

## Communications Consumer Panel and ACOD response to Ofcom's consultation on the Review of the General Conditions of Entitlement

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The Communications Consumer Panel (the Panel) and the Advisory Committee for Older and Disabled People (ACOD) welcome the opportunity to respond to this review of the General Conditions of Entitlement.

The Panel works to protect and promote people's interests in the communications sector, including the postal sector. We are an independent statutory body set up under the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and micro businesses.

The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers.

Four members of the Panel also represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues. Following the alignment of ACOD with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

### Response

We welcome the work that Ofcom has undertaken in this review of the General Conditions (GCs). The significance of the review should not be underestimated as the Conditions provide the bedrock for the provision of communications services to consumers, citizens and micro businesses.

We are pleased that the proposed consumer protection GCs are for the most part strengthened and clarified. The Panel has engaged with the GC Review team at a number of points during the Review and we are glad to see our views reflected in the consultation document: the proposed revisions work to strengthen the consumer interest and avoid the risk of de-regulation undermining consumer protection.

In general, we welcome the Review's intention to make the GCs clearer and fit for purpose, especially by tidying up definitions and not having definitions located in multiple sources. Alongside this, the GCs ought to be accessible (in all senses of the word) to consumers - possibly via a separate summary document aimed at consumers and perhaps with an easy read version that covers the key areas of consumer protection (especially the sections on complaints, vulnerability and Caller Line Identity). We would welcome the opportunity to input into any such guides and plans for their dissemination.

We strongly welcome Ofcom's conclusion that consumer protection GCs are not good candidates for de-regulation and believe that the presentational proposals offer a sensible approach. In relation to the specific sections of the consultation, we would make the following observations:

### ***Contract Requirements***

We are glad to see no significant policy changes in this area. We support Ofcom's view (in response to EE's suggestion that certain information requirements could be combined) that the distinction between information requirements that are of a general nature for comparison purposes and those that relate to point of sale, are important and should remain (4.9 refers). We welcome the additional clarity in respect of material detriment (4.18 - 4.20 refers). Embedding this additional information in the GCs rather than in a guidance document - whilst not altering the approach - gives it greater weight in our opinion.

In relation to minimum service quality levels, contracts should in our view make very clear the options open to users if the provided service falls below the contracted level and either offer a straightforward right of exit (without early termination charge) or proportional billing. For this reason, we believe that provision of a service such as broadband, should be on an 'at least' basis, e.g. "at least 15 MB at the point of entry to the property".

Although not currently a part of the GCs themselves, we believe that providers should be encouraged to make all terms and conditions as short, clear and accessible as possible and to present them in a way that is meaningful and useful to consumers. Far too often companies' terms and conditions are a "poor relation" compared to the accessible nature of their marketing information. Whilst we understand the reasons for this, we would encourage consideration of a 'key facts' section of essential contractual information.

### ***Information publication and transparency requirements***

We agree that information provision and transparency requirements are still necessary to ensure that consumers have up to date comparable information to help manage their

expenditure on services. We would suggest, given the increasing complexity of the market coupled with the fundamental role that communications services play in people's personal and professional lives, that these requirements are more important than ever. As such, we welcome the proposal to consolidate the various information and transparency requirements across the GCs into a single condition and to simplify and clarify the requirements where possible, particularly in relation to price transparency. We have some concerns in particular about a lack of awareness of access services charges and the levels at which they are set.

With reference to 5.16, we urge that care is taken so that micro businesses are properly informed of prices/tariffs. We would not want there to be an unintended consequence of less clarity if providers only have to inform small businesses of "differences" in tariffs compared to consumers - rather than clearly stating what those differences mean to them specifically.

We welcome the proposals in relation to placing direct obligations on providers to make information available to customers in respect of information on PRS charges (5.25); and the proposal under 5.28 to retain the requirement for CPs to ensure that helpdesk staff and customer and advice agencies are aware of price transparency information - i.e. "Regulated Providers must have procedures in place to ensure that enquiry and helpdesk staff are aware of the existence and content of this condition in order for them to be able respond to complaints and enquiries and to monitor their compliance with the requirements". We are interested to understand *how* this will be monitored for compliance.

