



# **Consultation on end-of-contract and out-of-contract notifications**

## **Virgin Media's response**

**26 October 2018**

**Non-confidential response**

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## EXECUTIVE SUMMARY

Virgin Media welcomes the opportunity to respond to Ofcom's "Consultation on end-of-contract and out-of-contract notifications"<sup>1</sup> ("**the Consultation**").

We believe Ofcom's programme of work on consumer engagement is a better way to proceed than largescale back-end systems overhauls, provided this programme of work leads to proportionate, evidence-based proposals that enhance consumers' abilities to engage in the market. We believe Ofcom's proposals should be refined to meet this threshold.

Currently, we are [X] and expanding the reach of our market-leading ultrafast offerings via Project Lightning<sup>2</sup>, "one of the most exciting and important investments in the UK's modern telecoms history."<sup>3</sup> Together these are amongst the changes allowing Virgin Media to provide more and better services, to more parts of the UK, every day. A market of engaged and informed consumers underpins investments in our services, our network and our customers.

However, in our response we provide some proposed adjustments to Ofcom's approach which, in our view, would make these notifications more proportionate for communication providers ("**CPs**") to implement and more effective for consumers to use.

In light of the scale and complexity of CPs' operations<sup>4</sup> and the breadth of Ofcom's proposals, we believe Ofcom's estimated implementation costs are too low and the deadline to deliver is certainly too short. Adjustments to the content and scope of these notifications could reduce implementation lead-times when compared to our assessment of Ofcom's proposals. We offer these suggestions throughout our response.

It is not clear to us that the 'before' and 'after' price of a contract in relation to its end date should be included in this notification, as currently proposed. While we understand the purpose, this information adds significant complexity for implementation and increases the risk of customer confusion, or that the notification could become inaccurate shortly after it is sent. We provide a simpler alternative in our response.

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<sup>1</sup> Ofcom, Consultation on end-of-contract and out-of-contract notifications, <https://www.ofcom.org.uk/consultations-and-statements/category-2/end-of-contract-notifications>

<sup>2</sup> Virgin Media's c.£3bn ultrafast network expansion plan to connect c.4m new premises via FTTP/cable.

<sup>3</sup> Sharon White, 1 December 2017, <https://www.ofcom.org.uk/about-ofcom/latest/media/speeches/2017/competition-britain-fibre-future>

<sup>4</sup> For example, in respect of the services offered, information environment, systems ecosystem and procedures/processes.

We also have concerns regarding the need to identify an exhaustive list of other services that customers purchase from Virgin Media. While, for some customers, there may be value in this information, that will not always be the case – and it creates significant implementation challenges where different business units and billing (or other) systems are utilised in the delivery of the different services. Creating these linkages would be complex, time consuming (adding potentially months, or even years, to the implementation timeframe) and still may ultimately lead to an incomplete view of a customer’s circumstances. There could also be privacy concerns about Virgin Media seeking to create linkages between distinct services, purchased from separate parts of our business. Even if these concerns could be overcome, a risk of error from trying to consolidate separate customer records by some form of ‘fuzzy matching’ will inevitably lead to false positives and false negatives.

This is an example of a broader concern we have with Ofcom’s proposals: that a ‘one-stop-shop’ notification is not proportionate to the consumer challenges that Ofcom identifies. The proposals appear over-engineered. We are not clear that Ofcom has sufficiently articulated its basis for intervention given the existing obligations on CPs (whether industry regulations or broader consumer/contract law), existing industry practices and alternative (in our view more proportionate) mechanisms to achieve Ofcom’s objectives.

Ofcom’s evidence leads us to conclude that a simpler solution would be easier to design, quicker to implement and potentially more effective for consumers. As Ofcom recognises (and its research demonstrates), customers typically have a wide range of options for acquiring relevant information once proactively prompted by the ECN. Even if the additional content Ofcom’s proposes to include could provide marginal gains in engagement, we do not believe the resulting delays to implementation, and the risks that information is confusing or inaccurate would justify this. A proactive reminder from CPs, including information on how to gather further information would encourage the customer to engage and reduce the effort required to review their circumstances.

Based on our experience, it is not clear that the challenges that Ofcom describes in its Consultation exist in the small business market. The addition of these customers to the proposals compound the complexities of implementation and so it is not clear to us that the benefits of doing so are justified. This is particularly true where business customers may have a small number of employees, yet still have sophisticated communication service needs. In our view, confining ECNs to residential customers would be more proportionate, particularly as this would still encompass small business customers that opted to purchase residential services.

In addition, many of the concerns Ofcom outlines in this Consultation do not appear to be prevalent in the mobile market. Particularly given Ofcom's recent consultation<sup>5</sup> on handset charges, we would welcome clarity on the timing implications of this Consultation, in part or in whole, as a result.

A preference for 'more engagement' has to be considered against the cost to industry and therefore the cost to consumers. These costs are recorded on company P&Ls and consumers' monthly bills. Investments in UK infrastructure are contingent on expected financial returns. Investment (by all stakeholders) in engagement should be based on expected benefits to consumers, especially vulnerable customer groups.

