



SKY'S RESPONSE TO OFCOM'S CONSULTATION ON "PROPOSED EXTENSION OF OFCOM'S GUIDANCE UNDER CONDITION C1 TO COVER TERMINATION PROCEDURES"

EXECUTIVE SUMMARY

1. Excellent customer service is at the heart of Sky's business. It is a core pillar of Sky's business strategy, alongside excellence in content and in innovation. Sky knows that these are the things that matter most to its customers and that is accordingly where Sky focusses its investments. We identify how consumers want to communicate with us, and adapt our communications channels accordingly. Our focus on customer service covers the entire customer journey, from when they sign up with Sky, their use of our services and termination of their services if they choose to leave.
2. The requirement that communications providers do not have conditions and procedures that act as a disincentive to end users switching is important to ensure that consumers are free to exercise their choices and there is an effectively functioning market for communications services.
3. Moreover, Sky agrees that Ofcom has an important role to play in clarifying how General Condition C1.3 applies in practice. This will assist communications providers in improving their conditions and procedures where necessary and facilitate enforcement action by Ofcom.
4. However, Sky has serious concerns with the current text of Ofcom's proposed guidance, which describes conduct that falls entirely outside the scope of GC C1.3.¹
5. First, the draft guidance fails to distinguish adequately between what Ofcom considers to be an obligation under GC C1.3 and conduct that Ofcom considers to be desirable, but non-mandatory. The draft guidance purports to include examples of "good practice", but these examples are not distinguishable from Ofcom's commentary on the baseline for compliance with GC C1.3. This is a material distinction as the examples of "good practice" that Ofcom states it "expects" communications providers to meet frequently go significantly beyond the scope of GC C1.3 and in fact are likely to have unintended consequences and a detrimental effect on consumers.
6. Second, the draft guidance unlawfully seeks to extend the scope of GC C1.3 by covering conduct that does not amount to "conditions or procedure for contract termination" that "act as disincentives" for end users switching communications provider. To remedy this, the draft guidance must:
 - focus solely on "conditions and procedures". At present the draft guidance states that "internal processes" and the "behaviour of individual customer service agents" can be caught under GC C1.3. This is not a tenable reading of the General Condition. Internal processes and customer service agent behaviour can be indicative of an issue with a communications provider's conditions and procedures, but they do not amount to conditions and procedures themselves.

¹ In this response, Sky has solely focussed on Ofcom's proposed guidance on GC C1.3, and not on other aspects of Ofcom's consultation on the General Conditions of Entitlement.

- be limited to conditions and procedures that “act as disincentives” to switching. Ofcom currently seems to consider that a condition or procedure acts as a disincentive to switching if it causes “unreasonable effort or hassle, [or] undue difficulty” even where the customer successfully switches. This is not correct. In these circumstances, the conduct in question has not had the effect of acting as a disincentive.
 - not require communications providers to maintain equivalent processes for different types of services. The draft guidance suggests that a communications provider could be in breach of GC C1.3 if there are significant differences in call waiting times for termination calls and upgrade calls, or if it adopts different verification requirements for terminations and contract renewals. There is simply no basis in law for this suggestion and to do this would not be in the interests of consumers. As a preliminary point, call waiting times are neither “conditions” nor “procedures”. Putting that aside, Ofcom’s draft guidance fails to recognise that whether or not a condition or procedure acts as a disincentive to end users switching is an objective question that must be assessed on its own merits rather than by reference to any other process or procedure.
 - specify the desired consumer outcome rather than prescribe how Ofcom believes a communications provider should achieve that outcome. The draft guidance presents an oversimplified view of complex businesses and many of the prescriptive requirements proposed by Ofcom would result in consumer harm and inefficiencies.
7. Third, Ofcom must be mindful of the chilling impact on innovation and the detrimental impact on consumers if it seeks to micromanage complex internal business operations via overly prescriptive guidance. For example, Ofcom’s proposal that CPs offer a range of communications options, and that these options should be equally prominent, bears no relationship to GC C1.3 but could have a negative effect on customers due to CPs being less able to ensure that training is rolled out consistently across a range of channels and a reduced ability to ensure that there are sufficient CSAs available across multiple communications channels to address consumer queries promptly.
8. Sky is the leading UK broadband supplier for customer service. It employs around [REDACTED] people across its entire customer service operation and handles around [REDACTED] calls each week from its 11 million customers. Its customer service operations are carefully balanced to ensure that customers receive the best possible service whilst maintaining competitive pricing. Sky expends significant resource on attaining its goal of offering the best customer service in the UK.
9. Given this inherent complexity, Sky has serious concerns that certain examples of Ofcom’s view of “good practice” set out in the draft guidelines:
- have not been subject to a thorough impact assessment to understand their full impact on customers and providers;
 - are not practicable; and
 - will actually be detrimental to UK consumers.
10. Sky urges Ofcom to strip back the current draft text to simpler, principles-based guidance, focussed strictly on what is necessary for communications providers to comply with GC C1.3 and leave the precise means of meeting those obligations and improving those processes to the providers themselves.

