost to themselves<sup>265</sup>;
- d) Sent written notifications to customers that did not make reference to the fact that they could utilise the ADR scheme at no cost to themselves<sup>266</sup>; and
- e) Did not reference in its Customer Complaints Code that complainants are also able to access EE’s ADR scheme by requesting a Deadlock Letter where both parties (the CP and the complainant) have agreed to deadlock<sup>267</sup>.

A10.6 With regard to Vodafone, the investigation identified the following contraventions:

- a) Vodafone’s procedures were not, as required, effective to “ensure the fair and timely resolution of” complaints, to clearly established timeframes<sup>268</sup>;
- b) Failure to secure that written notifications were sent to customers informing them of their right to free ADR where a complaint remained unresolved after eight weeks and no relevant exceptions applied<sup>269</sup>.

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<sup>261</sup> “Complaint” is defined in GC 14.13(c) as “a) an expression of dissatisfaction made by a customer to a Communications Provider related to either: i) the Communications Provider’s provision of Public Electronic Communications Services to that customer; or ii) the complaint-handling process itself; and b) where a response or resolution is explicitly or implicitly expected”.

<sup>262</sup> In breach of paragraph 4(b) of the Current Ofcom Code.

<sup>263</sup> This is required by paragraph 4(d) of the Current Ofcom Code.

<sup>264</sup> A “Deadlock Letter” is defined in the Current Ofcom Code as “a letter or email from a Communications Provider to a Complainant agreeing that the Complaint can be referred to the relevant Alternative Dispute Resolution scheme”.

<sup>265</sup> In breach of paragraph 4(b) of the Current Ofcom Code.

<sup>266</sup> The written notification must explain, amongst other things, that customers can utilise the ADR scheme at no cost to themselves (this is set out in the definition of ‘Written Notification’ in Annex 4 to GC 14).

<sup>267</sup> In breach of the requirements set out in paragraph 1(c) of the Current Ofcom Code.

<sup>268</sup> This is required by paragraph (3) of the Ofcom Code.

<sup>269</sup> In breach of the requirement in paragraph 4(d) of the Current Ofcom Code.

## ADR Study

- A10.7 As a result of our concerns around the level of compliance industry-wide with the current rules on complaints handling, we commissioned Mott MacDonald (“**MM**”) to carry out a review of a sample of complaint cases that had gone to ADR (“**ADR Study**”). The aim was to assess whether CPs were facilitating appropriate access to ADR and, particularly, whether CPs were sending out letters which explain a consumer’s right to take their complaint to an ADR scheme for consideration, either when “deadlock” is reached or the complaint has remained unresolved at eight weeks.
- A10.8 MM looked at nearly 900 cases relating to seven CPs, drawn from 80 to 90% of all cases accepted by the schemes between January to June 2014.<sup>270</sup> MM looked at CP case records and the records held by the schemes, looking at whether letters were sent and if not the reasons why. They also made observations on themes identified from the complaint handling customer journey.
- A10.9 The ADR Study, which was published on an anonymized basis in September 2015<sup>271</sup>, highlighted low levels of compliance, in particular that:
- a) A large percentage of consumers had not received either a Deadlock Letter before eight weeks or written notification of their right to take their unresolved complaint to ADR after eight weeks;
  - b) Only 20% of cases had logged a correct start date for the complaint by the CP;
  - c) There was a tendency by CPs to mark complaints as "resolved" or "closed" without sufficient justification and to do so unilaterally without the customer's consent.

## Informal compliance programme

- A10.10 Following publication of the ADR Study, we commenced an informal compliance programme with those CPs which, in our view, had been identified as warranting further engagement in order to drive significant improvements in performance. We said we would open formal investigations if the relevant CPs were unable to demonstrate improved performance.
- A10.11 We consider the informal compliance programme has had a positive impact and incentivised improvements on the part of all CPs with whom we have engaged. At the same time, however, it remains a concern that it should be necessary for us to have had extensive engagement with CPs before improvements in compliance levels could be observed.

