



BT's response to Ofcom's consultation document

“Ofcom Review of the GCs of Entitlement: Consultation on the GCs relating to consumer protection”

14 March 2017

**NON-CONFIDENTIAL VERSION**

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## Executive Summary

In its February 2016 statement setting out the initial conclusions from the Strategic Review of Digital Communications, and in later statements, Ofcom indicated the review would focus on making the GCs clearer, more practical and creating a simpler compliance and enforcement framework for businesses and Ofcom respectively. These are all sentiments which BT supports.

However, several of the changes proposed in the second phase significantly extend the scope of the GCs, extensively rewrite lengthy sections of associated documents, or create brand new obligations. We have been allowed insufficient time to respond to the review given the significant and wide-ranging nature of some of the changes and would ask Ofcom to continue to work with industry and separately consult on, at a minimum, the sections on Contracts, Billing, Complaints Handling, Vulnerable Customers & CLI, to ensure all stakeholders have had an adequate opportunity to consider the consequences of changes that will endure for the next several years.

We have structured this response as follows:

- Section 1 highlights key issues
- Section 2 expands on these key issues and sets out where we agree and disagree with Ofcom's proposed changes and why, provides additional relevant comments, and suggests amendments or alternative approaches, where appropriate
- Section 3 responds to each of Ofcom's questions

The review changes some long-established industry terminology e.g. "Communications Provider" becomes "Regulated Provider", "General Condition" becomes "Condition". In this response we have used the original terminology unless specifically quoting or citing a new rule i.e. we have continued to refer to "CPs" and "GCs" for general purposes but have referred to e.g. C7.1 in specific instances.

BT has endeavoured to be as constructive and helpful as possible and would welcome the opportunity to discuss this response with Ofcom.

## **1.1 Key issues**

1. We have a number of important concerns in respect of Ofcom's proposals; this section briefly sets out those key concerns which are then discussed in more detail in Section 2.

### **1.1.1 Common issues**

2. The Common issues section sets out our concerns about the use of the term "End-User" and explains why we believe greater clarity is required around how the term Public Electronic Communications Services is defined (2.1.1).
3. The Common issues section also explains why the proposed implementation period of six months is neither pragmatic nor proportionate (2.1.2; we expand on this issue in Annex 1) and why we believe it is important that CPs are given an additional opportunity to comment on the GCs prior to publication (2.1.3), if their implementation is not to result in systems or process challenges that may in turn lead to consumer inconvenience or consumer harm.

### **1.1.2 Contract requirements**

4. The Contracts requirements section outlines our concerns about the extension of the material detriment obligations to larger businesses and the removal of the current material detriment guidance (2.2).

### **1.1.3 Vulnerable customers**

5. The Vulnerable customers section explains our concerns about the definition of "vulnerable customers" (2.7).

### **1.1.4 CLI facilities**

6. The CLI facilities section explains why we believe Ofcom's proposal to prevent CPs from charging for CLI facilities is disproportionate and could stifle more innovative methods of preventing nuisance calls (2.8.1).

## 2 BT response to Ofcom's proposed changes

### 2.1 Common issues

#### 2.1.1 Definitions

##### "End-User"

7. We have concerns about the proposed use of the term "End-User" because it broadens CPs' responsibilities and significantly expands the scope of the GCs, and it is not clear that the consequences of the application of this term have been fully considered. For example, the use of End-User in C6 (previously GC 15), appears to extend CPs' obligations to every employee of larger businesses, when more properly it is the duty of businesses themselves to fulfil their obligations to any employees with disabilities.
8. We raised our concerns about the use of the term End-User in our initial response to the second phase of the review<sup>1</sup>. We explain in the relevant sections (Transparency, Billing and Vulnerable customers) where we believe the text requires clarification or amendment.
9. Ofcom should reconsider whether its uses of this term meet the intended outcome of the proposed changes and to consider whether "Subscriber" or the application of limiting additional words may be the more appropriate.

##### "Electronic Communications Services"

10. The regulatory framework for electronic communications distinguishes between the production of content (which falls outside its scope) and the transmission of content.<sup>2</sup>
11. We agree with Ofcom's position in its consultation of July 2016 last year on cross-platform switching that it has the power to impose GCs in relation to pay TV services i.e. that services involving the transmission of signals for pay TV fall within the definition of Electronic Communications Service (ECS)<sup>3 4</sup>.
12. As argued by BT in previous consultation responses, consumers are unconcerned about, or unaware of, the technical means by which voice, broadband and pay TV services they buy are delivered, and retail bundles containing all three services are increasingly popular. It is therefore important, and consistent with the electronic communications framework, that they are subject to a single regulatory regime, regardless of the technical means of delivery or the platform used.
13. For the avoidance of doubt, Ofcom should clearly state that its definition of Public Electronic Communications Services (PECS) includes the transmission of pay TV content.

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<sup>1</sup> See paragraph 15 of BT Response submitted on December 6 2016

<sup>2</sup> Recital 5 of the Framework Directive states "The convergence of the telecommunications, media and information technology sectors means all transmission networks and services should be covered by a single regulatory framework." This is reflected in the operative provisions of the Framework Directive, for example Article 8(1), which requires that "Member States shall take the utmost account of the desirability of making regulations technologically neutral."

<sup>3</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/making-switching-easier>

<sup>4</sup> Section 32(2) of the Communications Act and Article 2(c) of the Framework Directive respectively

### **2.1.2 Implementation period**

14. The implementation of a number of the changes proposed by the revised GCs within a six month period will be extremely challenging and divert systems release capacity from other areas, including quality of service improvement measures. Many of the proposed changes, including those outlined in the Billing, Complaints Handling, Vulnerable Customers, Mis-selling and CLI sections, will require significant modifications of complex systems, some of which interact right across the BT Group. We consider that given the varying complexity of the changes Ofcom have proposed, while many changes may be able to be implemented together, a "one size fits all" implementation period is impractical. Annex [1] explains why many changes will require an implementation period greater than six months.
15. Those proposals that are complex in implementation, for example the proposed billing changes, or which involve balancing very carefully competing policy considerations, for example, the development and implementation of policies and processes addressing vulnerable customers, should be the subject of further specific review, for example on implementation times or for the development of Ofcom guidance or industry codes of good practice. As well as revising the GCs themselves, Ofcom also proposes to change associated but separate documents: the Metering and Billing Direction and the Approved Code of Practice for Customer Service and Complaints Handling (currently contained in Annex 4 of GC 14). These are lengthy documents that relate to complex internal procedures; previously Ofcom consulted separately on these "associated" documents (in 2013 there was a long consultation on the Metering and Billing Direction and in 2008 a consultation on Alternative Dispute Resolution).
16. While we believe Ofcom should have focused on the core principles in the GCs and returned to associated documents governing complex processes once the GCs are settled, at this stage, pragmatically we propose:
  - a. Ofcom should grant a 12 month period for CPs to implement the all changes, with the exception of the Billing section, for which CPs should be allowed two years to make changes to their billing processes and to obtain approval.
  - b. Where changes to the GCs result in brand new, wide-ranging requirements, for example, the sections on Contracts, Billing, Complaints Handling, Vulnerable Customers & CLI, we encourage Ofcom to continue to work with industry and separately consult on these matters to ensure all stakeholders have had an adequate opportunity to respond.

### **2.1.3 Additional opportunities to comment following further changes**

17. Should Ofcom make any further changes to the text of the GCs between the end of the review period and the publication of the new GC document, CPs must be allowed an opportunity to review and comment on these changes through an additional brief consultation period.

## **2.2 Contract requirements**

### **2.2.1 Introduction**

18. The proposed and only partial incorporation of Ofcom's current guidance on GC9.6 into the body of the new Conditions increases the scope of the GCs without clear benefits for customers. The existing guidance on GC9.6 is clear and helpful to industry and we consider its removal a retrograde step.

19. Given the significant and wide-ranging nature of these proposed changes Ofcom should continue to work with industry and separately consult on these issues.

### **2.2.2 Extension of material detriment obligations**

20. The proposed application of C1.7 to all Subscribers, in effect, an extension of the material detriment provisions from small businesses to all businesses, is unwarranted and unsupported by evidence of business harm. This extension of scope has the potential to distort competition in the market and damage investment in networks: the balance of power between CPs and their larger customers may be disturbed as CPs are deprived of the certainty of terms negotiated and agreed with larger businesses that are well able to protect themselves against material detriment. As a result, CPs potentially face disruption of income that they should reasonably be able to rely on given the balance of bargaining power between CPs and larger customers.
21. Ofcom states at paragraph 4.19 of the review that in considering cases under C1.7 they will take into account the circumstances in which a larger business has entered into a contract and the nature of the contract, in particular, the stronger bargaining power larger businesses possess and the likelihood that contracts between CPs and larger companies will be bespoke. However, the vague wording ("larger businesses may ... be less likely to suffer material detriment in the event of price increases"), and absence of any proposal within the GCs themselves explaining Ofcom's decision making in such cases, gives insufficient comfort that adverse effects will be prevented.
22. Ofcom is right (paragraph 4.19) that "larger businesses may have stronger bargaining power in relation to CPs and may be able to negotiate terms with them" and that, as a consequence "they may be less likely to suffer material detriment in the event of price increases, especially if the terms (including price variation terms) have been negotiated in bespoke contracts".
23. Indeed larger businesses have stronger bargaining power because they will typically have alternative strategies in relation to the relevant product, reflecting the competitiveness of the markets in which they are procuring service, and will often have procurement teams tasked with negotiating bespoke arrangements which advance their commercial interests. In this regard large corporate customers often select their telecom provider through competitive bids where they set the conditions that the telecom provider should respect. If not through bids, larger customers will negotiate their contracts, potentially with bespoke terms and conditions, which aim to protect their interests.
24. While not all larger business customers will have bespoke contracts and contract on standard terms and conditions, they will still have a strong bargaining position with CP's in terms of whether they accept or challenge price increases and changes to contracts. Put simply, larger businesses will have "outside options" reflecting their ability and willingness to switch to alternative suppliers. In any negotiation, their ability to extract favourable terms will reflect the strength of these outside options and the value and longevity of their business to the CP.
25. As suggested by Ofcom, price variation terms would typically form part of a contractual negotiation thereby providing protection to larger customers in the event that these provisions are triggered. Some of BT's standard terms and conditions give BT the unilateral right to amend; however they also give customers the right to end the contract without penalty if the change is to the customer's material detriment in the same way as C1.6. Therefore customers have a contractual right to challenge any changes. These large customers will understand their rights under the contract and be well placed to challenge any change to the contract that they do not accept.



