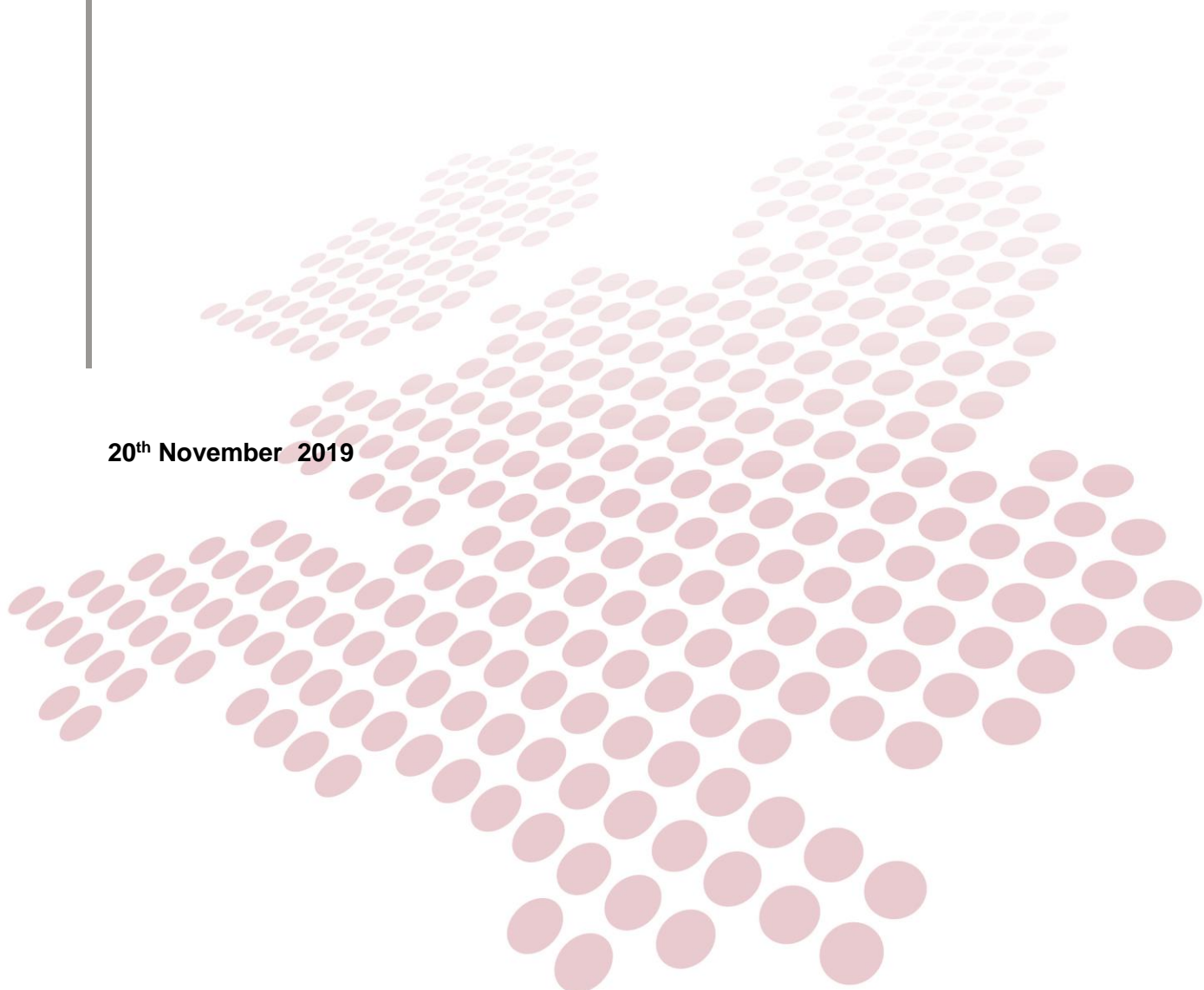


Trialling Customer Remedies

UKCTA Response to Ofcom's
Consultation

20th November 2019



1. UKCTA is a trade association promoting the interests of fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. We advocate regulatory outcomes designed to serve consumer interests, particularly through competition to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.org.uk.
2. UKCTA welcomes the opportunity to comment on Ofcom's consultation on trialling consumer remedies¹. Ofcom proposes the introduction of a new general condition that would require designated communications providers to participate in trials of potential consumer remedies (following a separate consultation by Ofcom on a case-by-case basis).
3. Consumer trials, such as randomised control trials, are a useful and important tool that can give valuable insights into the effectiveness, design and viability of particular draft remedies. UKCTA agrees that the ability to carry out trials with providers has the potential to provide Ofcom with a better understanding of the likely impact of any proposed remedies.
4. UKCTA's starting point is that it does not believe however, that it is necessary or indeed desirable to introduce formal regulation to require providers to participate in trials. Ofcom should first explore with providers whether there is scope for trial participation on a voluntary basis. It should always be Ofcom's preference to rely on voluntary commitments rather than formal regulation when this can deliver the same regulatory objective more quickly and at less cost to industry and Ofcom itself.
5. UKCTA believes that Ofcom should rely on voluntary commitments by providers to introduce a scheme for consumer trials rather than adopting the proposed general condition. Ofcom argues that providers may be unwilling to participate in trials on a voluntary basis because it may cause them to lose revenue.² UKCTA believes the evidence from several regulatory interventions quite clearly contradicts this unwarranted assertion. There are several examples in which providers have voluntarily agreed to rules in lieu of formal regulation:
 - a. Residential and business broadband providers have since 2007 voluntarily agreed to display broadband speeds at the point of sale and later also allowed customers to leave their contract without penalty if the minimum guaranteed speed cannot be achieved on the customer's broadband line. The voluntary broadband speed codes have been updated and revised several times since its inception.
 - b. In 2017, the major residential broadband providers (covering over 95% of the consumer market) agreed to an industry scheme on automatic compensation

¹ SSE is not included in this response. [Redacted]

² Ofcom consultation document, paragraph 4.4.

as a direct alternative to formal regulation (for which Ofcom had already drawn up draft regulation). At the time Ofcom estimated that the scheme would mean that providers would pay an additional compensation of £142 million per year to consumers representing a nine-time increase in compensation levels.³

- c. In 2019, the major broadband providers made specific voluntary pricing commitments to address Ofcom’s objective of achieving fairer prices for customers.⁴
6. In each of the above instances, the providers chose to make these voluntary commitments despite the fact that they would lose revenue as a result. The instances show very clearly that providers are capable and willing to address specific regulatory concerns by Ofcom without the need for formal regulation. Ofcom has not presented any good argument as to why the same would not apply in the case of the proposed regulation on trialling consumer remedies.