SKY'S RESPONSE TO OFCOM'S CONSULTATION ON "PROPOSED EXTENSION OF OFCOM'S GUIDANCE UNDER CONDITION C1 TO COVER TERMINATION PROCEDURES"

SECTION 1: THE PROPOSED GUIDANCE GOES BEYOND THE SCOPE OF GC C1.3

- 1.1 It is well recognised that the wording of GC C1.3 is "*quite vague*"². Therefore, in principle, guidance on the application of this General Condition is to be welcomed. Sky is concerned, however, that the proposed guidance goes beyond the scope of GC C1.3 in places. This is partly due to an expansive interpretation of what constitutes "*conditions or procedures for contract termination do not act as disincentives for End-Users against changing their Communications Provider*". It is also in part due to the conflation of Ofcom's interpretation of GC C1.3 with Ofcom's view of "*good practice*".
- 1.2 As set out below, Ofcom's final guidance should clearly distinguish "*good practice*" from the types of conduct that Ofcom would investigate as a potential breach of GC C1.3. Additionally, the guidance should specify the date from which it will inform Ofcom's approach to enforcement. Whilst Sky has put in place all measures that it considers necessary to ensure compliance with GC 9.3, and GC C1.3, Sky and other communications providers ("CPs") would need a period following publication of the final guidance to evaluate whether they need to undertake any further action and, if so, to implement those changes.

"Good practice" must be clearly distinguished from legal obligations

- 1.3 Ofcom's proposed guidance includes "*some examples of what we consider to be good practice*"³. However, these examples of "*good practice*" are not clearly distinguishable from Ofcom's views of CPs' legal obligations under GC C1.3.
- 1.4 First, it is unclear whether Ofcom considers that compliance with these examples of good practice is mandatory for CPs. On the face of it, one would consider examples of "*good practice*" to go beyond the steps necessary to ensure compliance. However, Ofcom warns CPs that they "*may wish to consider these examples when considering compliance with GC C1.3*"⁴. This implies that failing to follow Ofcom's examples of good practice could, in Ofcom's view, amount to non-compliance with GC C1.3. Moreover, in all but one case⁵, the examples in the proposed guidance state CPs "*should*" take the steps set out in the examples, as opposed to 'may' take those steps. This obfuscation leaves CPs wholly unclear about what conduct Ofcom considers to be a breach of GC C1.3, creating greater legal uncertainty than the position prior to the draft guidance being published.
- 1.5 By way of example, it is unclear whether Ofcom expects CPs to have measures in place to ensure that customer service agents ("CSAs") only receive incentive payments for retaining a customer where the customer is satisfied with the outcome of the call⁶. On the one hand, this is stated to be an "*example*" of what a CP could do to ensure that CSAs are not

² Page 186, 'Evaluation of the regulatory framework for electronic communications accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast)', European Commission staff working document, SWD/2016/0313 final. (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0313&from=EN>.)

³ Paragraph A11.2, 'Review of the General Conditions of Entitlement: Statement and Consultation, Ofcom, 19 September 2017 ("Statement and Consultation").

⁴ *Ibid.*

⁵ The one exception is in paragraph A11.17, where Ofcom states that it "*would expect*" CPs to take the stipulated steps, but not that they "*should*" take the stipulated steps.

⁶ Paragraph A11.15(b)(ii), Statement and Consultation.

rewarded for failing to process termination requests. On the other hand, Ofcom states that CPs “*should*” do this, thereby suggesting that it is a requirement. The latter interpretation is indicated by paragraph A11.2, which suggests that the examples of good practice are effectively Ofcom’s view of the baseline for compliance.

