

NON-CONFIDENTIAL VERSION

Fair treatment and easier switching for broadband and mobile customers

Ofcom proposals to implement the new European Electronic Communications Code

Comments submitted by TalkTalk

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1. Introduction

TalkTalk welcomes the opportunity to comment on Ofcom's proposals for transposing the provisions of the European Electronic Communications Code ("EECC") into the General Conditions of Entitlement.

[redacted]

Ofcom and leading providers have taken significant steps over the last few years to improve consumer protection including the following:

- Strengthening the customer switching process by adopting a truly gaining provider led process (2015)¹
- Improved customer awareness and access to alternative dispute resolution (2016/2018)²
- Strengthening the protection of vulnerable customers (2018)³
- Introduction of the industry automatic compensation scheme (2019)⁴
- Agreeing to adopt customer fairness commitments (2019)⁵
- Agreeing to adopt broadband pricing commitments (2019)⁶
- Introduction of end-of-contract and annual best tariff notifications (2020)⁷

In many cases, the UK is already ahead of the European Electronic Communications Code in terms of consumer protection. For instance, the four largest providers agreed to implement automatic compensation already in 2019 and have only last month launched the new

¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0032/69179/statement.pdf

² https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01101

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0026/106397/Statement-and-Consultation-Review-of-the-General-Conditions-of-Entitlement.pdf

⁴ <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/automatic-compensation2>

⁵ <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/broadband-and-phone-firms-put-fairness-first>

⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0018/168003/broadband-price-differentials.pdf

⁷ https://www.ofcom.org.uk/_data/assets/pdf_file/0018/148140/statement-helping-consumers-get-better-deals.pdf

requirements around end-of-contract and annual best tariff notifications (as Ofcom chose to implement this change ahead of the EECC).

[redacted]

In this document, we have focused our comments on the key areas of the proposed changes in so far as they are likely to impact TalkTalk and our customers, as follows:

- Provision of information to customers about their services;
- Provision of data to third parties;
- Contract duration and termination;
- Switching and porting;
- Emergency video relay;
- The provision of communications in accessible formats for disabled customers; and
- Availability of services and access to emergency services.

Our comments on the above areas are set out in the following sections.

2. Provision of information to customers about their services

The proposed new general conditions C1.3-6 will require providers to provide the customer with a defined list of Contract Information as well as a Contract Summary before the customer is bound by a contract.

The Contract Information needs to be provided at a time to allow the customer to make “an informed decision” and on “durable medium” (email or letter). The Contract Summary must also be provided at a time to allow the customer to make “an informed decision” and contract will only become effective once the customer has received the Contract Summary and expressly agreed to those terms.

We understand that the key difference between the two documents is that the Contract Information will contain information that is personalised to the customer depending on the service that they want to purchase from the provider. In contrast, the Contract Summary is effectively meant to set out the key features of the specific service or package that customer is interested in (without containing any customer-specific information).

The common feature shared by the Contract Information and the Contract Summary is that they both need to be presented to the customer (in a durable format) before the customer agrees to take service from the provider. This means that providers would typically need to alter their current sales processes to accommodate these changes.

[redacted]

3. Provision of data to third parties

We note the proposed obligation to require providers to give qualifying third parties access, free of charge and in open data formats, information related to prices and tariffs of services

and the minimum quality of service of such services, for the purposes of providing a comparison tool.

Over the past 12-18 months, TalkTalk has been closely involved in the industry discussions regarding (i) the sharing of more accurate broadband speed data to price comparison websites; and (ii) the broader policy discussion concerning Open Communications. It would be useful if Ofcom were able to clarify how it views the interaction between these two existing initiatives and the proposed obligation above. It appears to us that there is potentially significant overlap between the two so it would make sense to ensure a corresponding degree of coordination and avoid duplication. This way affected broadband providers will be able to target their efforts and financial resources in the most effective way possible.

4. Contract duration and termination

Ofcom proposes to remove the term “material detriment” such that providers will be required to give customers at least one month’s notice of any contractual modification relating to the communications service. In addition, the customer would have the right to leave without paying any early termination charges (unless the contract modification is exclusively to the benefit of the customer, is purely administrative nature, or is directly imposed by law).

[redacted]

We believe it is very important that Ofcom is clear in its guidance as to how exactly the proposed change to C1.14-15 would apply in likely practical scenarios such as those set out above. It will also very important that Ofcom is prepared to monitor providers’ behaviours very carefully to ensure that all providers follow precisely the same notification practices in compliance with new requirements.

5. Switching and porting

5.1 Switching

TalkTalk has been closely involved in the industry discussions aimed at developing a new gaining provider-led customer switching process that could be extended to a cross-platform environment including services provided by Openreach, Virgin Media and emerging FTTP networks. As Ofcom is obviously aware, the industry put forward two options via the OTA as it was not possible to agree on one single option. This was unfortunate but, we believe, hardly surprising given the difference in commercial strategy positions of the parties involved.

