



uSwitch response to Ofcom's consultation on end-of-contract and annual best tariff notifications

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1 Executive summary

1.1 uSwitch welcomes Ofcom's proposals

uSwitch welcomes Ofcom's consultation on end-of-contract and annual best tariff notifications. We remain clear that the introduction of contract notifications in the communications sector is necessary to boost consumer confidence and enable consumers to make informed choices. We are pleased that this step will bring the sector more closely in line with various other markets.

We are broadly supportive of Ofcom's proposed implementation of the requirements within the European Electronic Communications Code (EECC) and we hope to see consumers benefit from receiving contract notifications as soon as possible.¹ We note that Ofcom retains considerable flexibility in how it chooses to implement the requirements in practice.

We continue to believe that Ofcom can improve its proposed timing of the end-of-contract notifications to ensure that as many consumers as possible receive them at an actionable point in time. In addition, we believe that Ofcom should issue further clarificatory guidance to ensure a consistent interpretation of providers' obligations in relation to best tariff information that delivers clarity for consumers.

We look forward to continuing to engage with Ofcom on its consumer work programme.

1.2 Consumers should be free to act on receipt of end-of-contract notifications

We welcome the movement of Ofcom's proposed window for end-of-contract notifications to 10-40 days before the contract end date from its initial proposed window of 40-70 days. We do however continue to believe that Ofcom can improve its proposed window to maximise the number of consumers who receive end-of-contract notifications at an actionable point in time. This will be the most significant aspect of end-of-contract notifications in determining whether additional consumers are prompted to engage with their options.

¹ European Union, 2018. Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast), Article 105(3).
<http://data.consilium.europa.eu/doc/document/PE-52-2018-INIT/en/pdf>

We believe that Ofcom would ideally ensure that no consumer receives an end-of-contract notification at a point when they cannot take action without incurring an exit penalty. As the optimal way to deliver end-of-contract notifications at an actionable time for all consumers, uSwitch suggests that the preferred option is that Ofcom should ban exit fees from applying from the start of the end-of-contract notification window of 10-40 days, i.e. from 40 days before the contract end date.

Alternatively, Ofcom should be seeking to improve its proposed window to maximise the number of consumers who receive end-of-contract notifications at an actionable point in time. This could be achieved by:

- Maintaining Ofcom's current proposed 10-40 day window, but ban exit fees for any notifications sent before day 30; or
- Amending Ofcom's current proposed window to 10-30 days.

1.3 Best tariff information should provide consumers with clarity

uSwitch agrees with much of the proposed content of end-of-contract and annual best tariff notifications. However, we believe that Ofcom should refine its proposals in three areas to ensure that best tariff information within end-of-contract and annual best tariff notifications provides consumers with clarity. This will ultimately ensure that both notifications are as effective as possible in boosting consumer information and engagement.

1.3.1 Clarificatory guidance to ensure a fair and consistent approach to communicating providers' best tariffs

It is important that Ofcom deliver on its obligation to implement best tariff information within end-of-contract and annual best tariff notifications in a way that mitigates the risks attached. Consumers need to be able to have confidence in the details communicated to them by the notifications. In particular, consumers need to be able to have trust in their providers' best tariffs, given this is not a concept that consumers are familiar with for communications services. It is therefore essential that a fair and consistent approach is taken by providers in communicating their best tariffs.

To ensure this, we feel that Ofcom needs to issue further guidance covering a number of matters relating to best tariff information, including making clear that providers must surface their best retention deal in notifications, that providers should only show consumers best tariffs that are available to them, and that best tariffs should be accurate for a reasonable period of time.

In terms of provider retention deals, uSwitch's view is that the EECC and Ofcom's draft guidance requires providers to front-up its best retention deal in end-of-contract and annual best tariff notifications. Under the requirement, it cannot be right that consumers would have to phone their provider and threaten to leave to be offered a better "best" deal than was detailed in the notification. If a better provider deal were to exist in this manner, providers would have failed to comply with the requirement to show customers the best tariff available to them within the best tariff information.

We agree with the CMA's position that it is problematic for a provider to tell a customer that an offer is the "best" deal for them when this is untrue given that a better deal could be negotiated.² It is essential that consumers can have both confidence in and a clear understanding of the best tariffs presented to them by their provider within end-of-contract and annual best tariff notifications.

Ofcom has not yet been clear what consumers can expect from best tariff information or about the repercussions on provider retention deals. It is vital that Ofcom clarifies this point in its policy statement and the final guidance. In order to ensure providers' compliance with this requirement, Ofcom should also expand its proposed monitoring programme to order to audit calls made to providers following a customer's receipt of an end-of-contract or annual best tariff information notification.

1.3.2 Basis of providers' best tariffs: usage of allowances

uSwitch believes that Ofcom's guidance should require providers to list consumers' key usage of their allowances within notifications, where this is particularly relevant in informing the best tariff(s) offered to the customer. At present, we anticipate that this would mean that providers inform mobile customers of their average and highest monthly data usage of their allowance, given mobile data is currently the key variable in determining offers. Our proposed approach would allow flexibility if market conditions change in the future, for example if the market moves away from unlimited broadband deals meaning that usage becomes more instructive in pricing.

Where a customer's usage is not relevant to their provider's best tariff(s), for example as is common in broadband at present, Ofcom has indicated that best tariffs should be based on the customer's existing service. We believe that Ofcom should be clear that this means that providers should show customers

² CMA, 2018. Tackling the loyalty penalty: Response to a super-complaint made by Citizens Advice on 28 September 2018, paragraph 7.46.

https://assets.publishing.service.gov.uk/media/5c194665e5274a4685bfbafa/response_to_super_complaint_pdf.pdf

broadband deals with speeds that meet or, in the case of an upgrade tariff, exceed their current broadband speeds.

1.3.3 Price aggregation: total cost and projection

We continue to believe that the inclusion of aggregated price information with a cost projection will deliver additional consumer engagement. The quantitative consumer research that we commissioned as part of our response to Ofcom's previous consultation tested the effectiveness of five different pricing aggregation variants. Every variant we tested worked to boost the consumer response beyond that achieved by monthly price alone.

The likelihood of consumers to act was raised the most by the inclusion of an annual cost figure and a projected figure which demonstrated the price to be paid over the next year. Our research also found that total contract cost and projected cost over the same period also performed well in terms of likelihood to act. uSwitch maintains that end-of-contract notifications should include an aggregated cost message with a cost projection to ensure that the measure is as effective as possible in driving consumer response.

1.4 uSwitch supports Ofcom's proposed implementation timeline

uSwitch agrees with Ofcom that its proposed six month implementation period for both end-of-contract and annual best tariff notifications is both reasonable and realistic. We expect that providers will be capable of sending end-of-contract notifications by this point onwards and of sending the first annual best tariff notifications to all out-of-contract customers within the 12 months following this point. We consider this implementation timeline to be achievable given that providers already hold the relevant customer information and have all the processes in place to issue customer communications swiftly.

We welcome Ofcom's indication that it will publish a statement on end-of-contract and annual best tariff notifications in May 2019. We consider it vital that Ofcom makes every effort to meet this aim. We hope to see consumers benefit from the implementation of these measures as soon as possible, from November 2019.

1.5 Monitoring compliance with the guidance and ensuring a clear options message

We welcome Ofcom's proposed approach of issuing guidance to providers to ensure that they produce consistent and effective end-of-contract and annual best tariff notifications.

uSwitch agrees with Ofcom's plan to monitor end-of-contract and annual best tariff notifications. We believe this will be important in ensuring that the notifications are optimised to most clearly inform consumers and improve their ability to engage with their options.

