

Ofcom's proposed plan of work 2021/22

Making communications work for everyone
I

Response from a Member of the Public

January 2021

- **Fairness for customers.** We want people to shop around with confidence, make informed choices, switch easily and get a fair deal and for markets to work well so people can do just that. As part of that, we will continue our work to ensure broadband, phone and TV customers, particularly vulnerable customers are treated fairly.

Ensuring fairness by simplification

Governments and regulators make the assumption that "competition promotes fairness", but my experience is that competition often usually instead causes companies to continually invent more and more devious, confusing and often unfair price structures. The main and probably intended result is very often to mislead people about the actual cost.

For example, a company will typically devise a devious pricing structure whose primary purpose is to allow the company to **advertise** a bogus price (that is less than the majority of existing customers are paying, but gets used in price comparisons). The real price is higher, and often much much higher. But the real price is buried in vague, time wasting or intentionally-confusing small print that is too easy to miss. And existing customers are prohibited from taking benefit from the reduced rate.

The differences can be quite severe, sometimes involving compulsory doubling of the price part way through the contract.

I therefore propose that Ofcom should progressively seek to more tightly regulate the permissible charging terms, and as a start quickly seek to eliminate some of the more obviously unnecessary deceptions:

Ban mid-contract price changes

An **honest** network should be able to set (and advertise) a single monthly price that will **and must** remain constant throughout the contract period.

Networks may argue that they cannot reliably predict their costs throughout the contract duration. But Ofcom should counter that the network's customers are also equally unable to reliably predict their income in advance. So, networks that cannot accurately predict their costs should reduce their contract duration and ofcom should absolutely require them to keep the price uniform throughout.

Ability to opt out of Dual Pricing

Many networks offer the "choice" of PAYG or monthly bundles. The bundle, as expected, is much more economical than the PAYG rate. But networks differ in the way they handle bundle expiry.

If the bundle runs out before the end of the month, some networks immediately start force-charging calls, data or texts at the PAYG rate – which can be as much as 100 times higher.

Ofcom as regulator should not be allowing such grossly unfair contract terms.

Instead, I propose that Ofcom imposes the "bottles of milk" test.

- If our milk runs out mid way through a cuppa, we are able to seamlessly continue using the milk in our next milk bottle.
- No milk needs to be wasted, nor are we forced to resort to expensive single-portion milk pots for a couple of days. We are not required to guess in advance when my bottle will run out. We simply keep a spare bottle in the fridge, and use it when needed.
- Using the next bottle can be seamless and penalty free.

Ofcom could and should regulate network bundles to ensure to they too provide reliable, seamless and penalty free handover. To prove it, I'd suggest two mandatory tests:

- a customer must be able to prepay one or more future bundles and keep them in stock, unstarted
- they must also be able to choose, online and in advance (and separately for each resource covered by the bundle), what will happen when each of the services in the bundle runs out early, or when the bundle expires. The choice must include at least the ability:
 - to start the next bundle reliably, automatically, seamlessly and penalty free
 - for the bundled service to temporarily stop without penalty rather than be charged at a higher rate

Most networks do not currently provide both of these options. Ofcom therefore needs to make it **compulsory** for **all** networks to ensure that their bundles operate in a proper, seamless and penalty free, manner such as the above.

Ofcom should also ensure that contract networks can not impose similar penalty charges.

Ability to opt out of unwanted services

In addition to calls, texts and data, PAYG networks also provide services that may be expensive, are not covered by bundles, are not necessarily required by all users and ***can potentially be incurred by accident.***

Examples include:

- calls and texts to Channel Island numbers (which are not easily distinguishable to end users, due to sharing the 01 and 07 numbering range)
- MMS
- Non mobile 07 numbers
- 084, 087, 09 and other Premium Rate services
- Subscription services
- Text shortcodes

Ofcom as regulator should require networks to provide separate options, configurable online, to disable these and any other service that might result in an unexpected charge.

Some specific comments:

- Ofcom might eventually solve the Channel Islands problem by migrating CI numbers to a new range – eg CI numbers presently beginning 01 could become 0531 numbers and mobiles could become 0537. The chosen range is not important, but must be outside 01-04 or 07 and not be readily confused by with any other currently recognised number range.

But in the short term, Ofcom should be requiring networks to provide an online option to disable accidentally calling or texting CI numbers.

- MMS represents a problem because many phones take it upon themselves to send texts as MMS without asking the sender. Currently this can involve a substantial extra cost if the customer has a PAYG bundle that includes texts but not MMS. Consequently it's necessary for Ofcom to mandate providing an online opt-out that can prevent accidental access to MMS.
- Ofcom has made great strides in reducing the wholesale cost of 070 numbers, but has apparently not made it compulsory for networks to pass on the savings. This leaves unnecessary uncertainty that networks might either now or in the future charge extra for accidentally calling 070 numbers.