For this reason, it is vital that any intervention by Ofcom is not only proportionate, but provides regulatory certainty and stability. Ofcom must be alert to the fact that a net positive cost-benefit analysis does not capture the crowding-out effect on potential innovative engagement initiatives by CPs. It also does not reflect the opportunity cost of diverting CPs resources away from other customer service improvement projects.

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<sup>5</sup> Ofcom, Helping consumers to get better deals in communications markets - mobile handsets, <https://www.ofcom.org.uk/consultations-and-statements/category-2/consumers-communications-markets-mobile-handsets>

## 1. INTRODUCTION

As Virgin Media noted in its responses to Ofcom's formal and informal requests for information, Virgin Media takes seriously its responsibility to balance the extent to which we communicate with our customers. It is important that we do this in an appropriate and effective way and in line with their preferences. To date we believe we have struck the right balance in being transparent to our customers. Customers already have ready access to information relevant to their service – whether it is via our mobile apps, emails, online account, the customer's paper records or a phone call to our agents. Indeed, as Ofcom's research shows, almost without exception, customers confirm that if they wish to source information related to their services they find this easy.<sup>6</sup>

However, as Ofcom notes, providers are currently required to provide all relevant information at point of sale and customers have a wide range of methods of reminding themselves of this information at any time. Ofcom's bespoke analysis on this appears to confirm that this works well. A large majority of respondents to Ofcom's analysis indicate they check available offers<sup>7</sup> and few respondents describe this checking as only a 'quick scan'.<sup>8</sup>

Ofcom's evidence indicates that information it proposes to include in ECNs/OCNs is currently readily available to consumers across CPs. Ofcom's research also indicates that the majority of customers are satisfied with the service they receive and are well informed about the implications of being in/out-of-contract. While Ofcom found many respondents did not have specific information to hand, for example about the potential cost saving of re-committing, when asked to estimate, respondents provided responses consistent with evidence Ofcom presents based on data requests responses from CPs. Respondents also confirmed they would, on average, require a larger saving than they estimate they would achieve, to induce them to switch.<sup>9</sup>

We therefore believe that Ofcom's proposals should be more focused on simply and effectively providing an external and proactive reminder that an end of contract date is approaching. Or alternatively, it should be designed to specifically target the needs of vulnerable customers that find it difficult to engage in the market. As currently designed, Ofcom's proposals for ECNs to act as a 'one-stop-shop' for all subscribers appears to be overly complex for its stated purpose and disproportionate to the concern identified.

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<sup>6</sup> For example, Ofcom, Consumer engagement quantitative research 2018, slides 19 and 43.

<sup>7</sup> *Ibid.*, slide 30.

<sup>8</sup> *Ibid.*, slide 37.

<sup>9</sup> *Ibid.*, slide 54.

The remainder of our response is structured as follows:

- In **Section 2** we discuss our initial concerns with Ofcom's proposed implementation timeframes;
- In **Section 3** we provide our comments on Ofcom's proposed content of the ECNs/OCNs;
- In **Section 4** we comment on the scope of customers that Ofcom proposes to include in these proposals;
- In **Section 5** we provide feedback the proposed General Conditions provisions; and
- In **Section 6** includes our responses to Ofcom's consultation questions.

## 2. IMPLEMENTATION TIMEFRAMES

### Ofcom's proposals

Ofcom proposes a six-month implementation period for ECNs. Ofcom also, effectively, proposes a six-month implementation period for OCNs (with a three-month timeframe to complete the process of sending these notifications). In Virgin Media's view, this is too short and not proportionate.

### Implications of Ofcom's proposals

As currently defined, Ofcom's proposals are complex and will require each ECN/OCN to be highly personalised. Ofcom intends for these proposals to be implemented alongside, but not synchronised with, a range of other regulatory changes (including for example, as Ofcom notes, mobile auto-switching reforms). Ofcom suggests this may lead to cost savings and synergies.<sup>10</sup> Instead, these proposals, as currently defined, will put added strain on the successful delivery of existing regulatory implementation programmes.

Ofcom justifies<sup>11</sup> the proposed implementation timeframes on the basis that CPs currently communicate with their customers and therefore meeting its proposed implementation timeframes should not be unduly onerous, i.e. these proposals are another example of day-to-day communication. We have two key concerns with this logic:

- New customer communication campaigns take longer than Ofcom assumes, even without any of the additional complexities and systems requirements that Ofcom's proposals create. Ofcom's proposals introduce many of these additional complexities and therefore implementation timeframes are significantly underestimated; and
- Ofcom proposes these changes will be implemented by new, specific, General Condition obligations placed on CPs. We take our compliance very seriously. As a result, any solutions we introduce to implement these changes must pass the highest thresholds for accuracy and robustness. Ofcom's proposed timeframes are not conducive to this high bar.