- 1.6 For the sake of legal certainty, Ofcom must be clear about whether it considers that the examples of “*good practice*” are effectively the minimum requirements necessary to comply with GC C1.3 or whether they are to be treated as the term “*good practice*” is generally understood, i.e. as examples of practices that are welcome but that go beyond the baseline for compliance. If Ofcom does not do so, it risks creating the impression that there is a presumption that CPs that do not follow the prescribed practices are presumed to be infringing GC C1.3 (notwithstanding the fact that such a presumption would not withstand challenge).

Ofcom must not be overly prescriptive and risk chilling innovation

- 1.7 Sky places excellent customer service at the heart of what it does. It is a core pillar of Sky’s business strategy, alongside excellence in content and in innovation. Sky knows that these are the things that matter most to its customers and that is accordingly where Sky focusses its investments. Sky has invested [REDACTED] improving customer service, through increasing its contact centre staff and opening five dedicated UK contact centres in the last eight years. Sky’s strategy has been successful, with Sky consistently receiving the least complaints of any fixed communications company⁷, and being awarded the Best Broadband Provider award in the Trusted Review Awards 2017⁸.

- 1.8 Sky has considered how customers prefer to engage with their suppliers and adapted its contact strategies accordingly. [REDACTED]

This sort of innovation would not be possible if all communications options needed to be given equal prominence as CPs need the flexibility to trial and gradually roll out new methods.

- 1.9 These types of innovation are not possible if Ofcom is overly prescriptive in how CPs manage their affairs. It is right that Ofcom is clear about the baseline for compliance but, beyond that, the market (meaning suppliers and customers) should determine the level of service that suits their needs. CPs should retain the flexibility to innovate in how they serve their customers and organise themselves internally provided that in doing so they do not in practice constitute conditions or procedures which act as a disincentive to switch.

- 1.10 Letting service providers determine to what degree they wish to exceed the baseline for compliance also preserves the ability for customers to select suppliers that address their needs. Similar to airlines and other services, some customers will choose to minimise their costs and accept a ‘no frills’ service, possibly with worse customer service; whereas others will want the ease of dealing with a company that is dedicated to great customer service. It is important to preserve this mode of competition, whilst maintaining baseline requirements to ensure that consumers are sufficiently protected. In recommending

⁷ Based on Ofcom’s quarterly telecoms and pay-TV complaints data since 1 January 2016. (<https://www.ofcom.org.uk/research-and-data/multi-sector-research/telecoms-complaints-data>.)

⁸ ‘Sky beats BT, Virgin and more to Best UK Broadband Provider 2017 award’, Trusted Reviews, 8 November 2017. (www.trustedreviews.com/news/best-uk-broadband-2017-3325754.)

“good practice”, Ofcom must not engage in regulatory creep and risk chilling incentives to innovate or reduce consumer choice.

Ofcom’s guidance must focus on “conditions and procedures”

- 1.11 Ofcom rightly states that its guidance on GC C1.3 does not form part of the GC⁹. Guidance should assist with the interpretation of the relevant rule and cannot extend its scope. Accordingly, Ofcom’s guidance must be limited to “conditions and procedures of contract termination”, in keeping with the wording of GC C1.3.
- 1.12 Ofcom states that “conditions and procedures” should be interpreted broadly and cover “a CP’s internal processes” and the “behaviour of individual customer service agents ... in certain circumstances; for example, if it demonstrated a failure by the CP to have sufficient procedures in place to ensure agents are properly trained, or for monitoring their compliance with internal procedures”¹⁰. Ofcom offers no justification for seeking to extend the scope of GC C1.3 to internal processes and CSA behaviour.
- 1.13 CPs’ internal processes and CSAs’ behaviour can be manifestations of conditions and procedures, but they are not the conditions and procedures themselves. On the first category, internal processes can only impact compliance with GC C1.3 if they give effect to an external-facing procedure. On the second category, if CSAs systemically flout written procedures, this could be an indicator that the written procedures are not the actual procedures implemented by the CP. In both cases, Ofcom would have to state clearly what it considers the CPs’ actual procedures (or conditions) are that underpin the identified processes and behaviours prior to finding an infringement of GC C1.3. The words “conditions and procedures” in the GC cannot simply be overlooked.
- 1.14 At the time that GC 9.3 was introduced, Ofcom explained that it considered that “disincentives could be contractual conditions or may result from any industry procedures”¹¹ (emphasis added). This interpretation of “conditions and procedures” is in keeping with Article 30(6) of the Universal Service Directive,¹² from where the wording in GC C1.3 originates. Article 30(6) was intended to prevent CPs from preventing customers from switching through unfair contractual conditions (such as certain automatically renewing contracts) or industry procedures (such as an unworkable number porting system)¹³. It was not intended to cover internal processes and CSA behaviour, and this is reflected in the wording of Article 30(6) of the Universal Service Directive, GC 9.3 and GC C1.3.