TalkTalk believes the current “Option Y” is the best alternative for a new cross-platform gaining provider led switching model.⁸ The Option Y gives the customer a one-stop-shop by contacting only their new provider in order to switch service. The model addresses all of the base requirements set out by the OTA around consumer authentication, customer intent, customer awareness of implications of switching, service/asset validation and reliable process. Very importantly, Option Y is a truly gaining provider led switching process where the consumer does not need to contact their current provider in order to instigate the switch. The model therefore very clearly meets the legal requirements set out in the European Electronic Communications Code.

Most broadband switching already takes place using the existing advice of transfer process over the Openreach network⁹ which shares many aspects with Option Y. Even with the rollout of alternative FTTP networks over the coming years, a large proportion of consumers will still be switching providers using the NoT+ process on the Openreach network. Although Option Y would introduce additional safeguards to protect consumers against slamming and erroneous transfers, the option is already familiar to most consumers who have ever switched their communications service.

In contrast, TalkTalk is fundamentally concerned about the proposed “Option X” of using a switch release key that the customer would have to obtain first from their current provider before switching.¹⁰ We do not believe this process would be compliant with the EECC requirement for a gaining-provider led process. We are concerned that the implementation of a switch release key in the fixed broadband market would be very expensive and would be counter-intuitive to most existing consumers with experience in switching provider. A process based on a switch release key as a “step backwards” compared to the current broadband switching process on the Openreach network where the customer of course does not need to contact their current provider.

The requirement on the customer to obtain a key from their provider would introduce a large element of friction in the switching process. Consumer engagement in broadband is already low and needs to improve to stimulate a future move to new technology and new network platforms. We are concerned that the switching key option would act as a barrier to customer engagement and ultimately would frustrate the government and Ofcom’s objectives to stimulate FTTP rollout.

⁸ Option Y sets out a switching process in which the consumer would only need to contact the new (gaining) provider in order to switch their broadband and telephone services. The gaining provider would then coordinate the switch of services with the existing (losing) provider. Option Y would therefore be a “one-stop-shop” for the consumer who would not need to contact or otherwise engage with their current provider.

⁹ The advice of transfer process is the one that Ofcom has mandated for the Openreach network, see e.g. https://www.ofcom.org.uk/data/assets/pdf_file/0032/69179/statement.pdf. Like the proposed Y model, the advice of transfer process is a truly gaining provider led switching process in which the customer only needs to contact the new, gaining provider.

¹⁰ We are concerned that the X option would effectively entail a return of the broadband MAC process which Ofcom decided to remove only in 2016 as this was considered to prevent customers from switching broadband providers.

Together with the other providers who support “Option Y”, we have produced a more detailed description of the customer journey as well as an estimate of the associated implementation costs. We look forward to responding to the additional consultation on the proposed way forward that we understand Ofcom is looking to publish later this year.

5.2 Porting

In a similar vein, TalkTalk has been closely involved in the OTA-hosted industry discussions on how to implement the proposed requirement to allow customers to request porting of their number up to 30 days after they have switched their phone service to a new provider. Again, as Ofcom will be aware, this requirement does pose challenges in how industry can implement the required new process in a joint and robust fashion.

6. Emergency video relay

We understand the proposed obligation on internet access providers to provide free access to an “*approved emergency video relay service.*” We also note that Ofcom will publish tender to invite video relay providers to bid for the service. Like other providers, TalkTalk would then be expected to contract with one of those providers to be able to offer to service to our customers. Ofcom expects the obligation to come into force 12 months after final statement, which is likely to be in the first half of calendar 2021.

7. The provision of communications in accessible formats for disabled customers

Ofcom proposes to extend the existing alternative format obligation to all customer correspondence (including communications such as explaining price rises, welcome letters, payment reminders, order confirmations, mandatory information related to switching, responses to complaints, debt and disconnection letters, privacy and cookie policies, change of service/payment method, package information, and service messages). [redacted]

8. Availability of services and access to emergency services

We note that Ofcom proposes to extend of the scope of the services covered by the obligation to ensure fullest possible availability of services in the event of a catastrophe to internet access services as well as voice communications services/publicly available telephone services. Ofcom appears to suggest that this change is unlikely to have any major impact on network providers and we would agree based on the discussion in the consultation document. We do believe however that Ofcom should consider whether any changes to the its network security guidance document might be necessary as a result of this change.

9. Final remarks

The provisions of the European Electronic Communications Code will further enhance consumer protection and make communications markets fairer for consumers as well as businesses. [redacted]

We believe that some changes will be possible to implement more quickly than others, e.g. changes where the requirements are clear and do not rely on the outcome of further industry discussions. In this category would fall changes to sales processes, pricing issues and support for vulnerable customers. Other changes will inevitably take longer, e.g. the introduction of a new gaining provider led switching process that depend on the outcome of industry discussions and possibly further consultation from Ofcom.