Although we understand Ofcom's rationale in relation to the condition on the publication of quality of service information, we would urge caution given that the Digital Economy Bill has not yet been enacted (5.31).

We would also encourage consideration of the GCs covering greater transparency in relation to additional elements of a communications service such as the handset purchase element of mobile tariffs and the provision of security software for broadband/data connections.

In relation to mobile contracts, Ofcom's 2016 Tech Tracker found that of those with a contract including a subsidised phone element, 6% were out of their minimum contract period. Of those out of contract (albeit a small base of 107), 72% were paying a similar monthly tariff compared to when they signed up. In other words, although they had effectively paid off the cost of their handset, they were continuing to pay monthly amounts for it. In terms of treating consumers fairly, we believe that CPs need to be much more proactive in contacting consumers when they have reached the end of their

contract. Although some CPs offer the separation of the handset and service element of the tariff, this is by no means common practice - as we believe it should be.

Secondly, our recent [Digital Footprints](#) research highlighted that a significant minority of consumers are not protected when online. Our independent study of over 1000 internet users found that 15% said they were not using security software. The main reason given was lack of knowledge on how to use it, mentioned by almost a quarter (23%) of those who do not have security software. A further 16% said that they did not know whether they have any security software at all, reinforcing that lack of knowledge is a major issue. Other reasons for not having security software included not being able to afford it (16%) and not thinking it would work (14%).

ISPs have a key role to play here. We believe that ISPs should be required to provide, at a minimum, a basic security software product without additional cost to all users of their internet connection service. One of the Panel's key recommendations is that ISPs should "Explore how best to serve and support low-confidence consumers in vulnerable situations in respect of privacy and security: tangible steps might be ensuring essential information is provided about available resources; with ISPs providing for free a basic level of internet security (antivirus/spyware) by default for all customers and taking a role in highlighting on-line scams to consumers". If this is not considered viable, then ISPs should be required to publish details of the cost of their security software - for new and ongoing customers.

### ***Billing requirements***

We support Ofcom's central goal - to ensure that consumers are not overcharged and that they receive the services that they are charged and pay for. It is vital that consumers are able to control what they spend and that they are protected from immediate and unfair disconnection from unpaid bills. We believe these protections should apply to consumers of mobile voice and data services, not just fixed services and therefore strongly support Ofcom's proposed extension to the scope of GCs 11- 13.

We welcome the clarification and simplification of the conditions (which we note Ofcom intends to combine into a single condition). In particular, we believe that extending the scope of the new condition to include mobile voice and data services will bring much-needed clarity to consumers and providers. It should also be easier for CPs to provide clear, simple and consistent information to all of their consumers across the services for which they are billing those consumers.

We are pleased to see that Ofcom has taken into account evidence from consumers' complaints to their providers. We also welcome the clarification in the wording of the new condition to specify that while *billing* must be correct and accurate, consumers must also be *charged* accurately. It should not be taken for granted that providing an accurate bill means that the customer will be charged accurately; the re-drafted condition should give

more security to consumers in respect of not only what their provider says they will pay, but what they will actually pay.

We strongly support the retention of the safeguarding of potentially vulnerable consumers by requiring that calls to free of charge numbers (for example, helplines) are not itemised and we agree with the proposal to extend that obligation to text messages.

The consultation document mentions that most providers publish their debt collection policies on their websites. We would urge Ofcom to require that those policies take the form of a more specific Code of Practice, that is easily accessible to all and not buried within Terms and Conditions or hidden in the small print. This should also be linked to advice and support for consumers in vulnerable situations, including advice on steps to help avoid or mitigate debt.