Below we provide further context to these two key concerns as well as an estimate of the activities involved and timeframes required to deliver Ofcom's proposals.

In addition, throughout this response we propose a number of adjustments to Ofcom's proposals which we believe will make the notification more useful for consumers and more proportionate for

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<sup>10</sup> The Consultation, para A6.15.

<sup>11</sup> Ibid., para 5.42-3.



CPs to implement. Where relevant, we comment on how adopting our proposed changes may simplify the implementation process and accelerate the timeframes involved.

### Lead-times for customer communications and implementation programmes

In response to Ofcom's informal request for information, Virgin Media estimated that a basic (and therefore not personalised) ECN may take approximately [~~3~~] months to develop. This high-level estimated timeframe reflected:

- The time required to conduct the pre-requisite analysis to scope the programme of work; and
- Undertake relevant activities to, effectively, ensure our systems can retrieve a customer's contract end-date and use this information to identify the appropriate customers that need to receive a standardised communication at a given point in time.

Therefore, our initial estimate provided a simple ECN. The information Ofcom proposes to include in these notifications requires substantially more time to design the necessary solution. The planning, design and ultimate delivery of our own communications activities take longer than Ofcom proposes and these would often avoid many of the complexities of personalisation and snapshot references to customer circumstances at a given point in time.

This added complexity impacts on the up-front analysis required to identify the systems and processes that are impacted. It also impacts on the time required to design the solutions and test their effectiveness.

### ECNs/OCNs are proposed to be enforced by General Conditions on CPs

Virgin Media takes its regulatory obligations seriously. Notwithstanding these, we would always pay the highest regard to ensuring we inform our customers of important information in an accurate and timely manner.

However, where communications from us are a requirement of specific GCs (as envisaged in this Consultation) we will require that all necessary steps have been undertaken, checks made and exceptional circumstances foreseen to ensure the accuracy of information shared with our customers.

Accuracy of this information is especially important given, as Ofcom's qualitative research envisages, the ECN should act as a 'one-stop-shop' of key information the customer may use when engaging at the end of their minimum contract.

To achieve these outcomes, our approach to implementing the required solutions needs to be methodical. At a minimum it must follow standard programme management procedures and also allow adequate time to ensure all necessary compliance checks and controls associated with such obligations are fit for purpose and robust.<sup>12</sup>

As a high-level, these activities would need to include:

- Project establishment/mobilisation;
- Assess required system and process changes;
- Design the appropriate solution for the identified changes;
- Implement the additions or changes to deliver the solution;
- Undertake any necessary training; and
- Test and validate the outcome.

### Virgin Media's estimates for implementation timeframes

Below we provide details of our high-level estimates of the timeframes we would envisage to implement Ofcom's proposals.

We would note that Virgin Media would [X]. Were Ofcom's requirement on listing other services taken by the customer (beyond those included in the contract that is subject of the ECN) to be broadly defined, this would severely compound the complexity of implementation.

For brevity, we focus on the estimated implementation timelines for [X]. We have assumed that Ofcom intends to provide its final statement on this Consultation shortly before or after the start of 2019.

Broadly, we have distinguished between the prerequisite system impact (i.e. back-end changes) that would be required to create and deliver the content of the ECNs/OCNs that Ofcom envisages and the need to create a communications delivery plan: processes changes and activities required to take this content and ultimately send these messages to our customers.

While some of these activities could occur in parallel, solutions to system changes will need to be defined and finalised before aspects of the communication approach can be considered.

### Residential mobile (systems impact)

[X].

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<sup>12</sup> [X].

**Residential fixed (communications delivery)**

[~~8~~].

### 3. NOTIFICATION CONTENT

#### Ofcom's proposals

Ofcom proposes that ECNs include the following (paraphrased) information:

- Contract end-date, details of any applicable notice periods and confirmation that no Early Termination Charge (ETC) would apply;
- Services currently provided under the contract as well as any other benefits or other services received as a result of the contract;
- Current monthly price and future subscription price after the contract end-date as well as any historical discounts;
- A list of other services taken by the customer from the provider but not included in the contract that is subject of the ECN; and
- Options available to the customer after the minimum contract period, included that they may achieve savings by exploring other options. In the case of mobile, the option for SIM-only services must be referenced.

#### Concerns regarding Ofcom's proposed notification content

While we recognise the outcomes of Ofcom's consumer research and the rationale Ofcom' presents for the various pieces of information proposed to be included in the ECN, we have concerns about the practical implementation of some of these items. This is especially true if multiple, disparate systems were required to interact with each other to develop an all-encompassing view of a customer's circumstances. We do not believe the impact on implementation timelines would be justified if this scope of content to be included in the notifications is broadly defined.