As part of its monitoring plan, we consider that it will be important for Ofcom to actively monitor providers' compliance with its guidance to ensure that notifications sent by providers are within the spirit of the rules. In addition, Ofcom should audit providers' calls to ensure that they do not offer retention deals over the phone that undermine the requirement to surface their best tariff(s) within end-of-contract and annual best tariff notifications.

Ofcom should be prepared to be agile in issuing clarifying guidance in the instance that a provider's practices fall short of expectations. This is particularly the case for the options message, which is an essential component of the notifications in making clear the choices available to the consumer.

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3 Introduction

3.1 About uSwitch

uSwitch is the UK's leading price comparison and switching service for home services, helping consumers to find a better deal and save money on their gas, electricity, broadband, mobiles, TV, landlines and personal finance products including mortgages, credit cards, current accounts and insurance.

uSwitch is part of ZPG, a digital media business that owns and operates some of the UK's most widely recognised and trusted online brands including Zoopla, PrimeLocation, Money.co.uk and Hometrack. Money.co.uk is one of the UK's leading financial services comparison websites, helping consumers compare products including mortgages, loans, credit cards, bank accounts and insurance from more than 600 providers.

uSwitch is a vocal champion of consumer issues and we are informed by our experience engaging directly with consumers on these matters. We are constantly looking for ways to innovate to ensure that our customers can navigate consumer markets effectively in the energy, telecoms and financial services sectors. We support any measures which recognise that competition is the best tool to deliver better outcomes for consumers. We look forward to continuing to engage with Ofcom on its programme of work on consumer engagement.

3.2 Ofcom's implementation of end-of-contract and annual best tariff notifications will boost consumer engagement

uSwitch welcomes Ofcom's consultation on end-of-contract and annual best tariff notifications. We are pleased to see Ofcom's second iteration of proposals for these notifications and remain supportive of Ofcom's broader consumer engagement work programme. We continue to be firmly in support of the implementation of end-of-contract and annual best tariff notifications for communications services.

We welcome Ofcom ensuring that its proposals align with the EEC requirements for end-of-contract and annual best tariff notifications. We note that Ofcom retains a considerable degree of flexibility in determining how to implement the requirements in practice.

There are some key areas we consider would benefit from refinement within Ofcom's implementation proposals. We believe these can be addressed swiftly by Ofcom and we keenly anticipate that consumers should start to benefit from receiving notifications as soon as possible.

Indeed, we have called for the introduction of end-of-contract notifications for some time, as well as suggested that Ofcom should consider introducing regular out-of-contract notifications in our response to Ofcom's mobile handsets consultation. Consumers have come to expect these notifications given that Ofgem mandates fixed-term tariff ending notices in energy and the FCA requires similar notices for insurance and mortgage renewals. It is right that Ofcom acts to correct the harm experienced by customers of the 21.4 million accounts currently out-of-contract³ and the 10.6 million that are likely to encounter increases to the price and/or services at the end of the initial contract period.⁴

uSwitch's experience across consumer markets has made clear to us the sizeable gap between industry practices and consumer expectations in the availability of key contract information in the communications sector. The introduction of end-of-contract and annual best tariff notifications is an essential first step to improving consumer knowledge and confidence to engage with the market. In turn, this will encourage providers to improve their offering to consumers. We fully support Ofcom's intention to move communications in line with other consumer markets by requiring providers to send contract notifications to residential and small business customers of broadband, mobile, landline and pay TV services. Within these services, uSwitch's greatest expertise lies within the residential broadband and mobile markets and our response will be focused accordingly.

Beyond these notifications, we look forward to continuing to engage with Ofcom's future work on mobile handsets and price differentials in fixed broadband. More broadly, we consider that Ofcom's ongoing programme of work on consumer engagement should seek to build consumers' confidence and ability to take action. The BEIS Public Attitudes Tracker found that 64% of people felt that it was "very easy" to exit a previous car or home insurance contract, just 49% agreed with this for broadband and 47% felt this was the case for mobile

³ Ofcom, 2018. Consultation on end-of-contract notifications and out-of-contract notifications, Figure 8.

https://www.ofcom.org.uk/data/assets/pdf_file/0019/117163/Consultation-end-of-contract-notifications.pdf

⁴ Ofcom, 2018. Consultation on end-of-contract notifications and out-of-contract notifications, Figure 5.

https://www.ofcom.org.uk/data/assets/pdf_file/0019/117163/Consultation-end-of-contract-notifications.pdf

contracts.⁵ For example, a telecoms switch guarantee - similar to the Current Account Switch Guarantee - could tie together the processes involved and give more consumers the confidence to move to a better deal. We continue to believe that there will be an increasing case to revisit industry switching processes to support wider regulatory objectives of more fundamental infrastructure-based competition in the rollout of full-fibre networks.

uSwitch's Connectivity without Complexity campaign has been looking at these key issues and exploring their impact on consumers. We believe it's time the industry gave the facts - being open and upfront with the information that matters, removed the needless hoops that consumers are made to jump through and worked to ensure the road to faster, more reliable connectivity is a journey for all.⁶

We would welcome the opportunity to continue engaging with Ofcom drawing on our experience engaging directly with consumers on matters across telecoms, energy and financial services.

⁵ BEIS, 2018. BEIS Public Attitudes Tracker: Wave 26 - key findings. Figure 9.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/734270/beis-public-attitudes-tracker-wave-26-key-findings.pdf

⁶ uSwitch. Connectivity without complexity: putting consumers first.
<https://www.uswitch.com/campaigns/connectivity/>

4 Consumers should be free to act on receipt of end-of-contract notifications

We welcome the movement of Ofcom's proposed window for end-of-contract notifications to 10-40 days before the contract end date from its initial proposed window of 40-70 days. We do however continue to believe that Ofcom can improve its proposed window to maximise the number of consumers who receive end-of-contract notifications at an actionable point in time. This will be the most significant aspect of end-of-contract notifications in determining whether additional consumers are prompted to engage with their options.

4.1 Ofcom can improve its proposed sending window

uSwitch suggests that there are three options available to Ofcom in order to improve the design of its proposed sending window and boost consumer outcomes.

4.1.1 Preferred option: Ban exit fees from the start of the 10-40 day window

We believe that Ofcom would ideally ensure that no consumer receives an end-of-contract notification at a point when they cannot take action without incurring an exit penalty. This risks consumers accidentally incurring an exit penalty if they choose to take action, either by cancelling their existing contract or initiating a switch to another provider.

As the optimal way to deliver end-of-contract notifications at an actionable time, uSwitch suggests that the preferred option is that Ofcom should ban exit fees from applying from the start of the end-of-contract notification window of 10-40 days, i.e. from 40 days before the contract end date. Under this option, all consumers receiving an end-of-contract notification would be free to act. We anticipate that this would drive a significantly better consumer response rate than under Ofcom's current proposal.

Given that the implementation of text-to-switch by July 2019 will require mobile switches to be completed within one working day, this freedom to act immediately is especially important within mobiles. Mobile consumers who receive an end-of-contract notification 40 days ahead of their contract end date are unlikely to remember to look into their options and instigate a change if they are prohibited from doing so for 39 days.

Moreover, this option would enable Ofcom to retain its proposed 10-40 day window, giving providers a period of 30 days to allow for batching and flexibility around existing customer communications.