### ***Complaints Handling and Access to Alternative Dispute Resolution***

Our research [Going Round in Circles?](#) highlighted that too many telecommunications sector consumers are suffering in silence or finding that the negative experience of contacting their provider - the time taken to resolve a complaint, the number of contacts required and the sheer level of persistence demanded to reach a solution - made the whole situation worse. This is simply unacceptable.

That's why we urged communications providers to provide better support for those consumers who are experiencing problems. We emphasised to providers that we wanted them to review their processes and give consumers better, clearer information about service expectations. We urged providers to improve the customer contact experience through strengthening call centre staff training and achieving recognised accreditation. We were also extremely concerned by the results of Ofcom's ADR study which evidenced, inter alia, poor record keeping and the very low levels of compliance with the rules about the referral of complaints by CPs to the ADR Services.

We therefore applaud Ofcom's intention to strengthen the current rules by increasing the minimum standards that CPs' complaints handling procedures must comply with, to ensure that complaints are resolved effectively and in a timely manner - for all consumers, including people with disabilities or who are vulnerable. Our research found that older people, and people with a disability, were at a particular disadvantage in their dealings with CPs.

We also welcome the proposals to:

- clarify the criteria in the current Ofcom Code to make the proposed Ofcom Code easier to understand;

- broaden the definition of a complaint to include concerns about the CPs' customer service;
- increase the channels by which a complaint can be made;
- improve the transparency of the procedures for consumers and compel CPs to highlight the complaint and ADR process to them;
- prevent CPs from unilaterally deciding to close complaints without informing the consumer; and
- improve levels of compliance and effective enforcement in the event of non-compliance by monitoring and better record-keeping.

We also support the proposal for improvements in staff training around the identification of a complaint and their CP's Complaints Code; the retention of the requirement for CPs to be members of an ADR Service; and especially removing the requirement for consumers to have to request a deadlock letter and instead placing the onus on the CP to issue one proactively.

We are extremely pleased to see the proposals to improve the accessibility of CPs' complaints processes - e.g. the format of the CPs' written codes and the means by which a complaint can be made. We strongly support extending the requirement for providers to make available all three means of contact (phone, letter and electronic). The electronic means should in our view be expanded to include the ability for the consumer to be able to keep a durable copy (e.g. copy e-mail, web form copy, live chat transcript). We are conscious that some people with sensory disabilities find email correspondence easier than web forms/chat and so would encourage the requirement for an email address via which complaints can be lodged. This also enables consumers to draft complaints if they are on the move and without the benefit of an uninterrupted internet connection. We agree that it is vital to retain the option to complain by letter, for those consumers who are not online, or not confident online.

We would advocate the mandating of the definition of the start date of a complaint - in our view this is the date that the user first expresses his or her dissatisfaction with something that the CP has done, or has failed to do. Staff training on identification of a complaint should help to ensure that all 'expressions of dissatisfaction' are captured.

We support the requirement for providers to have a distinct Code for complaints; we believe that Ofcom should ensure that providers do not include vague "commitments" in their Codes - for example, a definition of "timely" would be helpful and we would suggest that the minimum target for complaints resolution should be in the order of 14 calendar days, with consumers being able to access ADR after a month if there is no resolution, agreed plan of action or deadlock. We welcome that this Code must be accessible to consumers and provided in a range of formats on request - the GC should also include something about easy access to the information.

One further element of the CP complaints process that we would suggest would benefit from direction set by a GC is the need for clear escalation processes that are apparent to consumers, are devoid of barriers or obstacles and give consumers control over escalating their complaints - rather than control residing with the provider, which currently seems to be the case.

We very much welcome the tightening up of when a complaint can be closed by a provider. We support the proposal for providers having to set a date by which the customer has to say whether they are happy with a complaint outcome or not (7.41). This also gives certainty to providers about when they can close a complaint. Ofcom may wish to consider whether a reminder should also be issued. We agree with the proposal to remove the three exemptions (7.73) from informing consumers about ADR and strongly support the requirement for consumers to be able to access ADR free of charge.

