

Q1. Do you agree that we should include SMEs in the scope of our work?

FSB agrees that small businesses should be included within the scope of this work. In our view, many small businesses interact with communications markets in much the same way as residential consumers do.

In general terms, the difficulties that micro and small businesses face are similar to those that consumers face when purchasing goods and services.¹ There are noticeable differences in market behaviour among smaller businesses compared to that of larger businesses that have more expertise and resources to deploy.² Micro-businesses are frequently treated differently by suppliers too.³ The very different behaviours and experiences of micro-businesses are clear, consistent and persistent over time and across sectors.^{4,5}

Survey evidence collected by FSB from its members in 2016 suggests a significant problem with detrimental terms in supplier contracts which result in negative impacts, such as increased costs, on small and medium sized businesses. In turn, this creates a considerable aggregate detriment for the economy.

The survey found that 52% of respondents reported that their business suffered negatively at least once due to terms in contracts with suppliers of goods and services to their business, over the preceding 3 years (mid-2013 to mid-2016).

Table 1: Types of contract terms, in contracts entered into to buy a good(s) or service(s) for your business that have negatively affected the business⁶

Detrimental contract term	% reporting it as an issue for their business
Automatic renewal (rollover) clauses not made clear upfront	24
Notice period required to end/ cancel a contract	22
High early termination charges	20
Detrimental terms that were not prominent i.e. in the small print	20
Variations to agreed price not made clear upfront	14
Leeway to change the terms at supplier's discretion	14

¹ We would however recognise that while there are similarities, consumers and micro-businesses are not identical. There are differences and these need to be acknowledged when policy making. Micro-businesses therefore cannot and should not be treated identically to consumers by the law or regulatory authorities. There are differences between consumers and even the smallest businesses. There are differences between businesses and consumers. Those differences include:

- Business activity and business models are more diverse than households
- B2B markets tend to be more highly segmented;
- B2B markets usually contain fewer buyers and sellers than consumer markets;
- Businesses often use goods and services more intensely, in much greater quantities and in different ways than consumers;
- Businesses can require goods and services specifically designed for a unique purpose;
- Businesses operate under a range of rules and obligations imposed them by Government, which consumers do not;
- Business activity is associated with more risk than consumer activity and might require bespoke methods/ tools to ameliorate risk.

² Fletcher A et al (2014). *'Small Businesses as Consumers: Are They Sufficiently Well Protected?'*.

³ Fletcher A et al (2014). *'Small Businesses as Consumers: Are They Sufficiently Well Protected?'*.

⁴ 'Larger businesses' for the purposes of this response describes larger smaller businesses e.g. those with more than 10 employees through to the very largest.

⁵ The '...evidence paints a broadly consistent picture of significant differences between smaller and larger customers in terms of their decision-making behaviour and also their treatment by suppliers'. Source: Fletcher A et al (2014). *'Small Businesses as Consumers: Are They Sufficiently Well Protected?'*.

⁶ FSB survey on communications services, May 2016. Respondents were able to select as many of the options listed as was relevant to their experience.

Terms which excluded liability by the provider of the good or service if the supplier failed to deliver a good or service of adequate quality	11
Insufficient notice of terms or time to consider them	11
Fixed term notice period not made clear upfront	10
Broad cancellation rights for the supplier/provider that were not reciprocated	7
Other	4

Base: 971

- Nearly a quarter (24%) identified automatic rollover clauses as contractual terms that had resulted in negative consequences for their business. This was the most frequently reported type of detrimental contract term;
- Over a fifth (22%) suffered negative consequences as a result of lengthy notice periods to end the contract;
- A fifth (20%) also reported having suffered negative consequences because of damaging terms hidden in the 'small print' i.e. that were not prominent in the contract;
- A similar proportion reported being negatively impacted by high early termination charges.

Beyond these wider, non-sector specific issues which small businesses face when dealing with suppliers of different goods and services, FSB has identified a range of different challenges small businesses face when interacting with communications markets.

The main risk which FSB has identified in this area is the low lack of understanding and knowledge about communications services that many small business owners have. The telecoms market is fast moving and changing. New technologies and services have emerged in recent years. For many consumers, including small business owners, these changes can be complicated to understand, and makes engaging in these markets difficult.