4.1.1.1 Learnings from other sectors: Ofcom's current proposal is unprecedented

The sending of contract notifications at a point when a customer could incur an exit penalty for taking action is unprecedented. Insurance renewal letters are in practice sent a maximum of 30 days ahead of a customer's renewal date because firms cannot generally quote coming year rates before this. The renewal letter allows customers to purchase a policy for the next year at the exact point their existing policy expires immediately on receipt. This is backed up by FCA rules which explicitly set out that firms should be sending renewal letters "in good time prior to the conclusion of the policy" with the intention of enabling customers to "make an informed decision about the arrangements proposed".⁷

Meanwhile, fixed term tariff plan ending notifications in energy are currently sent 42-49 days ahead of the end date⁸, and, critically, must allow customers to take action without facing an early termination charge from the point the letter is received. Ofgem has recently consulted on removing this exact prescribed window but still proposes to maintain a ban on exit fees in the last 49 days of the contract, or at the point the end-of-contract notification is received should it be sent earlier.⁹ Ofgem notes that:

"This mitigates the risk of a consumer being sent a renewal notice earlier than 49 days before the end of their contract, and then not being able to switch without exit fees for a certain period of time. This could be confusing messaging for the consumer and a barrier to switching".¹⁰

We believe the proposed change to this window indicates a recognition from Ofgem that a better consumer response will be driven by allowing suppliers to send notifications closer to the contract end date. Critically, Ofgem is proposing

⁷ FCA. Handbook ICOBS 6.1 Providing product information to customers: general, clause 6.1.5. <https://www.handbook.fca.org.uk/handbook/ICOBS/6/1.html?date=2018-10-01&timeline=True>

⁸ Ofgem, 2018. Standard conditions of electricity supply licence, paragraph 22C.4 (a). <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20Supply%20Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf>

⁹ Ofgem, 2018. Statutory consultation: Domestic supplier-customer communications rulebook reforms, Page 58. https://www.ofgem.gov.uk/system/files/docs/2018/09/statutory_consultation_-_domestic_supplier_customer_communications_rulebook_reforms.pdf

¹⁰ Ofgem, 2018. Statutory consultation: Domestic supplier-customer communications rulebook reforms, Page 58. https://www.ofgem.gov.uk/system/files/docs/2018/09/statutory_consultation_-_domestic_supplier_customer_communications_rulebook_reforms.pdf

to accompany the rules with a overarching enforceable principle for suppliers to maximise the effectiveness of this information as a prompt to engage.¹¹

uSwitch believes that Ofcom should ban exit fees from the start of the 10-40 day window in order to make end-of-contract notifications actionable for all consumers, as is common practice in other sectors.

4.1.2 Alternative options to maximise the number of consumers receiving actionable end-of-contract notifications

There are alternative options available to Ofcom which would improve its current proposal, if it considers that banning exit fees from the start of the 10-40 day window is not possible. In this case, we believe that Ofcom should be seeking to improve its proposed window to maximise the number of consumers who receive end-of-contract notifications at an actionable point in time. In practice, this means aligning the window to the point that would be timely for the most consumers.

The point at which each customer can act varies depending on their contract, but it is safe to say that cancelling a contract or initiating a switch to another provider at any point before 30 days of a contract end date is very likely to generate an exit penalty. This is because the maximum length of notice periods for broadband and mobile contracts tends to be 30 days. In practice, therefore, the 30 day mark is key to determining the design of the end-of-contract notification window.

With this in mind, we consider that Ofcom could better align the window to the point that would benefit the most consumers by pursuing two separate routes. Each of these routes are not ideal given that, similarly to Ofcom's currently proposed 10-40 day window, some consumers will still receive end-of-contract notifications when they cannot act without incurring exit fees. This is particularly the case once text-to-switch is implemented by July 2019 as mobile customers will be able to complete switches within one working day.

However, Ofcom might conclude that one of these routes are more proportionate than uSwitch's preferred option detailed above. Ofcom might also feel that one of the alternative options could be delivered without compromising its stated implementation timeframe. Either of these two options would reduce the number of consumers who would be liable to pay an exit fee if they chose to

¹¹ Ofgem, 2018. Annex 3 - Final proposed package of changes to customer communications rules. https://www.ofgem.gov.uk/system/files/docs/2018/09/annex_3_final_proposed_package_of_changes_to_customer_communication_rules.pdf

act, meaning they represent a significant improvement on Ofcom's current proposal.

The two alternative options are:

- **Maintain Ofcom's current proposed 10-40 day window, but ban exit fees for any notifications sent before day 30.** This guidance would set out Ofcom's expectation that providers should send end-of-contract notifications between days 10 and 30 to be of most relevance to consumers. The guidance would then ban exit fees applying to any customers sent an end-of-contract notification between day 31 and 40. This allows providers flexibility to send the notifications across the full 30 day window between day 10 and day 40 if they feel this is necessary to batch communications, but provides an incentive to send the notifications at a more timely point for consumers; or
- **Amend Ofcom's current proposed window to 10-30 days.** This would reduce the number of consumers that would receive an end-of-contract notification when exit fees would apply, given that acting before 30 days is highly likely to incur an exit penalty. This window still allows a customer time to look into their options and take action that broadly aligns with their previous contract ending. We note that providers will have an incentive to test when the sending of end-of-contract notifications will produce the weakest consumer response. This option narrows the window to 20 days which retains flexibility for providers but has the benefit of better guarding against such provider gaming. Moreover, a narrower window would align more closely with the size of the 7 day window for suppliers to send energy contract notifications,¹² and insurance firms send renewal letters at 30 days before the end date.¹³ We believe that there is no reason why communications providers cannot operate within a more targeted window.

4.2 Consumer responsiveness will be driven by the timing of end-of-contract notifications

4.2.1 To feel relevant, consumers need to be able to act immediately

We anticipate that the design of the proposed sending window is the critical factor that will determine whether end-of-contract notifications successfully act

¹² Ofgem, 2018. Standard conditions of electricity supply licence, paragraph 22C.4 (a). <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20Supply%20Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf>

¹³ FCA. Handbook ICOBS 6.1 Providing product information to customers: general, clause 6.1.5. <https://www.handbook.fca.org.uk/handbook/ICOBS/6/1.html?date=2018-10-01&timeline=True>

as a call-to-action for consumers. To feel relevant to consumers, and particularly those who are not already engaged, end-of-contract notifications should ideally be immediately actionable. Consumers should be able to look into their options when they receive an end-of-contract notification, without incurring detriment that would reduce the perceived benefits of engaging such as an exit fee.

The ability to engage should be seen as a critical requirement of any remedy that seeks a direct consumer response, as failing to do so is likely to increase the perceived hassle-factor. Steps to be taken by a consumer should be limited as much as possible, without placing unnecessary burdens a consumer to remember a future moment to engage or having to assess the options available in the market more than once. To do otherwise is likely to dull consumer responsiveness.

uSwitch commissioned research which showed that 21 days before the contract end date is the optimal time for a consumer to receive an end-of-contract notification.¹⁴ This was consistent across broadband and mobile consumers. Participants felt that 21 days allowed them time to explore their options, made the call to action seem relevant, and enabled them to act on price that were less likely to change. As such, we believe that Ofcom should improve its proposed sending window via one of the three options we set out above in order to maximise the impact of end-of-contract notifications.

4.2.2 Industry practices mean many consumers taking action before 30 days of their contract end date will face an exit penalty

We note that Ofcom has sought to allow time for consumers to look into their options prior to making choices. However, given the discrepancies in the terms applying to each consumer, we contend that it is not possible to design a window that allows for all consumers to execute a perfectly aligned switch. It is therefore important to require providers to send end-of-contract notifications at a time that seems broadly relevant to the greatest number of consumers and inspires them to consider their options.

The point at which a consumer can take action varies depending on contract type, but any consumer taking action before 30 days of a contract ending is highly likely to face an exit fee. This is because the maximum length of notice periods for cancellation (as opposed to switching) of broadband and mobile contracts tends to be 30 days and that early termination charges will apply until the end of the contract.

