

Consumer Forum for Communications (CFC) meeting with Ofcom General Conditions Review Team

21 February 2017, 11am – 12.30pm

Attendees

CFC

Roger Darlington	Chair
Claire Milne	Independent Consultant
Chris Holland	Consumer Panel and Advisory Committee for Older and Disabled People
Simon Pearce	National Association of Deafened People
Mandeep Toor	CEDR
Alan Horne	Broadband Pioneer
Charles Smith	Citizens Advice

Ofcom

Robert Wells	Legal Team
Selene Ross	Legal Team
Alan Pridmore	Consumer Policy
Katie Hanson	Consumer Policy
Grace Shaw	Consumer Policy

Meeting minutes

The meeting began with introductions. RD explained the usefulness of specific topic meetings between CFC members and Ofcom. He stated the intention to submit a note of the meeting to Ofcom as a consultation response from the CFC.

Prior to the meeting CM had circulated a note summarising her comments in relation to the GC Review (see annex to this paper). RD invited her to update and resubmit this note following the meeting, and Ofcom could then respond to her specific comments.

Overview of General Conditions Review

RW and AP gave an overview of the General Conditions and the GC Review. RW explained that the GCs are the main baseline regulatory regime for electronic communications in the UK. Currently there are 23 GCs covering three areas: network functioning conditions, technical and numbering conditions, and consumer protection conditions. RW said the GC review aims to make the GCs fit for purpose by making the conditions more coherent, making them easier to comply with and to enforce, and removing any redundant regulations. The GC review is being conducted in two separate consultations. The first was published last year and dealt with technical and numbering conditions. The second, issued in December 2016, focused on the consumer protection issues.

RD asked what the responses had been to the first consultation on the GC review. RW said that Ofcom are working through these responses at the moment, but two areas that generated the most debate were requirements in relation to VOIP (voice over IP) providers (especially as they relate to Emergency Service conditions) and requirements in relation to payphones.

For the second consultation, seven main consumer protection policy areas were identified: contract requirements, information publication and transparency, billing, complaints handling, consumers in vulnerable circumstances and end users with disabilities, nuisance calls, switching and mis-selling provisions.

Clarity of the conditions

RW said that they often heard feedback that the current conditions are too long and complicated. Ofcom is therefore trying to make them more user friendly and easier to understand. Therefore, the new conditions will be broken down into three separate sections to make it easier to navigate, and there would be a common glossary of defined terms rather than a separate one for each condition. There would also be recitals at the start of each condition so that it is clear what it intends to capture. The term 'Regulated Provider' will also be used as this does vary between different conditions. Finally, all additional documents (guidance, consumer law etc.) will be hyperlinked in the document so it is easy to find them.

RD said that the purpose of the GCs was to support and assist consumers. He suggested Ofcom might want to produce a user-friendly summary which could be used by consumers so they can understand the requirements for regulated providers. RW said this was something the team had thought about, especially in relation to updating the guidance. He said that replacing this with an easy consumer guide may be a better approach. MT said that this was a good idea, and that they would also find it useful as an ADR service to have an easy read guide. She also said that having this information out there may also motivate Regulated Providers to improve their services. CM added that it would be helpful if any supporting legislation/ other consumer guidance could be clearly hyperlinked in the guide so that consumers know where to look for requirements not covered in the GCs.

Contract requirements

These regulations largely come from the regulatory framework at the EU level. Ofcom is not proposing any major policy changes to this condition, but will try to make it clearer. Therefore, the current condition would be replaced by a new one that better explains the principle.

RD mentioned that there seems to be a move from rules-based of regulation to principled-based regulation in regulated sectors at the moment. RW said that Ofcom is going the other way, especially as one of the review focuses is on the enforceability of rules. RD agreed that this was a good approach, but suggested that it might be important to have preliminary text setting out the spirit of the rules as well. SR said this was something Ofcom is considering, which is why Ofcom proposed to have recitals at the start of each condition.