We also have concerns that conceptually, some of these pieces of information may appear straightforward to present, but in practice it is possible that information accurately presented in the notification, is nevertheless confusing to customers or risks becoming misleading after the notification has been sent. We believe these pieces of information should be presented via pre-existing channels, for example, customers' online accounts, so that changes that are made are updated and reflected at the time the customer reviews their information. As Ofcom recognises in the Consultation, customers find this information easily when they seek it out. The ECN should therefore be focused on acting as the external, proactive, trigger for customers to undertake this activity.

Specifically, we have this concern regarding the inclusion of:

- The current monthly price paid and the future estimate of the price; and
- A list of other services taken with the same provider under different contracts.

### **Current/future price paid**

As Ofcom recognises in the Consultation, a number of factors can influence these values during the lifetime of the minimum contract term.<sup>13</sup> Ofcom proposes to mitigate this risk by requiring that the ‘core’ monthly prices paid, applicable at the time of notification, are used. While this approach would reduce the risk, it is not clear that it would resolve this concern.

For the avoidance of doubt, our comments below relate to providing specific current/future prices, we do not have concerns about making customers aware that they could save money by engaging in the market or that a customer’s effective price may change after their contract end date.

Many customers make changes to their services throughout their minimum term and afterwards, for example upgrading, downgrading their services or adding or removing services entirely. Similarly, CPs may make changes (for example, goodwill discounts or temporary offers etc.). We therefore expect there will be circumstances where changes to a customer’s service will occur between Virgin Media sending the ECN and the contract end date.

A range of edge-cases could lead to this outcome, i.e. that the information in the ECN was right at the time it was sent, but no longer accurate. When considering the range of these edge cases and the size of many CPs’ subscriber bases (and potentially multiple contract end dates for each customer), what may appear as outliers, could nevertheless impact on many customers in any given year.<sup>14</sup>

In addition to our concerns regarding the ‘shelf life’ of these notifications, we also have a concern that the values listed in the ECN may not be values the customer recognises. Charges for additional services (for example, pay per view content, additional Pay TV bolt-ons or out of bundle voice usage) as well as discounts unrelated to the Core Subscription Price may feature on a customer’s bill.

If/when the value quoted in the ECN varies from the customer’s next bill this could cause confusion or concern.

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<sup>13</sup> Ibid., para 4.29.

<sup>14</sup> We provide a list of further examples of factors which may complicate content of the ECN as well as raise the risk of customer confusion in response to Q4.

Given Ofcom's preference for the ECN to be a 'one-stop-shop' for relevant information at the end of the minimum term and also Ofcom's desire keep this piece of communication separate from customer bills, we have a concern that when viewed in isolation (and potentially relied upon for decision making) these risks are heightened.

We believe a more appropriate approach would be for CPs to communicate that a customer's monthly cost may rise, if the CP's systems indicate they will. This adjustment would moderate the complexity of the initial proposal and accelerate the speed of implementation.

### **List of other services taken**

CPs may not have a specific method to identify that a customer contracting for services in one contract may take services from another part of the CP's business. We are concerned that CPs will be required to identify other services taken by customers that we may not have a mechanism to associate to another account held by a customer.

This is likely to be particularly challenging for Small Business customers, where separate billing systems are used for different types of products and where no common unique field is available to associate one set of customer records to another to validate if other services are taken.

[X].

It is not clear from the Consultation, whether Ofcom proposes that all other services should be included in this list, or if it is only services that would create a financial impact of making a change should be in scope.<sup>15</sup>

The inclusion of a broader list of services compounds the complexities of implementation. Furthermore, if this requirement were to need [X], we do not expect this to be achievable in any reasonable timeframes or at a proportionate cost.

We would also note that a broad interpretation of 'other' services to include in this notification is likely to not only make the cost to implement disproportionate, it also is likely to rule out solutions that are less automated (i.e. more 'campaign' driven), which may have been a mechanism to achieve shorter implementation timeframes.

### **Inclusion of CP offers**

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<sup>15</sup> For example, para 4.31 of the Consultation refers to the potential for 'implications' related to other services, whereas para 4.11 and 4.41 do not reference this qualifier. Equally, Ofcom's draft GC C1.12 (i) would also indicate this is all-encompassing.

We are inclined to agree with Ofcom that the ability for CPs to include offers at the end of the notification could be a positive addition to the content of the ECNs/OCNs. This content may provide marginal improvements in engagement and it is also likely to be relevant contextual information for the customer to consider when deciding to act.

However, we do think that further guidance or restrictions may be proportionate to ensure that any such messages do remain a secondary, and distinct, aspect of the broader service message. There are risks that the message could be against customers' expressed wishes not to receive marketing messages. Given these complex considerations there may be merit in Ofcom providing further guidance on the extent of this content. It would not, for example, be in the interest of consumers (or the effectiveness of Ofcom's proposals) for a CPs to be incentivised to 'push the boundary' of the relative prominence of the 'core' ECN content and any CP offers that may be included.

## 4. NOTIFICATION SCOPE

### Ofcom's proposals

The Consultation and Ofcom's research, in our view rightly, focuses on the experience of residential customers and how they interact with their communication services. It is not clear to us that Ofcom has developed an appropriate evidence base to conclude that Small Business customers, that buy business-grade services, have the same experience or interact with their services or their CP in a comparable way.

