

Review of the General Conditions of Entitlement

Response to Ofcom from Citizens Advice



Overview

Citizens Advice welcomes this review of the consumer General Conditions, and we support Ofcom's intention to retain the vast majority of the conditions. Our recent report on consumer discovered that consumers experience over 27.8 million issues with their phone, TV or internet services per year, which which cost consumers a total of £4.2billion.¹ Given this high level of consumer detriment, it is clear that, as the consultation document acknowledges 'consumers need protecting from the potential harm that might arise in these areas in the absence of regulatory protection.' We would go further and say that effective consumer protection is essential to ensure a truly competitive telecoms market. For instance smoother switching processes would reduce the number of consumers who have negative experiences changing providers, therefore encouraging more consumers to be active within the market.

Rather than repealing regulations, this review has concentrated on consolidating and clarifying companies' obligations. This is a welcome principle which will make it more straightforward for both companies and consumer representatives to understand the provisions. This is a particularly important for new entrants to the market. However, the overwhelming majority of consumers are never likely to read these documents, and making sure that consumers understand and can fulfill their consumer rights is a far broader task than just ensuring the regulations themselves are written clearly. It is vital that consumers are presented with clear and comprehensive information about their rights at key points, and that all procedures are as straightforward and intuitive as possible. The revised conditions makes some welcome steps forward in this area: for instance the complaints procedure has been simplified and companies are now obligated both to give consumers a clear timetable for their issues to be resolved, and to to issue key documents such as 'deadlock' letters without being requested. However, in many other areas it remains too difficult for consumers to understand or enforce their rights. Most significantly, telecoms contracts, an area which is not substantively changed by the review, are still frequently hard for consumers to understand.

The review also takes the welcome step of expanding the remit of some of the conditions to make them to apply to the full range of electronic communication services. In particular we welcome the decision to expand the conditions relating to vulnerable consumers to include broadband and other data services, and the decision to apply the debt collection regulations to mobile and broadband providers. The later change is one which Citizens Advice called for in our review of mobile phone companies debt collection practices last year. This is a vital step, which recognises that mobile is now an essential service, especially as Ofcom's own

¹ Citizens Advice, [Consumer Detriment: Counting the Cost of Consumer Problems](#) (2016)

figures show that low income households are more than five times as likely to mobile-only as the richest. In future the presumption should be that all new consumer protections should apply to all data and voice telephony services, with exceptions needing to be explicitly justified.

The review contains several vital steps forward in consumer protection: such as requiring all networks to publish their consumer vulnerability strategies and the extension of the conditions on debt collection to both broadband and mobile services are particularly welcome initiatives. However, it is disappointing that several long trailed initiatives were not complete in time to be included in this review: most notably reforms to the switching process for mobile phones and the introduction of an automatic compensation scheme for service faults. Whilst it is good that the slow progress on these two initiatives has not been allowed to delay the other important initiatives contained in this review, we hope to see more rapid progress on these issues in the near future.

Overall though, this review is a positive step forward for consumers and Citizens Advice strongly welcome the commitment to maintaining consumer protection which underlies the package. The remaining sections of this response will consider each policy area individually.

Responses to individual conditions

Contract-requirements (General Condition 9)

The proposals in the review clarify and consolidate the telecoms contract requirements, but make few fundamental changes to companies' obligations in this area. This is a missed opportunity. Many of the telecoms problems which consumers come to us with on a daily basis have their roots in contracts which are unclear, inflexible and hard for consumers to understand. Although, as the consultation document notes, the current requirements reflect the *minimum* standards required under the EU framework - there is substantial scope to improve industry practice in this area and deliver better outcomes for consumers.

For instance, both mobile and broadband contracts tend to set minimum service standards for their services that are either ill defined or unreasonably weak. This can lead to consumers paying for services which are not performing as advertised, or sometimes not being provided at all for long periods. For instance:

Stephen signed up for a new Fibre service in December, which stopped working after two days. He phoned his provider, who initially assured him that the service would restart again on the 2nd of January. When this didn't happen he was told it would start again on January 6th, and then, after another delay on January 25th. Finally he was told that 'there were not enough ports in his area' and he would have to wait until March 31st for the service to start again. Stephen felt that a three month delay was not acceptable and asked to leave his contract - but was told that he would have to pay a £270 exit fee if he wished to do this.