¹⁴ uSwitch, 2018. uSwitch response to Ofcom's consultation on end-of-contract and out-of-contract notifications.

https://www.ofcom.org.uk/data/assets/pdf_file/0021/127074/uSwitch.pdf

We contend that a research and decision-making period is allowed for within the final 30 days of the contract. This is because the actionable timeframe is often closer to the contract end date for customers using industry switching processes. We understand that Ofcom's mobile switching rules (from July 2019)¹⁵ will effectively ban notice periods for switching mobile customers from the end of the initial contract period. Under gaining provider-led switching rules on the Openreach network, losing providers will accept the gaining provider notification of typically 14 days as the notice.¹⁶ Notice periods are therefore becoming exclusively relevant to cancellation or cease and reprovide. Within switching, consumers can take action at any point subject to the transfer date taking place outside of the initial contract period.

Moreover, customers generally cannot specify broadband activation dates and are subject to installation periods that range from 14 to 30 days. This means that consumers cannot immediately pre-book a longer installation period to ensure perfect contract end date alignment. Sending the notification at a point where exit fees are banned and/or closer to the end of the contract reduces the risk of customers switching too early before the end of their contract and incurring an early termination charge. A window that does not extend above the 30 day point still accounts for the time a customer requires to research and make a switch that is broadly aligned with their previous contract ending.

We therefore believe that it is counter-productive to deliver end-of-contract notifications earlier than 30 days before the contract end date in the instance that exit penalties continue to be permitted. At 40 days before their contract ends, consumers would be a considerable way out from being able to action a switch without incurring an exit fee. As such, we do not consider that this meets the EECC requirement for providers to contact customers in a "timely manner".¹⁷ In the instance that exit fees are not banned during the end-of-contract notification window, we believe Ofcom should review the impact of exit penalties on consumers' ability to engage with their options in the future.

¹⁵ Ofcom, 2017. Decision on reforming the switching of mobile communication services. https://www.ofcom.org.uk/data/assets/pdf_file/0023/108941/Consumer-switching-statement.pdf

¹⁶ Ofcom, 2015. Switching - broadband. <https://www.ofcom.org.uk/advice-for-businesses/switching/switching-broadband>

Sky, 2018. Sky Broadband and Sky Talk Terms and Conditions, 11(f). https://www.sky.com/shop/PDF/Sky_Broadband_Talk_UK.pdf

¹⁷ European Union, 2018. Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast), Article 105(3). <http://data.consilium.europa.eu/doc/document/PE-52-2018-INIT/en/pdf>

5 Best tariff information should provide consumers with clarity

uSwitch agrees with much of the proposed content of end-of-contract and annual best tariff notifications. However, we believe that Ofcom should refine its proposals in three areas to ensure that best tariff information within end-of-contract and annual best tariff notifications provides consumers with clarity. This will ultimately ensure that both notifications are as effective as possible in boosting consumer awareness and engagement. These three areas for refinement are:

1. Clarificatory guidance to ensure a fair and consistent approach to communicating providers' best tariffs
2. Basis of providers' best tariffs: usage of allowances
3. Price aggregation: total cost and projection.

5.1 Clarificatory guidance to ensure a fair and consistent approach to communicating providers' best tariffs

It is important that Ofcom deliver on its obligation to implement best tariff information within end-of-contract and annual best tariff notifications in a way that mitigates the risks attached. Consumers need to be able to have confidence in the details communicated to them by the notifications. In particular, consumers need to be able to have trust in their providers' best tariff(s), given this is not a concept that consumers are familiar with. It is therefore essential that a fair and consistent approach is taken by providers in communicating their best tariffs. To ensure this, we feel that Ofcom needs to issue further guidance covering several key matters relating to best tariff information.

5.1.1 Ofcom should make clear that providers must surface their best retention deal in notifications

uSwitch believes that Ofcom should issue some further clarificatory guidance on its definition of the "best" deal available to the customer. The term "best" is inherently subjective, especially for services where price is not always the primary factor that consumers take into account. Guidance is required to ensure a uniform interpretation among providers that produces a fair, consistent experience for consumers.

We accept Ofcom's proposal for end-of-contract and annual best tariff notifications to contain between one and three of a provider's best tariffs. Indeed, our response to Ofcom's end-of-contract and out-of-contract

notifications consultation agreed with the inclusion of a provider marketing message, as long as this was preceded by and distinct from the core information.

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uSwitch's view is that the EECC and Ofcom's draft guidance requires providers to surface the best retention deal(s) available to that customer in end-of-contract and annual best tariff notifications. Within the best tariff requirement, it cannot be right that consumers would have to subsequently phone their provider and threaten to leave to be offered a better "best" deal than was set out in their notification. If a better provider deal were to exist in this manner, providers would have failed to comply with the requirement to show customers the best tariff available to them within the best tariff information. It is essential that consumers can have both confidence in and a clear understanding of the best tariffs presented to them by their provider within end-of-contract and annual best tariff notifications.

Indeed, in its response to the Citizens Advice "loyalty penalty" super-complaint, the CMA highlighted the importance of guarding consumers against false or deceptive statements.¹⁹ The CMA set out the consumers are entitled to be given information which is truthful and helpful, and that consumers "should not have to double check statements made by their suppliers". We agree with the CMA that it is problematic when a provider tells a customer "a deal on offer is the 'best' deal for them, when the salesperson has authority to negotiate a better deal if challenged".

Ofcom has not yet been clear what consumers can expect from best tariff information or about the repercussions on provider retention deals. It is vital that Ofcom clarifies this point in its policy statement and the final guidance. In order to ensure providers' compliance with this requirement, Ofcom should also expand its proposed monitoring programme to order to audit calls made to providers following a customer's receipt of an end-of-contract or annual best tariff information notification.

5.1.2 A "best tariff" should be accurate for a reasonable period of time

In addition, Ofcom needs to issue further guidance that indicates what Ofcom considers to be a reasonable period for a "best tariff" to hold. It does not seem

¹⁸ uSwitch, 2018. uSwitch response to Ofcom's consultation on end-of-contract and out-of-contract notifications.

https://www.ofcom.org.uk/_data/assets/pdf_file/0021/127074/uSwitch.pdf

¹⁹ CMA, 2018. Tackling the loyalty penalty: Response to a super-complaint made by Citizens Advice on 28 September 2018, paragraph 7.46.

https://assets.publishing.service.gov.uk/media/5c194665e5274a4685bfbafa/response_to_super_complaint_pdf.pdf

reasonable that a consumer could open an end-of-contract or annual best tariff notification that lists their provider's best tariff(s) which, while accurate at the time of sending, no longer reflects the best deals available. This could mean that the consumer accepts a worse tariff on the assumption that it is the best their provider can offer them. Similarly, it does not seem reasonable for a consumer to experience this issue if they do not look into their options and make a decision straight away on receipt of a contract notification.

Ofcom could partially mitigate this issue by requiring that any consumer who engages with their provider following receipt of a contract notification must be informed of the best tariff(s) currently available to them at that point, if this is better than the best tariff(s) shown within their end-of-contract or annual best tariff notification. For example, a customer who receives an end-of-contract notification at 35 days before their contract end date and then contracts their provider at 10 days before their contract end date should be made aware of any deals that are better than those listed as the best tariff(s) in the notification.

In contrast, if Ofcom is not minded to require that best tariffs hold for a reasonable period of time, it would be essential for notifications to contain stronger options messaging that makes clear to the consumer that their provider's best tariff(s) is unlikely to represent the best offer available in the market.

5.1.3 Consumers should only be shown best tariffs that are relevant to them

We firmly believe that consumers should only be shown best tariffs that are relevant to them within end-of-contract and annual best tariff notifications. We do not consider that the EECC requires best tariff information to include the best tariff available to any customer but which is not accessible to the customer receiving the notification.