Especially given the significant implementation challenges Ofcom's proposals raise in the Small Business environment, we believe Ofcom should reconsider the scope of ECNs/OCNs and instead ensure these proposals are effectively, and proportionately, delivered to residential customers.

Additionally, given the challenges Ofcom's Consultation raises, and the design of its current proposals, we are not clear that these are appropriate for mobile services.

### Inclusion of Small Business customers

As Ofcom recognises, some Small Business customers effectively self-select into a residential service, whereas others opt for business-grade equivalents. These services, at least in the case of Virgin Media Business, are quite distinct from the residential alternatives in terms of pricing, discounting, and service features.

In the Consultation Ofcom's analysis, in our view rightly, focused on considering the circumstances, trends and market research regarding residential customers. It is not clear to us that Ofcom has demonstrated that the features of the market or attitudes of customers are consistent or comparable in the Small Business market. Especially, as we reiterate, Ofcom recognises that some of these customers self-select into residential service types.

Virgin Media Business has no mechanism to directly monitor and maintain a record of our customers' employee base. Ofcom's definition of Small Business (ten employees or fewer) therefore creates significant challenges for introducing a compliance requirement for identifying, monitoring and communicating with a subset of our customer base that fulfil these criteria at any given point in time. Small Business customer headcount may fluctuate up or down while they take service from a



CP. We do not have a mechanism to monitor this and any attempt to create such a mechanism is likely to be cumbersome and frustrating for our customers.

Where Small Business customers take business-grade broadband or phone services, for example, these customers may have significantly more complex communication service needs. It is not clear that the same consumer protections that Ofcom envisages in this Consultation are warranted for these customers. In these circumstances, the customer is likely to have sophisticated needs and as a result, a more sophisticated approach to purchasing their required services.

Furthermore, Small Business customers typically expect CPs to provide a different (often more personalised) approach to interaction and customer service. Small Business customers may have dedicated account staff that manage their customer experience. This approach governs our systems and processes and therefore results in a customer service landscape which is quite distinct from our residential business. This has significant implications on our ability to, and the cost of, implementing Ofcom's proposals. High-level estimates of creating this capability range between [X], depending on the extent to which the process requires automation.

## Inclusion of mobile services

Ofcom's Consultation, broadly, identifies a concern that some customers are not aware of their contract status, some may not be aware of the implications of maintaining their service beyond the minimum term and that in some cases this may result in some customers paying more for their service once out of contract.

As Ofcom's research shows, these concerns are not apparent in mobile service.<sup>16</sup> Often, the opportunity to upgrade a handset acts as trigger for the customer to reassess their current service needs.

This appears to be an effective mechanism for customers to re-engage with their requirements and, for many CPs, it provides an effective mechanism to seek out this customer engagement. Ofcom's research supports this view, as the survey results for questions regarding mobile services are quite distinct from phone/broadband.

Since the publication of this Consultation, Ofcom has launched a further consultation on handset charges. We believe there are merits in decoupling these two consultations and considering what, if

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<sup>16</sup> We discuss these findings further in in our response to Q3.

any, proposals are suitable to address the specific concerns highlighted in that consultation, rather seeking to graft mobile services onto the ECN/OCN proposals, which appear to be focused on addressing challenges that do not appear to be significant features of the mobile market.

## 5. GENERAL CONDITIONS ADDITIONS/MODIFICATIONS

### Virgin Media's comments on proposed GC changes

Below we provide comments on Ofcom's proposed GC changes.

C1.12 An **End of Contract Notification** shall include at least the following information in respect of a **Subscriber's** contract, in a clear, comprehensive and easily accessible form:

(e) whether any discounts have been applied at any point during the **Fixed Commitment Period**;

We would welcome further clarity on Ofcom's use of 'any discounts'. For example, as currently drafted, this may encompass:

- One-off goodwill discounts for customer care issues;
- Discounts on services provided in relation to the customer's contract, but not part of the Core Subscription Price (i.e. a discounted bolt-on Pay TV channels).

Alternatively, it is not clear if, for example, an inducement to switch such as a complementary device, waived installation/activation costs, or a pre-paid cash card, would be considered in scope.

Therefore, further guidance or clarity regarding what would be considered a 'discount' in this context would be helpful.

(i) the services provided by the **Regulated Provider** to the **Subscriber** pursuant to any other contract.

As noted previously, for example in Section 3, a requirement to include a list of other services provided by the CP is problematic in some circumstances.

Were this to permeate different business units (for example business services that a residential customer may also take), or if other business-grade connectivity services were to be in-scope for a business broadband customer this would create significant implementation challenges.

C1.14 An **End of Contract Notification** shall be sent to **Subscribers** 40 to 70 days before the end of the **Fixed Commitment Period**.

We would request further clarity on how to interpret Ofcom's intended fixed start date for the new GCs to come into force, given the window associated with notifying customers.