Infringing conditions and procedures must “act as disincentives” to switching

- 1.15 The proposed guidance also appears to attempt to extend the scope of GC C1.3 by applying to conditions and procedures (or processes and behaviours) that do not act as a disincentive to end users switching services. Ofcom states that:

“a condition or procedure does not necessarily have to deter an end-user from switching (although it may do so). A condition or procedure could cause unreasonable effort or hassle, undue difficulty when seeking to terminate a contract

⁹ Paragraph A11.1, Statement and Consultation.

¹⁰ Paragraph A11.4, Statement and Consultation.

¹¹ Paragraph 7.28, ‘Changes to General Conditions and Universal Service Conditions: Implementing the revised EU Framework’, Ofcom consultation, 24 February 2011. (https://www.ofcom.org.uk/data/assets/pdf_file/0011/33041/gc-usc.pdf.)

¹² Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, 7 March 2002, as amended by Directive 2009/136/EC.

¹³ See fn. 2.

such that it acts as a disincentive for an end-user even if that end-user ultimately still completes a switch of provider.”¹⁴

- 1.16 If a customer faces “unreasonable effort or hassle, [or] undue difficulty” when seeking to terminate, that results in a poor customer experience and will have a damaging impact on the CP’s reputation. However, if that customer does successfully switch supplier then the hassle, effort and difficulty cannot have been so great that it actually acted as a disincentive. As such, there can be no breach of GC C1.3. Put another way, Ofcom appears to assume that a condition and procedure that causes some perceived level of hassle, effort or difficulty for customers who do switch must also have prevented other customers from switching at all. If this is *in fact* the case, then GC C1.3 may apply, but, absent such evidence, it is not open to Ofcom to rely on the evidence of switchers to conclude that there has been a breach of GC C1.3.
- 1.17 GC C1.3 is a valuable condition to preserve the effective functioning of the market, but it has a limited application and purpose. It does not exist to allow Ofcom to take enforcement action in relation to behaviours on the part of a CP’s CSAs that Ofcom does not like, but which are not in fact conditions or procedures that act as a disincentive to termination and switching.

SECTION 2: IT IS ARBITRARY TO REQUIRE EQUIVALENCE BETWEEN TERMINATION PROCESSES AND UNRELATED PROCESSES

- 2.1 The proposed guidance erroneously suggests that CPs may be in breach of GC C1.3 simply because they adopt different identification and verification (ID&V) procedures for termination requests as compared to service upgrades¹⁵; or because there are significantly longer wait times for users seeking to terminate a contract compared to those signing up for new contracts¹⁶.
- 2.2 There is no basis in law for Ofcom to require CPs to treat terminations and upgrades in the same way. Whether or not a condition or procedure acts as a disincentive to end users switching is an objective question. Either the condition or procedure has that effect or it does not. It cannot be the case that where two CPs have similar ID&V processes for termination requests, one will be in breach of GC C1.3 and the other not solely because the former has a less stringent approach to upgrades. Similarly, in the hypothetical scenario below – notwithstanding the fact that call waiting times do not constitute conditions or procedures – it would be perverse for CP1 to be found in breach of GC C1.3 whilst CP2 is not.

	Average wait time for terminations	Average wait time for upgrades
CP1	10 mins	2 mins
CP2	15 mins	15 mins

- 2.3 Each condition and procedure must be assessed on its own merits, rather than by reference to anything else.

¹⁴ Paragraph A11.5, Statement and Consultation.
¹⁵ Paragraph A11.9, Statement and Consultation.
¹⁶ Paragraph A11.15(a), Statement and Consultation.