26. Without clarity from Ofcom as to when material detriment provisions will or will not apply, CPs may face the choice of allowing larger business customers to leave their contracts following previously agreed price increases or waiting for the customer to complain to Ofcom, with no guarantee that Ofcom will agree with any assessment made by the CP. The costs and investments incurred by CPs of installing and managing large customer networks are high and the prospect of customers being allowed to leave without incurring previously agreed termination rates in the case of price increases would be a significant disincentive for CPs investing in their networks. In a competitive market such as the market for large corporate customers, where prices are often close to the costs, being forced to absorb any cost increase, including those due to RPI or costs increase, can lead to price squeeze and therefore distort competition.
27. The impact of the proposed extension can be especially negative in the markets for the provision of legacy products, both voice and data services, where it is particularly important for the CP to retain pricing freedom in order to manage the final phase of life cycle of a product and where BT, for example, typically reserves the right to unilaterally change prices. In these circumstances the price may be legitimately used by the provider to incentivise customers to migrate towards new, more efficient technologies. Moreover legacy services are much more likely to be affected by increasing maintenance costs and reducing volumes which justify price increases. In the case of retail very low bandwidth leased lines, for example, Ofcom has accepted a voluntary commitment from BT not to raise prices by more than RPI +8% per annum until these services are withdrawn.<sup>5</sup>
28. In the absence of any regulatory certainty about when material detriment provisions may be triggered, CPs may also be less inclined to negotiate innovative pricing structures where there is a risk of exposure to these provisions (depending on Ofcom's view on the relevant circumstances). The differentiation that suppliers can offer by tailoring prices and terms to suit customers' individual circumstances or requirements is a key dimension of competition. If suppliers are inhibited from doing so because the risk of triggering a complaint or contract dispute is perceived to be too high, then competition will be harmed.
29. Given the potentially adverse effects introduced by these changes and the lack of clear evidence of harm from the existing arrangements, we consider that the costs of the proposed extension of regulation would outweigh any benefits.
30. The proposal is also not justified merely for the sake of consistency with the USD, as Art. 20 of the USD does not provide any guidance on what material detriment is.
31. In any event, the provisions of C1.6 that apply to all Subscribers would satisfy any consistency required by Article 20 without the extension in C1.7.
32. Ofcom cites no evidence of harm and in fact acknowledges at paragraph 4.19 that larger contracts agreed between CPs and larger businesses are of a different order to those agreed with consumers or smaller businesses. Ofcom should make clear in the GCs that the scope of C1.7 is for consumers and small business customers.

### **2.2.3 Removal of material detriment guidance**

33. At paragraph 4.21 (a) the review document states that Ofcom's "provisional view is that, in line with our current guidance, the exercise at the CP's discretion of any contractual term or

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<sup>5</sup> BCMR very low bandwidth leased lines Statement published April 28 2016

condition which would make subscribers pay more than their monthly fees, should continue to be deemed as likely to be of material detriment to them".

34. However, the incorporation of Ofcom's current guidance into the body of the GCs (at C 1.7) appears to extend the scope of the guidance. The guidance specifies that any increase to the core subscription price, payable for the inclusive package of services or features, would be considered to be likely of material detriment to the customer. Ofcom's proposal does not refer to this core subscription price anymore but refers instead to the sum the subscriber must pay at monthly or other regular intervals. These sums can be made up by the charges for any service offered by the provider to the subscriber, whether in- or outside the inclusive package of services and features. This change goes significantly beyond the original guidance, and would result in all services offered by the provider being included.
35. There is no discussion in the review document on this extension of scope and therefore Ofcom's policy. As Ofcom's stated intention is to reflect its current policy in this area, absent clear restatement of its policy following an open review, Ofcom should revert to the position set out in the guidance and replace the sum payable at monthly or regular intervals by the core subscription price payable for the inclusive package or services or features.
36. Whereas Ofcom appears to make a distinction between discretionary and non-discretionary price increases in C1.7 (a) we believe the text must be made clearer to remove any ambiguity. Ofcom should incorporate the following wording into the GCs in relation to changes to contractual prices:
  - a) *The exercise at the discretion of the Regulated Provider of any contractual term or condition which would have the effect of increasing the Core Subscription Price that a Consumer or Small Business Customer must pay to the Regulated Provider at monthly or other regular intervals during the fixed term of their contract shall be deemed as likely to be of material detriment to a Consumer or Small Business Customer for the purposes of paragraph C1.6(a).*
  - b) *Price increases applied pursuant to price models (for example Core Subscription Price + RPI or a percentage or fixed amount change at pre agreed dates) communicated and agreed to by Consumers and Small Business Customers on a prominent and transparent basis prior to entry into their contract do not constitute a modification for the purposes of paragraph C1.6 and so are not capable of meeting C1.6's material detriment requirement.*
37. This wording would require a new definition for Core Subscription Price:

*"Core Subscription Price means the price for the inclusive package of services that the Regulated Provider agrees to provide the Subscriber in consideration for a recurring (normally monthly) payment. This differs from the non-subscription price(s) which are charged by Regulated Providers for services that fall outside of the relevant inclusive package or core subscription, and which are billed incrementally when such services are used by the customer, for example, for mobile customers they typically (though not necessarily) include charges: incurred when they exceed their monthly inclusive allowance of services, and for premium rate services, NGCs, directory enquiries, making calls and sending texts internationally and roaming services."*

38. The CMA guidance on Unfair Contract Terms, like Ofcom's current guidance, permits increases linked to a relevant published price index (such as the RPI) provided the details are clear and adequately drawn to the consumer's attention before entering into the contract in a way which allows the consumer to foresee and evaluate the practical implications on them of the variation. This provides for the important distinction between a variable monthly price (i.e. £x + RPI) entered into at the point of contract and a fixed monthly price.
39. In light of the above, if the intended effect of the revised GCs is to preserve the status quo on this issue, Ofcom should continue to exempt the type of price rises described in Example 3 of the current Ofcom "Guidance on "material detriment" under GC9.6", from the material detriment provisions described in C1.6 and C1.7.
40. Our response to Ofcom's questions on Contract requirements is in section 3.2.

## 2.3 Information publication and transparency requirements

### 2.3.1 Introduction

41. We support Ofcom's proposal to consolidate the information publication and transparency requirements in one section and we agree that these requirements are still necessary, particularly where they protect and empower Consumers and Small Businesses. However, we consider that extending the obligation to publish information to all End-Users, i.e. encompassing larger business customers within the scope, is disproportionate as there is no evidence of harm in this area.<sup>6</sup>

### 2.3.2 Application of transparency requirements to large customers

42. This change will require CPs to publish information about tariffs and other features of their services provided to their larger business customers, considerably extending the scope beyond that of the existing Code of Practice requirement. We note Ofcom have proposed an exemption for "bespoke or individual prices". However, not all large customers have bespoke contracts; many take standard products at standard prices. BT believes that the proposed change should not be implemented, for the reasons below.
43. The text of Article 21(1) requires that "Member States shall ensure that national regulatory authorities are able to oblige undertakings providing [services] to publish..." The use of the term 'are able', as opposed to the use of the word 'oblige', provides Ofcom with discretion. Given the absence of harm, Ofcom should exercise its discretion and not apply this proposed obligation to business customers. This is clearly appropriate, as to do otherwise:
  - (i) goes against Ofcom's duty to have regard to the principle that intervention should be proportionate and larger sophisticated businesses do not require this protection;<sup>7</sup>
  - (ii) goes against Ofcom's duty to have regard to the principle that intervention should be targeted only at cases in which action is needed, and there is no evidence to support the change; and

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<sup>6</sup> C2.2 extends the obligation to publish the information in paragraphs C2.3 and C2.11 to all End-Users

<sup>7</sup> s.3(a) Communications Act 2003 (CA03)

(iii) goes against the principle that commercial parties negotiating at arm's length in a competitive market should be free to make their own deals and pursue any issues they have via the law of contract.

44. Our response to Ofcom's questions on Information publication and transparency requirements is in section 3.3.

## 2.4 Billing requirements

### 2.4.1 Introduction

45. We recognise how important it is for our customers to be billed accurately and to be protected from unfair debt collection and disconnection procedures. We fully support Ofcom's desire to give users of broadband services the same level of protection in relation to the billing of their services as voice customers.
46. We agree it is sensible to combine GC 11, 12 and 13 into a single Condition and for Ofcom to make the proposed changes in relation to record retention.
47. We are concerned that a six month period for implementing Ofcom's proposed changes is particularly unrealistic in respect of the Billing section; our detailed comments in relation to the implementation period are in section 2.1.2 and Annex 1.
48. Given the complex nature of many of the proposed changes to the Billing section Ofcom should continue to work with industry and separately consult on these issues.