RD suggested it might be a good idea to have the CEO make a keynote address once the review has been done, aimed at summarising the spirit of the provisions as well as the letter. Ofcom team said that they would take this away.

Information publication and transparency

Ofcom are not proposing major changes to the requirements around information publication and transparency, but have proposed to pull them all together into one place to make them clearer.

RW flagged that the current GC21 is proposed for deletion as Ofcom do not replicate/duplicate anything from legislation into the GCs. The condition concerns the publication of information about quality of service requirements, and this is being picked up directly in legislation in the Digital Economy Bill. If this is not introduced into legislation, then the condition will be left as it is.

SP sought clarifications in relation to disability legislation under the Equality Act. RW clarified that we cannot put something into the GCs that is a requirement under national law.

Billing

There are currently three separate conditions relating to billing: on the accuracy of bills, the provision of itemised bills, and rules for debt collect and disconnection for non-payment of bills. Ofcom has proposed to bring these together into one billing condition, and is also proposing to extend the current requirements to include broadband.

RD asked if we expected pushback on this. RW said it is hard to predict. CH said that a lot of providers would say they are doing what is required anyway, so it would be unlikely they would object to these proposals.

CM said that when charging providers should be clear how they measure data use including charges for part units (eg 1.4 MB). RW said that a lot of providers bill by session, rather than by website as it would be very hard to break it down this way. RW added that operators have to give an indication of usage for roaming as well.

End users with disabilities

There are six measures that apply to the needs of disabled end users. These only apply to telephony at the moment. Ofcom are proposing to extend three of them to broadband (priority fault repair, third party bill management, and the requirement to have accessible formats for bills and contracts), while the other three are not being extended as they are specific to telephony (directory inquiry services, text relay, and emergency SMS).

SP said that it is possible to get VOIP handsets, and the end user might not distinguish between this and regular telephony. He asked why text relay was therefore not available on these handsets. RW said that to the extent that a VoIP service is a publicly available telephone service ("PATS"), the current GC15 applies to it.

CLI identification facilities

RW explained that this new condition was aimed at tackling nuisance calls. He added that the team had looked at whether there should be a separate 'nuisance calls' condition, but that the GCs aren't the right place for this. Instead the condition refers to identifying CLIs. The current condition requires providers to provide CLI facilities where it is technically feasible and economically viable. Under the new condition, providers would need to identify that a CLI is a valid number, is a dial-able number, and uniquely identifies the caller.

CM said that she would prefer a separate condition called 'Nuisance calls'. She added that an easy read guide would need to point out the importance of CLIs to nuisance calls.

CM said there were a few requirements missing to help combat against nuisance calls. She would like to see companies having to make it clear to consumers that they can provide CLI identification. They should also publish easy to find links on their websites so that consumers can find out what action they take on nuisance calls. She said Ofcom had produced a survey of what information each provider gave on its website about nuisance calls (<https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2013/services-that-can-help-tackle-nuisance-calls>) and suggested Ofcom may want to build on this to encourage good practice.

CM also said that at the time of signing up for a new service, consumers should have their attention drawn to the existence of TPS, or even go further and have people opt-out rather than opt-in to the scheme, or have a free tick-box choice either way. RW said that the choice between an opt-in and opt-out is a matter for the Government rather than Ofcom as it falls outside the framework the regulator operates in. However, he said that he would pick up the other suggestions with the policy team.

SP asked whether Ofcom was doing any work with the Behavioural Insights Unit. RD said that Citizens Advice had previously done work with them and could pass Ofcom a contact if they wanted to follow up with them.

Complaints handling

Ofcom propose to make more explicit what providers should do on complaints handling. These changes have come out of the complaints handling enforcement programme, during which Ofcom found that many of the complaints handling conditions were hard to enforce.