For example, on 'Day-0' of the GCs entering into force, would all CPs be required to notify all subscribers that have a relevant minimum contract ending in 40-days via ECN? Alternatively, if a CP

intended to notify with 70-days' notice, it would presumably only notify a subset of these customers via ECN and subsequently notify the remainder via OCNs.

This would be a temporary issue associated with the start of the process, however we would welcome any clarity Ofcom can provide on how it intends this to be interpreted.

## 6. CONSULTATION QUESTION RESPONSES

Please see below for our responses to the specific questions identified in the Consultation. These responses should be read in conjunction with our main response above.

### **Question 1: Do you agree with our assessment of harm relating to residential consumers and Small Businesses?**

Virgin Media acknowledge the challenges that Ofcom identifies, although we have some concerns that the proposed remedies are inappropriate. Additionally, as discussed below, we are not clear that these proposals are necessary or appropriate for either mobile or small business services.

Ofcom's consultation<sup>17</sup> indicates that:

- Some consumers may not be aware of their end-of-contract date at a given point in time; and
- Some may lack awareness of the implications of continuing to take service beyond the minimum contract period.

Therefore, where customers are not aware of their contract end-date and are not aware of the implications, this may give rise to challenges.

However, Ofcom's research also indicates that:

- This incidence of these two factors is not common: According to Ofcom's research c.14% of respondents were unaware of their in-/out-of-contract status for fixed services, only 6% in the case of mobile.<sup>18</sup> C.17% of respondents did not know what would happen at the end of their minimum term;
- CPs provide a wide range of methods for customers to look-up or request this information, and Ofcom's research shows that customers do this. Ofcom's research indicates that for respondents did this; the vast majority confirmed they found it easy;
- The large majority of those who are currently out-of-contract know when this occurred; and
- The vast majority of those currently out-of-contract are satisfied with the status quo and confirm that they do not intend to change this.

Therefore, the challenges that Ofcom identifies would appear to be more proportionately addressed by either simpler notification that acts as an external reminder, including a 'call to action' without

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<sup>17</sup> The Consultation, para 3.18.

<sup>18</sup> Ofcom appears to include respondents that were not clear on when their contract ends, but know they are in-contract. Including this cohort in Ofcom's analysis likely overstates the prevalence of harm, e.g. customers that know their contract end-date is more than a year in the future.

seeking to act as a 'one-stop-shop' and create significant complexity for implementation and added risks the notification is ineffective. Or, alternatively, work with industry on a more targeted remedy to address a specific concern, for example working with CPs to create initiatives specifically designed to support vulnerable customer engagement.

We estimate that over [X]% of Virgin Media's broadband customers that are outside their minimum contract period and have a tenure of 24 to 36 months benefit from a discount of another kind to an average value of £[X]per month excluding VAT (as of June 2018). Similarly, [X]% of customers that have tenure of 36 months or more benefit from a discount of an average value of £[X]per month excluding VAT. As a point of comparison, the latter exceeds the value of the promotional discount received by nearly [X]% of customers who have been with Virgin Media for 0-12 months. [X].

Customers with tenure are also more likely to benefit from other improvement in the services that we offer. For example, [X]. We have also, in previous years, upgraded our customers' broadband speeds for free.

On mobile we have our Freestyle product where customers take a loan of 24 or 36 months for the handset as well as a separate, rolling SIM only (30 day) airtime agreement. When the customer finishes paying the loan he or she will remain on the SIM only tariff so the overall monthly payment will drop automatically.

In May 2018 we launched new combined airtime and handset deals. Customers are given a handset as part of a 24-month contract. At the end of the contract term, the monthly price is automatically reduced by moving the customer to the nearest equivalent SIM only tariff. [X].

**Question 2: Do you agree that providers should send both end-of-contract and out-of contract notifications?**

Virgin Media agrees that it is appropriate for CPs to provide ECNs/OCNs. However, we would note our comments on the content and scope of these notifications provided throughout our response.

**Question 3: Do you agree with our proposal that notifications should be sent to all residential and Small Business customers who take Public Electronic Communications Services?**

As noted in our response, we do not agree with scope of recipients in Ofcom's proposals. In particular, we do not believe it is appropriate to incorporate Small Business or mobile customers within these current proposals.

### **Small Business**

As Ofcom notes, some small business customers opt to take residential consumer services rather than the equivalent small business service.

We do not believe the challenges Ofcom describes in the Consultation exist for business grade services in a comparable way to those Ofcom identifies for residential services. We are not aware that the market dynamic of introductory offers that expire at the end of the minimum term, for example, are prevalent features of the business market.

Instead, these services are typically tailored to the business customer's needs and have additional services features that serve as a mechanism to further differentiate services and attract customers. We would also note that Virgin Media Business (VMB) interacts with its customers quite differently to our residential customers. This is in part due to the scale of VMB's customer base, but also our customers' expectations on the type and form of care service we offer.