### 2.4.2 Extension of scope to wholesale providers

49. There are two significant elements of the proposed text that appear to significantly extend the scope of the Billing GC:
- a. the addition of the term "*(including any wholesale provider)*" in paragraph C.4.1. b<sup>8</sup> unintentionally extends paragraphs C4.4 to C4.12<sup>9</sup> of the Billing GC to all Regulated Providers, which includes all billing relationships between wholesalers and CPs
  - b. the change of definition from Communications Provider to Regulated Provider and a change in the definition of Subscriber in paragraphs C4.7 to C4.12<sup>10</sup>. This inadvertently extends Access to Billing Information and Debt Collection and Disconnection obligations to wholesale providers for the first time.

We are sure that this is not Ofcom's intention and propose that further changes to the proposed text of the Billing GC are required.

50. The purpose of this GC is to ensure End-Users are billed accurately and protected on issues of debt collection and disconnection. Most, if not all, of the responsibility for billing rests with CPs who manage the billing relationship with their End-User. Only in very specific circumstances does a wholesale provider have any information that is directly used by a CP to bill the End-

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<sup>8</sup> See para C4.1.b Annex 12 of the Consultation document '*Review of the General Conditions of Entitlement*'

<sup>9</sup> See paras C4.4 to C4.12 Annex 12 of the Consultation document '*Review of the General Conditions of Entitlement*'

<sup>10</sup> See para C4.7 to C4.12 Annex 12 of the Consultation document '*Review of the General Conditions of Entitlement*'

User. However, the scope of the Billing GC has been fundamentally changed by adding the term "*(including any wholesale provider)*". This extends the whole Billing GC to all wholesale billing activity, irrespective of whether it has any impact on how a CP bills an End-User.

51. We understand Ofcom's addition of the term "*(including any wholesale provider)*" is intended to take account of a situation where a CP relies upon the wholesaler to provide metering information that is then used to bill End-Users. For example, a wholesaler may provide a wholesale calls product to a CP, where the wholesaler is the only party that meters individual calls. In these circumstances it is appropriate for the wholesale provider to be included within scope of both the Billing GC and also the Metering and Billing Direction.
52. This is already implemented in the Metering and Billing Direction (latest draft shown as Annex 14 of this review of the GCs), which was amended some time ago to include wholesale providers within scope. Wholesale providers of PATS services were included where they provided metering information to CPs that was used directly to invoice End-Users. However the scope of the Direction<sup>11</sup> and Annex C<sup>12</sup> excluded non-metering PATS activity, as both sections clearly indicate that invoices between CPs and wholesalers are not included. Furthermore it has always been industry practice, and understanding, that non-metering wholesale PATS activity has been excluded.
53. The new wording in the GC is in conflict with this approach, because Ofcom have designated all wholesale providers (above the relevant turnover figure), to be a Regulated Provider. As such all billing activity by any wholesaler providing fixed line voice or mobile services (PATS) or Publicly available Internet Access Services (PAIAS) PAIAS would be captured by all aspects of the proposed new Billing GC.
54. An example of this would be where a wholesaler can bill a CP for aggregated bandwidth (PAIAS); then the CP will onward bill individual End-Users for bandwidth. Whilst the wholesaler/CP agreement will impact the commercial pricing decisions of the CP at a macro level, it will have no bearing or impact on the CP to End-User billing process, including metering. Therefore it is disproportionate to include wholesale billing of this kind within the scope of the new Billing GC. Wholesale billing should only be included where it involves metering and billing that directly impacts End-Users.
55. The inadvertent extension of the billing GC to wholesale providers is compounded by the proposed change to the defined terms in the sections that relate to Billing information (itemised billing in the old GC 12) and Debt Collection and Disconnection (non-payment of bills in the old GC 13):
56. Previously these sections specifically referred to the relationship between Communication Providers and their Subscribers, where 'Subscriber' was defined as "*an End-User who is party to a contract with the Communications provider...*"<sup>13</sup>. Now they refer to the relationship between Regulated Providers and their Subscribers, where "Subscriber" is defined as "any person who is party to a contract with a provider of Public Electronic Communications Services..."<sup>14</sup>

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<sup>11</sup> See para 3.1 Annex 14 of the Consultation document '*Review of the General Conditions of Entitlement*'

<sup>12</sup> See para 1 of Annex C within Annex 14 of the Consultation document '*Review of the General Conditions of Entitlement*'

<sup>13</sup> See General Conditions 12.6(e) and GC 13.3(b) of the "*Consolidated Version of General conditions as at 28 May 2015*"

<sup>14</sup> See Annex 1 to Annex 12 "*Draft revised conditions for consultation*".

57. Also the term "Regulated Provider" replaces the term "Communications Provider". This means that all wholesale providers of PATS and PAIAS are within scope. So now the sections relating to Billing Information, and Debt Collection and Disconnection, would be extended to all wholesale providers in their dealings with customers, whether or not they are End-Users. This means that a wholesaler's debt collection and disconnection policy with a CP would be captured by the new Billing GC. This is a standard commercial agreement between two businesses with little to do with an End-User, and does not require additional regulatory supervision or intervention.
58. Ofcom does not state an intention to extend the scope of the provisions taken from GC 12 and GC 13 to include the contractual relationship between CPs and wholesalers. Indeed, when Ofcom discusses this change in Section 6 at paragraph 6.42(d)<sup>15</sup> of the Consultation, it only refers to the fact that the existing definition of 'Subscriber' in GC 12<sup>16</sup> *'limits the scope of GC 12 to call services only'*. Ofcom does not highlight that this definition also limited the scope to End-Users, as set out above. Given this is a significant change in scope but the Consultation is silent about it, we assume that this extended impact is unintentional.
59. In summary a wholesale provider's billing relationship with a CP often has little or no impact on how a CP bills their End-User. Only in the case of PATS metering (details of a voice call service such as duration of a call etc.) would there be such a direct mapping. Only in this situation is it appropriate to include a wholesaler provider within the scope of this GC, and only for the Total Metering and Billing Systems section (GC.4.4 to 4.6)<sup>17</sup>.
60. Further, if wholesale providers were to be brought fully within the scope of the new Billing GC, this would:
- a. create a disproportionate additional layer of regulatory supervision and intervention; contrary to Ofcom's statutory duties; and
  - b. require wholesale providers to change the way in which they design their billing systems and processes, incurring unnecessary costs.
61. Ofcom should alter this condition to make it clear how it should apply to wholesale providers. This can be easily achieved by amending the proposed drafting of C.4.1 b) as shown below:
- C4.1 The provisions of this Condition apply as follows:*
- a) *paragraphs C4.2 and C4.3 apply to any person who provides a Public Electronic Communications Service; and*
  - b) *paragraphs C4.4 to C4.12 apply to any provider of Publicly Available Telephone Services and/or Publicly Available Internet Access Services (including any wholesale provider) only if they bill an End-User, except that paragraphs C4.4 to C4.6;*
    - i) ***only apply to a wholesale provider if they provide metering information that is then used by a retailer to onward bill End-Users,***
    - ii) *do not apply to any such provider if its Relevant Turnover in its most recent complete financial year is less than £55 million;*

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<sup>15</sup> See para 6.42 (d), Section 6 of the Consultation document "Review of the General Conditions of Entitlement"

<sup>16</sup> See General Conditions 12 of the "Consolidated Version of General conditions as at 28 May 2015"

<sup>17</sup> See paras 4.4 to 4.6 of Annex 12 of the Consultation document "Review of the General Conditions of Entitlement"

*and each person to whom a provision applies is a 'Regulated Provider' for the purposes of that provision.*

62. If this is not Ofcom's intention then given the significance of the change for wholesale providers further consultation is needed to identify reasonable timescales for wholesale providers to comply with the new obligations.

### **2.4.3 Metering and Billing Direction**

63. The proposal to change the Direction to include data as mandatory is a significant change, especially considering Ofcom's extensive consultation period and decision in 2014, less than 3 years ago, where it was decided to retain data as a voluntary approval. Ofcom justify the change based on complaints from consumers, however, it would have been helpful to have been provided with greater context and evidence in this respect e.g. what degree of harm has been caused to consumers, and whether there is any evidence that such harm results from any data services being included on a voluntary basis only.
64. Before finalising the revised condition and Direction Ofcom should engage with industry to discuss the new requirements and provide stakeholders with an opportunity to consider any changes prior to the publication of a new Direction.
65. We also note that given the substantial impact the changes will have on Regulated Providers, significant resources will be required from the respective Approval Bodies to manage the external assessment work required.
66. Whilst in principle we agree internet access services should be included in the Direction, Ofcom should provide further clarification on the scope of the new Condition and Metering and Billing Direction. In particular, the definition of "Publicly Available Internet Access Service" and the use of the term "data" within C4 should be clarified.
67. We believe the definition of "Publicly Available Internet Access Service" should be amended and defined as follows: "a service made available to the public that provides direct access to the internet". This would make clear that the relevant services in scope are consumer broadband services that directly connect the customer to the internet, rather than other data services, such as virtual private networks, which may allow internet access, although internet access does not represent the main component of the offer. This would be consistent with the approach followed in the Ofcom Business Broadband Speed Code of Practice.
68. Ofcom should apply a consistent approach to terminology used and Ofcom refer to Publicly Available Internet Access Services across all relevant documents rather than using the generic term "data", which is much wider in scope and includes all data transmission services offered in the corporate market that are clearly out of the scope of the Billing Direction. We would also point out Ofcom the current Metering and Billing Direction explicitly excludes VoIP services from the scope of the mandatory approval; in fact VoIP is only subject to voluntary approval.
69. Ofcom should also be mindful of the resource pressure its proposed changes will bring to Approvals Bodies, as all CPs impacted seek to obtain extended approvals of their metering and billing systems.