It is prudent to have more stringent verification procedures for terminations than upgrades and contract renewals

- 2.4 As set out above, there are no grounds in law for requiring that a CP maintains consistent procedures across upgrade and termination requests. On the contrary, there are good reasons for CPs to have different verification procedures for different types of account activity. For example, Sky has different verification processes in place for termination requests as compared to fault inquiries or requests for upgrades. This reflects the need to carefully balance the ease with which customers can make changes to their account against the obligations on CPs to take appropriate technical and organisational measures to ensure that those requesting the actions are authorised to do so, particularly when the requested action may have a potentially detrimental impact on the customer¹⁷.
- 2.5 Applying this balancing exercise in the context of upgrades and termination, Sky is cognisant of the fact that an unauthorised upgrade (or downgrade) is generally straightforward to put right with no, or minimal, loss of service impact for the customer. In contrast, an unauthorised termination of communications services may be significantly more difficult to reverse or remedy, with significant potentially adverse consequences for consumers during the period that the service is being restored.
- 2.6 If a customer realises too late that a wrongful termination request was made against his or her account then he or she risks losing their telephone number, telephone or other records or unexpectedly being left without their service, including the ability to make emergency calls or use the internet. This can be an issue in many circumstances, but is particularly likely to arise in cases of family breakdown or homes in multiple occupation where several people other than the account holder will often have sufficient information to pass the initial identification checks and may act without the agreement of the account holder. The likelihood of this occurring would increase if Sky were required to reduce the level of verification required for critical account activities including termination.
- 2.7 Conversely, achieving consistency by requiring a higher level of verification for upgrades could cause significant inconvenience for households who may want to make a quick and simple upgrade (e.g., to add international calls to a Talk package in order to avoid call charges) or downgrade when the account holder is unavailable to make that request.

Matching call waiting times for terminations and upgrades is impractical and likely to reduce overall customer service levels

- 2.8 Sky handles around ██████ calls each week from its 11 million customers. We receive ██████ contacts from customers – via a variety of means – every hour. Managing such a large and complex operation is far from simple. There are hourly, daily, weekly, monthly and seasonal fluctuations in call volumes into Sky's retention estate. Sky is constantly estimating demand on its different customer service teams and it is important that Sky allocates its resources and makes the right call centre resource available at the right time to ensure Sky is best able to deliver an overall positive customer service experience.

¹⁷ In dealing with customer data Sky must comply with the Data Protection Act 1998 (the "DPA"). Sky is required to comply with the eight Data Protection Principles. Principle seven requires:

"Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data."

Further, the DPA goes on to state:

"Having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as are mentioned in the Seventh Principle, and the nature of the data to be protected." (emphasis added)

- 2.9 With such high volumes of calls, and demand for certain types of call being driven by factors beyond Sky's control (such as competitors' offers), it would be impossible for Sky to *ensure* that the average time to answer a termination call was never significantly longer than an upgrade or renewal call. Indeed, if Sky were required to ensure equivalence between the different types of call, it is likely that Sky would have to artificially worsen its call answering times for upgrades and renewals to ensure compliance. This would be an inefficient outcome that results in a worse quality of service and absolutely no benefit to consumers who are calling to terminate their service.

SECTION 3: OTHER SPECIFIC CONCERNS WITH THE DRAFT GUIDANCE

- 3.1 In this section, Sky sets out concerns with specific measures set out in Ofcom's proposed guidance.

Ofcom's requirement that CPs offer a range of communications options, and that they are equally prominent, is unreasoned and could have adverse consequences for consumers

