CityFibre response to the 'Quick, easy and reliable switching' consultation

Non-confidential

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Contents

1   Executive Summary

1.1   This document comprises our response to Ofcom's consultation entitled *'Quick, easy and reliable switching: Proposals for a new landline and broadband switching process and to improve information for mobile switching*, published on 3 February 2021 ('the 2021 Switching Consultation'.[1]

1.2   Quick, easy and reliable switching is essential for ensuring that consumers can shop around with confidence and take advantage of the range of services available to them. Making switching simpler and easier will also improve consumer outcomes, by helping to support the business case for investment in new full fibre networks, and thereby promoting network competition.

1.3   Ofcom is consulting on the process that should apply to all residential broadband (and landline) switches, to ensure compliance with the conditions set out in the European Electronic Communications Code (EECC) which mandates that switching must be (among other things) gaining provider led (GPL), efficient, simple, and minimise any service interruption.

1.4   Ofcom set out in the 2021 Switching Consultation that it proposes to adopt a 'One Touch Switch' process, whereby the customer need only contact their gaining provider to commence the switch, who then handles the switchover process on their behalf. This (one-step) approach is essentially how switching works today within the Openreach network, and how switching now works in most other sectors such as energy and bank accounts.

1.5   In the 2021 Switching Consultation, Ofcom set out an assessment of the 'One Touch Switch' process, concluding that it best meets its policy objectives, relative to other possible processes including a 'Code to Switch' process (which would require the customer to get a switch authorisation code from their existing provider, which they would then give to the gaining provider in order to commence the switchover process). Ofcom has asked respondents to the consultation to comment on whether or not they agree with its proposal to require providers to develop and implement the One Touch Switch process.

1.6   Firstly, we wish to highlight that Code to Switch is <u>not</u> consistent with the requirements of the EECC nor with Ofcom's general approach to GPL switching. In requiring a customer first to approach their losing provider in order to obtain a switching code, it fails to meet the requirement for a switching process that is <u>led</u> by the gaining provider, thereby enabling a one-stop-shop for consumers, as required by Article 106 of the EECC.

1.7   Code to Switch is also inconsistent with Ofcom's own assessment of what constitutes GPL. For instance, Ofcom has previously defined losing provider led ('LPL') as, "*switching processes where the consumer needs to get a code from their existing provider, before they can switch their service to the new provider.*"[2]

1.8   We therefore consider that Ofcom should not – and cannot lawfully – mandate the implementation of Code to Switch. Of the proposals submitted to Ofcom, only the One Touch Switch is compliant with the EECC and with Ofcom's own assessment of what constitutes GPL.

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[1] https://www.ofcom.org.uk/__data/assets/pdf_file/0024/212685/consultation-quick-easy-and-reliable-switching.pdf

[2] Ofcom (2010). 'Strategic review of consumer switching: A consultation on switching processes in the UK communications sector' Page 1 [Link]

1.9   Notwithstanding this, we agree with Ofcom that One Touch Switch is the best and most proportionate switching process and should be adopted by industry. We agree with Ofcom that One Touch Switch best meets Ofcom's policy objectives, and we consider that it would significantly improve consumer outcomes, by reducing barriers to switching. We set out below more detail as to why we consider that One Touch Switch is the right option for industry to implement:

    i.   **A genuine one-stop shop:** Under One Touch Switch, the customer can request the switch, consent to switch and sign up for new contract, all on a single phone call or visit to the gaining provider website or store.

    ii.   **Fully GPL:** The receiving provider truly leads the switching and porting processes (i.e. facilitates the process on behalf of the customer), as required under the EECC.

    iii.   **No losing provider contact required:** At no point does the process require the customer to try to get through to their losing provider (e.g. via a call centre or in-store) or to access an online account/portal with their existing provider.

    iv.   **Fast switching**: Switches could take place very quickly (i.e. next day).

    v.   **Highly flexible**: Facilitates switching between networks (e.g. CityFibre to Swish), and between providers operating on the same network (e.g. Openreach retailers). Works for both business and residential customers.

    vi.   **Fully scalable**: Allows customers to disaggregate bundles, switching some services but not others. Can be expanded to facilitate switching of service types beyond just broadband and voice.

    vii.   **Wide industry support**: Supported by most network and service providers (who have been actively involved in the industry dialogue phase), including CityFibre, TalkTalk, Vodafone, BT Group including PlusNet & EE, Hyperoptic, Gigaclear and Swish along with a number of industry trade associations.

1.10   In this document we set out our own proportionality assessment (to complement Ofcom's analysis) in regard to both One Touch Switch and Code to Switch. We find that:

- **One Touch Switch best meets Ofcom's policy objectives:** It is clear from the assessment criteria (i.e. that the switching process is easy to use, quick, reliable and based on informed consent) that One Touch Switch is superior to Code to Switch. This can for example be seen in terms of the simplicity of the process for the consumer, i.e. the difference between a simple one-stage process under One Touch Switch, and a two-stage process under Code to Switch.

- **One Touch Switch will drive greater switching compared to Code to switch:** As a critical component to assessing the best switching process, we consider that relative to switching levels today, Code to Switch would likely lead to a reduction in switching rates. In contrast One Touch Switch would likely lead to material increases in switching. This difference could be significant, resulting in materially divergent consumer outcomes, given that very small increases in switching can deliver very material consumer benefits.