### **2.4.4 Definition of "Bill"**

70. Ofcom has proposed the following as the definition:

*"Bill" means the information issued, or made available, by a Communications Provider to an End-User of the charges levied and due for payment or the information retained by a*

*Communications provider for the purpose of recording and enabling debits and credits to be applied to an End-User's account including current balance information".*

71. The revision of the definition of "Bill" to apply to "End-Users" extends CPs' obligations to all who may use the service. CPs are only responsible for the provision of bills to their own Subscribers and the bill should only be provided to the person or business with whom the contract is made.
72. Further, the definition of "Bill" should explicitly exclude "unbilled" information, which is the data available to customers in near real-time during the incomplete bill cycle, which allows customers to monitor their usage and charges either online or via an Interactive Voice Response (IVR) for mobile Pay as you go. This "unbilled" information may not contain all available data and may exclude, for example, discounts, credits due and promotions which are normally applied at the end of the bill cycle when the Subscriber's bill is produced.
73. In light of the above, we believe the definition should be revised as follows:

*"Bill" means the information issued, or made available, by a Communications Provider to its **Subscriber** ~~an End-User~~ of the charges levied and due for payment or the ~~information retained by a Communications provider for the purpose of recording and enabling debits and credits to be applied to a~~ **Subscriber's** ~~an End-User's~~ account including current balance information".*

#### **2.4.5 Turnover threshold**

74. We believe all CPs, regardless of their size and annual turnover, should be subject to a TMBS approval scheme. All CPs are currently required to have accurate billing systems (which the more detailed requirements of the Direction reflect), and all consumers should be protected and have confidence that their bills are correct, since customers must take the bills they receive from providers on trust. All CPs should therefore be subject to the same rigorous processes and checks. The proposed increase of the turnover threshold to £55 million would continue to unfairly exempt smaller providers from the mandatory metering and billing scheme. We believe there should be no threshold and would like to see it removed completely. All CPs should be required to have audited standards and be answerable to an Approval Body.

#### **2.4.6 Non-itemisation of calls that are free to the caller**

75. As the scope of the obligation has been widened to include data itemisation, BT considers that there should be no requirement to provide specific usage where the customer purchases a fixed price (or unlimited) data bundle rather than being charged a metered data rate. Itemisation of usage within bundled data packages would require significant systems development disproportionate to the minimal benefit to the Subscriber.
76. Additionally Ofcom proposes to amend the current requirement under C4 11.10 (GC 12.4) as follows:

*"Regulated Providers shall ensure that calls and Short Messages which are made from a Subscriber's telephone which are free of charge to that Subscriber, including calls and Short Messages to helplines, are not identified in the Subscriber's itemised Bills or any other Records that Regulated Providers make available to the Subscriber".*

77. It would be helpful if Ofcom could provide a clearer definition of calls that are 'free to caller' specifically for calls made within a bundle as these would still be free to the caller. Also to confirm whether existing itemisation, where usage is within allowance, and for which a customer is only charged through a monthly recurring charge, can be included in itemisation but is not a specific regulatory requirement.



78. While we agree that helplines using the dedicated 080880 number range should be suppressed from the bill, because callers may want to remain anonymous; we question the rationale for suppressing other non-chargeable items. There may be instances where customers want to know on which date and at what time they have called a certain free number, for instance to get the third party to verify what was said on the call, or who dealt with the call.
79. We also disagree with the insertion of the text "make available to the Subscriber". Ofcom should make a distinction between information made available to a Subscriber in the form of their bill, which customers can access themselves, and information available for staff, including customer service agents, to be able to handle customer complaints and billing queries as well as to correctly bill MVNOs and wholesale partners for the calls made by their end users.
80. We suggest that the requirement is re-drafted as follows:

*~~"The Communications Regulated Providers shall ensure that calls and Short Messages to confidential helplines which are made from a Subscriber's telephone and which are free of charge to that Subscriber, including calls and Short Messages to helplines, are not identified in the Subscriber's itemised Bills or any other Records that Regulated Providers make available to the Subscriber can access directly from the Regulated Provider".~~*

#### **2.4.7 Access to billing information**

81. C4.7 now refers to providing Subscribers "access to adequate billing information" rather than "itemised bill with a sufficient level of detail" so that customers can "verify and control the charges" and "adequately monitor the usage and expenditure". The revised statement is inconsistent with the obligation in the USD (Condition 6) and it would be appropriate for consistency to reinstate the previous wording.
82. Our response to Ofcom's questions on Billing is in section 3.4.

## **2.5 Complaints handling and access to ADR**

### **2.5.1 Introduction**

83. We agree that when customers feel the need to complain they should have confidence that their CP will treat them fairly and try to resolve their complaint in an effective and timely manner. To achieve this CPs need effective reporting and record keeping processes and we support Ofcom's proposals to raise industry standards.
84. The additional requirements in the proposed code such as specific reporting and record keeping requirements will require significant system developments across multiple systems and platforms. We are concerned that a six month period of implementation is unrealistic in respect to the complaint handling section. Our detailed comments in relation to the implementation period is in section 2.1.2 and Annex 1.
85. Ofcom should consult separately on this section to ensure stakeholders have adequate opportunity to consider the consequences of the proposed changes and to ensure the changes proposed address the issues identified.

### **2.5.2 Vulnerable customers**

86. We fully support Ofcom's desire to protect vulnerable customers. We agree that it is necessary for CPs to recognise when complainants may be vulnerable and to take this into account when processing their complaint.

87. Our advisers are trained to identify a complaint and as part of this process will assess customers' individual circumstances, be it a disability or a personal issue that may make them vulnerable.
88. However, as explained in section 2.7, the development, establishment and implementation of clear and effective policies for the extension of the GCs to include vulnerable customers is likely to be a complex task. Until the definition of vulnerable customer is fully resolved we believe that including a specific obligation in relation to vulnerable customers in Approved Code of Practice will cause uncertainty.
89. The Approved Code of Practice obliges CPs to train their advisers to identify a complaint and to be able to deal with that complaint regardless of who it is from or the customer's circumstances. This means CPs adhering to the Code should already be dealing effectively with complaints from vulnerable customers.
90. While we welcome Ofcom's new focus on additional protections for vulnerable customers, we believe that, as set out in our response the Vulnerable customers section, such policies should be developed "in the round", with input from all relevant stakeholders. BT would be willing to play a full and leading role in any such discussions.
91. We note that section 1, paragraph 2 states the Complaints Handling Procedures must be sufficiently accessible to vulnerable Relevant Customers. Relevant Customers is defined as Domestic and Small Business Customers. We would point out that the obligation on CPs under C5 and C6 is inconsistent and should only apply to "Vulnerable Consumers" rather than Relevant Customers.
92. Our response to Ofcom's questions on Complaints handling and access to ADR is in section 3.5.

## **2.6 Codes of practice**

93. Our response to Ofcom's questions on Codes of practice is in section 3.6.

## **2.7 Measures to meet the needs of vulnerable customers and End-Users with disabilities**

### **2.7.1 Introduction**

94. BT believes in the power of communications to make a better world.
95. We fully support Ofcom's desire to ensure that all in our society, including those who are disabled or who are in some other way vulnerable, enjoy the benefits that communications bring to our daily lives. To achieve this CPs need to play a full role, through considering the needs of their individual customers and through helping their disabled customers obtain comparable access to good quality communications.
96. We lead the UK's telecommunications industry in the provision of good quality information and advice to disabled and vulnerable customers through our "Including You" web pages and associated literature. We provide services specifically for our vulnerable customers, for example BT Basic and BT Basic Broadband. We have skilled advisors dedicated to helping vulnerable and disabled customers. We innovate, with services targeted at helping those in need, including specialist handsets and BT Call Protect, which protects our customers from nuisance and scam calls.

97. The current protections for disabled customers must be retained, these protections should be extended to cover all PECS, including broadband services, and we agree it is time for all CPs to look again at their policies and procedures, and, if CPs do not have policies and procedures, to establish them.
98. Identifying customers who are disabled or vulnerable is far from straightforward, and requires empathy and an understanding of the views and desires of the individual customer. The implementation of fair and effective policies requires the balancing of many factors. We discuss these factors in the following paragraphs.

### **2.7.2 Policy in relation to vulnerable customers**

99. Ofcom's proposed definition of who is a vulnerable customer is broad and open ended. Many customers, who objectively may be viewed as vulnerable, may see themselves as anything but. Customers may not wish to share any information that identifies themselves as such. Some customers may be insulted or angered if asked about a potential vulnerability.
100. The trigger for a customer's individual vulnerability are many and varied, covering factors such as health, age, background, education, relationships, employment etc. The vulnerability may be chronic or may be transient, and for those whom it is transient it may be recurring.
101. Competing legal and regulatory obligations will need careful weighing. For example, capturing and recording information about a customer's vulnerability would need very careful consideration to make sure all the requirements and principles of Data Protection legislation are complied with. This could potentially involve consideration about how to deal compliantly with a customer's sensitive personal data.
102. Further, many customers self-serve via our website and the opportunity for capturing information about their vulnerability will be limited.
103. Given all these factors, the development, establishment and implementation of clear and effective policies for the extension of the GCs to include vulnerable customers is likely to be a complex task, involving the development and augmentation of systems, training schemes and other processes and ways of working.
104. Additionally, the guidance as to how to apply disparate rules and obligations, and where the balance lies for competing policy considerations is unclear.
105. For the above reasons, while it is important that every CP develop its own policies and procedures as quickly as possible, we believe that the timescale for implementation suggested by Ofcom is overly optimistic. Ofcom should agree a realistic implementation period with CPs and extend the proposed period as necessary.
106. To help all involved contribute to the development of effective policies and procedures, and for regulators to provide clear guidance, we believe there needs to be much more discussion between all interested stakeholders, including Ofcom, the Information Commissioner's Office, the wider regulatory community through the United Kingdom Regulators Network, CPs and, importantly, those stakeholders who act as advocates for the disabled and vulnerable.<sup>18</sup>

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<sup>18</sup> For example, the Financial Conduct Authority have researched vulnerability; they have focused on "stimulating debate and interest around the subject of consumer vulnerability so that firms better understand the issue and act appropriately"; *FCA Occasional Paper No. 8: Consumer Vulnerability*: <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-8-exec-summary.pdf> Other regulators have been examining vulnerability; Ofgem has developed a consumer vulnerability strategy based on engagement with academic experts, building on their earlier work and their Social Action Plan and Social

107. BT would be willing to play a full and leading role in such discussions.

### **2.7.3 Measures for End-Users with disabilities**

108. Ofcom's proposal to change the definition of those who benefit from the current and proposed protections set out in C6.5 to C6.11, from Subscriber to End-Users, will create uncertainty.

