

Citizens Advice Scotland Response to 'Ofcom's consultation on implementing the new European Electronic Communications Code – Revised proposals for annual best tariff information and business customer definitions'

Scotland's Citizens Advice Network empowers people in every corner of Scotland through our local bureaux and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

Question 1: Do you agree with our proposed changes to the GCs and our Guidance on General Condition C1 in relation to annual best tariff information?

In May 2019 Ofcom proposed placing a requirement on providers to send annual best tariff information to customers on any type of contract, including pre-pay mobile contracts. In response, providers raised a number of concerns about this approach, noting that pre-pay mobile customers know they are not tied-in to a contract and often switch between different packages. Ofcom now proposes that annual best tariff information only needs to be sent where the customer was initially tied into a minimum contract period, which has since expired.

Citizens Advice Scotland notes the concerns raised by providers in relation to pre-pay mobile contracts. We understand that many consumers who use those packages are topping up manually and making conscious purchasing decisions on a regular basis. However, we agree with Ofcom's good practice guidance and we would urge providers to be mindful of this. In this context, we believe that providers should be obliged to send customers who are in contracts that are not subject to commitment periods periodic reminders on the best tariffs available to them. For customers with contracts that roll over automatically, or those who have set up a recurring automatic payment method, we consider that this would also be an important way of raising consumer awareness about alternative options. The periodic reminders that are issued should offer information about the details of the contracts that customers are purchasing, along with information on their usage of data and other services. They should also highlight whether the customer might benefit from an alternative package.

Citizens Advice Scotland would ask Ofcom to consider the merits on including information on debt advice on customer's periodic reminders, as seen in other regulated markets. Citizens Advice Scotland, and our colleagues Citizens Advice in England Wales and the Consumer Council for Northern Ireland, provide debt and general advice for consumers across a range of issues. We believe that consumers will benefit from such information when receiving their periodic reminders.

Question 5: Do you agree with the guidance we have proposed to help providers identify employee headcount should also apply to not for profit organisations?

Please note that we are answering questions 4 and 5 collectively in the following response:

The new European regulatory framework includes measures to protect microenterprise and small enterprise customers and not for profit organisations, treating these customers in a similar way to residential customers. The EECC (European Electronic Communications Code) is not definitive about how these businesses and organisations should be defined and they are not defined in current GCs (General Conditions), although small businesses are defined as having a headcount of less than 10.

Ofcom previously consulted on draft definitions for these groups of customers, however, some respondents argued that the proposed definitions were too broad and risked including businesses and organisations that, in their view, did not require the same level of protection as residential customers. Concerns were expressed that there was no restriction on the size of organisation included within the definition of not for profit organisations proposed by Ofcom. As a result, there were fears that central and local government as well as large, well-resourced charities would be within scope. Respondents were of the view that these groups do not need the same protections as residential customers. Some respondents also highlighted practical difficulties in applying the definitions. Ofcom now proposes to:

- remove any financial threshold from the definition of microenterprise and small enterprise customers;
- use a single definition of 'microenterprise or small enterprise customer' with a headcount threshold set at 10 staff members;
- set a headcount threshold of 10 staff members for not for profit organisations; and
- extend the guidance for providers on identifying employee headcount to not for profit organisations. The proposed headcount is to include volunteers as well as paid staff.

Citizens Advice Scotland strongly disagrees with the proposed definition of a not for profit customer. As Scotland's leading advice charity, we represent 59 independent Citizens Advice Bureaux that form Scotland's largest independent advice network.

In 2018/2019, the Citizens Advice Network helped over 272,500 clients in Scotland. This is only possible due to the excellent work undertaken by both staff and volunteers.

The proposed definition of not for profit customer could cause harm to charities who rely on the work undertaken by their volunteers to fulfil their charitable purposes. The proposal to place a headcount threshold of 10, which encompasses both staff and volunteers, is not reflective of the circumstances that many charities face or currently operate within.

We recognise that larger charities may be substantial in size and well-resourced in terms of paid staff members. However, for the independent charities (individual Citizens Advice Bureau) within the Citizen's Advice Network in Scotland this is not the case given the way they operate is to provide advice to the public via a number of paid staff and volunteers.

Each independent Citizens Advice Bureau relies on the work carried out by volunteers and the nature of their work means that volunteers often work sporadically, resulting in each Bureau recruiting a number of volunteers in order to ensure the demand on their service is met. We also understand that this is the case for similar organisations and charities throughout Scotland and the UK. Many of these volunteers may be transient, only available at certain periods or recruited for short term projects, meaning that headcount may fluctuate substantially over time. Community based organisations who rely solely on volunteers, with no paid staff, may also be caught by this provision. Given this fluctuation, we consider the proposal runs the risk of being administratively unworkable for both providers and customers.

The consultation paper provides little by way of justification for including volunteers within headcount. By including volunteers within this threshold, not for profit organisations will lose protections that would assist them in continuing their services in the most financially efficient way. We believe that this definition of not for profit organisations does not reflect the reality of how the third sector operates. Larger and more well-resourced not for profit organisations may well have bargaining power with communications providers, but this proposed revision may result in small charities losing protection simply due to their reliance on volunteers. By grouping all not for profit bodies together in this manner, it assumes that all not for profit organisations are similarly resourced and structured.

We consider that the proposed definition, particularly that of the headcount threshold, will remove protections for small not for profit groups at a time when competition for grant funding and donations will already be high, leaving not for profit groups under severe financial pressure.

We do not believe that a one size fits all approach, which simply treats the not for profit sector in the same way as small and micro-enterprises is appropriate. We further believe that the grouping of not for profit organisations, microenterprises and SMEs into the one categorisation of customer does not reflect the significantly different contexts in which they operate. We feel that providers should already be making efforts to understand their customer's operations, as their operations will dictate what package is most appropriate for them. As such, we consider that providers should already be aware of the differences between the types of customers that would be deemed as not for profit.

There are significant differences between, for example, Local and Central Government agencies and small charitable organisations that have a few paid staff but more than 10 volunteers. We believe that the implementation of the EECC should therefore not be so simplistic in its design. As it stands, we believe that the proposed definition would result in large numbers of not for profit and small businesses missing out on consumer protections that may well be afforded to their colleagues in other European jurisdictions who may adopt a more liberal definition.

We therefore urge Ofcom to reconsider this definition and engage with representatives of small and micro businesses and not for profit organisations in order to design a definition that recognises the concerns of communications providers while also recognising the needs of small businesses and not for profit organisations. We would be happy to assist in the facilitation of this engagement with relevant organisations in Scotland, ensuring that there is an understanding of the different operational nature of not for profit, social enterprise and small business organisations.

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