The Consumer Rights Act 2015 specifies that consumers should receive a refund for services which are delivered without 'due care and skill'. This provision means that consumers are entitled to receive a refund for poor or disrupted service, and be allowed to leave their contract without paying a fee if the service is persistently poor. However, without explicit minimum standards it is hard for consumers to enforce such rights. In the cases we see, providers rarely offer either refunds or fee-free exits. Ofcom has already recognised this in one area, through the implementation of the broadband speeds code: which uses the speed range consumers were promised when they signed up for a broadband service to set a minimum speed which consumers should receive. Ofcom should undertake similar work looking into service standards across telecoms markets to ensure that consumers are able to exercise their rights effectively.

Another aspect of telecoms contracts which persistently cause problems are early termination charges. These are often unduly high and applied inflexibly. When a

consumer wants to leave a contract before their minimum contract term ends, broadband and mobile providers will charge them a fee for each month remaining under the contract. For mobile services these fees are typically the full cost of the remaining minimum monthly payments, meaning the fees can cost hundreds of pounds. Broadband and fixed telephony providers typically provide larger discounts, mostly as a result of an agreement between providers and Ofcom on the subject. However, these fees can still frequently reach hundreds of pounds. Analysis we will be releasing in April indicates that they have gone up significantly since the agreement was reached in 2010. Although it is often reasonable for consumers to pay an exit fee if they leave contracts early, these fees are substantially higher than in other essential services such as energy, and they do not seem to reflect the substantial saving providers will be making by not having to provide the service.

We also see that these exit fees are often applied in cases where consumers should not be expected to pay a penalty. These include:

- When consumers have received a persistently poor service from providers
- When consumers have moved to an area where the provider is unable to continue to provide the service
- Where consumers have been entered into a new minimum contract because of a minor change to the service being provided (for instance a change in data limits or the precise package of TV channels being provided)

As with service standards, telecoms contracts need to be far more transparent when it comes to exit fees. Specifically they should specify the contexts in which consumers may be allowed to exit without penalty (including, but not limited to, the scenarios above). Ofcom should also review the way exit fees are determined, to ensure they truly reflect the cost to the provider of cancelling the contract.

Debt Collection (General condition 13)

Citizens Advice strongly support the decision to extend General Condition 13 on debt collection to mobile and broadband networks. This means that these companies will be obliged to publish their debt collection policies and to ensure that all their debt collection activity is 'proportionate and non-discriminatory'. These simple requirements are a vital first step in improving the debt collection practices of the telecoms industry.

Citizens Advice debt advisers have long reported that they find the mobile networks particularly hard to work with when resolving debt problems. Indeed a survey we conducted in 2015 found that advisers rated mobile phone companies as the worst private sector debt collectors they had to deal with. Other evidence supplied from our networks indicate that there are systemic weaknesses in debt collection practices across the industry. Clients and advisers routinely come up against cumbersome, inadequate processes which prevent them from resolving debt problems. Common problems include premature or disproportionate collection activity, inflexible policies (especially when dealing with consumers whose circumstance make them vulnerable), pursuit of debts which are being disputed and poor communication.² We hope that both the providers and Ofcom will use this extension as an opportunity to review their overall policies in this area.

In order for this condition to be effective companies will need support to know what they need to do to make their policies 'proportionate and non-discriminatory'. As our report *Falling Behind* pointed out, in most other essential markets the regulator has issued guidance to accompany equivalent regulation. **Ofcom should develop similar guidance in this area in order to help companies improve their practice.**

Not all telecoms debts are collected by the networks themselves. In 2016 29% of phone and broadband debts owed by Citizens Advice clients were being collected by debt collection companies. It is therefore vital that networks have a duty to ensure that any debt collection companies they employ, or sell debt on to also comply with the standards set out in this condition. **Networks should be required to perform appropriate due diligence on any such companies, in similar way as they are expected to do so for third party retailers who sell their products.**

Since the publication of *Falling Behind* we have been working with the major mobile phone networks to improve practices. As part of this work we have produced the mobile phone debt collection charter³, a five point programme which we are asking all networks to sign up to. We have been pleased that the companies have been willing to engage in this programme, although at the time of writing no company has yet signed up to all five points. However, it must be emphasised that we do not

² Citizens Advice, [Falling Behind: an assessment of debt collection practices in the mobile phone market](#) (2016)

³ https://www.citizensadvice.org.uk/about-us/campaigns/current_campaigns/dialling-down-debt/

think that signing up to charter should in itself be taken as evidence that the networks are complying with the proposed regulation. We regard the charter as a minimum standard, which emulates basic good practice from other sectors. The implementation of this condition should be viewed as a valuable opportunity to improve debt collection practices much further.