We welcome the move to improve record keeping (7.83). In the past this has been woefully inadequate. Providers must be able to give accurate data on volumes and resolution times. Hopefully the move to tighten when a complaint can be closed will help with this. While consumers already have the right to request personal data as a Subject Access Request, this is a formal route, which affords the CP up to 40 days to respond - and some CPs charge up to £10 for this. Forty days is a long time for a customer to wait before they can use that information to help escalate their complaint to ADR. In practice, accessing and issuing complaint records should be a straightforward process that could be handled by contact centre agents with the level of data protection training that they should already be receiving in order to handle customers' data sensitively. We would like to see a GC that gives the customer the right to have a copy of the provider's record/notes of the complaint, promptly - and ideally within contact centre turnaround times. This relates to achieving "equality of arms" - a consumer cannot anticipate at the start of a contact that it may become a complaint and it's unreasonable to expect him or her to record dates/details in the same way that a provider would. Associated to this, we welcome the proposed requirement for CPs to maintain records for 12 months - as this is the period during which a complainant can go to ADR. However given the eight weeks which may have already elapsed prior to going to ADR, we question whether the retention period should be 14 months.

Paragraph 7.94 proposes that CPs monitor their own compliance. We are unsure how this would work in practice - would Ofcom retain an ability to conduct randomised audits of the data? We have been calling for the publication of complaints data by the ADR Services and are pleased that Ofcom has been working with the Services to this end. We would also encourage the publication of complaints data by individual CPs - much in the way that is required by the FCA - of number of complaints received, the percentage referred to the ADR Service and the percentage of those upheld. In an era of consumer decision making powered by information, this would be a significant step forward.

We are disappointed that the opportunity to be bold and shorten the eight week period before consumers can approach an ADR Service without a deadlock letter has been missed. Complaints have been a problem for years, with little evidence of meaningful improvement. A clear solution would be to give consumers quicker access to independent redress. There is in our view no sustainable argument for a customer being unable to seek independent complaint resolution within a month if a complaint is unresolved or hasn't been deadlocked. We would welcome Ofcom's continued consideration of this issue as it begins to gather more data which will highlight where there are opportunities for improvements to be made. There also needs to be confidence that there is consistency between the ADR Services.

That said, the proposal that deadlock letters should be automatically issued rather than must be requested by the consumer is a significant step forward (7.7 and elsewhere). We would welcome further information about how this will be monitored and enforced; and what the consequence of non-compliance or poor performance will be.

### ***Codes of Practice***

We agree with Ofcom's proposals in relation to the codes of practice that CPs are currently required to establish, maintain and comply with - including replacing these with direct obligations to make information available, where appropriate.

### ***Measures to meet the needs of vulnerable consumers and end users with disabilities***

We fully support Ofcom's proposals to:

- introduce a new requirement for CPs to take account of, and have procedures to meet, the needs of consumers whose circumstances may make them vulnerable; and
- 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.

We welcome Ofcom's broader, more holistic, view of vulnerability in its proposed changes to GC15. Vulnerability reflects a consumer's circumstances at a given time and may be permanent, temporary, progressive or fluctuating, due to health, disability, age, financial, or other reasons. It is important - and seems fair and appropriate - that CPs are flexible to the needs of consumers in vulnerable circumstances. With this in mind, we would suggest renaming the condition "**Measures to meet the needs of consumers in vulnerable circumstances** (instead of "vulnerable consumers") **and end users with disabilities**".



We strongly support Ofcom's proposal to require CPs to establish, publish and implement clear and effective processes and procedures in relation to consumers whose circumstances make them more vulnerable.

We would also urge Ofcom to require that CPs train their staff in Power of Attorney procedures as part of the wider initiative to meet the needs of people in vulnerable circumstances.

Consumers who are not the target of competition are immediately placed in a vulnerable position when attempting to engage in the market. Consumers who have no choice in the prices they pay, because they have no other provider to go to, require the support of regulation and this needs to be reflected in the rulebook for CPs. These include fixed voice-only consumers, who have experienced line rental increases while their provider benefited from wholesale price decreases, consumers and micro businesses in rural locations and consumers in multiple-occupancy dwellings, whose choice of provider may be restricted.