109. We agree that, in certain circumstances, it is necessary for the protections that currently apply to a Subscriber should extend to an identifiable End-User. The example that Ofcom gave of a disabled relative who lives with a Subscriber and who, as an authorised End-User, makes regular use of the services that the Subscriber has contracted for, is a good illustration of the type of situation where a definition based on Subscriber is insufficient.

110. However, the proposed use of the definition of End-User captures all persons using PECS, including, for example, employees of large companies, and for whom obligations fall on their employers to ensure appropriate adjustments and arrangements are made for their disabilities.

111. Ofcom should consider carefully with CPs potential "use cases" arising as a result of the change of definition from "Subscriber" to "End-User", and consider introducing wording to the proposed condition that clarifies the extent and limits of CPs' obligations to End-Users.

112. Our response to Ofcom's questions on Vulnerable customers is in section 3.7.

## **2.8 Calling line identification facilities**

### **2.8.1 Prohibition on additional charges for standard CLI facilities**

113. BT fully supports Ofcom's drive to reduce nuisance calls. We recognise that these calls can cause our customers annoyance and distress and we welcome Ofcom's focus on the use of CLI data as a tool to reduce the number of unwanted calls consumers receive. BT has led the industry in tackling the problem of nuisance calls. Through BT's Vulnerable Customer & Nuisance Calls team, and EE's Nuisance Calls Bureau, we give our customers practical advice on how to reduce nuisance calls and associated scam calls.

114. Recently, BT launched BT Call Protect, a free service that allows BT's fixed line customers to blacklist calls from unwanted numbers; to create a personal blacklist of unwanted numbers; and to manage specific categories of calls (such as withheld or international) and send them straight to junk voicemail. BT Call Protect is the first such service of its kind and is effective at reducing the volume of nuisance calls and allowing customers much greater control over the calls they receive.

115. Although we agree with Ofcom's general intent to combat nuisance calls, we consider that the proposed prohibition on separate or additional charges for access to or use of standard CLI facilities (C7.5) too narrowly focuses on one aspect of nuisance call prevention to the exclusion of all others, and in doing so unnecessarily limits CPs' commercial freedom and stifles a retail market that is generally deemed by Ofcom to be effectively competitive.

116. CPs should be permitted to continue to levy additional charges for CLI facilities as long as they also take effective action to prevent nuisance calls. The vast majority of BT customers have free access to BT Call Protect, which diverts hundreds of thousands of nuisance calls a week on our network, significantly reducing the impact of these calls on customers. For many BT

customers, therefore, caller display is a secondary tool in combatting nuisance calls and can be considered a discretionary purchase.

117. It is disproportionate to prevent CPs from charging for a service like caller display, which is valued by customers but not essential for protection from nuisance calls. Having the option to charge for caller display allows BT to differentiate its offer through the development of value add services to retain competitiveness against firms who do not charge. Forcing the removal of charging would have unintended consequences by removing this form of differentiation which is an important dimension of competition. A prohibition on additional charges for CLI facilities could also reduce incentives to invest in new technological solutions such as BT Call Protect.
118. We consider that Ofcom should impose a general obligation on CPs to proactively tackle nuisance calls at no additional cost to customers but that CPs should be allowed the flexibility to interpret that obligation and implement measures as they see fit. This will have the dual outcome of ensuring CPs focus on the nuisance calls issue while incentivising investment in innovative and market-differentiating services such as BT Call Protect.

### **2.8.2 Other CLI issues**

119. BT supports Ofcom's drive to reduce nuisance calls but we are concerned that some of the more technical changes in relation to CLI proposed by Ofcom may be insufficient to ensure the accuracy of CLI data; resolving these issues may require separate consultation with industry.
120. Ofcom's other proposed amendments to C7 largely concern ensuring the accurate provision of CLI data to assist with the detection and prevention of nuisance calls. While BT fully supports Ofcom's aims in this respect, we do not believe the changes go far enough to ensure CLI data not only identifies the caller but also the accurate geographic location from which their call has been made.
121. In addition, we take our role as the UK's emergency call handler very seriously and believe that Ofcom's revision of C7 must go further if it is to properly protect End-Users contacting the emergency services. C7 should explicitly prohibit misuse of CLI and oblige Regulated Providers to ensure the location as well as the identity of the caller must be valid or flagged as such.
122. Whilst we understand that legally the GCs can only apply to providers of PATS and PECNs, we believe that to ensure customer safety the CLI principles should be enshrined within this General Condition, the CLI Guidelines and the NICC Standard to additionally bind any other type of communications service provider to whom Ofcom has allocated numbers of any kind. Ofcom should consider how it could oblige all types of communications service providers to comply with the CLI obligations that currently only apply to providers of PATS and PECNs, for example, as part of the number allocation process. Any such obligation should cover existing number allocations as well as all new applications for telephone numbers.
123. In C7.2 and C7.3 Ofcom outlines Regulated Providers' obligations. However, we do not believe it is sufficiently clear to whom these two Paragraphs apply. Ofcom should clarify that C7.2 applies to Originating (OCP) and Terminating (TCP) providers while C7.3 only applies to Terminating providers.
124. BT cannot envisage a situation where an OCP could not technically provide a network CLI for an outgoing call and our experience to date is that all OCPs can provide a network CLI (even where there is some debate about the telephone number that should populate that field). However C7.3 relates to whether a consumer receiving a call is given visibility of the CLI of the calling party and therefore clearly relates solely to TCPs.

125. The current drafting of C7.4 requires Regulated Providers to provide CLI data on an outgoing call that "uniquely identifies the caller". This dilutes current requirements and jeopardises emergency call handlers' ability to trace nuisance or emergency calls and lookup address information for 999 services. It is our view that this wording would allow an OCP to use the number in service for call termination at another address and even with a different Communications Provider which could put the caller's safety in jeopardy if they are unable to verbally confirm their location when making an emergency call. We believe that this risk could be mitigated significantly by requiring Regulated Providers to provide CLI data that uniquely identifies the point at which the call enters the OCP's network.
126. C7.4 caters well for numbers presented from 01/02 number ranges where we expect customers to call from a fixed location. However, numbers presented from 03 and 08 ranges will be used mainly by organisations and in many cases the company's switchboard number will be used as the Presentation Number for all callers within the organisation (e.g. Ofcom) so the CP will be unable to uniquely identify the caller.
127. Ofcom does not make any reference in the text of C7 to the distinctions between presentation CLI (what a caller may choose to display to the party being called, if anything) and the network CLI which should be continually available at the network level to clearly identify the origin of the call. Presentation CLI is a helpful tool for customers who may wish not to disclose their full telephone number when they make calls, but if not clearly separated in the regulation from the need for network CLI to be valid and traceable, risks the continued misuse that we experience today. While accurate and reliable network CLI is important for a call to route and bill correctly end-to-end while transiting different ECNs and ECSs, when it is supplied in connection with an emergency call, it can be the difference between whether someone lives or dies. We believe Ofcom could provide this additional clarity within its proposed changes to C7.4, emphasising that the network CLI must always be present and correctly populated (subject to the point at C7.2 above).
128. C7.6 as currently drafted puts a clear and equal obligation on OCP and TCP, as well as any transit operator, to identify and block any traffic with an "invalid" or "non-diallable" CLI. It is our view that this is entirely appropriate with respect to all OCPs and may be helpful for those transit operators and TCPs to be entitled to block such traffic, but BT does not agree that these CPs should be under an obligation to do so (subject to technical capability). Requiring call blocking for invalid or non-diallable CLI would undoubtedly reduce malicious and nuisance calls. However, it would also prevent such calls reaching their destination regardless of where or what that was and would inhibit genuine emergency calls and those to services such as Childline and Samaritans where termination of the call with the service dialled would be imperative to the caller. We believe Ofcom should set out separate requirements in respect of nuisance calls or those associated with fraud that require Regulated Providers (OCP, TCP and transit CP alike) to block calls with specific invalid or non-diallable CLIs where technically feasible and those where the Regulated Provider has good evidence to suggest that these are unwanted calls or calls associated with potentially criminal activity.
129. We are concerned that the decision to precede proposed changes to the CLI guidelines with the revisions to C7 may inhibit the implementation of formal regulation that can then be enforced if required. The NICC standard (ND1016) provides the definitive technical absolutes by which UK Communications Providers should operate and is being revised in light of what is seen as current bad practice to tighten matters up further. It is not enforceable in law, however. We understand that when Ofcom does consult on revisions to the CLI Guidelines that, for the first time, it will refer to this technical standard. However, the Guidelines themselves have no legal status and as the drafting of the revised General Condition 7 refers neither to Guidelines nor the NICC standard, it is our view that the risk exists for legal challenge as the communications industry won't have legal certainty until a dispute is brought against Ofcom's findings.

