

26th September 2018

Further to reading about Ofcom's consultation on the bundling of handset and airtime charges and the comments thereon from Margot James, Minister for Digital and Creative Industries, I am writing to you on a related matter which I am hoping you could raise with her.

It is common practice within the mobile industry to provide a 'free' handset along with a SIM card and calls/texts/data package. In the event of a fault developing with the handset, it seems to be the norm for the provider to relinquish responsibility for fulfilling the customer's statutory rights by denying being a phone provider. To exemplify this point, I would like to quote Talkmobile's response to an issue I had with my own handset last year:

When you took out the contract with Talkmobile it was for SIM card and the services that were provided to you (texts, minutes and data). This is also stated in your terms and conditions, please see below:

A. This Agreement covers the SIM Card and any Services I use in my Plan. It's made up of the Pay Monthly Customer Agreement, the List of Charges Guide, Privacy Policy and any additional products or services I choose to use or take.

When you take out a contract you are paying for the services and not the handset.

In this case, I was left wondering how Talkmobile would respond were I to take out a contract, cancel it during my statutory cooling-off period and then refuse to return the handset on the grounds that it was a freebie not covered by their terms and conditions. In view of there being no other clause within their terms and conditions that covers what is or is not included, they would presumably have to cite the same clause and contend that the phrase 'any additional products [...] I choose to use or take' covers the handset. Which would be tantamount to admitting that they consider themselves to be a phone provider only when it suits them financially.

Incidentally, I consider my own matter resolved (unsatisfactorily), and the present letter is not intended to raise a specific case. Rather, I would like to take Ofcom's current consultation as an opportunity to argue that companies such as Talkmobile should not be allowed to relinquish responsibility for fulfilling customers' statutory rights by maintaining that they are not phone providers. By definition, a phone provider is a party that provides a phone in return for some commercial gain. If you will forgive a crude analogy, the excuse that the phone is not covered is surely no more convincing than an escort's claim that she is selling her time rather than her services.

Thanking you for your attention to this matter. I look forward to a response at your convenience.