 7. Ofcom acknowledges that consumer trials have worked in the past on a voluntary basis (e.g. BT’s landline pricing trial). UKCTA notes Ofcom’s point no provider came forward to trial consumer communications in the context of the end-of-contract notifications. UKCTA would suggest, however, that request from Ofcom perhaps was not explicit enough to garner interest from providers and that Ofcom may have had more success if had written to the larger provider directly on this point rather than just making the request in the consultation document.
 8. UKCTA strongly believes that Ofcom could achieve the same objectives through voluntary commitments as it would do through formal regulation on trialling consumer remedies. In particular we can see benefits in that a voluntary arrangement would allow involvement by CPs at an early stage where they are able to contribute to the design of any trial and highlight any concerns. UKCTA would therefore urge Ofcom to engage with providers to understand their willingness to engage in such discussions with a view to developing an industry code of practice or scheme to support trials of consumer remedies.
 9. Separately, UKCTA has a number of concerns with the draft General Condition (“GC”) being proposed by Ofcom. We appreciate that the draft GC does not in and of itself oblige CPs to do anything and that Ofcom would consult before requiring any CP to participate in a trial. Nevertheless, we are concerned that the draft GC is too wide in its potential application and that the impacts on CPs have not been fully considered. Any use by Ofcom of its powers to require a CP to participate in a trial should be subject to a strict

³ Ofcom press release, 10 November 2017, <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/automatic-compensation>.

⁴ Ofcom press release, 25 September 2019, <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/fairer-prices-for-broadband-customers>.

proportionality assessment including in particular that Ofcom should be able to show that the CP's costs of participating are fair and reasonable.

10. The scope of the proposed General Condition is such that Ofcom would have the ability to propose trials in a wide range of circumstances. In particular, the draft GC would require CPs to comply with any direction "*for any purposes connected with its consideration of any Customer Engagement Measure.*" This is not limited to situations where Ofcom has already consulted on the need for a new regulatory measure but could potentially also include situations where Ofcom has not yet established the need for a particular remedy but is seeking evidence to support the view that there is a market failure that warrants the introduction of a new remedy. We would seek Ofcom's reassurances that this is indeed not the intention of the draft GC.
11. We also believe that Ofcom needs to consider further the impact that directing participation in trials could have on the CPs involved. Ofcom has specified proposed selection criteria for participating in trials, but we believe that this oversimplifies what we think could be a very complex selection process. We can envisage that assessing any proposal that a particular CP participate in a trial is likely to require significant effort from impacted CPs.
12. Furthermore, the issue of the impact for CPs at the end of a trial has also not been addressed. If Ofcom chose not to proceed with imposing a new obligation as a result of a trial then it will be left for participating CPs to "back out" of any measures they had taken in order to take part in the trial. While in some cases this may be simple, there will invariably be a cost associated with this. Where this requires customer interaction and the potential withdrawal of services which customers have used then there is also likely to be a detrimental impact for CPs in terms of customer experience.

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