130. Our response to Ofcom's questions on CLI is in section 3.8.

## **2.9 Switching**

### **2.9.1 Introduction**

131. We agree that it is sensible to manage the review of GCs 18 and 22 in two stages, with the second stage being completed once Ofcom has reached a conclusion on its ongoing reviews of cross-platform switching and of mobile switching.
132. In its review document, Ofcom lists the switching projects currently underway; we note that the mobile switching project has been delayed. We ask Ofcom to take this opportunity, outside of the GC review process, to assess all current ongoing switching work in the round and work with industry to develop a switching process that encompasses all services, as proposed in BT's response to Ofcom's switching consultation.
133. It is essential that Ofcom takes a holistic and consistent view in carrying out these assessments. As we said in response to Ofcom's cross-platform switching consultation, services likely to be purchased in a bundle – i.e. fixed voice, broadband, pay TV and, in the near future, mobile – should follow a consistent switching process. Now that fixed voice and broadband services provided on the Openreach platform are switched using a Gaining Provider Led (GPL) process, a holistic, future-proof and consistent approach should be adopted, so that the same process applies to all voice, broadband and pay TV services, regardless of the underlying platform over which they are provided.
134. BT will continue to engage with Ofcom and industry, in relation to both fixed and mobile number portability, to bring about improvements that will minimise loss of service and make the process as quick, simple and smooth as possible for consumers.
135. We are concerned that the new provision to "ask Switching Customers if they also want relevant information provided in a Durable Medium" goes beyond simplifying drafting and definitions, which is Ofcom's stated intention in the review document.
136. We welcome Ofcom's proposal to remove the current prohibition on reactive save activity.

### **2.9.2 Obligations to prevent mis-selling**

137. Ofcom states (in Paragraph 11.5 of the review document) that for GC22, it intends to "simplify drafting and definitions, but without changing the original scope". However, with respect to the "Obligations to prevent mis-selling" proposed at GC22.3, the proposed obligation to "ask Switching Customers if they also want the information provided in a Durable Medium" and, if they do, to provide the information in that form, is completely new.
138. Having to provide pre-contractual information in a durable medium on request goes beyond the requirements of current consumer protection legislation and does not appear to be justified on the basis of any evidence of consumer harm. We discuss this in more detail in the Mis-Selling section, in section 2.10 below; please note that our comments below apply equally to the equivalent obligation contained in the Switching section.

### **2.9.3 Impact on the Switching Customer's contractual obligations with other Regulated Providers**

139. Ofcom has included a new list of examples of the types of information that a CP provides to the Switching Customer that must be accurate and not misleading. This includes information about "the impact on the Switching Customer's contractual obligations with other Regulated Providers,

as a result of buying the Relevant Communications Services being sold or marketed by the Gaining Provider" (GP). Whilst naturally BT agrees that no information should be provided that is inaccurate or misleading, we note that a GP is unlikely to have any information of this kind which relates to the customer's specific circumstances. We understand that the new GC22.3(c)(iii) is not intended to impose any new obligation on the GP to provide such information.

#### **2.9.4 Switching Customers' termination rights**

140. In relation to Switching Customers' termination rights, we question whether it is reasonable for Regulated Providers still to have to allow customers to cancel the contract by post. Given the steps that have to be taken for this to occur (order placed by GP, loss notification sent to Losing Provider (LP), processed by LP who sends out Notification of Transfer letter by post, customer receives letter, reconsiders and sends letter to the GP), it seems unlikely that this could be achieved in practice within the 10 working day transfer period. Ofcom therefore may wish to consider removing the postal option as far as the customer cancellation is concerned.

#### **2.9.5 Definitions**

141. The rewording of GC22.3 should state "and" rather than "or" between points (a) and (b). i.e. "(a) it does not engage in Slamming; and (b) it only uses Cancel Other in the circumstances set out in Annex 1."

142. We note that the definition of "Switching Customer" includes "a person who is a Domestic and Small Business Customer of a Communications Provider...." However we question whether it is appropriate to use this term in the context of Annex 2 to GC22, which is about Working Line Takeovers. The term "switching" is generally used in the context of customers migrating between different Communications Providers, whereas in the context of a Working Line Takeover, whilst the line/service might be being "switched" to a different provider, very often the customers (both the "incumbent" customer and the customer leaving the premises) will be remaining with their existing provider. It would therefore be clearer to adhere to the existing terms of "incumbent" and "incoming" end user/customer.

143. Our response to Ofcom's questions on Switching is in section 3.9.

## **2.10 Mis-selling**

### **2.10.1 Introduction**

144. We fully support Ofcom's desire to protect domestic and small business customers from mis-selling.

145. We welcome the suggestion that CPs should undertake enhanced due diligence in respect of third party retailers acting on their behalf and agree with the underlying philosophy that consumer and small business ("Relevant Customers") customers should be empowered to make informed purchasing decisions.

146. However, we consider that some of the proposed means of achieving Ofcom's aims are unlikely to enhance existing protections for Relevant Customers (designed to deter retailers from engaging in aggressive or misleading sales practices that cause harm) or be effective at tackling the sharp practices used by some CPs in the context of switching (an issue identified in Paragraph 12.3 of the review document as a sector specific problem requiring regulatory intervention).



147. In particular, Ofcom's proposal that CPs should offer and upon request provide pre-contractual information in a durable medium, creates a disproportionate burden of compliance upon CPs without any clear benefit. In continuing to rely on paper-based solutions to convey important information to Relevant Customers without exploring innovative digital alternatives, Ofcom could ultimately cause more consumer harm, as explained below.
148. Additionally, there is a real risk that the proposal will divert CP investment away from innovative customer and agent engagement tools recognised to be effective techniques in the prevention of mis-selling.
149. Further, providing detailed pre-contractual information in a durable medium prior to a contract being entered into is impractical and may actually cause customer confusion. Offers in this market change regularly, meaning CPs could be obliged to send information about a product that will be imminently withdrawn; this could be confusing for customers and it would be onerous for CPs to have to provide this information. It is clearly preferable in this instance to point customers to a relevant website where up to date information can be easily accessed – see 2.10.5 below.
150. Should the latter proposal be implemented, significant systems changes and updates to training material would be required to support it, and a six month period of implementation would be unrealistic. Our detailed comments in relation to the implementation period is in section 2.1.2 and Annex 1

### **2.10.2 Legal obligations to prevent mis-selling**

151. As outlined by EE and BT in previous submissions to Ofcom, there is an existing legal framework designed to enhance the quality of decision making for consumers before entering into contracts. This framework includes: the Consumer Protection from Unfair Trading Regulations 2008, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Rights Act 2015.
152. Contrary to the assertion at Paragraph 12.24(b) of the review document, this legal framework ensures that all organisations (including CPs) must provide consumers with information related to the products and services they market before the point at which the customer is about to sign the contract.
153. The descriptions below outline how BT, its group companies and (we assume) other CPs provide clear information about their products pre-sale. The descriptions also outline the challenges each channel would face should it have to provide additional communications, in a durable medium, to consumers and the potential increase in consumer harm.

### **2.10.3 Retail**

154. On a confidential basis, EE can confirm that it currently spends c. [xxxxxxxxxxxxx] per annum providing printed: posters, backing cards and leaflets to its retail stores. EE invests heavily in this material to comply with its existing legal and regulatory obligations but also because it is important to ensure consumers are confident buying products in store rather than online; EE has seen a sharp decline in retail footfall and an increase in e-tailing. This shift in consumer behaviour is, in part, a result of customers using online comparison tools and the internet to research products more thoroughly.
155. However, as printed material is distributed by our retail agents there is an inherent risk (as with any process that is not centrally managed or mechanised) that human error results in the supply of that out of date material to customers. To address this issue, EE and other CPs are increasingly using digital content such as: interactive video screens, digital notice boards and

internet enabled tablets (providing access to the retailer's online shop) to provide pre-contractual information to consumers. This approach enables head office and the compliance teams to have greater control of the information provided to consumers. The interactive shopping experience also allows the consumer to get to grips with the products marketed to them

156. Imposing an obligation to provide pre-contractual information, in a durable medium, in retail would mean: greater investment in printing and/or an investment in IT infrastructure (at the moment agents are not able to email consumers directly for IT security and data protection reasons).

#### **2.10.4 Telesales**

157. As described above, consumers tend to undertake extensive research online before committing to a contract for a high value handset and telecommunication service. This applies equally to mobile and fixed-line services.

158. This means, whether they are buying a mobile or fixed-line service, as a small business or a consumer, customers generally have a basic awareness of a CP's product prior to speaking with a telesales agent. However, for those customers that do not undertake market research before calling, telesales agents in all BT Group companies are trained to provide accurate information about the products they sell. We also have prompts in our sales systems to ensure agents to read out key information about the products and services at the relevant times. This is to comply with our existing legal and regulatory obligations but also, from a consumer retail perspective, to minimise the commercial impact (which is significant) of a customer exercising their legal right to a 14 day cooling off period because they haven't properly understood the contract they are entering into.<sup>19</sup>

#### **2.10.5 Online**

159. As already described, consumers and small business customers are increasingly buying products online; consumers/Relevant Customers are able to access a wealth of information to help inform their purchasing decision. As described at Paragraph 6.5.2 above, it is in the interests of CPs to ensure that the information they publish is accurate and informative, particularly in a competitive online market.

160. Given the accessibility of this information, we consider the requirement to provide this in paper or email format is an unnecessary requirement.