- **Ofcom should give little weight to the estimated implementation costs in its proportionality assessment:** This is for three reasons, i) the industry cost estimates are very high-level and uncertain, and should be viewed only as a rough 'order of

magnitude' estimate, ii) on the basis of these rough cost estimates, we consider that the two options are broadly comparable, and iii) the implementation costs will be very small relative to the consumer benefits of an improved switching process.

1.11 In summary, we consider that One Touch Switch will better meet Ofcom's policy objectives than Code to Switch and, given that the costs of implementing both options are uncertain (and broadly comparable), we agree with Ofcom's consultation proposal, and consider that Ofcom should implement the One Touch Switch process.

1.12 Finally, in regard to implementation timelines, we think it is imperative that customers are able to migrate seamlessly between competing broadband providers in order to empower them to can shop around with confidence and find better deals. We are encouraged by Ofcom's recent statements about moving forward quickly with implementation and governance structure, and look forward to working with industry, the OTA and Ofcom to achieve this.

1.13 The remainder of this document is structured as follows:

- **Section 2:** Sets out why Code to Switch does not meet the EECC requirements and therefore is not a lawful option.

- **Section 3:** Sets out our views on proportionality, and why we consider that One Touch Switch is the better option.

- **Section 4:** Discusses the timelines for implementing the One Touch Switch process.

- **Annex 1 – Evidence on levels of UK broadband switching:** Sets out the evidence on low levels of switching observed in the UK broadband (and fixed landline) markets, especially when compared to other sectors.

2 Code to Switch is not consistent with the requirements of the EECC nor with Ofcom's general approach to GPL-based switching

2.1   We set out below our view that Code to Switch is not consistent with the EECC, given that (1) it is not GPL (as a switching consumer must initiate the process with the <u>losing</u> provider); and (2) is in consequence not a one-stop-shop solution (as the consumer must contact both the losing provider and the gaining provider in turn).   This is directly contrary to the legal requirements set out in the EECC.

The requirements of the EECC

2.2   Article 106(6) of the EECC provides that:

> *"6. The **receiving provider shall lead the switching and porting processes set out in paragraphs 1 and 5** and both the receiving and transferring providers shall cooperate in good faith. They shall not delay or abuse the switching and porting processes, nor shall they port numbers or switch end-users without the end-users' explicit consent. The end-users' contracts with the transferring provider shall be terminated automatically upon conclusion of the switching process.*
>
> *National regulatory authorities may establish the details of the switching and porting processes, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the end-users. This shall include, where technically feasible, a requirement for the porting to be completed through over-the-air provisioning, unless an end-user requests otherwise. National regulatory authorities shall also take appropriate measures ensuring that end-users are adequately informed and protected throughout the switching and porting processes and are not switched to another provider without their consent."*

2.3   Ofcom has implemented the requirements of Article 106(6) EECC through General Condition C7.5(a), which states that the receiving (or gaining) provider must lead the switching process.[3] Ofcom is now seeking to work out the details of the switching process in accordance with sub-paragraph 2 of Article 106(6). Any such process must, however, respect the requirements of the first paragraph, including that it is led by the gaining provider.

2.4   Recital 281 provides further detail on the requirement for any process to be led by the gaining provider, as follows:

> *"Number portability is a key facilitator of customer choice and effective competition in competitive markets for electronic communications and should be implemented with the minimum delay, so that the number is functionally activated within one working day and the end-user does not experience a loss of service lasting longer than one working day from the agreed date. The right to port the number should be attributed to the end-user who has the relevant (pre- or post-paid) contract with the provider. **In order to facilitate a one-stop-shop enabling a seamless switching experience for end- users, the switching process should be led by the receiving provider of electronic communications to the public.** National regulatory or, where relevant, other competent authorities should be able to prescribe the global process of the switching and of the porting*

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[3] https://www.ofcom.org.uk/__data/assets/pdf_file/0018/209502/annex-5-revised-gc-eecc-19-dec-22.pdf

of numbers, taking into account national provisions on contracts and technological developments. This should include, where available, a requirement for the porting to be completed though over-the-air provisioning, unless an end-user requests otherwise. Experience in certain Member States has shown that there is a risk of end-users being switched to another provider without having given their consent. While that is a matter that should primarily be addressed by law enforcement authorities, Member States should be able to impose such minimum proportionate measures regarding the switching process, including appropriate penalties, as are necessary to minimise such risks, and to ensure that end-users are protected throughout the switching process without making the process less attractive for them. The right to port numbers should not be restricted by contractual conditions." (emphasis added)

2.5   Read together with recital (281), Article 106(2) therefore requires a process (1) which is led by the gaining supplier; and (2) which thereby facilitates a 'one-stop shop' by avoiding the need for a consumer to contact both the losing and the gaining provider in turn. As Ofcom has recognised, "*the EECC seeks to make switching a seamless experience for customers by requiring the gaining provider to lead the process and offer a "one- stop shop*".[4]

2.6   It is therefore essential that the switching process approved by Ofcom should involve a single point of contact for the customer, and that point of contact should be the gaining provider, in order for the process to be gaining provider led.

Code to Switch is not consistent with the EECC

2.7   The Code to Switch process is clearly incompatible with the requirement for a gaining provider led process, which facilitates a one-stop shop for consumers.

2.8   Under Code to Switch:

- A customer is required to approach the <u>losing provider</u> before any further steps are taken in order to obtain information about the implications of switching as well as a switching code;[5]

- If the customer decides that they wish to proceed with the switch, the customer must <u>then</u> approach the <u>gaining provider</u> and give them the switching code.

2.9   This process cannot properly be described as gaining provider led. On the contrary, the switching process must be initiated with the losing provider, which controls access to the process.