- Ofcom should finish the job and force networks to charge 070 numbers identically to other 07 numbers, also including them in standard bundles.
- There are numbers beginning 076, and possibly others, which networks are currently free to charge at rates different from the rest of 07
 - Again, Ofcom should finish the job it has started and migrate all 076 or other numbers to ranges outside 07 – or should mandate that they be charged at the same rate as the rest of 07.
 - Unless and until that happens, Ofcom needs to stipulate that users must be able to opt out online from accidentally calling those numbers.

Ability to opt opt of Subscription Services

Ofcom has traditionally left regulation of Subscription Service regulation to PSA. But there are reasons why Ofcom needs to take a closer look at problems which PSA faces in regulating those services.

PSA claims that networks are free to opt their customers out of subscription services, but only some networks provide that facility.

PSA also claims that its terms of reference prevent it from forcing networks to provide an opt-out from subscription services, because apparently "only Ofcom has the power to do that".

In recent years, network customers have suffered greatly from fraudulent charges being raised by what is probably a small number of cowboy companies. Better regulation may reduce the incidence of fraud, but none of the current proposals will prevent it altogether.

Subscription services should therefore be totally optional. Many customers don't need them and those customers should be able to opt out easily from them.

*Ofcom therefore needs to take immediate responsibility for ensuring all networks **can and must** provide a simple online method to opt out of subscription services, and to advertise the availability of that option to all customers.*

Ability to send STOP texts from an account without credit

One extra problem that those hit by unwanted Subscription Services is that they may be asked to opt out by sending a STOP text. These texts are charged at a special rate which

may not be covered by bundles. Thus a customer may be forced to add extra credit (perhaps with a minimum of £10) in order to send that text.

Ofcom could and should require networks to make all STOP texts free. Ideally should also be required to provide the customer a permanent, undisputable log of those texts that could be used in evidence if the service provider continues to charge.

"Standard Message Rate"

Many services advertise "texts are charged at your standard message rate", yet customers discover they have unexpectedly charged extra for sending the text.

For a customer with a bundle which includes standard texts, the customer's *standard* message rate for texts up to and including the bundled texts is *zero*. Ofcom therefore needs either to force networks to include those messages in bundles, or to require advertisers to use a different phrase not involving the words "standard rate".

Participation and vulnerability. We will work to support the needs and interests of those who are disabled, elderly, on low incomes or living in rural areas, as well as those whose circumstances appear to put them in need of special protection. This will include contributing to joint policy work with the UK Regulators Network to improve outcomes for vulnerable consumers.

Open Communications. We will consider how to proceed with our proposals

I draw Ofcom's attention to the fact that most networks (mobile and landline) impose very short limits on Maximum Number of Rings before network services such as voicemail and diversion begin.

This unnecessarily discriminates against those who are disabled or less mobile, and who may therefore have difficulty reaching and answering their phones in the limited ring time allowed. Such customers are therefore prevented from enabling diversion and voicemail services that might otherwise be useful to them.

The delay is generally configurable, but the present configuration range does not provide adequate user choice. As it's one of Ofcom's duties as regulator to support the interests of those who are disabled or elderly, I propose that ofcom should assist them by a mandatory requirement for networks to increase the configurable maximum delay to at least two minutes.

- **Affordability.** We will continue to monitor where households have difficulty paying for communications services, particularly in relation to broadband. We will consider whether any measures are needed to support consumers who are financially vulnerable.

I note that during the last year or two, several networks have raised their PAYG prices, sometimes quite significantly. Ofcom ought to investigate to find out why networks are finding it necessary to impose such substantial price rises.

That's especially relevant to the financially vulnerable, who might already have been struggling to afford even the previous PAYG rates.

Banking regulators have determined there are core features which the financially vulnerable need and that all banks must provide. I'd suggest that Ofcom could similarly take the view that the financially vulnerable need economical PAYG prices, and require all networks to provide economic PAYG rates for calls, texts and data.

An approach that Ofcom could possibly take here is to determine the average price charged by networks 10 years ago for PAYG calls, texts and data, increase that by 10 years of RPI and impose that as a price capped Universal Service obligation on all MNO and MNVO operators.

Helping customers get better deals. Since February 2020, broadband, mobile, landline and pay-TV companies have been required to tell customers when their contracts are coming to an end and show them the best deals they have available. Out-of-contract customers will also have to be sent reminders and

That's a good start. But my complaint here is that companies providing communication and web hosting facilities (such as the one that operates my email mailbox) make it easy to subscribe to a service online, but fail to provide an equally easy way to cancel a service online.