#### **2.10.6 Conclusion**

161. In our view there are more effective ways of protecting Relevant Customers from mis-selling. The existing legal framework imposes an obligation to provide extensive information to consumers pre-sale and the suggestion to offer this information in a durable medium is unlikely

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<sup>19</sup> To improve the accuracy of the information supplied to its customers, EE has started developing and using a tool called Vizualise. Vizualise enables the agent and the consumer to log into an online "chat room" whilst speaking to an agent on the phone. The agent can share pictures, pricing information and other details of the products / services discussed direct from EE sales systems. If the customer does not wish to use this chatroom, they are free to go online and research the products marketed to them on ee.co.uk. So far we have had a positive response to our use of Vizualise and have seen a reduction in the number of customers using their cooling off period. Innovations, such as Vizualise, which may be adopted more widely within the industry, would be stifled by a requirement to provide information in paper or email form.

to effectively tackle the problem Ofcom seeks to solve. The increased compliance costs associated with the suggestion would divert resources away from investment in projects that improve the transparency and accuracy of the information we supply to customers through the digitisation of point of sale material, the enhancement of agent training and the implementation of more stringent disciplinary procedures that would deter rogue agents from engaging in sharp or misleading practices that cause consumer harm.

162. Instead, we propose that Ofcom focuses on imposing an outcome based approach for CPs to prevent mis-selling; this would enable CPs to develop and deploy innovative solutions to help Relevant Customers feel more confident when contracting with CPs.

### **2.10.7 Provision of Relevant Mobile Services**

163. We agree, as stated at Paragraph 12.30(c) of the review document, that it is reasonable for CPs to supply services that consumers have paid for. However, there are occasions where a consumer may not be able to receive services for reasons that are beyond the CPs control. For example, customers may be unable to access the internet on their phone because they've failed to configure their mobile device according to the set of instructions provided.

164. For this reason, we think General Condition 23.6 imposes an obligation on CPs to take extraordinary steps to ensure the consumer is actually receiving services; this is disproportionate and not within the spirit of the implied obligation described in the review document. Accordingly we think it would be helpful to make a minor amendment to the proposed drafting for General Condition 23.6, set out below.

*23.6 Regulated Providers must ensure that each Relevant Customer ~~receives~~ **can access** the Relevant Mobile Services that they have contracted with the Regulated to receive.*

165. Our response to Ofcom's questions on Mis-selling is in section 3.10.

## **2.11 Consequential changes**

166. Our response to Ofcom's questions on Consequential changes is in section 3.11.

### 3 Answers to Ofcom's questions

167. This section provides BT's responses to the questions raised in the review document.

#### 3.1 Common issues

**Question 1:** Do you agree with our overall approach to this review of the GCs as set out in Sections 2 and 3 of this consultation? Please give reasons for your views.

168. We have outlined our concerns with some of the common issues above in section 2.1. We would also like to make the following points.

169. The General Conditions framework has grown over time and become unwieldy, which makes compliance more difficult for CPs. BT and other CPs require regulatory certainty in order to invest in the market, based on a clear, straightforward and consistent set of regulatory rules which are easily navigated and interpreted. We acknowledge there are advantages to the GC framework being a living document though we ask Ofcom to balance that approach with the risk that amendments and continuous evolution make the document inconsistent and unwieldy.

170. In the spirit of simplifying the regulatory regime, Ofcom should in future encourage the use of industry co-regulatory initiatives rather than formal General Conditions which, in some cases, impose unnecessary and inflexible burdens on the stakeholder community. Good examples of where this co-regulatory approach has worked well are the industry fixed broadband speeds code of practice and co-operative work done by industry on nuisance calls.

171. Ofcom should adhere to the general principle that the revised GCs ought to be technology- and medium-neutral, as well as being outcome-based rather than prescriptive. This allows CPs greater flexibility to cater to customer preference, and to make use of evolving efficiencies within their businesses and technological innovation in industry.

**Question 2:** Do you agree with our proposed implementation period for the revised GCs of 3 to 6 months following publication of our final statement? If you think a longer implementation period is necessary, please explain why, giving reasons for your views.

172. No. Please see section 2.1.2 and Annex 1.

#### 3.2 Contract requirements

173. Our comments on Ofcom's proposals regarding Contract requirements is set out in section 2.2.

174. In this section we set out our response to the specific questions Ofcom has posed.

**Question 3:** Do you agree with our proposals in relation to contract requirements? If you consider that we should retain the regime applying to contracts concluded before 26 May 2011, please explain why, giving reasons for your views.

175. We disagree with Ofcom's proposed changes to the material detriment provisions (section 2.2) but have no other concerns.

176. We agree Ofcom should remove the regime applying to contracts concluded before 26 May 2011.

**Question 4:** Are there any other modifications to the proposed revised condition in relation to contracts requirements that you consider would be appropriate?

177. We note the ongoing work being undertaken at European Union level in respect of the European Electronic Communications Code and the Consumer Law acquis REFIT. Whilst Britain's exit from the European Union introduces some uncertainty as to adoption of reforms, it is our view that alignment and, where appropriate, coherence with consumer law changes generally would be sensible.

### 3.3 Information publication and transparency requirements

178. Our comments on Ofcom's proposals regarding Information publication and transparency requirements are set out in section 2.3.

179. In this section we set out our response to the specific questions Ofcom has posed.

**Question 5:** Do you agree with our proposals in relation to information publication and transparency requirements, including removing the separate condition relating to publication of quality of service information?

180. We agree with Ofcom's proposal to remove the separate condition relating to publication of quality of service information.

**Question 6:** Do you agree with our proposal to replace the existing detailed requirements in relation to Small Businesses with a general obligation to ensure price transparency and to notify Small Business Customers where the terms and conditions that apply to them differ from those that providers are required to comply with in relation to consumers?

181. C2.8 appears to suggest that CPs should carry out a comparison of its Consumer offering with its Small Business offering and identify the differences in terms and costs, a process that is complex as the products are not always comparable, onerous, and not proportionate to the intention of the requirement; if all charges are all published then customers can carry out their own comparison should they wish to. Ofcom should create a simple obligation on CPs to make their terms and costs to Small Businesses clear rather than a requirement to highlight differences between different offerings.

**Question 7:** Are there any other modifications to the conditions relating to information publication and transparency requirements that you consider would be appropriate?

182. No.

### 3.4 Billing requirements

183. Our comments on Ofcom's proposals regarding Billing requirements are set out in section 2.4.

184. In this section we set out our response to the specific questions Ofcom has posed.

**Question 8:** Do you agree with our proposals for updating the current conditions that relate to billing? In particular, do you agree with our proposals to extend the current protections for End-Users in relation to billing so that they would apply, more generally, to fixed and mobile voice call and data services?

185. We agree with the proposals in principle since it is sensible to ensure consumers receive whole bill protection, especially with the increased use of broadband and mobile services in the

marketplace. We consider that most of the proposals Ofcom make are workable and help simplify and clarify the regulatory obligations for CPs. In particular, we welcome and agree with the proposals to (i) combine GC11, 12 and 13 into a single Condition; (ii) remove Ofcom's direction-making power that allows it to specify which records should be retained in order to demonstrate that customers have not been overcharged or for use in billing complaints; (iii) remove Ofcom's direction-making power allowing Ofcom to specify how long providers must retain records in order to demonstrate that customers have not been overcharged or for use in billing complaints; (iv) remove the 15 month maximum limit on record retention; (v) introduce the 12 month minimum requirement on record retention; (vi) clarify the scope of wholesale providers so that it only applies where the wholesale provider provides data to enable the direct metering of end-user services.

Question 9: Do you agree with our provisional assessment that our proposals to extend the regulatory requirements for billing to fixed and mobile voice call and data services does not impose a disproportionate burden on industry? Do you have any further information on the likely costs of these proposals?

186. To comply fully with the new obligations BT will need to make changes which will result in additional costs. Until Ofcom's requirements are fully understood it is difficult to estimate the cost impact for system change development that may be required, however, given the significant extension of the scope they are likely to be significant.

187. The revised Direction, expanded to include Internet Access Services, will pose a particular challenge in terms of implementation, given the changes to the accreditation processes to cover additional specific systems/controls will be in scope. These changes include

- a. New documentation and process reviews
- b. Additional reporting.
- c. Additional auditing
- d. Additional Approval Body fees
- e. Additional internal compliance costs (including auditing and reporting)
- f. Legal costs of reviewing contractual arrangements with third parties
- g. Cost of developing new systems

188. While BT does not consider this disproportionate *per se*, we consider the proposed six month implementation period to be unrealistic. Given the complexity of obtaining accreditation in the Direction, we believe the timescales for approval should remain the same as in the 2014 Direction, whereby a new approval allows a two year period. We have provided comments in relation to this issue in section 2.1.2 and Annex 1.

189. Finally, as we set out in section 2.4 of this response, the extension of the Billing GC to all wholesaler providers in all circumstances, would impose a disproportionate burden on industry. We have not fully costed this as we do not believe it is Ofcom's intention to extend the scope of the Billing GC in this way. We have proposed some minor changes to clarify the Billing GC. We don't believe the impact on wholesale providers would be disproportionate if these changes are adopted by Ofcom.

Question 10: Are there any other modifications to the billing conditions that you consider would be appropriate?

190. No.

### 3.5 Complaints handling and access to ADR

191. Our comments on Ofcom's proposals regarding Complaints handling requirements are set out in section 2.5.

192. In this section we set out our response to the specific questions Ofcom has posed.

Question 11: Do you consider that our proposed revised condition for complaints handling and access to alternative dispute resolution, together with our proposed revised code of practice on complaints handling, will improve the transparency, accessibility and effectiveness of communications providers' complaints handling procedures, and improve access to alternative dispute resolution? If not, please give reasons, including alternative suggestions.

193. We are pleased to see the timescale to send a customer an ADR letter remains at 8 weeks. We believe this is the right timeline. Our priority is to resolve a complaint to the consumer's satisfaction as quickly and efficiently as possible and whilst the majority of our complaints are closed within the first two weeks, more complex or technical complaints will require a longer period for resolution.