2.10   Nor does this process facilitate a one-stop shop. It requires the consumer to contact the losing and the gaining providers in turn in order to achieve a successful transition from one provider to another.

2.11   In each case, the Code to Swich contravenes the requirements of Article 106(6) EECC and General Condition C7.5(a).

2.12   We note that Ofcom considers that both Code to Switch and One Touch Switch "*should be able to address a number of the components needed to ensure a process is led by the gaining*

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[4] *Statement: Fair treatment and easier switching for broadband and mobile customers*, 27 October 2020, paragraph 9.46.

[5] *Consultation: Quick, easy and reliable switching*, *Proposals for a new landline and broadband switching process and to improve information for mobile* switching, Ofcom, 3 February 2021, paragraph 1.12 (the "**2021 Switching Consultation**")

provider and enhances customer control".[6] In particular, Ofcom appears to consider that under Code to Switch, the fact that a customer does not need to contact the losing provider again at the conclusion of the process in order to terminate the old contract is sufficient to render the switching process gaining provider led.

2.13   This is incorrect. The proper focus should be upon the initiation and content of the switching process itself and not upon how the switching is effected at the conclusion of the process. The beginning of the switching process occurs at the time the customer takes the decision to switch and it is this process which must be led by the gaining provider to ensure compliance with Article 106(6) EECC. The Code to Switch Process, however, places the losing provider at the heart of the process as the first port of call for any customer who is minded to switch.

Variations of Code to Switch will also be inconsistent with the requirements of the EECC

2.14   Ofcom has asked industry proponents of Code to Switch whether the process would allow customers to obtain a switching code by text or webchat. However, any process which requires a customer to first contact the losing provider by any means, whether by telephone, text or webchat is inconsistent with the requirement of Article 106(6) EECC for a one-stop shop, gaining provider led process. The gaining provider must lead the switch from the outset and Code to Switch fails to achieve this.

Code to Switch is inconsistent with Ofcom's historic approach to GPL-based switching

2.15   Ofcom has examined the regulation of switching a number of times since 2010. From the outset it has always been clear that any system of switching which requires a customer to first contact their losing provider does not amount to GPL-based switching. For example, in 2010 Ofcom noted that, "*LPL switching processes refer to situations where the consumer needs to get a code from their existing provider, before they can switch their service to the new provider.*[7]"

2.16   Indeed the 2010 switching consultation (in paragraph 6.83) Ofcom specifically considered a proposal by Sky and Virgin to use an IVR platform of the kind that the same parties are now belatedly proposing in response to the current consultation (Sky and Virgin Media revised proposal published by Ofcom on 29th March 2021).

2.17   Ofcom rightly described this proposal as an "enhanced <u>losing</u> provider led" process (emphasis added). Ofcom noted that while an IVR-based system might reduce the scope for the losing provider to engage in customer save activity it would require greater regulatory scrutiny and would be difficult to enforce. Call recording would be required as would monitoring to ensure that losing providers were not calling customers soon after they had used the automated system. The costs of such regulatory monitoring and scrutiny would be considerable. Ofcom concluded (in paragraph 6.88) that such a system would create enforcement difficulties that "are likely to be insurmountable".

2.18   In 2012 and 2013 Ofcom again considered switching and while the Code was referred to as a "Unique Service Number" Ofcom's view that use of such a number would represent a form of LPL did not change.

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[6] 2021 Switching Consultation, paragraph 5.21
[7] https://www.ofcom.org.uk/__data/assets/pdf_file/0025/54169/switching.pdf

2.19   The last substantive consideration of fixed line switching (prior to the current round of consultation) was in 2014 at which time Ofcom stated a preference for the process to be gaining rather than losing provider led. Ofcom's interpretation remained consistent: -

> *"Losing Provider Led ('LPL') - a switching process where the consumer needs to contact their existing (i.e. losing) provider in order to enable the switch to go ahead".[8]*

2.20   Ofcom maintained this interpretation in its 2016 consultation on changes to the mobile switching regime where it defined fixed line GPL as follows: -

> *"Gaining provider Led (GPL) Process: where the customer contacts their (new) Gaining Provider to switch. The Gaining Provider informs the (current) Losing Provider on behalf of the customer in order to organise the transfer"[9]*

2.21   Accordingly, not only has Ofcom's interpretation been consistent for at least the last eleven years, but Sky and Virgin Media have previously advanced the same proposals as they have in their most recent submission on 29th March 2021.

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[8] https://www.ofcom.org.uk/__data/assets/pdf_file/0021/76116/consumer_switching_cfi.pdf at paragraph 4

[9] https://www.ofcom.org.uk/consultations-and-statements/category-2/mobile-switching-jul16 at paragraph 80 Glossary

3 One Touch Switch best meets Ofcom's proportionality criteria

3.1 In this section we set out our assessment that One Touch Switch is the best and most appropriate switching process. We do this by first setting out Ofcom's assessment criteria (i.e. policy objectives) before comparing OneTouch Switch and Code to Switch against these. We find that in each case, One Touch Switch is significantly better, or at least no worse than Code to Switch.

3.2 We then set out our assessment of the costs of implementing each option, showing that the broad cost estimates are very similar and, in any event, will represent a very small industry-wide cost relative to the likely benefits to consumers from easier and quicker switching.