At the same time, and as a consequence of the growing importance of communications services, small business owners increasingly appreciate the need to engage with these markets. Small business owners often can struggle to do so, especially as many smaller businesses and sole traders will not have an IT manager or dedicated expert as a member of staff.

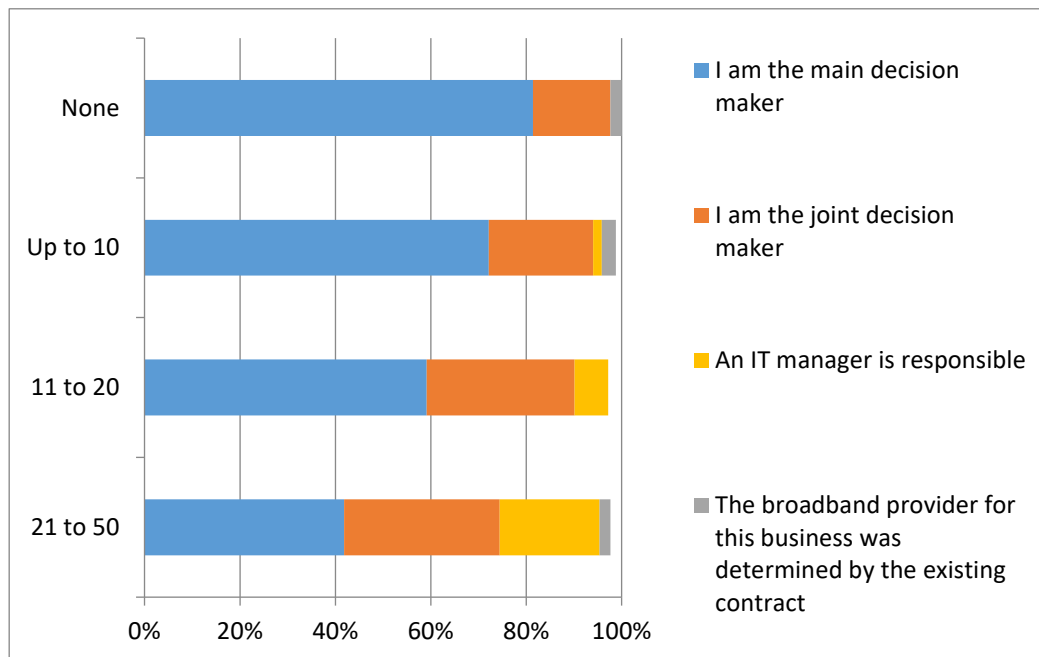
71 per cent of small business owners said that they were the main decision maker when it came to setting up and procuring telecoms services.⁷ An additional 22 per cent said that they were the joint decision maker. Just 3 per cent employed an IT manager who made those decisions. There is a substantial jump in the number of businesses employing an IT manager between those who employ less than 20 members of staff and those who employ more. Among businesses with between 11-20 employees, only five per cent had an IT manager. This figure rose to 24 per cent for those employing 21-50 members of staff. It should be noted that these figures are still low even for larger small businesses, and that the number of businesses within this sample is low making it hard to make direct comparisons.

These statistics demonstrate the challenges which many small business owners will experience when interacting with the telecoms market. As well as running the core business, business owners will often

⁷ FSB survey on communications services, May 2016

need to make decisions about procurement, HR and IT issues. Without support, it can be difficult for them to make these decisions effectively.

Chart One: Main decision maker for IT issues (by number of employees)⁸



The lack of in house support is a challenge for small business owners, and requires further action from a range of stakeholders. As our research has shown, small businesses struggle to act as effective consumers as they do not possess the skills, knowledge or experience to effectively assess their own requirements, how they could better integrate technology within their business, or how to overcome any challenges they might face when engaging with communications providers.

One issue which is frequently flagged by our members is the lack of a single point of contact for raising complaints or getting faults repaired. While this service is offered by some providers, many business owners have described their frustration with being frequently passed between different teams and individuals when contacting their provider.