In some circumstances, disability may affect the way that a consumer is able to engage with the market as a whole and with their CPs, making a consumer more vulnerable. We agree that equality of access and choice of services for people with disabilities is an important policy aim. Following our research 'We're not all the same'<sup>1</sup>, published in December 2015, we met CPs and other stakeholders around the UK and fed into a guide published by Ofcom<sup>2</sup> to provide CPs with good practice in promoting services that are available to disabled consumers. We would welcome the guide being interpreted as formal guidance, as suggested in the consultation document.

The reliance placed by consumers on broadband and other communications services is clearly recognised in Ofcom's proposed extension of the scope of the specific measures that apply to providers, to include all providers of public electronic communications services and not just voice services. We agree that mandating this ensures consistency across CPs and provides certainty for CPs in terms of their obligations.

We would also urge Ofcom to mandate the promotion of such measures, including priority fault repair. Our research, 'We're not all the same', highlighted above, revealed a lack of awareness - among service users and some communications providers' staff - of specific rights for disabled people relating to equivalent access. All CPs' customers should be made aware of the GC15 support measures available to promote uptake and understanding. This

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<sup>1</sup> <http://www.communicationsconsumerpanel.org.uk/research-and-reports/we-re-not-all-the-same-inclusive-communications>

<sup>2</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/81132/guidance.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/81132/guidance.pdf)

is the case in the energy sector. Although an individual consumer may not qualify for such support, they may well know of someone who would.

We fully support Ofcom's proposal to amend the current requirement to ensure that consumers who are "unable" to use a printed directory due to a visual impairment or other disability have access to directory information and directory enquiries facilities free of charge, to include consumers who are "unable to easily use" a printed directory due to visual impairment or other disability.

We support Ofcom's proposal to clarify the obligation on CPs to consult with the Communications Consumer Panel "from time to time" to "on request". This is a useful strengthening of the condition, which we hope only to rely on rarely, as we have developed good relationships with CPs and would hope that these can be maintained in future. We also support the proposal to include the obligation to consult the Panel in respect of the requirements and interests of consumers whose circumstances make them vulnerable.

We are pleased to see a proposed revision to the GCs about making text relay and priority fault repair available to "people with disabilities who normally use the services, including when they are not the subscriber; for example, family members". However, the wording of this should be clearer so that it is understood that by "people with disabilities who use the services" Ofcom means - for priority fault repair - consumers who meet eligibility criteria (and promotion of the service should be mandatory so that the most vulnerable can benefit from it). Text relay may be used via a textphone - but the Next Generation Text Service can be used via an app, by people who are deaf, hard of hearing or have a speech impairment and by hearing people alike. As we have highlighted under 'Billing Requirements' we would urge Ofcom to require that CPs' debt collection policies take the form of a more specific Code of Practice, that is easily accessible to all and not buried within Terms and Conditions or hidden in the small print. This should also be linked to advice and support for consumers in vulnerable situations, including advice on steps to help avoid or mitigate debt.

### ***Caller Line Identification Facilities***

We are acutely aware of the distress and annoyance caused by nuisance calls and are delighted by the proposal for CLI to be provided at no additional charge (10.36, 10.38 and elsewhere). For consumers to be able to make a truly informed decision about whether to answer a call, they must be able to see immediately what that number is. The Panel has long urged the provision of free caller line identification (CLI) by default for consumers. We believe that, since it is the service provided by telephone companies, and paid for by the consumer, that is being abused then it is logical for CLI - one of the main available defence mechanisms against nuisance calls - to be freely available to all consumers. Additionally, the CLI service can be used to report nuisance calls to regulators as well as

being critical for the effective use of handsets and services that rely on caller display to block and filter certain calls.