3.3 On this basis, we believe that One Touch Switch is the most proportionate option.

One Touch Switch is better than Code to Switch at meeting Ofcom's policy objectives

3.4 Ofcom set out in the 2021 Switching Consultation a framework for assessing switching process, based on four policy objectives:

  i. **Easy to use:** The switching process should be easy for customers to use. Specifically, it should: be simple to understand and follow; be led by the gaining provider; and minimise the effort needed to complete the process.

  ii. **Quick:** Switching processes should allow customers to switch quickly. Switching processes that are too slow may deter customers from switching.

  iii. **Reliable:** Switching processes should be reliable. In particular, the process should: ensure the switch happens when the gaining provider says it will; minimise any loss of service; and minimise the chance of errors and enable a customer's services to be restored quickly where an error does occur.

  iv. **Based on informed consent:** A switch must only happen with the informed consent of the customer. In particular, in circumstances where both: a customer has expressly agreed to it; and information is provided enabling the customer to make an informed choice.

3.5 We consider these are the right policy criteria for Ofcom to use. Ensuring that the switching process is easy to use and quick is critical to securing good consumer outcomes. This is especially true in light of the low levels of current switching and the evidence that this is in part caused by the perceived complexity and delays involved in the existing switching process. We present this evidence in Annex 1.

3.6 We take each of the above four criteria in turn and discuss the two options put forward by industry (One Touch Switch and Code to Switch).

Easy to use

3.7 In order to be effective and efficient, switching processes should be easy to use. Without the process being easy to use, consumers will simply not make use of it. It is therefore a basic requirement of an effective switching process.

3.8   In Annex 1 we set out evidence showing that in the UK broadband market, rates of switching have been historically low, and continue to be low today. We show that rates of switching in the broadband market are much lower than other sectors. For example, annual UK broadband switching rates were 10% in 2020. Which is about half of the (c. 20%) rate of switching in the energy sector.

3.9   The market evidence shows that consumer switching in the broadband market is materially dampened due to the perceived complexity and risks of switching. For instance, a 2019 study by Which? showed that consumers in general have broadly negative perceptions of switching and believe they face a material risk of service loss:[10]

> *"Participants also reported being concerned about losing service as a result of switching broadband either as part of the switching process, or by mistake during this process.*
>
> *Some weren't familiar with the idea of switching being 'provider-led', and that this could avoid a service gap. When told about this, not all were confident that when switching to and from providers, they or their providers would successfully ensure that there was no gap in service.*
>
> *Other concerns were mentioned about the switching process. Having to arrange a time for an engineer to visit and having to be at home for a longer window of time than was actually required for an engineer to complete the work were both seen as an inconvenience."*

3.10   Consumers also face confusion as a result of the inconsistent switching processes that exist today, while consumers switching within the Openreach network benefit from a quick and simple Gaining Provider Led (GPL) process, consumers moving to a provider on a different network are instead required to manage the entire process themselves, including cancelling their existing service, and ordering a new service. This generally results in either a gap in service or the consumer over-paying as a result of overlapping contracts.[11] In some cases both can occur.

3.11   Research conducted by Ofcom in 2016 showed that many consumers (8 in 10) considering moving to a provider on a different network were put off from doing so due to worries about the switching process:[12]

> *"We also found that 79% of consumers who had considered switching but decided against it were put off by process-related worries. These concerns included: being worried about being without a particular service (e.g. landline, broadband and/or pay TV) during the switch; difficulty cancelling the service; worrying about paying two providers at the same time; and concern about arranging the services to start/stop at the right time."*

3.12   Such switching concerns have been addressed in other sectors including the energy markets and banking (current accounts), which now all facilitate simple and quick switching between platforms. The evidence shows that these measures have resulted in significant increases in consumer switching for those sectors.

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[10] Which? (2019) 'Consumer engagement with broadband' Page 42 [Link]

[11] Consumers are usually unaware of if their switch is within or between networks, meaning most are unaware of what process they should expect when considering moving provider. This is reinforced by market research shows that UK consumers are put off from switching due to distrust in the switching process and concerns about service continuity.

[12] Ofcom (2016) 'Making switching easier and more reliable for consumers: Proposals to reform landline, broadband and pay TV switching between different platforms' Paragraph 3.18 [Link]

3.13   Ofcom identify three specific criteria for ensuring that the process is easy to use, stating that any process must be: i) simple to understand and follow, ii) led by the gaining provider and enhance customers' control, and iii) minimise the effort needed to complete the process. We consider these are the right criteria to assess the switching proposals.

3.14   In this section we set out our assessment of One Touch Switch and Code to Switch in terms of meeting each of these three criteria for ensuring that the process is easy to use. We consider that for all three, One Touch Switch is the better option. Furthermore, we consider that Code to Switch fails to meet some of the criteria.

3.15   This is consistent with Ofcom's own assessment:[13]

> *"We consider that One Touch Switch would be, easier for customers to use than Code to Switch. This is because, in our view, which we explain below, One Touch Switch would:*
>
> *a) be simpler to understand and follow;*
>
> *b) give greater control to customers over the extent and type of contact they have with the losing provider; and*
>
> *c) likely involve less effort for most customers.*
>
> *In addition, we consider that Code to Switch would expose customers to difficulties and deterrents that many do not currently face in the existing Notification of Transfer process and would not face using One Touch Switch. As a result, some customers may find switching harder under Code to Switch than they currently do.*
>
> *On this basis, we explain why we do not consider that Code to Switch, as presently constructed, would meet our policy objective."*

3.16   In the table below we set out our assessment of One Touch Switch and Code to Switch against the criteria Ofcom uses in assessing whether a switching process is easy to use.