## Stakeholder comments

- A10.12 Stakeholder comments on previous Ofcom consultations, including our Annual Plan for 2015/16<sup>272</sup> and 2016/17<sup>273</sup> and also the more recent discussion document on the

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<sup>270</sup> The seven CPs were: BT, O2, Sky, TalkTalk, Three, Virgin and Vodafone. The 10 to 20% of cases where the scheme had recorded that a letter had been sent were removed from the population for the purposes of sampling.

<sup>271</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/55534/access\\_to\\_adr.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/55534/access_to_adr.pdf)

Strategic Review of Digital Communications<sup>274</sup>, have provided us with valuable feedback on the Current Ofcom Code and access to ADR. Stakeholder comments can be categorised as follows:

- a) A call for more standardisation of complaints handling across industry;
- b) Looking at the definition of a complaint, which some view as too broad and all encompassing;
- c) Doing more to publicise the existence of ADR schemes;
- d) Ensuring consumers are informed about their rights to go to ADR;
- e) Making the complaints handling process and ADR process easily accessible to all consumers; and
- f) Shortening the time period for resolving complaints.

## Ofcom Research

A10.13 In light of stakeholder comments, Ofcom carried out research in April 2016 to look at whether some of the current requirements in the Current Ofcom Code were still appropriate<sup>275</sup>. In particular, the research looked into preferences of consumers when making complaints and also consumer awareness of ADR schemes across all service sectors including fixed line, mobile, broadband and pay TV. The findings of this research showed that:

- a) Whilst telephone is by far the contact method most used by consumers when making a complaint to their CP and is the preferred first choice of contact method, email is the second most preferred.
- b) Across all service sectors, the majority of consumers (between 57-72%, dependent on service) now have online bills for their communications services. This is followed by paper bills (between 10% and 24%, dependent on service).
- c) Almost a quarter (24%) of those who had made a complaint in the last 12 months were aware of ADR. Only 17% of participants, who had not made a complaint in the last 12 months were aware of ADR.

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<sup>272</sup> Draft Annual Plan 2015/16: <https://www.ofcom.org.uk/consultations-and-statements/category-2/draft-ann-plan-15-16>

<sup>273</sup> Draft Annual Plan 2016/17: [https://www.ofcom.org.uk/consultations-and-statements/category-1/annual\\_plan\\_2016-17](https://www.ofcom.org.uk/consultations-and-statements/category-1/annual_plan_2016-17)

<sup>274</sup> <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/digital-comms-review/conclusions-strategic-review-digital-Communications>

<sup>275</sup> This research was carried out by Kantar Media on behalf of Ofcom and consisted of a nationally representative sample of 4,000 adults in the UK aged 16 and above via face-to-face CAPI omnibus. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/95871/Complaints-Handling-Omnibus.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/95871/Complaints-Handling-Omnibus.pdf)  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0031/95872/Ofcom-Complaints-Handling-tabulations.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0031/95872/Ofcom-Complaints-Handling-tabulations.pdf)

- d) Almost a quarter (23%) of those previously aware of ADR had heard about ADR via a friend, relative or colleague. Just over a fifth (21%) had heard about ADR via their CP *by various means*.

## Research by Ofcom's stakeholders on complaints handling and ADR

- A10.14 In addition to Ofcom's own research, we have also had regard to research conducted by external stakeholders, which help to throw light on the range of difficulties during the consumer journey when making a complaint, the experiences of particular groups of consumers and low awareness of ADR.
- A10.15 A research report *Going Round in Circles? The Consumer Experience of dealing with problems with communications services*,<sup>276</sup> published by the Communications Consumer Panel ("CCP") in October 2013, explored consumers' perceptions and experiences of CPs' customer service and complaints handling.
- A10.16 The report highlighted that older people, and people with a disability, seemed to be at a particular disadvantage in their dealings with CPs with negative experiences when contacting their provider to make a complaint and getting their complaint resolved. It also showed that some CPs seem to be poor at telling customers about ADR.
- A10.17 In addition, the more recent report *We're not all the same! Older and Disabled People's Experiences of Contacting Communications Providers*<sup>277</sup>, published by the CCP in December 2015, highlighted the difficulties some older and disabled people face when using customer services systems, emphasising the importance of ensuring that customer services and the ability to make complaints are accessible to all and easy to use.
- A10.18 A research report *Understanding Consumer Experiences of Complaint Handling*<sup>278</sup> published by Citizens Advice in June 2016 covered a range of sectors including regulated services (such as energy, financial services, telecoms) as well as non-regulated and public services.
- A10.19 The report indicated that consumers are particularly unhappy about the complexity of the complaint process, long response times and poor understanding of the issue by companies and/or service providers. The report noted that telecoms was the most complained about sector and highlighted key problems that were common across all sectors, including:
- a) The journey for a complainant was often problematic – including for instance difficulties with registering a complaint and navigating complaints procedures, and being passed around an organisation; and
  - b) There were difficulties with seeking redress through ADR services – including a lack of awareness of ADR for complaints and a belief that using ADR will not make a difference to the outcome of their complaint.

