

Review of the General Conditions of Entitlement – Consumer Protection

Introduction

The Federation of Communication Services represents companies which provide professional communications solutions to professional users. Our members deliver telecommunications services via mobile and fixed line telephony networks, broadband, satellite, wi-fi and business radio. Our members' customers range from SMEs, home-workers and micro-businesses up to the very largest national and international private enterprises and public sector users. FCS is the largest trade organisation in the professional communications arena, representing the interests of nearly 400 businesses with a combined annual turnover in excess of £45 billion. Members need to have a very clear understanding of the rules and regulations that are pertinent to them.

Overview

The FCS welcomes the second part of this review by Ofcom of the General Conditions, some of which have, over time, become extremely complex, requiring multiple cross-referencing in order to be able to find an answer or “do the right thing”.

We are pleased to note that the majority of our wish-list ideas discussed with Ofcom prior to the launch of the formal consultation have been incorporated into the proposals.

Q 1: Do you agree with our overall approach to this review of the general conditions as set out in sections 2 and 3 of this consultation? Please give reasons for your views.

As stated in our response to part one of the review, we welcome Ofcom's overall approach including the decision to move all definitions across the GCs to a separate Annex and the use of a short explanatory note at the start of each condition.

We are pleased to note that Ofcom has now decided to replicate statutory definitions within the general conditions and believe this will make the new conditions work better as a standalone document without the need to refer elsewhere.

Q 2: Do you agree with our proposed implementation period for the revised general conditions 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.

The FCS does not have any reason to believe a longer implementation period would be required.

Q 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.

We agree with the proposals set out regarding contracts, including greater clarity on the “material detriment” situation as it arises. Again, inclusion within the condition makes the document far more workable for the reader.

We do not believe that it is necessary to retain wording to deal with contracts commenced prior to 26 May 2011.

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

We wonder what the benefit is in splitting paragraph C1.3 into sub paragraphs (a) and (b) when the application to Consumers and Small Business Customers is identical. Would this work:

Regulated Providers who are providing Public Electronic Communications services to Consumers and/or Small Business Customers must not, at the end of the Initial Commitment Period renew those contracts for a further Initial Commitment Period unless that Communications Provider has first obtained the customer’s express consent.

Q 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?

The FCS welcomes the proposals as set out, in particular the decision to remove the requirements for separate codes in respect of NTS and PRS. GC14 and its 4 annexes were complex and confusing containing both codes that CP had to follow and some that they had to publish.

Q 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?

Yes, we agree with this proposal and the decision to bring the NTS/PRS requirements into the new condition as direct requirements.

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

Is it worth considering whether there are any implications arising from the small overlap where a number can be both NGCS and CPRS – eg 087 charged at more than 7ppm?

Q 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?

We agree with the proposals and believe that it is appropriate to include protections for a wider range of end users.

Q 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?

We feel that this must be the right way forward; we do not have specific cost information to support the proposal but feel confident that the MNOs could absorb this.

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

We suggest that the proposed definition of Bill set out in paragraph 6.11 should read “..the information issued or made available, by a Communications Provider to an End-User about the charges levied...”

Q 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.

We welcome the changes made to help clarify the complaints handling and ADR processes and believe that this will aid affected parties considerably when raising and pursuing a complaint.

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

The implication in the draft wording of section 11a of the *Code for Customer Service and Complaints Handling* is that the Regulated Provider should issue an ADR Letter at the conclusion of an investigation regardless of whether the outcome is good or bad for the complainant: is this the intent?

Q 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?

We agree with Ofcom's proposals and, as stated earlier, believe that the transposition of information required via the various GC14 annexes into direct condition requirements will make conforming with the new condition significantly less complex.

Q 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?

The requirements of GC15 have not historically caused issues for FCS member companies, however, Ofcom's proposals seem entirely reasonable.

Q 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?

No further comment

Q 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?

No further comment

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

We agree with Ofcom's view that this is a service that will be likely to be provided by CPs regardless of regulatory requirements.

Q 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.

The FCS welcomes the strengthening of the requirements to ensure that presented CLIs are valid and diallable given the additional safeguards that this will provide for called parties. The requirement to provide CLI information at no additional cost can only be a benefit to consumers and this, along with blocking invalid CLIs should help tackle the problem of nuisance calls significantly.

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

We believe that the proposed changes in regard to GC22 are appropriate and mirror recent and on-going reviews.

However, we are disappointed that at this time Ofcom has made no significant proposals in respect of number portability (GC18). We are, of course, aware that there is a long running industry group that works to improve the day to day management of the porting process as it operates now and that a higher level group has been formed to look at the over-arching position.

Nevertheless there are steps that Ofcom could take to help both these groups move forward now by some changes to what will be B3. For example:

- Existing GC 18.5: clarification of what constitutes “reasonably practicable” – a defined time period would be of immense assistance, particularly for B2B porting requests which can have a far greater impact if they run for days or weeks than C2C ports.
- A requirement to set up a porting agreement within a defined time on request – this is something that LCPs consciously procrastinate on currently, putting prospective gaining providers in an impossible position with new customers.
- Clarification of responsibilities of range holders and hosted providers particularly for set-up of porting agreements and dealing with any subsequent issues/failures.

This is an area where the FCS believes that it is vital that Ofcom understand the implications of poorly managed porting regime on the business community where porting is significantly different to the volume C2C provider single-line ports.

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

We believe it is appropriate to remove this provision at this time.

Q 21: Do you agree with our proposal to replace the current miss-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.

The FCS believes that the proposed changes in respect of miss-selling are correct. We note the revised wording in C8.3 refers to the Gaining CP using “Cancel Other” whilst in Annex 1 it is correctly referenced that it would be the Losing CP that initiates this. Perhaps C8.3(b) needs to be moved elsewhere within C8?

Q 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?

No further comment

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

No comment

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

We only have some minor drafting comments not raised elsewhere:

- We note that in the draft revised conditions, the summary note to condition B2 is missing the word “once” in the final sentence.

- Within the definitions section of the draft revised conditions, should a Charging Year not include 29 February when it occurs?
- Also in the definitions we would suggest that the definition of a complaint would be “an expression of dissatisfaction made by a Domestic OR Small Business customer..”

Conclusion

The FCS welcomes this consultation as a major step forward in improving regulatory transparency for CPs and believes that the revised General Conditions as proposed will be significantly easier for CPs to follow and, as a result, comply with.