Criteria	One Touch Switch	Code to Switch
Be simple to understand and follow	Similar to the approach used in other sectors (energy, current accounts) as well as for switches on the Openreach network under the existing NOT+ framework. Much simpler than Code to Switch for bundle switches in that under that approach multiple codes may be required, that come from different sources. In contrast, One Touch Switch would be the same process for bundles and single	Would require customers to undertake a two-step process and to also start using switching codes, which are not used in any other context. This would add complexity and confusion to the switching process. Would be harder to follow and more confusing than the existing NOT+ process, meaning many customers would have a more complicated switching process than they do today. Would involve customers having to contact their losing provider which is not

[13] The 2021 Switching Consultation, paragraphs 5.4-5.6.

	product switches, all involving only a single step.	required under existing switching processes (energy, current account, broadband within Openreach) and which would therefore be unfamiliar to consumers.
Be led by the gaining provider and enhance customers' control	Led by gaining provider, with no need to speak to losing provider. It therefore avoids all difficulties and deterrents related to contacting the losing provider. This includes avoiding unwanted save activity. Aims to provide a similar pure GPL switching experience as adopted in other sectors such as energy.	Not led by the gaining provider since it requires the consumer to first contact the losing provider. It therefore gives no control to customers in respect of the extent of contact with their losing provider. This would disproportionately affect elderly and vulnerable people without an internet connection or mobile phone, who would have no choice but to directly contact their losing provider via a phone call or in a physical store. Even those with internet may have difficulties accessing their online accounts with the ISP or remembering their login details. As Ofcom identify, there are many difficulties associated with a requirement to get a code from your losing provider, including the hassle associated with contacting both losing and gaining providers, the difficulties in actually contacting the losing provider and any unwanted save activity. All three will undermine consumer propensity to shop around for a better deal by acting as a barrier to switching.
Minimise the effort needed to complete the process	One step process involving only a single point of contact. Consumer need only contact the gaining provider, who has every incentive to make the process easy and seamless. No need to access any online portals or to gather specific information about existing services/account codes. All the information necessary to switch (e.g. your address, name, existing	Significant effort required by consumer to firstly contact their losing provider and thereafter the gaining provider. Scope for delays and hold-up if, for example, the consumer cannot reach their losing provider and/or cannot access their online account.

	provider) will likely be already known by the consumer.	

3.17 One Touch Switch is therefore the better option in terms of ensuring that the switching process is easy for consumers to use.

3.18 Furthermore, on a number of occasions Code to Switch fails to meet Ofcom's criteria. For instance, the fact that the process would be more convoluted and complex than the one currently in force today through the NOT+ process within the Openreach network (which accounts for the majority of switches) means that implementing Code to Switch would be a step backwards in terms of ease of switching.

3.19 As a result, if Code to Switch were implemented, we believe there would be less broadband/voice switching going forward, both within and across networks.

Quick

3.20 The new switching rules require that providers do not delay the switching process. This means that the administrative elements of the process should not make a significant difference to how quickly a customer can switch. Instead, the speed of switch should be determined by customer choice and the time it takes a provider to supply a new service.

3.21 Ofcom set out in its consultation its view that there appears to be little difference between the options in relation to how quickly a customer could switch their voice and broadband service. In both options, the practical requirements of providing a service and the choices made by the customer would likely be the principal determining factors for the overall speed of the switch, rather than the administrative elements of the process. Ofcom notes that:[14]

> *"In both options, where a customer chooses to switch and completes the necessary steps to arrange the switch on a particular day, the gaining provider should be able to place a switch order that same day. Therefore, all other things being equal, the switch could happen on the same day in either option. This could potentially be the next working day."*

3.22 We do not agree with Ofcom's assessment. The fact that under Code to Switch a customer will need to contact their existing provider, will create material delay for some switches. For example, consumers may struggle to access their online account/portal, or have difficulties getting through to the gaining provider on the phone. In such cases, customers (unsuccessful in their first attempt) may not have sufficient time in that moment to continue with efforts to secure a code, meaning that they may not be successful in securing the code that same day. This could then lead to further switching delays.[15]

3.23 The losing provider will have incentives to delay the switch in this very way, i.e. making it difficult for consumers to access the switching code. This could be done, for example, by making the process of accessing the code a complex one, such as through an unclear online portal, or via routing consumers round multiple call-centres. We consider that policing the

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[14] The 2021 Switching Consultation, paragraph 5.73.

[15] Ofcom does highlight the issue with possible switching delays through Code to Switch as a result of the time taken to receive information from providers. For instance, if the consumer opts to receive the code by post, (e.g. voice-only customers without access to a smartphone or email service), they would have to wait for a letter from a provider twice, first from the losing provider and then from the gaining provider. In One Touch Switch, such customers would only wait to receive information by post from the gaining provider. In this scenario, One Touch Switch would be quicker.

system to minimise such barriers to acquiring a switching code would be almost impossible in practice.

3.24   Overall, we consider that One Touch Switch would in most cases be quicker than Code to Switch, and in no scenarios would it be slower. It is therefore the better option in terms of speed of switching.

Reliable

3.25   As Ofcom set out in the 2021 Switching Consultation, in order for a switching process to be reliable it should: i) ensure the switch happens when the gaining provider says it will; ii) minimise any loss of service; and iii) minimise the chance of errors and enable a customer's services to be restored quickly when an error does occur.