- 3.2 Ofcom states, "*we expect CPs to offer a range of communications options for end users to terminate*".¹⁸ Ofcom then states that the full range of communication options should be "*equally prominent*" and published on a CP's website.¹⁹
- 3.3 As a preliminary point, Ofcom's proposals do not relate to "*conditions*" or "*procedures*" and therefore cannot be considered to be relevant to compliance with GC C1.3. Moreover, it is unclear whether, in Ofcom's view, CPs are required to meet Ofcom's expectations in order to comply with GC C1.3, or whether these are examples of "*good practice*" that go beyond CPs' obligations. In any event, Sky has two main concerns with the proposed guidance on communication options.
- 3.4 First, it is unclear what satisfies the proposed requirement that "*CPs offer a range of communication options*" and how this requirement relates to GC C1.3. Ofcom states that it would expect CPs to offer non-real time means to terminate, such as by letter, email or via an online account. Sky does enable non-real time termination, but it is not clear why or how Ofcom would mandate this. Ofcom has not identified any reason why requiring a real time communication would in itself amount to a condition or procedure that acts as a disincentive to switching. Ofcom makes the vague assertion that such a requirement "*take[s] account of different end-user preferences and needs*"²⁰ but it does not follow that merely failing to take this preference into account would constitute a condition or a procedure, or a disincentive to switching under GC C1.3.
- 3.5 Mandating that CPs have a range of communications options, is legally flawed and, further, is likely to have a negative effect on consumers. Prior to making this a requirement, Ofcom must set out the legal basis for considering that not having a range of communications options constitutes a condition or procedure that acts as a disincentive. Additionally, it should specify why that is necessary under GC C1.3 and undertake an impact assessment of that requirement, identifying the potential benefit to consumers as well as the potential harm.
- 3.6 Sky considers carefully the range of communications options that it offers to consumers, taking account of customer preferences and behaviour, and the impact that has on Sky's

¹⁸ Paragraph A11.7, Statement and Consultation.

¹⁹ Paragraph A11.8, Statement and Consultation.

²⁰ Paragraph A11.7, Statement and Consultation.

resources. Sky employs around [REDACTED] people across its entire customer service operation, and carefully balances the range of communications options available to consumers to ensure consistently high quality across all of our channels. If there are too many dedicated teams focussed on specific communications channels, it becomes harder to ensure that training is rolled out consistently and that there are sufficient CSAs to address consumer queries promptly.

- 3.7 Second, Sky has serious concerns with Ofcom's suggestion that *"The full range of communication options should be equally prominent to end-users"*. Sky ensures that a range of termination options are readily identifiable by subscribers so that customers who wish to contact Sky to terminate their services are able to do so it does not give equal prominence to the *"full range"* of options as this can lead to inefficiencies and, consequently, worse customer service.
- 3.8 Again, Ofcom's proposal bears no relation to GC C1.3. A CP cannot be considered to have conditions or procedures in place that act as a disincentive to switching on the basis that it does not give equal prominence to the full range of communications options. Ofcom should focus on the scope of GC C1.3 and not seek to micromanage how CPs present communications options to consumers. CPs should be free to encourage contact by more efficient communication methods. The consequence of Ofcom's approach is to preserve inefficient contact methods which, if somehow implemented, would ultimately increase costs of consumers and discourage innovation.
- 3.9 Sky has a dedicated webpage detailing how consumers can contact Sky to terminate.²¹ This includes details on how to speak to a CSA on the phone or online. We also tell customers exactly how they can contact us via email or post, although we flag that we may need to speak to them to verify that they are the account holder.
- 3.10 However, Sky's dedicated termination webpage does not list telephone numbers or 'live chat' options that are dedicated to customers that have registered with Sky as having accessibility issues. These contact details are listed separately, on Sky's Accessibility webpage. Sky considers that it would be inappropriate to include all of these details on Sky's termination webpage, as it could result in CSAs that have had specialist training on dealing with vulnerable customers being inundated with calls from customers who think that it would be quicker to call these numbers. This would be a poor outcome for customers that rely on these accessibility options.

CPs should not be required to encourage subscribers to send sensitive personal data via unsecure means

- 3.11 Ofcom states that CPs are expected to:

"Be clear about the types of identification information that the end-user will need to provide before their contract will be terminated" and "Adopt identification and verification procedures that are consistent with the communication option that the end-user has selected to make their termination request".²²

- 3.12 In effect, this would require every CP to either encourage subscribers to include sensitive personal data – such as their date of birth, bank account details, mother's maiden name,

²¹ 'How to cancel your subscription', Sky website. (<https://www.sky.com/help/articles/remove-a-package-or-cancel-your-subscription>.)

²² Paragraph A11.10, Statement and Consultation.

address and account password²³ – in unencrypted communications or, alternatively, restrict subscribers from using those means of communication entirely.