Notifications should be clear and focused on information relevant to the specific recipient. To do otherwise risks confusing consumers about what is available to them, which would likely discourage some consumers from looking into their options at all. We are particularly concerned that the surfacing of a provider's best tariff for new customers could lead an existing, disengaged consumer to believe that this represents what is available in the wider market.

Furthermore, we note that pursuing Ofcom's current proposed approach involves the risk that providers withdraw attractive deals available to new customers from the market in order to avoid displaying them within notifications to existing customers. We'd expect this to be particularly likely among providers

who are more reliant on customer retention. This would significantly dampen competitive pressures in the market that are working to the advantage of consumers.

Given the significant risk of generating such unintended consequences that would be harmful to consumers, Ofcom should amend its position to only allow providers to show one to three best tariffs that are available to the recipient of an end-of-contract or annual best tariff notification. Moreover, if Ofcom aligns its proposals with Ofcom's position that consumers should be shown the best retention deal available to them within notifications (see section 5.1.1), then there will remain an incentive for providers to offer good deals to customers within the notifications even without the inclusion of the best tariff available to any customer (in the instance that these differ).

5.1.4 Clarity on best tariffs for consumers with bundled services

Furthermore, we note that Ofcom's draft guidance states that "tariffs should be for a bundle of services where the consumer receives them under a single contract with the provider, or has financially linked or interdependent contracts with the same provider and where the fixed commitment period(s) is about the end or has already ended".²⁰ uSwitch suggests that further guidance is required to resolve a provider's obligations in the instance that a standalone tariff represented the best tariff available to that consumer. At present, the draft guidance does not require providers to communicate standalone best tariffs to consumers taking bundled services. However, we believe that this is core to the policy intent of the EECC best tariff requirement.

5.2 Basis of providers' best tariffs: usage of allowances

It is crucial that Ofcom's guidance requires that consumers are informed of their usage of their allowances within end-of-contract and annual best tariff notifications. This is because, where relevant, a customer's usage of their allowances will be the basis of their provider's calculation of the best tariff(s) to show that customer. Providers should be required to make this clear within notifications.

²⁰ Ofcom, 2018. Consultation on end-of-contract and annual best tariff notifications, and proposed scope for a review of pricing practices in fixed broadband, paragraph 6.44(g). https://www.ofcom.org.uk/data/assets/pdf_file/0022/130378/Consultation-helping-consumers-get-better-deals.pdf

5.2.1 Providers should be required to state consumers' key usage metrics

uSwitch believes that Ofcom's guidance should require providers to list consumers' key usage of their allowances within notifications, where this is particularly relevant in informing the best tariff(s) offered to the customer. At present, we anticipate that this would mean that providers inform mobile customers of their average and highest monthly data usage of their allowance, given mobile data is currently the key variable in determining offers.

Our proposed approach would allow flexibility if market conditions change in the future, for example if the market moves away from unlimited broadband deals meaning that usage becomes more instructive in pricing. Providers should also be required to make clear what best tariffs are based on within the notifications, i.e. that customer's usage of their key allowances where relevant or similarity to their current service package.

uSwitch continues to consider that the inclusion of consumers' usage of their key allowances as part of the best tariff information is both reasonable and proportionate for providers to implement. This is particularly the case given that Ofcom is already proposing that providers must pull each customer's usage of key allowances in order to produce one to three best tariffs tailored to that customer. Consequently, there is no additional effort required of providers to include this information within notifications sent to consumers.

Where a customer's usage is not relevant to their provider's best tariff(s), for example as is common in broadband, Ofcom has indicated that best tariffs should be based on the customer's existing service. We believe that Ofcom should be clear that this means that providers should show customers broadband deals with speeds that meet or, in the case of an upgrade tariff, exceed their current broadband speeds.

5.2.2 Consumers need the tools to understand their usage needs

As we demonstrated in our response to Ofcom's consultation on end-of-contract and out-of-contract notifications, the inclusion of key usage information in notifications would prompt more consumers to engage with their options.²¹ The provision of customers' usage of key allowances becomes more critical in the context of Ofcom's current proposals. Consumers need to be equipped to interpret the information within the notifications, and this is especially the case

²¹ uSwitch, 2018. uSwitch response to Ofcom's consultation on end-of-contract and out-of-contract notifications.

https://www.ofcom.org.uk/data/assets/pdf_file/0021/127074/uSwitch.pdf

for best tariffs given they are a new concept that consumers are not familiar with for communications services.

5.2.2.1 Equipping customers to determine what best suits their needs

Many consumers currently find it difficult to access information about their usage and allowances. Existing research that uSwitch commissioned from Opinium found that 21% of consumers do not know how much data they have on their package, while 26% do not know how much data they use.

Presenting consumers with an incomplete picture could result in consumer harm both directly by a consumer moving to a tariff that does is not appropriate for their needs and indirectly by a consumer ignoring the call to action and deciding not to engage after having been confused by the best tariff(s) shown to them.

Under the current proposals, a mobile customer is at risk of being presented with one to three of their providers' best tariffs and being unable to recognise why they are being directed to those deals. This could be experienced by a consumer who does not know their usage or allowances, as well as a more informed consumer who knows their allowances but not their usage and who is likely to be confused by best tariffs, that unbeknown to them, align with their usage. The ability for providers to include one upgrade tariff within the best tariffs would likely further cause confusion among consumers given that, without the context of a consumer's own usage and allowances, it may be difficult to discern why one tariff does not resemble the other(s).

Moreover, uSwitch knows that consumers often choose to have a buffer in their data allowances to avoid expensive charges for going beyond their typical data consumption. As such, consumers need to be shown the basis of the calculation of best tariffs so that consumers can discern whether they align with their data allowances, their average data usages, or their highest data usages.

We believe that less engaged consumers are very likely to be particularly reliant on the provision of information on their usage of key allowances. We also feel that Ofcom should guard against end-of-contract notifications lulling mobile customers into a false sense of security, given the possibility that their price will remain the same or even reduce. This risks concealing that their deal and their provider's best tariff(s) might now represent poor value for money. As such, the inclusion of this information is likely to be a core driver in determining the degree to which both end-of-contract and annual best tariff notifications bring additional consumer awareness and engagement into the market.

5.2.2.2 A cross-sector consensus on the importance of key usage information

The CMA has found that it is a problem when providers fail to give information that consumers need, particularly around the point of renewal.²² This includes information about how consumers have been using their services, such as how much data they use per month. We agree with the CMA's statement that this information is necessary for consumers to understand what products might best suit their needs.

Our view is further informed by Ofgem's rules for energy contract notifications. Energy suppliers are required to show customers a personalised cost projection for the upcoming year for both that customer's current tariff and the cheapest tariff relevant to that customer.²³ Suppliers must show consumers their energy usage in order to explain the basis of their calculations.

5.3 Price aggregation: total cost and projection

We agree with Ofcom's proposal for the best tariff information within end-of-contract and annual best tariff notifications to include the customer's current monthly price and, for end-of-contract notifications, the monthly price they will pay after their contract ends. This is important basic information. As we set out in our response to Ofcom's first consultation, we continue to believe that the inclusion of aggregated price information with a cost projection will deliver additional consumer engagement.²⁴ This is especially important in the context of providers including their best tariffs in the notifications as consumers need consistently aggregated pricing information to cut through different pricing structures in order to assess whether the best tariffs listed represent good value to them.