3.26   Ofcom uses these criteria within its assessment and conclude that there does not appear to be a material difference in the reliability of the two options, noting that:[16]

> *"Independent technical advice has not identified material differences in the expected technical reliability between the options. The advice concluded that both options are well thought out technically and could be implemented successfully."*

3.27   We agree with Ofcom that there is no material difference between the two options in terms of reliability.

Informed consent

3.28   As Ofcom set out in the 2021 Switching Consultation, in order for a switching process to be based on informed consent it should: i) only occur where a customer has expressly agreed to it; and ii) enable customers to make an informed choice. Ofcom considers that against these criteria, both options fare similarly.

3.29   In regard to ensuring the switch only occurs where a customer has expressly agreed to it, Ofcom notes that both options perform similarly.

3.30   In regard to ensuring that information is provided enabling customers to make an informed choice, both approaches provide information to consumers regarding; i) the new services and ii) implications of switching (from the losing provider). As such, while the means of delivering this information differs between the two options, the nature of the information and the timelines for delivering them to the customer are not materially different.

3.31   On the basis of this we agree with Ofcom that in terms of ensuring that the switch is based on informed consent, both options would meet the requirements.

The costs of each option are comparable, and do not materially impact the proportionality assessment

3.32   In Annex 7 of the 2021 Switching Consultation, Ofcom set out the implementation cost estimates for each of One Touch Switch and Code to Switch, provided by industry stakeholders (of which CityFibre was a part). These cost estimates were produced by industry stakeholders (and collated by the OTA) with the intention of gathering a high-level indicative estimate of the costs associated with implementing the two switching processes.

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[16] The 2021 Switching Consultation, paragraph 5.76.

3.33   In order to assess the two switching options, in addition to considering the extent to which they meet Ofcom's policy objectives, Ofcom has given regard to these costs estimates as part of its proportionality assessment.

3.34   We consider that Ofcom should not give any significant weight to the costs of the two options in its proportionality assessment, for the following reasons:

   i.   These industry cost estimates are high-level and imprecise, and therefore inherently uncertain. They should therefore be viewed only as a rough 'order of magnitude' estimate, and not a reliable cost forecast.

   ii.   On the basis of these rough cost estimates, the two options are broadly comparable.

   iii.   The costs are likely to be immaterial relative to the consumer benefits of an improved switching process (that is simpler and more reliable).

3.35   We discuss each of these points in turn.

The cost estimates are inherently uncertain

3.36   Ofcom recognises in the 2021 Switching Consultation that the cost estimates provided to it by various industry stakeholders, are preliminary and high level: [17]

> *"the cost information is preliminary and relatively high-level. The estimates do not account for potential dynamic changes that could impact – for example, the fact that the number of switches could change in future.*
>
> *Finally, the figures reported below are a projection of the potential costs borne by providers and do not necessarily reflect the costs (or cost savings) that might ultimately be passed through to customer bills."*

3.37   We agree with Ofcom that the information provided is preliminary and high-level. We consider that the cost estimates only provide a rough estimate (i.e. broad order of magnitude) for the costs. We therefore consider that Ofcom needs to be very cautious about placing any significant weight on these cost estimates in its proportionality assessment.

Both options are comparable from a cost estimate perspective

3.38   In Annex 7, Ofcom set out a summary of the capital and operating cost estimates submitted by industry. It shows that industry estimates the capital costs being between £35.4m and £48.8m for Code to Switch and between £28.3m and £39.0 for One Touch switch.

3.39   In regard to annual ongoing operating costs, for One Touch Switch, Ofcom set out a figure of £3.2m per year. However, for Code to Switch Ofcom give two possible values, one of -£5.9m and another of £4m. Ofcom explain that the first estimate (-£5.9m) is based on aggregating all the industry cost estimates, the second estimate (£4m) is the result of removing a single stakeholder's estimate, which Ofcom notes is a significant outlier. Ofcom state that a single entity has submitted a very large negative opex value for Code to Switch that skews the overall result:[18]

> *"in aggregate, the estimates reported indicate an opex saving as a result of Code to Switch […] this, however, is driven by the opex estimate of one*

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[17] The 2021 Switching Consultation, Annex 7, paragraphs A7.3-A7.4.

[18] 2021 Switching Consultation, paragraph A7.20.

respondent, i.e. substantial savings related to Code to Switch. For the remaining [five] respondents who provided opex information, four had estimates which were the same across the two switching options and one respondent reported higher opex for Code to Switch"

"This is the only respondent to report opex savings as a consequence of implementing a new switching process. The value of these savings is very large relative to the capex involved and in absolute value is an order of magnitude greater than the opex impacts reported by any other industry respondents."

3.40   While we cannot comment on the specifics of the cost estimate methodology adopted by this individual stakeholder, we consider it is unlikely to be robust. We consider this on the basis of the significant divergence between this one respondent's estimates and those made by the other respondents. We note that the majority of respondents stated that the operating costs for the two switching options would be the same.[19]

3.41   In the 2021 Switching Consultation Ofcom set out its estimated costs of implementing Code to Switch and One Touch Switch using the aggregate opex values when omitting the outlier. We reproduce these in the table below, noting that these figures are based on a 10-year assessment.[20]

Table 1:   Costs of Code to Switch and One Touch switch

	Code to Switch	One Touch Switch
Net present cost	£65-78m	£50-62m
Estimated annual cost	£9.6m	£7.5m
Annual cost per switch[21] [22]	£4.0	£3.1

Source: *Ofcom. 2021 Switching Consultation. Annex 7, Table A7.6.*

3.42   On this basis of this cost comparison, we can see that the annual cost per switch between the two options is broadly comparable. We note that whilst the estimated Code to Switch costs are higher than One Touch Switch, we recognise that the cost estimates are not precise.