The Text to Switch service has solved this for mobile networks. It's no longer necessary to phone for a PAC. But we need to look at making it equally easy to cancel other coms-related services, including web and especially email hosting.

If a company has the expertise to create a page to subscribe online, then it also has the expertise to create a page to unsubscribe too. Ofcom and other regulators need to impose that as a binding requirement on all companies that provide services online.

Transforming Ofcom's capability in data engineering, science and analytics.

We will continue to contribute to data science initiatives and support colleagues around the organisation to maximise insight and efficiency from data related activities. In addition to using innovative tools and processes to support policy and operational delivery, we will review emerging technologies and methodologies to make sure we remain at the forefront of understanding in this complex area.

Here I start to get worried about e-sims.

Ofcom recently imposed a well-overdue deadline on the practice of locking of mobile phones to networks.

- How confident is Ofcom that phone manufacturers and networks cannot use e-Sim technology as another way of preventing owners from easily moving between networks, and what action is Ofcom taking to prohibit them from doing so?

Next I see that although most VNOs are offering e-Sim support, most MVNOs are not.

Likewise, I see many MVNOs don't support technical features (such as VoLTE and wifi calling) even though their VNO supports it.

- Here, I think Ofcom should be investigating whether VNOs might be abusing their dominant position by unreasonably preventing MVNOs from offering features that might allow them to compete more strongly with the VNOs.
- MVNOs cannot buy a service like Wifi Calling from a different VNO to their host network. Therefore it's important that Ofcom requires VNOs to provide the same features to MVNO customers as to their own customers.
- Likewise, it's often believed that VNOs cap MVNO speeds, or give their own customers priority over MVNOs when networks are congested. Ofcom should be checking to find out if this is the case, and if that seems possible, then should probably be mandating equal priority for MVNOs.

Back to the e-Sim – Ofcom should also investigate whether Apple might be somehow directly or indirectly preventing VNOs from providing e-Sim support to MVNOs, and if so, whether that might be an abuse of Apple's dominant position.

Keeping customers connected despite fault conditions

Despite best efforts, faults will occur. That's understandable. The problem is that depending on the nature of the fault, it may take 2 hours, two days, two weeks, two months, maybe even more to fix.

In mobile networks, there's an obvious technical solution. When overseas, phones connect to any network with coverage in the area and the calls that they make are billed back to their home network. It happens seamlessly without the customer needing to do anything.

As I understand it, Ofcom has previously proposed that the same should happen when in the UK if a customer cannot connect to their home network due to a fault condition, but was persuaded by networks not to impose this as a requirement.

Here, I think ofcom needs to be reminded of one of its own statements:

Our principal duty is to further citizen and consumer interests

A1.3 Ofcom was established under the Office of Communications Act 2002 and operates under a number of Acts of Parliament.¹⁹ The Communications Act 2003 states that our principal duty is to further the interests of citizens in relation to communications matters and to

I submit that unnecessarily requiring customers to wait days, weeks, months or more with degraded or no service in their homes or other places that are important to them is inconsistent with this statutory "principal" duty.

Accordingly I ask Ofcom to begin a replacement consultation, this time with the mandate that the networks **will** provide automatic failover via each other's networks. The technical and financial mechanisms used to implement that failover could be open to discussion, but the end result must be that failure of the home network results in seamless automatic transfer of services at no extra charge to the customer, until such time as the fault is fixed.

Reporting on pricing trends. We will report on pricing trends in fixed, mobile and pay-TV services. This will include a review of the prices available to consumers buying different types of services and a summary of what, on average, consumers are paying. It will also look at tariff structures and how 'discounted' prices vary from standard or 'list' prices, as well as the difference between in-contract and out-of-contract prices.

Where no Customer Premises equipment is (phones, routers etc) is required, it's difficult to argue why there should be any need for contracts. Any equipment or services used by a leaving customer can be rapidly allocated to a new customer. A competent network should be able to keep its customers by providing a satisfactory service and having a pricing policy that does not require or permit renewing customers to pay higher prices than new users. It should not need artificial enforcement via contracts that impose penalties or inconvenience on those who leave, especially if it happens through customer dissatisfaction.

Contracts also prevent customers switching easily, but that's incompatible with one of Ofcom's primary regulatory policies.

Ofcom should consider:

- totally separating contracts for installation and customer equipment from the service and customers having the statutory right to provide their own equipment
- contracts for the service must be terminable at short notice (days rather than week), no penalty and a refund of any prepaid costs up to the handover or termination date
- contracts for installation and equipment should have an early termination charge capped at the difference between the wholesale cost of the equipment and 90% of the total amount paid to date.