



Trialling consumer remedies

Virgin Media's response

25th November 2019

Non-Confidential response

EXECUTIVE SUMMARY

Virgin Media welcomes the opportunity to respond to Ofcom's consultation on "Trialling Consumer Remedies" ("the Consultation").

Virgin Media supports measures that seek to ensure the fair treatment of consumers. We also support specific measures that encourage customers to engage in the market in order to make informed decisions and achieve the best available deal. In regard to trials, Virgin Media agrees with Ofcom that they can play a useful role in assessing the effectiveness of potential remedies. If carried out correctly, with well-defined objectives and measurable outcomes, the use of trials can often lead to a better understanding of the impact of planned measures. Therefore, we are not opposed in principle to the involvement of providers in such trials in order to achieve positive outcomes for both providers and consumers.

However, we are concerned about Ofcom's proposal to use its powers to introduce a formal regulatory obligation requiring providers to participate in trials, as and when Ofcom sees fit. We do not feel that the introduction of a regulatory obligation is either necessary or proportionate, and we believe that Ofcom has not fully considered the potential impact of its introduction on providers.

Instead, we believe that a voluntary approach would better meet Ofcom's stated objective and would be more proportionate, more effective and easier to manage for all parties.

Our response considers the proposals made by Ofcom and highlights the issues that Virgin Media has with the proposed approach. We also set out further detail on our proposed alternative approach.

VIRGIN MEDIA RESPONSE

The introduction of any new formal regulatory obligation must be subject to careful consideration to ensure that, not only is it in the interests of consumers, but that it is also proportionate and necessary.

Virgin Media believes that the proposed General Condition is neither proportionate nor necessary. Further, its proposed scope is too wide. Specifically, providers "*must comply with any direction...made by Ofcom for any purposes connected with its consideration of any Customer Engagement Measure.*"¹ Virgin Media is concerned that this obligation, combined with the definition of a Customer Engagement Measure, is not constrained in scope and affords Ofcom the ability to force providers to participate in trials relating to an essentially limitless range of circumstances. It appears that, according to the Consultation, Ofcom anticipates the use of trials to assess not only the effectiveness of potential measures but also to "*monitor and assess whether existing remedies are being implemented successfully*". Ofcom already has the means to undertake assessments of compliance with existing measures and remedies via its information gathering powers. To extend the trials regime to sit under similar formal regulatory powers would therefore appear to us to be unnecessary and disproportionate.

¹ Ofcom states "*Customer Engagement Measure*" means any requirement, process, action, communication or behaviour which may affect customer engagement with the markets for electronic communications services and their provision by communications providers"

Although Ofcom suggests that participation in trials would preferably be on a voluntary basis, the existence of formal regulatory requirements, enforced following a consultation period, suggests that this may not be the case. Throughout the Consultation, Ofcom points to a strict selection process and the plan to undertake consultations prior to any trial, suggesting that participation in such trials could be viewed not as a strict obligation. However, this is clearly and consistently negated by the use of the term “*require*” and the proposed introduction of a draft General Condition.

The selection criteria indicates a disproportionate bias towards larger providers which are more likely to have the customer base and the necessary “*size, resources and processes*” best suited to run the types of trials considered appropriate to gauge the impact on consumers. This potential discrimination towards larger providers is concerning. Virgin Media seeks assurance from Ofcom that an unfair burden would not be placed upon us and other large providers. Although there are selection criteria listed within the Consultation, we note that there is also scope for these to be extended on an ad hoc basis, determined by the nature of individual trials.

Virgin Media also believes that Ofcom has not fully considered the impact that trialling new remedies may have on providers. Although we are supportive of the principle of trials, it is important to consider the wider picture when looking to introduce them. Providers have clearly planned roadmaps of work, including the introduction of existing Ofcom measures such as End of Contract notifications and switching, and resources have to be allocated accordingly. Adding to, or amending these, can be costly and disruptive. Whilst Ofcom acknowledges potential impacts on providers, we feel that this has been oversimplified and does not truly consider the potentially significant effort and cost that would be required to undertake some of the trials.

We also note that Ofcom has not provided detail on how it will assess the effectiveness of the trials that it requires providers to undertake. This is clearly a key element of any trials process and it is important that providers understand what success criteria Ofcom would be looking to use. We appreciate that such criteria would be dependent upon the individual trial but it is vital that Ofcom clearly defines an overarching set of aims and objectives that it wants to achieve. Without such a clear definition, the scope and justification of the proposals would increase further and impact greatly upon providers’ ability to respond to any pre-trial consultation.