The implementation costs are not material when compared to the benefits

3.43   Ofcom has undertaken an assessment of the materiality of the costs, estimating that if the costs generated by either option were to be passed to customers in full,[23] this would represent

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[19] Ofcom also notes that for five out of six respondents the opex to capex ratio was very similar (the difference between the ratios for the two switching options is between 0 and 14 percentage points). However, for the respondent submitting the negative opex values, the difference between the two ratios is 142 percentage points.

[20] We consider this will produce inflated cost estimates since there is significant upfront capex costs and we anticipate that the switching process will be in place for longer than 10 years (e.g. 20 or 30 years). As such, over its full-time horizon, the estimated annual cost (and cost per switch) will be lower than is set out in the above table.

[21] Ofcom set out in paragraph A7.21: "The cost per switch represents the equivalent annual cost divided by the number of switches per year (2.4m)".

[22] In regard to the cost per switch calculation, Ofcom estimate this based on the current rates of switching. However, we consider that this should actually account for the forecasted impact on switching going forward. Specifically, we would expect switching rates to increase significantly in the case of implementing One Touch Switch, and to likely decrease if Code to Switch were adopted. This would further increase the delta between the cost estimates.

[23] It is not clear that implementation costs would even be passed onto consumers as they would likely be largely absorbed by firms as a part of their own cost stack. However, we can consider (as Ofcom has) a conservative assessment based on the situation where all of the implementation costs are ultimately borne by consumers.

no more than three pence per month per fixed residential connection.[24] Ofcom notes that this is very small when compared to the typical bill for landline and broadband services of a UK household (c.£37 per month).[25]

3.44   We agree with Ofcom that the costs are small in absolute terms. Further, we consider they are likely not to be material when compared to the benefits to consumers from easier and quicker switching.

3.45   In estimating the likely benefits, the key question is (relative to levels of switching today) how much greater switching will there be as a result of a new switching process, and what impact will that have on consumer welfare. This can then be compared to the switching implementation costs to compute the net consumer benefit from implementing the new process.

3.46   While we are unable to reliably estimate the likely impact on propensity to switch for the two switching processes (without robust market testing), we believe that only a very small increase in switching is required to offset the implementation costs.

3.47   Industry analysis suggests that switching provider saves consumers on average £90 per year,[26] which is significantly greater than the cost attribution from switching (i.e. 22-30 times greater than Ofcom's estimated cost per switch of £3-4).

3.48   If, as a result of the new switching process total broadband switching increased by just 1%, this would represent an aggregate consumer saving of around £22.5m,[27] which is significantly greater than the cost of implementing the new switching process. In fact, in order to offset the cost of implementing a new switching process, switching would only need to increase by 0.34%.[28]

3.49   We expect switching to increase significantly more than 0.34% as a result of implementing One Touch Switch which would make switching simpler and easier for consumers. Indeed, the energy sector has seen annual switching rates double after implementing improved switching measures, from 11% in 2014 to 20% in 2019 (see Figure A1).

3.50   The implementation costs for any switching process will be dwarfed by the consumer welfare benefits resulting from higher rates of switching. Given this, we consider that the Ofcom should give much greater weight in its proportionality assessment to the policy objectives and the four criteria it has set out (easy to use, quick, reliable, based on informed consent), compared to the implementation costs.

One Touch Switch is the most proportionate option

3.51   We consider that One Touch Switch will result in materially higher rates of broadband and landline switching than Code to Switch. This is for the reasons Ofcom set out in the 2021

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[24] This calculation appears to be based on Ofcom's assessment of the annual average cost being between £7.5m and £9.6m and there being 26.2m residential exchange lines. This would give an average of 2.4p to 3.1p per exchange line per month (e.g. £7.5m / 26.2m = 28.9p / 12 months = 2.4p per month).

[25] The 2021 Switching Consultation, paragraph 5.118.

[26] https://www.ispreview.co.uk/index.php/2021/01/the-missing-end-of-contract-letters-for-broadband-and-mobile-users.html

[27] Based on a simplified assumption of 25 million fixed customers, 1% would represent 250,000 customers. If each saved £90 from a switch, that would result in an aggregate saving of £22.5 million.

[28] In reference to the above footnote, 0.34% of 25 million customers is 85,000 customers. If each saved £90 from a switch, that would result in an aggregate saving of £7.65 million. Which is greater than the estimated costs of implementing One Touch Switch as set out in Table 3.

Switching Consultation, including that One Touch Switch will; i) be simpler for consumers to understand, ii) give greater control to customers, and iii) involve less effort for customers.

3.52 Relative to today, we consider that Code to Switch may actually act to reduce rates of switching, given that the majority of switches today are on the Openreach network and the Code to Switch process would be ultimately a step-backward relative to the NOT+ process in terms of ease of use and effort required from consumers (not least because it would move from being a one-step process under NOT+ to a two-step process under Code to Switch).

3.53 As such, we anticipate that there would be a significant divergence in switching rates under Code to Switch and One Touch Switch. As we set out above, just a 1% increase (or relative differential) in switching rates could deliver around £20m of consumer savings. We expect the actual differential in switching rates between Code to Switch and One Touch Switch to be significantly greater than 1%. For example, if One Touch Switch resulted in rates of switching that were 5% greater than Code to Switch, on an annual basis, this could deliver ~£100m of consumer savings each and every year.

3.54 Relative to these benefits the costs of implementing either switching process is relatively small, with a conservative (upper bound) estimate being ~£5.5m per year, on average over a 20-year duration.