The quantitative consumer research that we commissioned as part of our previous response tested the effectiveness of five different pricing aggregation variants. Every variant we tested worked to boost the consumer response beyond that achieved by monthly price alone. The likelihood of consumers to act

²² CMA, 2018. Tackling the loyalty penalty: Response to a super-complaint made by Citizens Advice on 28 September 2018, paragraph 7.49.
https://assets.publishing.service.gov.uk/media/5c194665e5274a4685bfbafa/response_to_super_complaint_pdf.pdf

²³ Ofgem, 2018. Standard conditions of electricity supply licence, paragraph 22C.3 (c)(vii).
<https://epr.ofgem.gov.uk/Content/Documents/Electricity%20Supply%20Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf>

²⁴ uSwitch, 2018. uSwitch response to Ofcom's consultation on end-of-contract and out-of-contract notifications.
https://www.ofcom.org.uk/data/assets/pdf_file/0021/127074/uSwitch.pdf

was raised the most by the inclusion of an annual cost figure and a projected figure which demonstrated the price to be paid over the next year. Our research also found that total contract cost and projected cost over the same period also performed well in terms of likelihood to act. uSwitch maintains that end-of-contract notifications should include an aggregated cost message with a cost projection to ensure that the measure is as effective as possible in driving consumer response.

An aggregated cost figure and projection compels consumers to look into their options as it enables consumers to identify the problem with their current deal. The options message within the end-of-contract notification then sets out the solutions available to consumers. In addition, a projection for the coming period helps consumers to imagine the future cost implications of taking no action.

Furthermore, consumers are familiar with aggregated pricing figures and cost projections in other sectors. The FCA requires that the last year's price and the renewal annual price for insurance policies are shown on firms' renewal letters.²⁵ In energy, Ofgem requires that suppliers' end of tariff notifications must show consumers a personal projection for the upcoming year.²⁶ As such, aggregated pricing figures and cost projections are a cross-industry standard that consumers will be expecting from contract notifications for communications services.

²⁵ FCA. Handbook ICOBS 6.5 Renewals, clause 6.5.1(3).

<https://www.handbook.fca.org.uk/handbook/ICOBS/6/1.html?date=2018-10-01&timeline=True>

²⁶ Ofgem, 2018. Standard conditions of electricity supply licence, paragraph 22C.3 (c)(vii).

<https://epr.ofgem.gov.uk/Content/Documents/Electricity%20Supply%20Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf>

6 uSwitch supports Ofcom's proposed implementation timeline

uSwitch agrees with Ofcom that its proposed six month implementation period for both end-of-contract and annual best tariff notifications is both reasonable and realistic. We expect that providers will be capable of sending end-of-contract notifications by this point onwards and of sending the first annual best tariff notifications to all out-of-contract customers within the 12 months following this point. We consider this implementation timeline to be achievable given that providers already hold the relevant customer information and have all the processes in place to issue customer communications swiftly.

We welcome Ofcom's indication that it will publish a statement on end-of-contract and annual best tariff notifications in May 2019. We consider it vital that Ofcom make every effort to meet this aim. We hope to see consumers benefit from the implementation of these measures as soon as possible, from November 2019.

Once implemented, we support Ofcom's plan to monitor end-of-contract and annual best tariff notifications. We believe this will be important in ensuring that the notifications are optimised to most clearly inform consumers and improve their ability to engage with their options. In the instance that Ofcom identifies that customers are receiving contract notifications that do not meet requirements and/or are not within the bounds of the guidance, Ofcom should be prepared to address this swiftly and publish further guidance.

7 Monitoring compliance with the guidance and ensuring a clear options message

7.1 Assessing compliance with the guidance

We welcome Ofcom's proposed approach of issuing guidance to providers to ensure that they produce consistent and effective end-of-contract and annual best tariff notifications.

We agree with Ofcom's plan to monitor end-of-contract and annual best tariff notifications by:

- a) requiring providers to keep a record of each end-of-contract and annual best tariff notification they send for a period of at least 12 months;
- b) requesting additional data from providers as they roll-out their end-of-contract and annual best tariff notifications, to assess the impact on end-users;
- c) conducting ongoing consumer research by focusing on engagement and satisfaction, where possible linked to the receipt of end-of-contract and annual best tariff notifications; and
- d) exploring the potential with providers to conduct a randomised control trial to assess the effectiveness of different formats of notifications.

We believe this will be important in ensuring that the notifications are optimised to most clearly inform consumers and improve their ability to engage with their options.

As part of its monitoring plan, we consider that it will be important for Ofcom to actively monitor providers' compliance with its guidance to ensure that notifications sent by providers are within the spirit of the rules. In addition, Ofcom should audit providers' calls to ensure that they do not offer retention deals over the phone that undermine the requirement to surface their best tariff(s) within end-of-contract and annual best tariff notifications.

Ofcom should be prepared to be agile in issuing clarifying guidance in the instance that a provider's practices fall short of expectations. This is particularly the case for the options message, which is an essential component of the notifications in making clear the choices available to the consumer.

7.2 Delivering consumers a clear options message

uSwitch agrees with Ofcom that guidance is required for providers regarding the options message to be included within end-of-contract and annual best tariff notifications. The options message is especially important for consumers who are currently less engaged, particularly when combined with their provider's best tariff(s). This is because, in isolation, the listing of their provider's best tariff(s) could have the unintended consequence of directing consumers towards offers that do not represent the best deal for them. Enabling consumers to make informed choices about the wider options available to them is fundamental to the intent of the EECC requirements for contract termination and provider communications with their customers.

We welcome Ofcom's guidance that sets out that the options message for residential consumers should include advice that they can:

- a) stay on their existing contract;
- b) switch to a new one with the same provider (including but not limited to those referred to as part of the provider's best tariffs);
- c) switch to a new contract with a different provider; and
- d) for mobile consumers on bundled handset and airtime contracts only, switch to a SIM-only deal.

We also agree with Ofcom's guidance that the advice should state that some providers may offer new customers better deals and that they may get a better deal if they bundle the services they have with that or any other providers. Each element of Ofcom's guidance for the options message is crucial to improve awareness among consumers that they might be able to access improved services and/or a cheaper price by moving to a different deal or provider.

We consider that a clear options message is particularly important to ensure that mobile customers are informed of the benefit of taking action to access a good value deal, even where end-of-contract notifications show that their monthly pricing may remain the same or even lower out-of-contract.

As we argued in our response to Ofcom's consultation on end-of-contract and out-of-contract notifications, our quantitative consumer research found considerable variation in the consumer response driven by different wording of the options message.²⁷ The research found that the wording of Ofcom's proposed General Condition performed the best. We set out that, given the

²⁷ uSwitch, 2018. uSwitch response to Ofcom's consultation on end-of-contract and out-of-contract notifications.

https://www.ofcom.org.uk/data/assets/pdf_file/0021/127074/uSwitch.pdf

variation in performance of wording similar in substance, it stands to reason that providers would be able to optimise the delivery of messages to lessen the chance of response while still being in compliance with Ofcom's requirements.

In our previous response, we discussed that both Ofgem and the FCA have identified and acted upon poor provider practices regarding options messages. For example, the FCA's 2017 review of insurance renewal letters found that some firms were failing to comply with the rules.²⁸ This necessitated enforcement action and continued compliance monitoring as, among other issues, some firms were found to be failing to present the premiums and shopping around message clearly, accurately and in a way which draws the reader's attention. As such, we argued that prescribed language is necessary to deliver a clear message that enables consumers to understand and engage with their options.

uSwitch believes that Ofcom's proposed options message and accompanying guidance is a significant improvement on its corresponding proposal within the end-of-contract and out-of-contract notifications consultation. As part of its monitoring plan, we consider that it will be important for Ofcom to specifically monitor providers' compliance with its guidance on options messages. In the instance that any provider is found not to be meeting Ofcom's expectations, it may be necessary for Ofcom to review its guidance and make it more prescriptive to ensure that consumers receive clear and consistent message that prompts them to consider their options.

²⁸ FCA, 2017. Firms falling short of renewal expectations.
<https://www.fca.org.uk/publications/multi-firm-reviews/firms-falling-short-renewal-expectations>

8 Response to specific consultation questions

Question 1: Do you agree with the way we propose to implement the requirement to provide end-of-contract notifications in terms of the services they should cover?