We anticipate substantial implementation challenges in establishing the ECN/OCN proposals Ofcom currently envisages for both VMB mobile and fixed services. These implementation challenges will be further compounded by the wide array of other services that even our Small Business customers may purchase from us. Even customers with a modest headcount may have sophisticated communication service needs. Designing a notification mechanism that can take these broader service requirements into account will be problematic. We would therefore encourage Ofcom to de-scope Small Business customers that take business-grade services and instead target these proposals at consumers, including small business customers that effectively self-select into this group via the services they take.

### **Mobile**

In the case of mobile, as Ofcom's data shows, average spend by mobile customers appears to decline the longer a customer is out of contract.<sup>19</sup> Throughout the Consultation Ofcom explains that it has concerns that some customers are not aware of their contract end date and of those customers, some may also not be aware of the potential that discounts may end as a result, or that overtime a customer may experience annual price rises, which are commonplace across industry.

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<sup>19</sup> The Consultation, Figure 7.

Ofcom acknowledges that these are not features of mobile market.<sup>20</sup> Instead, mobile contracts typically do not have a discount which expires at the end of a minimum term and similarly, many mobile services that include a handset will either have:

- A distinct handset loan, which ceases when the repayments are completed; or
- Be designed such that the customer defaults to a SIM-only service at the end of the minimum term.

Consequently, we do not believe it is appropriate or proportionate to apply a remedy designed to address a particular form of harm to a set of services that do not appear to exhibit these concerns, especially when Ofcom's research indicated that mobile consumers expressed less value in receiving these notifications, given the external trigger of a handset upgrade typically exists.<sup>21</sup> A large majority of respondents on contracts other than SIM-only also confirmed they were aware that this option was available to them.<sup>22</sup>

Since the publication of this Consultation, Ofcom has launched a further consultation<sup>23</sup> on proposals intended to address specific concerns that may arise in the mobile market.

We will provide comments on those proposals separately. However, given the overlapping timing and subject of these consultations and the engagement timeframe Ofcom has indicated for latest consultation, in our view this further extends the required implementation period, were Ofcom to decide mobile services were in scope for the ECN/OCN proposals.

**Question 4: Do you agree with our proposals on the content of the end-of-contract notification?**

As noted in our response, we do not agree that Ofcom's proposed ECN content and the timelines for implementation are either appropriate or consistent. We anticipate material challenges in designing a solution that deals with the myriad edge cases that can result in confusion to the customer or changes to the customer's service during or after the ECNs are being generated or sent. An initial list of some examples of these would include:

- Price rises;
- Subscriber-generated services changes;
- Right to cancel periods;

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<sup>20</sup> For example, the Consultation, para 3.39.

<sup>21</sup> Ibid., para 3.83.

<sup>22</sup> Ofcom, Consumer engagement quantitative research 2018, slide 29.

<sup>23</sup> Ofcom, Helping consumers to get better deals in communications markets - mobile handsets, <https://www.ofcom.org.uk/consultations-and-statements/category-2/consumers-communications-markets-mobile-handsets>



- Time-limited discounts;
- Non-synced discounting, e.g. discounts specific sport package against triple TLD;
- Third-party charges such as Netflix or handset loans;
- Rolling month-by-month bolt-ons (for example, Pay TV channels dedicated to specific Premier League clubs);
- Reoccurring or time-limited monthly discounts or credits which may end before, at or after the minimum contract end date; and
- Specific customers circumstances. For example, a customer in collections may misunderstand the implications of an ECN.

Actions by the customer, or the CP, could lead to existing/prospective Core Subscription Prices changing. This could lead to information or estimates in notifications sent on one day being invalid and inaccurate the next day. This is particularly challenging in the time period prior to the minimum contract end date, as this is often the time window where customers decide to make changes.

As a simple example, a mobile customer may look to take a re-contract with Virgin Media and purchase a new handset, which may have been in response to proactive marketing we have undertaken. If the customer contacted us prior to their minimum contract end date, the sales agent may wave any applicable ETCs to allow the customer to re-contract with us early. If the customer received an ECN during the time involved in arranging the new service this could cause confusion.

These, along with many other, factors will also interact with one and other. This will lead to greater complexity for CPs to design a solution that consolidates all of these considerations to present accurate information at the time of notification. It also has the potential to make the content of these notification confusing for the customer. Given the edge cases that will occur, we believe Ofcom should have a bias towards simpler notifications.

**Question 5: Do you agree with our proposals on the structure, method, timing and frequency of the end-of-contract notification?**

Virgin Media agrees with Ofcom's proposal that one ECN is likely to be the most appropriate frequency and that contracts of six-months or more should be considered in scope. We also agree with Ofcom's proposed 40-70 day window to notify provides consumers with reasonable timeframe to consider engaging in the market, without being too far in advance of the contract end date that it is disregarded by the customer. We would also acknowledge that specifying a timeframe provides greater flexibility for CPs to manage how they communicate with customers to minimise the risk of confusion due to overlapping messages.