3.55 Furthermore, the industry estimates for the costs of implementing each process suggest that Code to Switch might have higher costs, or, in any event, the costs would be at least broadly comparable.

3.56 On the basis that One Touch Switch will likely deliver considerably higher levels of switching (resulting in very material consumer benefits) compared to Code to Switch, and that the costs of implementing either option are broadly similar, we consider Ofcom is entirely correct to adopt One Touch Switch.

4 Timelines for implementing One Touch Switch

4.1 As a builder of fibre networks, and a promoter of competition, we think it is imperative that customers are able to migrate seamlessly between competing broadband providers. We are motivated to ensure that One Touch Switch is implemented as quickly as possible and look forward to working with industry, the OTA and Ofcom to achieve this.

4.2 We support Ofcom's recent statements that industry should proceed without delay to put in place the necessary governance arrangements to facilitate smooth implementation of the new switching process.

Annex 1   Evidence on the levels of UK broadband switching

A1.1   Levels of switching in the UK broadband (and fixed landline) market have been low for a number of years, especially when compared with other sectors.

A1.2   In Figure A1 (below) we present the annual switching rates (based on Ofcom's own annual Switching Tracker) for fixed broadband from 2014 to 2020. We can see that annual switching rates peaked in 2017 (at 13.5%) before falling in more recent years to 10% as of 2020.

A1.3   To provide a benchmark, we also show the annual switching rates for the energy market (electricity and gas). We can see that the energy market has historically had greater switching, especially over the past few years (over 20% of consumers switched gas and electricity provider in 2019). In contrast to broadband, the energy market has seen significant growth in switching rates (almost doubling since 2014),[29] whereas broadband switching in 2020 (10.2%) was about the same as in 2015 (10.6%).

Figure A1:   Comparison between fixed broadband and energy (electricity and gas) annual switching rates
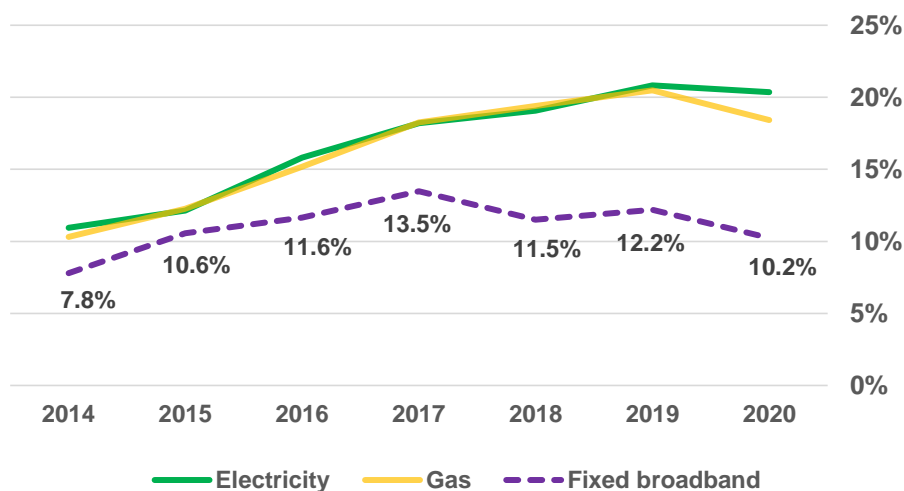
Source: *Ofgem - Domestic energy switching statistics [Link]. Ofcom - Switching tracker (2014-2020)[30]*

A1.4   This evidence of lower rates of switching for broadband (and fixed landline) compared to other sectors is reinforced by evidence from GoCompare in its 'Annual personal finance switching report'. Table A1 (below) shows the results of GoCompare's switching report for 2019 and 2020. We note switching rates in 2020 were substantially lower for some products (e.g. insurance products) as a result of COVID-19.[31]

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[29] This is largely as a result of interventions by Ofgem to make switching provider much easier. The first of these measures came into force in 2015 ('Moving to reliable next-day switching').

[30] For example, 2020 can be found here.

[31] Research from Citizens Advice published in September 2020 identified that "Around 1 in 4 people found their ability to switch was impacted by the coronavirus lockdown". 'The loyalty penalty in essential markets: Two years since the super-complaint'. Page 7. [Link]

A1.5   We can see that in 2019 there were twice as many consumers switching in the car insurance market (28%) than the broadband market (14%). We also observe (consistent with Figure A1) that switching in the energy market is significantly higher than in the broadband market.

Table A1: **Product/service switched in the last 12 months from GoCompare's 'Annual personal finance switching report'**

	2020	2019
Car insurance	19%	28%
Energy provider	18%	21%
Mobile phone provider	17%	17%
Home insurance	14%	21%
Broadband provider	13%	14%
Credit card	9%	10%
Bank current account	8%	10%
ISA or savings account	7%	9%
Landline phone	6%	7%
Mortgage provider	4%	5%

Source: *GoCompare [Link] February 2021.*

A1.6   Furthermore, a 2019 study from Which? (referencing Ofcom data) noted the prevailing low levels of consumer switching in the broadband market, and suggested that this was indicative of low consumer engagement:[32]

> *"While switching provider is only one aspect of engagement, switching statistics are indicative of low consumer engagement. Ofcom's annual switching tracker found that in 2018, only 12% of broadband customers had switched provider in the last year […] and its latest research found that there are around 8.8 million out of contract broadband customers in the UK, Furthermore, Ofcom data shows that only 45% of UK premises have taken up superfast broadband"*

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[32] Which? (2019) 'Consumer engagement with broadband' Page 7 [Link]