However, although Virgin Media does not agree with the introduction of a General Condition and a regulatory obligation to require providers to trial consumer remedies, we acknowledge the benefits that trials can bring. We believe that Ofcom can achieve its objectives in a more effective, proportionate and efficient way through voluntary agreements with the industry. Within the Consultation, Ofcom itself acknowledges that conducting trials on a voluntary basis actually has the potential to achieve the same benefits as those that are formally imposed, with the added benefit of being quicker to implement. We also believe that Ofcom has made a number of assumptions about the potential unwillingness of providers to volunteer to take part in trials and assumes that outcomes are more likely to be achievable if controlled by formal regulation. Virgin Media urges Ofcom to reconsider its position.

There are numerous examples of where providers have demonstrated an ability to work with Ofcom voluntarily, be that in relation to trials or agreeing to follow rules without the need for formal regulation. Throughout the Consultation, Ofcom references successful trials that have been undertaken on a voluntarily basis by BT. This, alongside initiatives such as the Broadband Speeds

Code of Practice and the introduction of the Automatic Compensation scheme, clearly show the willingness of providers to work with Ofcom on a voluntary basis.

We note that Ofcom refers to the lack of responses to the request for participation in trials concerning End of Contract notifications. However, we would suggest that this is not reflective of industry appetite regarding trials. The request for involvement in such trials was part of a large final statement on the requirements on providers to introduce End of Contract notifications and potentially lacked the relevant prominence to garner the required response. In addition, it was not pursued proactively by Ofcom, including during or in advance of the consultation stage. It is fair to suggest that this, combined with the level of change and development required to meet timescales for the introduction of the new regulation, led to the lack of responses from providers. This is not something that we believe would be reflective of future attitudes amongst providers. The introduction of any formal intervention should always be seen as a last resort, once it has been clearly proven that other, less intrusive measures will not be effective. It is our view that the lack of response to the above request for providers to participate in trials, in addition to examples of where providers have worked with Ofcom on a voluntary basis, does not pass this test.

In conclusion, Virgin Media agrees that consumer trials, if carried out properly, can be positive tools to assess the impact of potential consumer remedies. We would be willing to work with Ofcom, as part of a wider industry group, to conduct appropriate trials on a voluntary basis. However, we believe that the introduction of formal regulatory obligations is both unnecessary and disproportionate and would not be appropriate at this time. Ofcom can achieve its objectives through the support and cooperation of the industry and this is something that we believe needs strong consideration, alongside further open dialogue, before the notion of any formal requirement is explored.

CONSULTATION QUESTION RESPONSES

Please see below for our response to the specific questions in the Consultation.

Question 1: Do you agree with the proposal to make a general condition to protect end-users' interests requiring all providers to participate in trials of customer engagement remedies, as directed by Ofcom?

Virgin Media does not agree with the proposal to introduce a new General Condition. We do not feel that this appropriate or necessary to protect end-user interests as we believe that the same outcomes can be achieved more effectively from a voluntary arrangement.

Question 2: Do you agree with our proposed approach for determining whether it is appropriate to conduct a trial in future cases?

Notwithstanding our view that formal regulation is unnecessary, Virgin Media believes that the proposed approach is too broad in nature and gives Ofcom the ability to undertake trials relating to an essentially limitless set of measures, both existing and new, using the definition of Customer Engagement Measures alongside the proposal that providers *"must comply with any direction...made by Ofcom for any purposes connected with its consideration of any Customer Engagement Measure."*

Question 3: Do you agree with the proposed criteria for selecting which provider(s) we would direct to take part in a trial?

Virgin Media believes the proposed criteria are biased towards trials by larger providers and would urge Ofcom to assess a more pragmatic approach that is more proportionate across all providers.

Question 4: Do you have any comments on our assessment and provisional conclusions set out in Section 5?

Virgin Media does not agree with the assessments and conclusions made by Ofcom in this regard. We believe that the proposals are based upon a number of assumptions and the proposed formal regulatory intervention would be disproportionate and unnecessary.

Question 5: Do you have any comments on the draft condition set out in Annex 5 to this document?

As stated, Virgin Media does not agree with the introduction of a General Condition in relation to trialling consumer remedies. However, notwithstanding this view, with specific reference to the draft General Condition, we believe that what is proposed is too broad in scope and is disproportionate.

Question 6: Do you have any other comments on our proposals?

As stated, Virgin Media does not believe that it is necessary to introduce formal regulation with regard to trialling consumer remedies. We are of the firm belief that the stated outcomes that Ofcom wishes to achieve can be done so via ongoing dialogue and voluntary agreements between Ofcom and providers.