194. We keep cases open until we have confirmed customers have received any follow up action required, such as making sure an adjustment or placing a credit on their bill has been done, a fault cleared or an order closed. Our data supports this timeline by showing that most customer complaints are closed with 2 weeks of being opened and, where we are unable to reach agreement with a customer, they are informed of their right to go to ADR before the 8 week period. With this in mind, we believe the current timeframe is correct and provides a minimum standard that allows CPs to drive customer service and enables CPs to compete in this area.

195. We welcome Ofcom's clarification on who the condition applies to, both in the scope and the proposed definition of a complaint.

Question 12: Do you have any other comments on our proposals in relation to complaints handling and access to alternative dispute resolution?

196. No.

### 3.6 Codes of practice

Question 13: Do you agree with our proposals in relation to the codes of practice that communications providers are currently required to establish, maintain and comply with – including replacing these with direct obligations to make information available, where appropriate?

197. We agree with Ofcom's proposals in relation to codes of practice. Although not a code of practice, we reiterate here that we disagree with the proposal (at least in its current form) to remove Ofcom's material detriment guidance and replace it with a direct obligation within the GCs – see section 2.2.

### 3.7 Measures to meet the needs of vulnerable customers and End-Users with disabilities

198. Our comments on Ofcom's proposals regarding vulnerable customers and End-Users with disabilities is set out in section 2.7.

199. In this section we set out our response to the specific questions Ofcom has posed.

Question 14: Do you agree with our proposals to introduce a new requirement for communications providers to take account of, and have procedures to meet, the needs of consumers whose circumstances may make them vulnerable?

200. We fully support Ofcom's desire to ensure that all in our society, including those who are disabled or who are in some other way vulnerable, enjoy the benefits that communications bring to our daily lives.

201. We believe that given the complexity involved in developing, establishing and implementing clear and effective policies and procedures for the fair and appropriate treatment of customer's whose circumstances may make them vulnerable, Ofcom should

202. Review with CPs whether an implementation period of 3-6 months is realistic, and extend the period as necessary; and

203. Engage further with all interested parties, developing clear policy positions and guidance, to ensure the policies and procedures CPs implement are effective.

Question 15: Do you agree with our proposals to update regulation by extending the current protections for End-Users with disabilities, which currently apply only in relation to telephony services, to cover all public electronic communications services?

204. We fully support Ofcom's proposal to extend the current protections for End-Users with disabilities to all PECS, including broadband.

Question 16: Are there any other modifications to the proposed revised condition on measures to meet the needs of vulnerable consumers and End-Users with disabilities that you consider would be appropriate?

205. It's noted that 15.11 (billing) refers to Subscriber rather than End-User which is more appropriate.

206. However, there may still be confusion around the use of Subscriber where the Subscriber is a company e.g. provision of priority fault repair to a Subscriber. Ofcom should specify that this obligation only applies to consumers. It is also unclear how priority fault repair will apply to mobile customers.

### **3.7.1 Relay Service:**

207. We assume that Ofcom's reference in paragraph 9.32 of this consultation, to the technical requirements for relay services set out in GC 15.3 (c), (e) and (h), should read 'GC15.5' and we are responding on that basis.

208. It is helpful to move the technical functionality that an approved and compliant relay service must deliver to the definition of the service. This helps to separate the role of the relay service provider from the regulatory obligations CPs are required to fulfil. We also believe that extending the definition further and including the requirement to publish quarterly KPIs, an Annual Report, and (every over year) conduct and publish customer research would provide further clarity of what a relay service provider must do. Currently, this additional information is only available in documents supporting the Next Generation Text Relay consultation and in Ofcom's approval of BTs equivalent. Therefore, the inclusion of these criteria within the definition of a relay service would enable the definition to be a single source document



providing the minimum technical and commercial requirements a compliant relay service provider will need to meet.

209. We note within the definition of "Relay Service" (set out at Annex 12 of this consultation) that Ofcom has retained the requirement to provide access to operator assistance services. We believe this may be unintended and recommend that the definition is amended to reflect the fact that Ofcom has already proposed its removal from GC8 (as set out in Phase I of this review). In making this amendment we believe it would be appropriate to include within the "Relay Service" criteria a requirement to provide access to a "Relay Service Helpdesk Facility".

### 3.8 Calling line identification facilities

210. Our comments on Ofcom's proposals regarding CLI are set out in section 2.8.

211. In this section we set out our response to the specific questions Ofcom has posed.

Question 17: Do you agree with our proposal to remove the condition relating to the provision of tone-dialling? Please give reasons for your views.

212. Whilst we are generally content with the deletions Ofcom propose to make in the drafting of General Condition 7, we are concerned that the supporting observations Ofcom make in the review document imply an expectation that Tone Dialling would be available indefinitely in the UK.

Question 18: Do you agree with the changes we are proposing to make in relation to the provision of calling line identification facilities, including the new requirements we are proposing to add? Please give reasons for your views.

213. Please see section 2.8.

### 3.9 Switching

214. Our comments on Ofcom's proposals regarding Switching are set out in section 2.9.

215. In this section we set out our response to the specific questions Ofcom has posed.

Question 19: Do you have any comments on our proposals in relation to the proposed revised general condition on switching?

216. Please see section 2.9.

Question 20: Do you agree with our proposal to remove the current provision which expressly prohibits so-called 'reactive save' activity (in GC 22.15)?

217. We agree with Ofcom that the position on "reactive save" activity is much more nuanced than Ofcom has, in the past, declared it to be. We support the removal of the express prohibition on reactive save in the current Condition 22.15.

218. However we do still have some concerns about the uncertainty which remains as a result of GC1.2, despite Ofcom's assurances that it "does not plan to make the enforcement of GC1.2 an administrative priority in the absence of evidence of consumer harm". As Ofcom notes at Paragraph 11.32 of the review document, GC1.2 has been found by the UK courts to apply to certain switching scenarios and to prevent information regarding a GP's order being used by

the LP for marketing purposes. This condition will still apply to all voice and broadband switches within the Openreach platform.

219. As we have noted in previous consultation responses, including our response to the cross-platform switching consultation, BT's view is that the most important thing is to achieve a level playing field, and to ensure that, when it comes to We therefore ask Ofcom to progress with its cross-platform switching proposals, in conjunction with the proposed changes to GC22 in the current review, in order to level the playing field and ensure that consumers can follow a consistent switching process across all services likely to be switched in a bundle. We expect Ofcom to take a technology-neutral approach in this respect and to confirm that if mobile switching processes are also changed there will be no prohibition on reactive save for these services too.

### 3.10 Mis-selling

Question 21: Do you agree with our proposal to replace the current mis-selling provisions with rules that focus on the information that communications providers give to customers when selling or marketing fixed-line or mobile communications services? Please give reasons for your views.

220. Please see section 2.10.

### 3.11 Consequential changes

Question 22: Do you have any comments on the consequential changes we are proposing to make to the national telephone numbering plan, the premium rate services condition or the metering and billing direction

221. We have no comments on the consequential changes Ofcom is proposing to make to the national telephone numbering plan, the premium rate services condition or the metering and billing direction. Our full response in relation to the other changes to the metering and billing direction is in section 2.4.

Question 23: Do you have any comments on our equality impact assessment?

222. No.

Question 24: Do you have any other comments on the matters raised by this consultation?

223. No.

## **Annex 1**

[CONFIDENTIAL ANNEX]

## Annex 2

224. We set out in this annex more information about the work done in other industries to improve policies for vulnerable customers. Ofcom should review definitions from other regulators and industry groups to assist in the creation of an industry vulnerability strategy based on well-evidenced supporting documents. This approach would allow CPs to work with Ofcom in developing their own policies further and benefit from shared learning across industries.

### FCA

225. The FCA has

226. published an Occasional Paper which aims to: broaden understanding and stimulate interest and debate around vulnerability; provide practical help and resources for firms in developing and implementing a vulnerability strategy; and show examples of good practice in the way some firms treat consumers in vulnerable circumstances.

227. created a Practitioners' Pack which provides examples of good practice in identifying and interacting with vulnerable customers. This pack helps firms understand what they could be doing to generate better outcomes for consumers in vulnerable circumstances.

228. commissioned research amongst consumers in potentially vulnerable circumstances. This was combined with a review of available evidence and literature, engagement with consumer and advice groups, and analysis of information provided by firms.

229. The FCA defines a vulnerable customer as

*"someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care."*

### Ofgem

230. In 2013 Ofgem launched a Consumer Vulnerability Strategy which builds on their earlier work of their Social Action Plan and Social Action Strategy. They engaged with the University of Leicester law academics to help them develop their consumer vulnerability strategy. They then updated their approach and work plan, which evidences the need for a fluid approach to helping vulnerable customers. Ofgem notes that the way they "term, or frame, vulnerability has developed over the last decade, from "disadvantaged" consumers, to "social issues" to "vulnerable consumers".

231. Ofgem defines a vulnerable customer as

*"when a consumer's personal circumstances and characteristics combine with aspects of the market to create situations where they are:*

*•significantly less able than a typical consumer to protect or represent his or her interests in the energy market*

*•significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial"*

### Citizens Advice Bureau

232. The Citizens Advice Bureau defines a vulnerable customer as

*"Generally, a person is considered to be vulnerable if it would be unreasonable to expect them to be able to deal with a problem themselves. There is no legal definition of a vulnerable person, but the National Standards for taking control of goods says this could include:*

- older people*
- disabled people*
- the seriously ill*
- the recently bereaved*
- single parent families*
- pregnant women*
- unemployed people*
- those who have obvious difficulty in understanding, speaking or reading English.*

*Other people who could be considered vulnerable are people with mental health issues."*

#### **British Standards Institute**

233. The British Standards Institute defines a vulnerable customer as

*"The condition in which a consumer is at a greater risk of mis-selling, exploitation, or being put at a disadvantage in terms of accessing or using a service, or in seeking redress."*