AP explained that in terms of new proposals, Ofcom intends to make clear that complaints about customer service are covered by the requirements. There are new requirements about transparency and accessibility of the complaints handling process (in particular, over timescales). The provider would also have to automatically issue a deadlock letter if the complaint is concluded without resolution, so consumers would not have to wait eight weeks for a notification. Ofcom also propose to extend the record keeping requirement from six to 12 months. There is also a specific obligation for providers to train staff and to monitor compliance with the obligation.

MT asked what Ofcom considered to be a timely resolution of a complaint, and does this vary by size of provider as larger providers are likely to have more staff to respond to complaints quickly. CS added that timescales may depend on a consumer's circumstances. For instance, debt collection issues or loss of service should be dealt with more quickly than other complaints due to their nature. AP said that the condition had not set a minimum requirement as this is difficult to stipulate to cover all possible complaints. Instead the condition stipulates that providers must take prompt action. The focus is therefore on providers being active in resolving complaints which wasn't there before, and makes it easier to take enforcement action if they don't. AP also said there would be a requirement to explain up front what the timescales are for resolving a complaint.

MT asked if it would be possible to specify that providers should deal with a complaint within a month, and that this could tie in to the eight-week limit before a deadlock letter. Therefore, a provider has a chance to resolve it in the first instance, the consumer can come back and if the provider cannot resolve

it on the second instance a deadlock letter is sent automatically. She said this would give providers and consumers an idea of what is reasonable.

CH welcomed the previous comments and wanted to add three things on accessibility issues. Firstly, the extent to which escalation of complaints is made accessible to consumers. Secondly on the definition of “timely”, there is an issue of clarity around what is written on providers’ websites and literature. The timescales quoted there for complaints resolution should be in line with practice. Finally, on deadlock letters, CH asked how Ofcom would know if deadlock letters are not being issued to consumers, especially as consumers are not always aware of the deadlock process. He added that given the improvements that Ofcom is suggesting to the issuing of deadlock letters, the eight-week period should be able to be shortened, as this is far too long a period for consumers to be left without their complaint being resolved.

Vulnerable consumers

SP questioned the use of the term ‘vulnerable consumers’ and raised the point that many in the deaf community see themselves as able.

KH said that Ofcom recognise that consumers can find themselves in vulnerable situations at different points in their life (for instance due to bereavement), and that the wording of the condition has been drafted to try and reflect this. She said that Ofcom would value thoughts on the proposed wording. RD suggested that Ofcom might want to use the CFC as a sounding board for issues like this.

RW added that there had been internal discussion about whether it was right to put measures for end users with disabilities together with measures for vulnerable consumers, as these often covered different groups of people. He said that Ofcom welcome feedback on whether these should be grouped together or split.

Final comments

RD suggested that where there were areas of disagreement between providers and consumers Ofcom might want to hold small workshops with representatives of each group. He also asked when a statement on the new GCs could be expected. RW said this depends on the responses that the team get back, but that the current aim is to get this out in the Summer.

Annex

General Conditions review – some comments on consumer protection conditions

An initial draft of these notes was amended in the light of the meeting held at Ofcom on 21.02.17, attended by several CFC members, and all CFC members have had the opportunity to comment on them. They may therefore be taken as an input from CFC to Ofcom's consultation.

We welcome the review and all those proposals which strengthen consumer protection, especially the extension to mobile and broadband providers of requirements which until now have applied only to fixed providers. We also appreciate the proposed drafting simplifications. We look forward to the eventual production of a consumer-oriented guide to the consumer rights conferred by the General Conditions. This should also include sector-specific rights conferred by other legal instruments, such as the Digital Economy Act and the USO Conditions.

C1 Contract requirements

Missing: C1.2d requires Regulated Providers to provide details of minimum service quality, but there is no mention of the Consumer's contract termination rights if the minimum service quality is not attained. Sustained below-minimum performance (to be defined) would be a breach of contract by the RP and in our view should permit the consumer to terminate without penalty. Since lower service quality is "the other side of the coin" of higher price, ideas about "material detriment" might be applicable.