Yes, we agree with Ofcom's assessment of the relevant services to be covered by the requirement to provide end-of-contract notifications.

Question 2: Do you agree with the way we plan to implement the requirement to send end-of-contract notifications and annual best tariff notifications to residential consumers and businesses?

Yes, we agree that end-of-contract and annual best tariff notifications should be sent to residential consumers and businesses.

Question 3: Do you agree that end-of-contract notifications should be sent to end-users before the expiry of a fixed commitment period, if the contract will be automatically prolonged after that point?

Yes, we agree that end-of-contract notifications should be sent to end-users before the expiry of a fixed commitment period, if the contract will be automatically prolonged after that point.

Question 4: Do you agree with our proposal not to specify in a prescriptive way the words and language used in end-of-contract notifications?

Please see Section 7 of our response which addresses this point in full (with specific reference to the options message).

In summary, uSwitch believes that Ofcom's guidance on what it expects providers to include in order to meet each requirement for end-of-contract and annual best tariff notifications is a significant improvement on the proposals within the first consultation.

As part of its monitoring plan, we consider that it will be important for Ofcom to actively monitor providers' compliance with its guidance to ensure that the language used by providers is within the spirit of the rules. In the instance that

any provider is found not to be meeting Ofcom's expectations, it may be necessary for Ofcom to review its guidance and make it more prescriptive to ensure that consumers receive clear and consistent notifications that enable them to understand and engage with their options.

Question 5: Do you agree with our implementation proposal for the end-of-contract notification to include the date on which the fixed commitment period will end?

Yes, we agree that the date on which the fixed commitment period will end is an essential piece of information for consumers.

Question 6: Do you agree with our implementation proposal for the end-of-contract notification to include details of the services which the provider currently provides to the end-user under the relevant contract?

Yes, we agree that the details of the services which the provider currently provides to the end-user under the relevant contract is an essential piece of information for consumers.

Question 7: Do you agree with our implementation proposal that the end-of-contract notification must include information regarding notice periods?

Yes, we agree that the inclusion of information regarding notice periods is an essential piece of information for consumers.

Question 8: Do you agree with our implementation proposal that the end-of-contract notification must include information regarding early termination charges?

Yes, we agree that the inclusion of information regarding early termination charges is an essential piece of information for consumers in the instance that Ofcom chooses not to ban exit fees.

Question 9: Do you agree with our implementation proposal that the end-of-contract notification must include information regarding other contracts which the provider currently provides to the end-user?

Yes, we agree that the inclusion of information regarding other contracts which the provider currently provides to the end-user is essential contextual information for consumers.

Question 10: Do you agree with our implementation proposal that the end-of-contract notification must include information regarding how to terminate the contract?

Yes, we agree that the inclusion of information regarding how to terminate the contract is an essential piece of information for consumers to enable them to engage.

Question 11: Do you agree with our implementation proposal that best tariff advice should include the monthly price paid, and any changes after the end of the fixed commitment period?

Yes, we agree that best tariff advice should include the monthly price paid and any changes after the end of the fixed commitment period as this is essential information for consumers.

Please see Section 5.3 which addresses this point in full.

In summary, we continue to believe that end-of-contract notifications should include an aggregated cost message with a cost projection to ensure that the measure is as effective as possible in driving consumer response.

Question 12: Do you agree with our implementation proposal that best tariff advice should include changes to the service provided because the fixed commitment period is ending?

Yes, we agree that best tariff advice should include changes to the service provided because the fixed commitment period is ending as this is essential information for consumers.

Question 13: Do you agree with our implementation proposal that best tariff advice should include the date on which the fixed commitment period ends for financially linked or otherwise dependent contracts taken with the same provider, for subscribers on residential contracts?

Yes, we agree that best tariff advice should include the date on which the fixed commitment period ends for financially linked or otherwise dependent contracts taken with the same provider for subscribers on residential contracts as this is essential information for consumers.

Question 14: Do you agree with our implementation proposal that best tariff advice should include the options available to the subscriber after the fixed commitment period has ended?

Yes, we agree that best tariff advice should include a message about the options available to the subscriber after the fixed commitment period has ended as this is core to the intent of best tariff advice in making consumers aware of their ability to engage.

Please see Section 7 of our response which addresses this issue in full.

In summary, uSwitch agrees with Ofcom's draft guidance which sets out its expectations on the options that providers should make clear to consumers. uSwitch believes that Ofcom's proposed options message and accompanying guidance is a significant improvement on its corresponding proposal within the end-of-contract and out-of-contract notifications consultation.

As part of its monitoring plan, we consider that it will be important for Ofcom to specifically monitor providers' compliance with its guidance on options messages. In the instance that any provider is found not to be meeting Ofcom's expectations, it may be necessary for Ofcom to review its guidance and make it more prescriptive to ensure that consumers receive clear and consistent message that prompts them to consider their options.

Question 15: Do you agree with our implementation proposal that best tariff advice should include the provider's best tariff and with our draft guidance for subscribers on residential contracts that:

- a. providers should give residential consumers at least one and up to three best tariffs;
- b. the tariffs should be based on similarity to the consumer's previous usage where relevant, and otherwise based on service packages that are most similar to what the consumer currently receives;
- c. one tariff should be the cheapest tariff available to the consumer receiving the advice;
- d. one tariff should be the cheapest tariff available to any consumer (if not the same as in (c));

- e. one tariff can be the cheapest upgrade tariff;
- f. one tariff should be a SIM-only tariff where the consumer has a bundled handset and airtime contract; and
- g. tariffs should be for a bundle of services where the consumer receives them under a single contract with the provider or has financially linked or interdependent contracts with the same provider and where the fixed commitment period(s) is about to end or has already ended.

Question 21: Do you agree with our proposed implementation of the requirement to send annual best tariff notifications by specifying that providers must inform end-users of the provider's best tariffs and with our draft guidance for subscribers on residential contracts that:

- a. providers should give residential consumers at least one and up to three best tariffs;
- b. the tariffs should be based on similarity to the consumer's previous usage where relevant, and otherwise based on service packages that are most similar to what the consumer currently receives;
- c. one tariff should be the cheapest tariff available to the consumer receiving the advice;
- d. one tariff should be the cheapest tariff available to any consumer (if not the same as in (c));
- e. one tariff can be the cheapest upgrade tariff;
- f. one tariff should be a SIM-only tariff where the consumer has a bundled handset and airtime contract; and
- g. tariffs should be for a bundle of services where the consumer receives them under a single contract with the provider or has financially linked or interdependent contracts with the same provider and where the fixed commitment period(s) has ended.

Yes, we agree that best tariff advice within end-of-contract and annual best tariff notifications should include the provider's best tariff. We broadly agree with the draft guidance, although we have a number of concerns.

Please see Section 5.1 of our response which covers this issue in full.

In summary, it is important that Ofcom deliver on their obligation to implement best tariff information within end-of-contract and annual best tariff notifications in a way that mitigates the risks attached. Consumers need to be able to have confidence in the details communicated to them by the notifications. In particular, consumers need to be able to have trust in their providers' best tariff(s), given this is not a concept that consumers are familiar with within communications services. It is therefore essential that a fair and consistent approach is taken by providers in communicating their best tariffs.

To ensure this, we feel that Ofcom needs to issue further guidance covering a number of matters relating to best tariff information, including making clear that providers must surface their best retention deal in notifications, that providers should only show consumers best tariffs that are available to them, and that best tariffs should be accurate for a reasonable period of time.

Question 16: Do you agree with our proposed implementation on the timing of the end-of-contract notification?