In addition to the comments provided in our main response, we would note the potential benefit of CPs being able to send ECNs alongside billing information. Given our concerns regarding consumers' interpretation of 'current monthly price' included in the ECN, there may be merits in ensuring that this information is shared at the same time as the latest bill. This would provide a reference point for the customer to compare and contrast the monthly rental price against their net billed figure.

Not only would this help to provide context to a value that otherwise may not be immediately familiar, it may also help customer to consider what if any other charges they incur, which may prompt the customer to reappraise their current needs/services.

We also anticipate, although acknowledge the impact is likely to be relatively limited, that aligning ECNs to existing communications, would be expected to simplify the implementation process to some degree as well as reduce incremental cost i.e. to avoid additional postage charges for ECNs.

As we note in our main response and in response to Q4, Virgin Media has concerns about the content that Ofcom proposes to include in ECNs/OCNs. We recognise Ofcom's desire, as referenced in its qualitative research, that these notifications should be a 'one-stop-shop' for relevant information the customer should consider when reviewing their services and options.

However, we are concerned that attempting to summarise relevant information of a customer's current circumstances into the form of notification Ofcom proposes would risk creating confusion. Attempting to create a single, simple, notification that is intended to capture all key information is likely to be counter-productive. CPs' service offerings are diverse and the range of benefits consumers' have access to from a given CP are multi-faceted. Designing a notification that is positioned as 'one-stop-shop' could cause consumers to overlook important aspects of their service when deciding to engage in the market and therefore make less well-informed decisions.

Consequently, we believe that a simpler notification, which acts as an aide-memoire would be more effective and more proportionate. This approach would simplify and streamline the implementation process and we believe it would be as effective in encouraging engagement as Ofcom's proposals. Equally, once ECNs are in place it would be less complex to refine the context of the notifications at a future date, if Ofcom determined adjustments were appropriate.

**Question 6: Do you agree with our proposals on the content of the out-of-contract notification?**

Virgin Media has no additional comments related to the content of OCNs at this time. Please see our main response and Q2 and 4 for comments against content in OCNs that are also common to ECNs.

**Question 7: Do you agree with our proposals on the structure, method and frequency of the out-of-contract notification?**

Virgin Media agrees that one out-of-contract notification is appropriate and have no further comments on these proposals, beyond those provided regarding common elements between ECNs/OCNs in response to Q2 and 5.

**Question 8: Do you agree that our proposals are both effective and the minimum necessary to achieve our policy objectives?**

Virgin Media does not agree. As noted previously, we believe a simplified notification could be as effective, if not more effective in practice, as Ofcom's current proposals but would be significantly quicker and less complex to implement and would have a lower risk of confusing customers and/or a lower risk that the information included in the notification becomes out-dated.

It is not clear to us that the ECN would be less effective as a reminder or 'call to action' without the extensive personalisation Ofcom proposes. In our view this leads to a more complex and longer implementation which risks presenting information that customers are not familiar with, are confused by, or is out of date at the point the customer returns to the notification to use it.

**Question 9: Do you agree with the impacts we identify, and the approach we take to quantify these impacts, in our assessment in Annex 6?**

Virgin Media has no comments on this question at this time.

**Question 10: Do you agree with our provisional assessment that the potential costs for providers are not disproportionate in order to achieve our policy objectives?**

As noted throughout our main response, we do not believe that Ofcom's proposed timeframes for implementation are realistic, especially in light of the content and scope of the notifications that Ofcom currently envisages.

As we have noted, we believe that a simpler notification would be easier and quicker to implement and carry fewer risks of customer confusion.

**Question 11: Do you agree with our proposed implementation timescale for end-of contract notifications and for the one-off notification to customers who are already outside of their minimum contract period?**

Virgin Media does not agree, please see our main response for further details of our concerns regarding the six-month implementation period for ECNs/OCNs.

Specifically regarding OCNs, we believe the window to contact out-of-contract customers is too short.

Ofcom currently proposes a six-month implementation window for ECNs. The system and processes required for ECNs and OCNs are likely to be broadly aligned, given many of the elements of these notifications are common. Therefore, under the current proposals that would broadly indicate that CPs have a three-month window to send OCNs to their existing subscriber base, after the implementation is complete.

Ofcom estimated that c.20m customers are currently out-of-contract. If Ofcom's proposals are successful and consumers are prompted to engage, this could lead to significant pressures on call centres, both for customer care centre addressing queries from existing customers or on sales agents receiving new enquiries from customers prompted to engage.

We believe a longer window is justified to avoid the risk of any disruption to existing customer service activities. In our view a six-month window should be permitted to start and complete this notification exercise i.e. once the implementation process is complete. In our view this strikes a reasonable balance between ensuring the OCN processes is orderly, without introducing undue delay in making these customers aware.

**Question 12: Do you have any comments on the draft condition set out in Annex 9 to this document?**

Please see comments provided in Section 5 of our response.