Comment: Ofcom have clarified that C1.6 applies equally to prepayment customers. Both here and elsewhere, it is important that all customers should receive information in appropriate ways and be able to refer back to it. Please consider a reference here to use of a Durable Medium (as in C8).

C2 Information publication and transparency requirements

Ofcom say that the proposed changes are editorial, and that the substance of the requirements should remain. We feel that this viewpoint overlooks the increasing complexity of market information, and that this opportunity should be taken to help consumers handle this complexity.

Missing: requirement for all this information to be made available in a standard format to facilitate comparisons, including a machine-readable format suitable for input to web-based tariff comparison services. Accredited tariff comparison service providers could be invited to agree on a specification for the machine-readable format, but the spec should be publicly available to make it easy for others to use.

Missing: easily found information on the Regulated Provider's offer for dealing with nuisance calls/texts.

Missing (not sure where it would best fit): requirement for procedure to sign up for new (or renewed) contracts (for services which include receiving calls or texts) to include either default subscription to TPS (drawing attention to the possibility of opting out) or at least a forced explicit choice on joining TPS.

C3 Public pay telephones

Comment: Ofcom have clarified that they believe that there is sufficient commercial incentive for Regulated Providers to display the means by which payment may be made, so that no requirement is

needed. To us, it seems a simple and obvious requirement which costs almost nothing to fulfil and should be left as it stands, providing occasional consumer protection.

Comment: Disability organisations may well object to removal of all the disability-related requirements. NADP objects to removal of the requirement for text relay services for new payphones, saying “Given that NGTS requires both wifi or 3G, and a voice connection, the chance of someone being able to use NGTS in a rural location where road fatalities are highest increases the need for pay phones to offer these facilities. Also our own research suggests that many of the deaf population are unaware of the emergency SMS services.” Ofcom’s point that accessibility features already exist in some payphones overlooks their likely withdrawal in case of equipment failure, if maintenance is not required.

Comment: the consumer guide should provide details of USO conditions relating to payphones, so as to give people a full picture of what they can expect.

C4 Billing requirements

Comment: C4.7 relies on the terms “adequate” and “reasonable” (in relation to subscribers checking their bills). Ofcom has clarified that the meaning of these terms may vary from case to case, but ultimately would be determined by Ofcom in the course of enforcement. It would be helpful to provide (in the Consumer Guide, and in any guidance available for RPs) some examples of what has and has not been found adequate and reasonable, in both postpaid and prepaid contexts.

Missing: requirement for prepay subscribers to be notified by all available means before any credit expiry, together with instructions on how to avoid expiry (e.g. make a chargeable call or text).

C5 Complaints handling and dispute resolution

Comment: Clarity is needed on what a consumer is expected to do where a Regulated Provider fails to comply with the Code, e.g. doesn’t issue a deadlock letter.

C6 Measures to meet the needs of vulnerable consumers and end-users with disabilities

Comment: C6.5 provides for alternatives to printed directories for those who can’t use them. This may no longer be appropriate; we should now be talking (possibly in addition) about alternatives to online access to directory information.

Comment: C6.10 provides for third-party bill management for subscribers with disabilities. We suggest extending these provisions be extended to anyone in vulnerable circumstances, or indeed anyone who requests them (which is most likely to happen when problems arise). We also suggest extending the third-party functions to switching or terminating services, which again may well be wanted when life circumstances change, e.g. an elderly subscriber going into care for an unknown duration.

C7 Calling line identification facilities

Comment: To maximise the consumer benefits of the proposed changes at little additional cost, Regulated Providers should also be required to inform subscribers about the changes, and make available at reasonable charges end-user equipment for displaying received CLI, including a simple add-on box for fixed phones without such a display.

C9 Sales and marketing of mobile communications services

Comment: C9.1 contains various exceptions for prepaid and SIM-only services. Ofcom has clarified that the relevant concerns have not yet arisen in relation to prepaid services. We would prefer to drop the exceptions, as prepaid customers need protections at least as much as postpaid ones do, and are less likely to complain.

Claire Milne

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7 March 2017