- 3.13 Sky strongly objects to this proposal. Sky takes data protection extremely seriously and does not wish to promote a process which encourages customers to share sensitive or confidential data over unsecure channels. Subscribers can be verified quickly and safely by phone, webchat or asynchronous messaging, without that amounting to a condition or procedure that acts as a disincentive to end users terminating their service.
- 3.14 Sky does not wish to follow the approach taken by some other providers who ask customers to include sensitive information in letters or emails. It is safer for customers if this information is provided as part of a direct secure communication between the customer and Sky. To propose otherwise risks serious consumer harm including an increased risk of phishing and other scams designed to extract sensitive information from consumers.

Including maximum contract termination periods in terms and conditions is unnecessary and would be disruptive for consumers

- 3.15 The proposed guidance states that CPs should allow end users to give more than the minimum period of notice to terminate and that it expects the maximum notice period to be clearly referenced in CPs' internal guidelines for CSAs and in the end users' contractual conditions.²⁴
- 3.16 Sky agrees that CPs should allow end users to give more than the minimum period of notice, and indeed Sky does this. Sky also specifies the maximum notice period in its internal CSA guidelines. Further, it is clear from Sky's terms and conditions that the customer may give Sky more than the minimum notice period if it wishes to terminate its contract.²⁵
- 3.17 Sky considers that the steps that it takes provide sufficient information to CSAs and subscribers. There is no basis under GC C1.3 why Sky, or any other CP, should specify the maximum notice period in its contract. Sky resists including detailed and unnecessary operational information in the terms and conditions sent to subscribers because (i) this makes it harder for subscribers to identify the information that is important to them; and (ii) those terms and conditions would be out of date if those operational parameters change unless changes are specifically notified to customers, which can cause annoyance to customers and be costly for providers.

Gating CSAs' rewards behind customer feedback would be unfair to CSAs

- 3.18 The proposed guidance states that CPs should have procedures in place to ensure that CSAs' incentive schemes do not encourage poor behaviour that constitutes or otherwise gives rise to a disincentive to switch.²⁶ Ofcom goes on to state that, as an example:

"CPs should have measures in place to ensure that agents only receive incentive payments for retaining a customer where the customer is satisfied with the outcome of a conversation about retaining their services".

²³ Sky does not always ask customers to provide the same personal information when verifying their identity. Otherwise, it would be easy for a non-account holder to circumvent the verification process.

²⁴ Paragraphs A11.11 to A11.13, Statement and Consultation.

²⁵ Conditions 11(f) and (g), Sky Broadband and Sky Talk terms and conditions, August 2017. (http://www.sky.com/shop/PDF/Sky_Broadband_Talk_UK.pdf)

²⁶ Paragraph A11.15(b), Statement and Consultation.

- 3.19 As set out in paragraph 1.5 above, it is unclear whether Ofcom considers this to be “good practice” or a requirement to comply with GC C1.3. Either way, Sky again notes that this does not constitute a condition or procedure. Moreover, Sky considers this proposal overly prescriptive, and has concerns about how it could work in practice. It is surprising that Ofcom would propose such an intrusive measure without any engagement with CPs on the impact that such a proposal would have on CSAs.
- 3.20 Excellent customer service is a key focus of Sky, and we have a proven track record. Accordingly, Sky does require CSAs to have obtained good overall feedback from customers before they are eligible for incentive payments. The incentive payments track whether customers’ issues have been resolved without them terminating their service but are more heavily weighted to the CSAs’ ‘net promoter score’ (i.e. positive feedback).
- 3.21 However, even Sky does not go as far as Ofcom’s proposed guidance. It is impractical and unfair on CSAs to require them to get positive feedback from every customer prior to receiving an incentive payment in relation to that specific call. CSAs do not ask every customer for feedback on each of their contacts with Sky and there is no obligation on customers to give feedback when asked. This would be a nuisance for those customers. Sky does seek feedback in around 50% of cases, but only 22% of those customers respond. If Sky only paid CSAs incentive payments where they received positive feedback, then they would only be eligible for incentive payments for 11% of their calls, at most.
- 3.22 Sky considers that it would be a poor outcome if CPs were required to choose between persistently requesting feedback from customers and not incentivising CSAs to perform well.