The moves to require CPs to take reasonable steps to identify and block calls with invalid or non-diallable CLI data are welcome (10.39), as are those to extend the scope of CLI requirements (10.25 and 10.26) and proposals to better inform customers about availability are important. We also welcome the move to transfer some of the non-binding guidelines into binding conditions (10.28).

Alongside the new GCs, there should be an information campaign so that consumers know what is available. CPs themselves will have an important role to play but hopefully Ofcom can also promote the changes.

### ***Switching***

We have previously highlighted our concerns about the barriers to switching faced by consumers and micro businesses, most recently in our responses to Ofcom's consultations on mobile switching<sup>3</sup> and the potential removal of mobile notice periods<sup>4</sup> - where we support reform of the current anomalous and unfair situation in respect of notice periods. As well as removing technical barriers to switching, there should be no financial disincentive for the consumer. We firmly believe that all switching process should be considered holistically; matters such as notice periods are an important part of this and should not be handled separately. We strongly support removing notice period charges from the point at which the losing provider deactivates the old service.

We are not fully convinced about the merits of the proposal to remove the prohibition on reactive save activity when a consumer intends to switch provider. While this offers a legitimate opportunity for consumers to secure a better deal and is a feature of a competitive market, it also carries the risk of unwanted and over-enthusiastic contact from the losing provider. Safeguards must be in place in relation to how the save activity is carried out (for example, a limit on the number of attempted contacts and all information to be factual and accurate).

We recognise that it is difficult to review the switching conditions while the overall approach to switching has not been finalised. However, switching should be a straightforward, predictable, hassle-free and cost-free process for consumers; it should contain no unfair terms and should not be an opportunity for the unjustified enrichment of CPs. We would urge Ofcom and CPs to work towards a conclusion to the reviews on all of

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<sup>3</sup> <http://www.communicationsconsumerpanel.org.uk/downloads/mobile-switching-june-2016.pdf>

<sup>4</sup> <http://www.communicationsconsumerpanel.org.uk/downloads/ccp-acod-mobile-switchingadditional--requirement-to-remove--notice-period-charges-sept-2016.pdf>

the switching processes, as these have been long and drawn-out and consumers need certainty. Ofcom must decide what the rules are before it can review them. We would be interested in knowing whether, once settled, the outcome of Ofcom's work on switching will necessitate further revisions to the GCs and if so how long that may take.

### ***Mis-selling***

Our view is that the current rules appear to have had an impact and therefore they should stay in place as a valuable safeguard. Consumers both need and deserve protection from mis-selling; consumers in vulnerable circumstances are even more in need and deserving of that protection.

We support the introduction of more and better information for consumers and small businesses, but do not understand why it is deemed necessary to remove the existing prohibitions - which seem to provide clarity, when it comes to selling. Furthermore, it appears that the proposed amendments may not protect the consumer or small business from conduct issues, such as engaging in aggressive conduct or contacting the customer in an inappropriate manner.

We note that Ofcom's evidence shows that most alleged mis-selling take place during the switching process; this highlights the need to push ahead with the review of switching processes, so that consistent consumer information can be produced to let consumers know what they should and shouldn't expect during a switching process and what they can do about it.

We support the proposed approach to set out what CPs can and can't do and what consumers and small businesses should and should not expect. The stronger obligations in respect of mobile calls and texts are also welcome, including Ofcom's proposals to require CPs to use reasonable endeavours to ensure that retailers comply with high level obligations. It is vital that consumers can expect the same level of protection throughout their purchasing journey, regardless of which provider they engage with.

In summary, we welcome the focus on better consumer protection that is inherent in the proposed GC revisions - especially in the areas of complaints, consumers in vulnerable situations, CLI and widening protections in respect of debt collection. We feel that Ofcom could go further in some areas - such as providing quicker access to ADR when CPs fail to deal with complaints within a month, cost transparency on mobile handsets and mandating widespread promotion of GC15 support measures. And finally, we look forward to knowing more about how compliance in certain areas will be monitored and measured.