ADR and complaint handling

Having to complain about a telecoms service is a common and often time consuming experience. Our recent study of consumer complaints found that over 20% of consumers have complained about their phone, TV, or Broadband service in the past two years - the highest rate of complaints for any category.⁴ Furthermore the survey found that telecoms problems took longer to resolve than consumers initially expected and longer than equivalent problems in other essential markets.

We therefore welcome the proposed changes to the general conditions on complaint handling. It is vital that the process of making a complaint is as simple, transparent and as quick as possible, so that consumers are not discouraged from seeking the redress to which they are entitled. The new requirements represent substantial progress towards these goals. In particular the proposal that networks should be required to issue a 'deadlock' letter without the consumer requesting one, removes an entirely unnecessary burden on consumer pursuing a complaint. The new obligation on mobile providers to set out a clear dates by which they expect complaints to be dealt with is also welcome, as it will give consumers certainty as to how far their complaint has progressed.

Our research indicates that telecoms complaints are over twice as likely to be about a poor quality products or services as in other regulated markets (18 vs. 37 %). Effective complaints procedures are a crucial part of ensuring good outcomes for consumers experiencing such poor service. However, it is better if consumers do not have to make a complaint at all, either because problems do not occur in the first place or, failing that, in because networks offer consumers redress for problems without being having to be asked. The swift implementation of the proposed automatic compensation scheme would help achieve both these aims. It will ensure that consumers who have experienced a number of common problems with their telecoms service do not have to go through lengthy complaints procedures, and give networks a financial incentive to improve service overall.

⁴ DJS Research for Citizens Advice, [Understanding Consumer Experiences of Complaint Handling](#) (2016)

Vulnerability (General Condition 15)

This provision is a pivotal step forward in protection of UK telecoms consumers and we strongly welcome each of its the three main changes. The extension of the condition to users of data services is an important recognition that the broadband is now an essential service. The obligation on networks to produce and publish policies and procedures on vulnerable consumers is a welcome prompt for networks to review and improve their policies and practices in this area. The requirement that these strategies relate not just to end users with disabilities, but all consumers whose circumstances make them vulnerable, is another welcome step that will bring the telecoms sector into line with the standard practice developed in both the energy and financial services markets in recent years.

The provisions set out in the consultation could be further improved by **including financial circumstances (for example low income or debt) in the list of sources/indications of vulnerability**. Similarly, a **'change in circumstance' should include sudden changes in income/expenditure** (sometimes referred to as 'income shock'). As the Financial Conduct Authority's working paper on consumer vulnerability argues, low income and debt problems can have a significant impact on consumers coping ability, making it harder for them to deal with complex systems and successfully resolve problems.⁵ Some groups of vulnerable consumers, including disabled people and people with mental and physical health problems and people with low levels of literacy, are also more likely to experience financial difficulty. Providers' strategies should recognise both that financial difficulties can make consumers vulnerable and that such difficulties are a key indicator that consumers may be experiencing other problems. Such strategies should also take into account income shocks as a key source of vulnerability. We know from our experience of providing debt advice that short term financial problems can often lead to unpayable long terms debts, both because people struggle to pay their bills and because the stress involved reduces their ability to make effective long term decisions.

In order make sure that these new policies and procedures genuinely help consumers in vulnerable circumstances, providers need to make sure that they are understood and acted upon at all levels in their organisation. Strategies and dedicated units for vulnerable consumers are of limited use if the front line staff who have initial contact with consumers are not aware of them, and when it is appropriate to refer customers to these teams. We therefore particularly welcome the requirement that providers must consider how staff are made aware of the company's policies in this area and are appropriately trained.

We also welcome the requirement that companies should monitor and evaluate the impact of these policies and procedures. Services for consumers in vulnerable circumstances should be being constantly assessed and improved. Our experience

⁵ Financial Conduct Authority, [Occasional Paper no.8: Consumer Vulnerability](#) (2015)

in the energy market shows that consumer vulnerability is a constantly evolving area. Changes in general economic conditions, market developments, and new technology can lead to new forms of vulnerability. In our role as statutory consumer advocate in the energy market Citizens Advice regularly publishes guides to how the industry can support consumers in vulnerable circumstances and arranges forums for providers to share best practice⁶. Ofcom should consider how similar support could be provided to telecoms networks.

⁶ See for example N. Grayburn, *Staying Connected: How energy suppliers can help and support prepayment customers who self-disconnect* (Citizens Advice, 2016) ; Citizens Advice, *Good practice guide: how energy suppliers can signpost and refer vulnerable consumers to the right source of help* (2017).