Across the evidence we assembled, we found that small business owners felt that they lack the ability to accurately assess their needs. We broke the process of upgrading to superfast broadband into six discrete phases, shown below, which are designed to illustrate the different areas where small businesses told us they lacked the information to effectively make economically efficient choices. These can broadly track across the Engage, Assess, Act framework which Ofcom have used within this Call for Inputs.

⁸ Verve: Telecoms survey, April 2015. Base: 1216 responses. Note Figures do not add up to 100% through excluding those who answered "Don't know"



Stage of upgrading process	Small business requirements
Available: Knowledge about infrastructure availability	Reliable information as to when and if superfast broadband will be available, not only in their area, but also to their business premises specifically.
Aware: Understanding of how to start the process	Ability to find relevant and reliable information for themselves about the availability of superfast broadband in their area.
Consider: Getting advice about their actual requirements and the potential services which will most effectively provide measurable benefits at a reasonable price	<p>Independent advice and guidance from a trusted source. FSB and the Government are seen as such a resource at the more general level, though small business owners may also require more tailored local advice.</p> <p>Use of plain and simple language as opposed to technical language or jargon. This requirement is relevant to all information sources but is made in reference to suppliers in particular. Whilst some technical language is unavoidable, small businesses felt that language generally was too hard to understand at present.</p> <p>Online tools and checklists to review</p> <ul style="list-style-type: none"> • How to start and what the steps are when upgrading to superfast broadband • What speed is needed and feasible given hardware and infrastructure (this could include more guidance on what level of increase in speed is enough to warrant upgrading) • Support in assessing their actual requirements and their level of need <p>A choice of suppliers and packages and the ability to compare prices / packages / speeds across available suppliers, thereby giving reassurance that the price of the package is reflective of the service on offer.</p>
Apply: Initial conversations with suppliers	<p>The use of plain and simple language by the supplier is considered critical to making the right decisions at this phase.</p> <p>Open discussion with the supplier as to physical factors that will impact the possible speed / reliability e.g. distance from the cabinet, presence of any speed caps, number of users connected to the one line etc.</p>

<i>Install: Process of installation</i>	A smooth installation process in which the engineer arrives at the pre-agreed date and time, and carries out the work as paid for in the agreed time period.
<i>Experience: Post upgrade experience</i>	<p>Reduction in the gap between advertised speeds and actual speeds being delivered. Regulation of suppliers to provide reassurance that their claims are accurate.</p> <p>Commitment from the supplier post installation to resolve any issues with unacceptable speed or the reliability of the service.</p> <p>In essence, small business owners are looking for their supplier to be a trusted advisor both during and after the upgrade.</p>

Ofcom's work to create a Code of Conduct should help to address some of the issues identified above, although an assessment will need to be made on how effective this Code has been now that it has been in force for a year.

Small businesses struggle to compare products effectively, hindering switching rates

The ability to effectively compare products is limited for small business owners as well. Unlike residential consumers, who have access to a variety of price comparison websites which can allow them to assess which service best suits both their needs and budget, small business owners do not have the tools to effectively compare products. This is particularly challenging as small business owners should be considering metrics such as upload speed and service level agreements on fault repair times – both key metrics which are generally not provided by price comparison websites. This information would be highly valuable in order for small business consumers to be able to act as empowered consumers in the telecom markets.

The recent publication of the Comparing Service Quality report contains some useful information for small business owners, and we would welcome the opportunity to further shape this work in future. One challenge will always be that few business owners would know that Ofcom has carried out this work, which will limit its usefulness.

Ofcom could however fill a role in working with communications providers to make quality of service information more readily accessible to consumers. If possible, existing price comparison websites could also play a valuable role in providing this information in a transparent and easily understandable fashion.

The British Banking Insight survey offers a model for increasing the amount of information available to small business consumers. This survey provides data and ratings which allows small business consumers to make informed choices about a range of different finance providers, based on the experiences of their peers. The data gathered is based on what small business owners report is important to them, and is sortable by business size and product type. This allows small businesses of all sizes to effectively make informed decisions about what service would best meet their needs. Ofcom could consider whether a similar model would be useful or appropriate in the telecoms sector.