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<sup>276</sup> <http://www.communicationsconsumerpanel.org.uk/downloads/going-round-in-circles.pdf>

<sup>277</sup> <http://www.communicationsconsumerpanel.org.uk/downloads/were-not-all-the-same---final-report-171215.pdf>

<sup>278</sup> [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling\\_DJS%20report%20final\\_June2016%20\(2\)%20\(1\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20(2)%20(1).pdf)

## Annex 11

## Glossary

A11.1 The following terms have been used in this document and are defined as follows:

- **Access Directive** means Directive 2002/19/EC, as revised in 2009;
- **Act** means the Communications Act 2003 (2003 c. 21);
- **August 2016 consultation** means the first part of this consultation, published in August, which focused mainly on the network functioning conditions and the numbering and/or technical conditions;
- **Authorisation Directive** means Directive 2002/20/EC, as revised in 2009;
- **Cross platform switching consultation** means the consultation published in July 2016 setting out Ofcom’s provisional view on the difficulties consumers currently experience when they switch, or consider switching, one or more of landline, fixed broadband and pay TV between the Openreach, KCOM, Virgin cable and Sky satellite platforms;
- **Communications Provider (“CP”)** has the meaning set out in paragraph 3.3 of this document;
- **DCR Consultation** means Ofcom’s document of 16 July 2015 entitled “Strategic Review of Digital Communications. Discussion document”;<sup>279</sup>
- **DCR Statement** means Ofcom’s Statement of 25 February 2016 entitled “Making communications work for everyone. Initial conclusions from the Strategic Review of Digital Communications”;<sup>280</sup>
- **EU Framework** means the European framework consisting of the following five Directives: the Framework Directive, the Authorisation Directive, the Access Directive, the Universal Service Directive and the Privacy and Electronic Communications Directive;
- **Fixed Line Providers** means providers of fixed line voice call services;
- **Framework Directive (“FD”)** means Directive 2002/21/EC, as revised in 2009;
- **General Condition (“GC”)** means a general condition imposed by Ofcom under section 45(2)(a) of the Act;
- **Numbering Plan** means the National Telephone Numbering Plan;
- **PATS** means a publicly available telephone service;

<sup>279</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/dcr\\_discussion/summary/digital-comms-review.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/dcr_discussion/summary/digital-comms-review.pdf)

<sup>280</sup> <http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/digital-comms-review/DCR-statement.pdf>

- **Privacy and Electronic Communications Directive** means Directive 2002/58/EC, as revised in 2009;
- **Universal Service Directive (“USD”)** means Directive 2002/22/EC, as revised in 2009.

## Abbreviations

- **ADR:** Alternative Dispute Resolution
- **CCP:** the Communications Consumer Panel
- **CLI:** Calling Line Identification
- **CP:** Communications Provider
- **EIA:** Equality Impact Assessment
- **EC&R:** Enhanced Cease and Re-provide
- **FD:** Framework Directive
- **GP:** Gaining Provider
- **LP:** Losing Provider
- **MAC:** Migration Authorisation Code
- **PAC:** Porting Authorisation Code
- **PATS:** Publicly Available Telephone Service
- **PAYG:** Pay-As-You-Go
- **PCB:** Public Call Box
- **PECS:** Public Electronic Communications Service
- **PRS:** Premium Rate Service
- **QoS:** Quality of Service
- **USD:** Universal Service Directive