Keeping notes of all offers on customer files is unnecessary and would extend the duration of calls with customers

- 3.23 Ofcom’s proposed guidance states that Ofcom expects CPs to ensure that CSAs “make clear notes on an end-user’s file about any retention conversation or offers made so that they can be accessed by other agents”²⁷. This has no bearing whatsoever on consumers’ engagement with CPs and it is wholly inappropriate to direct CPs to take these steps in guidance on GC C1.3. Moreover, this reflects an over-simplified view of customer conversations which can vary significantly reflecting the conversational style of the customer.
- 3.24 In any given hour, Sky will have around [REDACTED] CSAs working (including those in training sessions, which amounts to around [REDACTED] per CSA) and [REDACTED] customer contacts. It is important to Sky that CSAs are able to work efficiently so that they can respond to customer contacts promptly.
- 3.25 It is not practical for CSAs to record every retention conversation or offer that they put to a customer. This would delay the call – meaning that the customer is on the phone for longer than necessary – and would disrupt the flow of conversation between the customer and CSA. It would also reduce the ability of CSAs to respond to customers promptly, increasing waiting times for customers or resulting in materially increased costs (which have an impact on customers’ bills).
- 3.26 Sky has robust monitoring and compliance processes, and [REDACTED] Sky considers that this goes well beyond what is required to comply with GC C1.3. Sky would be reticent to make changes to its internal processes that result in a poorer customer experience and have no bearing on its compliance with GC C1.3.

²⁷ Paragraph A11.15(c)(i), Statement and Consultation.

Processes for dealing with vulnerable customers would be better addressed under GC C5

- 3.27 Sky agrees that it is important for CSAs to treat vulnerable customers with greater care²⁸. However, Sky considers that GC C5 is a more appropriate tool to ensure that CPs implement measures to meet the needs of vulnerable consumers (for example, as part of the vulnerable customer policy mandated under GC C5.2). A condition or procedure could not act as a disincentive to termination solely for vulnerable customers without amounting to an infringement of GC C5.2 (which, insofar as vulnerable customers are concerned, is a wider obligation).
- 3.28 If Ofcom intends to maintain this restriction in its guidance on GC C1.3, then Sky proposes that Ofcom offers greater guidance on what circumstances make customers vulnerable and the fact that CPs are not required to risk offending customers by making specific enquiries about a customer's circumstances.²⁹

Processes for monitoring, reviewing and training staff are matters of internal audit and do not relate to compliance with GC C1.3

- 3.29 Ofcom states that it expects CPs to have written processes for CSAs handling termination requests, monitoring and quality assurance procedures and appropriate disciplinary processes for CSAs that fall short of the behaviour required.³⁰
- 3.30 These are all reasonable steps for CPs to take, and indeed Sky places significant resource on monitoring CSAs' compliance with our internal processes. Sky's ongoing monitoring, training and disciplinary programme is part of our internal compliance regime to ensure that CSAs are aware of Sky's processes and comply with them.
- 3.31 Sky considers that the proposed guidance should be clearer that the steps set out in paragraph A11.17 (and paragraphs A11.15(d)(ii) and (iii)) amount to a proposed structure for an internal compliance programme and do not amount to a pre-requisite for compliance with GC C1.3. It would not be open for Ofcom to find a CP in breach of GC C1.3 solely because it did not have an internal monitoring or training programme. Ofcom would still have to identify specific conditions and procedures that acted as a disincentive to switching.
- 3.32 These changes would make it clearer that it is prudent for a CP to have an effective monitoring and compliance programme in place, but it is not mandatory. Ofcom could go further and follow the CMA's approach of encouraging the use of compliance programmes by considering them to be a mitigating factor when determining the appropriate level of any penalty.³¹

Sky

November 2017

²⁸ Paragraph A11.16. This is also identified in paragraph A11.17a(iii)

²⁹ At a meeting on 26 June 2017, Ofcom assured Sky that CPs were not required to actively identify vulnerable customers, but they are only required to act on information given by the customers. Sky considers that this position should be shared with other CPs.

³⁰ Paragraph A11.17, Statement and Consultation.

³¹ Paragraph 2.15, 'OFT's guidance as to the appropriate amount of a penalty', OFT423, September 2012. (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284393/oft423.pdf) The CMA is consulting on revisions to its guidance on the appropriate amount of a penalty, but it has not proposed any changes to the relevant paragraph (see paragraph 2.19 of the CMA's draft revised guidelines; available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/634986/clean-draft-guidance-ca98-penalty-calculation.pdf).