We disagree with Ofcom's proposed timing of the end-of-contract notification, though we welcome the movement of Ofcom's proposed window to 10-40 days before the contract end date from its initial proposed window of 40-70 days.

Please see Section 5 of our response which covers this issue in full.

In summary, we continue to believe that Ofcom can improve its proposed window to maximise the number of consumers who receive end-of-contract notifications at an actionable point in time. This will be the most significant aspect of end-of-contract notifications in determining whether additional consumers are encouraged to engage with their options.

We believe that Ofcom would ideally ensure that no consumer receives a end-of-contract notification at a point when they cannot take action without incurring an exit penalty. As the optimal way to deliver end-of-contract notifications at an actionable time for all consumers, uSwitch suggests that the preferred option is that Ofcom should ban exit fees from applying from the start of the end-of-contract notification window of 10-40 days, i.e. from 40 days before the contract end date.

Alternatively, Ofcom should be seeking to improve its proposed window to maximise the number of consumers who receive end-of-contract notifications at an actionable point in time. This could be achieved by:

- Maintaining Ofcom's current proposed 10-40 day window, but ban exit fees for any notifications sent before day 30; or
- Amending Ofcom's current proposed window to 10-30 days.

Question 17: Do you agree with our proposed implementation regarding the form of the end-of-contract notification?

Yes, we agree with the proposed form of the end-of-contract notification and agree that this will ensure it is communicated in a prominent manner, and on a durable medium.

Question 18: Do you agree with our proposals to ensure accessibility of the end-of-contract notification?

Yes, we agree with Ofcom's proposals to ensure accessibility of the end-of-contract notification.

Question 19: Do you agree with our implementation proposal for annual best tariff notifications to be sent only to end-users who are outside of their fixed commitment period?

We note that the EEC requires annual best tariff notifications to be sent to all end-users. We consider this to be relevant to instances where providers choose to send communications to their in-contract customers, for example, ahead of the mandated end-of-contract notification window. In these cases, uSwitch would expect Ofcom to be clear that providers should include the broader best tariff information set out in the guidance, such as the options message, if it is likely that engaging in the market would be advantageous to the consumer.

We believe that our view is a proportionate interpretation of the requirement given that it does not unnecessarily require providers to send annual best tariff notifications to in-contract consumers at points where they are highly likely to be irrelevant. Such an example might be early on in a customer's contract period where the extent of the applicable exit penalty would mean that that customer's best option would almost certainly be to remain on their current contract.

This would align with the energy sector, given that Ofgem has recently consulted on an obligation for energy suppliers to communicate the Cheapest Tariff Message on at least one occasion in any 12 month period (the length of most fixed term energy deals), and at all other Key Prompt Points.²⁹ Ofgem define "Key Prompt Points" as "points in time when a consumer is likely to want to consider, or could benefit from considering, their options relating to choice of tariff or other aspects of their contract".³⁰

²⁹ Ofgem, 2018. Statutory consultation: Domestic supplier-customer communications rulebook reforms, Page 67.

https://www.ofgem.gov.uk/system/files/docs/2018/09/statutory_consultation_-_domestic_supplier_customer_communications_rulebook_reforms.pdf

³⁰ Ofgem, 2018. Statutory consultation: Domestic supplier-customer communications rulebook reforms, Page 25.

https://www.ofgem.gov.uk/system/files/docs/2018/09/statutory_consultation_-_domestic_supplier_customer_communications_rulebook_reforms.pdf

Question 20: Do you agree with our proposed implementation of the requirement to send annual best tariff notifications that providers must inform end-users of:

- a. the fact that they are not within a fixed commitment period for the relevant contract or contracts;
- b. the services which the provider currently provides under that contract or contracts;
- c. any applicable notice period(s);
- d. details of other contracts the end-user has with the provider;
- e. the monthly subscription price(s); and
- f. the options available.

Yes, we agree with Ofcom's proposed implementation of the requirement to send annual best tariff notifications and the information that providers must inform end-users of.

Question 22: Do you agree with our proposed implementation on the timing of the annual best tariff notification?

Yes, we agree with Ofcom's proposal on the timing of the annual best tariff notification which sets out that a provider must send an annual best tariff notification to customers within twelve months of the condition coming into force, or within twelve months of receiving an end-of-contract notification, and at least once per year after that.

We believe it is reasonable that providers begin to send annual best tariff notifications within twelve months of the condition coming into force. We hope to see consumers benefit from receiving these notifications as soon as possible.

Question 23: Do you agree with our proposal to implement the annual best tariff requirements by specifying that providers should combine the best tariff information in a single notification for those end-users who have two or more contracts outside of their fixed commitment period?

Yes, we agree with the proposal to implement the annual best tariff requirements by specifying that providers should combine the best tariff information in a single notification for those end-users who have two or more contracts outside of the fixed commitment period.

Question 24: Do you agree with our implementation proposals regarding the form of the annual best tariff information?

Yes, we agree with the proposed form of the annual best tariff notification and agree that this will ensure it is communicated in a prominent manner, and on a durable medium.

Question 25: Do you agree with our implementation proposals for the timescale within which providers must comply with the end-of-contract and annual best tariff notification requirements?

Yes, we agree with the proposed timescale for providers to comply with the end-of-contract and annual best tariff notification requirements.

uSwitch agrees with Ofcom that its proposed six month implementation period for both end-of-contract and annual best tariff notifications is both reasonable and realistic. We expect that providers will be capable of sending end-of-contract notifications by this point onwards and of sending the first annual best tariff notifications to all out-of-contract customers within the 12 months following this point. We consider this implementation timeline to be achievable given that providers already hold the relevant customer information and have all the processes in place to issue customer communications swiftly.

We welcome Ofcom's indication that it will publish a statement on end-of-contract and annual best tariff notifications in May 2019. We consider it vital that Ofcom makes every effort to meet this aim. We hope to see consumers benefit from the implementation of these measures as soon as possible from November 2019.

Question 26: Do you agree with the way we plan to monitor the effectiveness and impact of end-of-contract and annual best tariff notifications?

We agree with Ofcom's plan to monitor end-of-contract and annual best tariff notifications by:

- a) requiring providers to keep a record of each end-of-contract and annual best tariff notification they send for a period of at least 12 months;
- b) requesting additional data from providers as they roll-out their end-of-contract and annual best tariff notifications, to assess the impact on end-users;

- c) conducting ongoing consumer research by focusing on engagement and satisfaction, where possible linked to the receipt of end-of-contract and annual best tariff notifications; and
- d) exploring the potential with providers to conduct a randomised control trial to assess the effectiveness of different formats of notifications.

We believe this will be important in ensuring that the notifications are optimised to most clearly inform consumers and improve their ability to engage with their options.

As part of its monitoring plan, we consider that it will be important for Ofcom to actively monitor providers' compliance with its guidance to ensure that notifications sent by providers are within the spirit of the rules. In addition, Ofcom should audit providers' calls to ensure that they do not offer retention deals over the phone that undermine the requirement to surface their best tariff(s) within end-of-contract and annual best tariff notifications.

Ofcom should be prepared to be agile in issuing clarifying guidance in the instance that a provider's practices fall short of expectations. As we discuss in full in Section 7, we believe this is particularly crucial for the options message.

Question 27: Do you agree with the impacts from the introduction of end-of-contract notifications we identify in our assessment?

Yes, we agree with the impacts from the introduction of end-of-contract notifications identified in Ofcom's assessment.

Question 28: Do you agree with the impacts from the introduction of annual best tariff notifications we identify in our assessment?

Yes, we agree with the impacts from the introduction of annual best tariff notifications identified in Ofcom's assessment.

Question 29: Do you have any comments on the draft general conditions, set out in Annex A6 to this document?

We do not have any comments on the draft general conditions, other than that they should be amended to reflect the refinements we set out in our response.