



Virgin Media's response to Ofcom's consultation on Guidance for contract termination procedures.

Ofcom is proposing to introduce specific guidance on the use of save techniques by providers when a customer requests to terminate their contract.

Ofcom has already confirmed the removal of the prohibition on reactive save under GC22, as "some consumers actively look to benefit from contacting their current provider where this leads to a better deal"¹. This followed full consideration of the issue within Ofcom's Triple Play Switching Project². Ofcom rightly notes that this should not be abused by unwarranted conversations that prevent switching, and it appears that it is in this context that the additional guidance has been proposed.

Virgin Media supports the overall intent to ensure that appropriate service is offered to customers who express an interest in terminating their contracts. However, it appears that the draft guidance has not been sufficiently thought through, or the implications and consequences of it properly considered. For example, some elements, as currently drafted, are likely to have material practical and financial implications for CPs. More concerningly, there is a high risk that the guidance in its proposed form will lead to confusion, and ultimately act to the detriment of customers.

In Section 7 of the statement and consultation the proposal to introduce guidance is covered in just four paragraphs, none of which provide any substantive context, other than stating that it sets out "good practice" on issues identified through Ofcom's monitoring and enforcement work. Given the materiality of the proposals (and their consequences), we believe that Ofcom should undertake a full impact assessment.

The obligations to which Ofcom is subject in this regard are clear. The impact of proposed regulation (even noting the nature of guidance as being non-binding) has to be considered and assessed by Ofcom in order to discharge its s3 and s4 obligations under the Communications Act, including section 3(3), which requires Ofcom to have regard to the principles of transparency, accountability, proportionality, consistency and targeted intervention. To propose guidance in the absence of context and explanation, and without considering its impact and effect, appears to ignore these principles.

¹ Consultation and Statement paragraph 14.11

² Triple Play Switching Statement paragraph 2.22

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Virgin Media considers there are a number of areas in particular in which the proposed guidance lacks clarity and/or may have unintended consequences:

Alternate Contact Channels

Ofcom's guidance suggests that multiple contact channels should be offered to customers to terminate contracts in order to account for different end user preferences. Whilst we consider that it is right not to prescribe specific channels that must be offered by providers, the proposed guidance, as drafted, still appears to require several different types of channel be offered for termination of contracts, including some available on a non-real time basis. This appears to contemplate additional channels being made available for termination purposes over and above standard communication channels. We believe that this could lead to a number of adverse consequences, and consider that Ofcom needs, at the very least, to consider the impact of such a requirement prior to its implementation³. For example, when a function specific communication channel is offered or advertised, it can often lead to it being used for general communication purposes. [3<] An effect of this is to overburden a channel that is set up to deal with a specific issue (based upon predicted volumes). Not only would this have a negative impact on, in this case, genuine termination requests (which risk getting lost in the sea of general communications using that channel), but it also creates a negative customer experience for non-terminating customers as they often have an unrelated or separate issue that cannot be immediately and effectively dealt with. A further factor that has not been considered in relation to non-real time notice is that in our experience requests are often not straight forward, and there will often be a need to clarify the termination process, for example, how things happen, timings costs, equipment. Providing a non-real time channel would lead in a significant amount of cases to customers needing to have more than one contact to terminate their service. Further, if a call back is required and the customer cannot be immediately contacted this could lead to potential delays in the termination process, and provide for a negative customer experience.

Agent Incentives

Whilst we agree that any agent incentive scheme should not seek to reward inappropriate behaviour on the part of the agent, the proposed guidance seeks to expressly prohibit schemes that "fail to process termination requests"⁴. However, a scheme will be permitted if it incentivises the retention of a customer "where the customer is satisfied with the outcome of a conversation about retaining their services"⁵.

In a case, where a customer initially requests termination, but subsequently is persuaded to remain through an appropriate retention conversation (which they may be expecting), any incentive to retain that customer could be seen to be fall under either behaviour. We consider that Ofcom does not intend to prohibit legitimate save conversations, and only wishes to ensure that terminations are correctly actioned, but the guidance is potentially contradictory on this point. The issue is perhaps redundant in that the guidance already proposes significant internal process to be developed to

³ Indeed, it is of note that Triple Play switching proposals were rejected on the basis of a negative cost benefit analysis

⁴ Proposed Guidance paragraph A11.15(b)(ii)

⁵ ibid

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ensure that agents are fully aware of the need to process genuine termination requests appropriately⁶.

Vulnerable customers

Ofcom's proposed guidance at paragraph A11.16 requires that vulnerable customers be treated with "greater care". Virgin Media is concerned that this creates two areas of uncertainty for providers. Firstly, it is clear that the proposed guidance requires vulnerable customers to be assessed using the wider definition set under Condition C5, which is considerably wider than the set of customers for whom regulated additional services (eg text relay, priority fault repair) are required to be provided. As noted a number of providers, including Virgin Media, expressed concerns about the open ended nature of vulnerability as defined under Condition C5, and having taken account of those comments, we welcome Ofcom's decision not to require providers to specify steps taken to identify this set of customers. The proposed guidance, however, does then require these customers to be treated with greater care. Whilst we appreciate that this does not require a provider to proactively identify a customer who may be vulnerable, it still requires agents to make an assessment as to whether the "greater care" provisions would apply to a customer or not.

Secondly, it is unclear what "greater care" means. It is likely that this will be interpreted differently by different providers and also potentially within a provider by different agents. The guidance relates to the conversation that may be had in relation to potentially saving a customer from leaving a provider; as Ofcom notes this is a conversation that is welcomed (and, indeed expected) by many customers; we consider that this group of customers will include some who may fall within a definition of vulnerable. It would be inappropriate to not have these conversations at all with these customers (indeed, to not offer them the same offers as non-vulnerable customers would give rise to an issue in itself), so the guidance appears to require some sort of additional filter to be applied that may require an agent to modify their conversations.

Given that the explicit requirement in the guidance is to ensure that a save conversation is not held in inappropriate circumstances⁷, the requirement to take account of customers' vulnerabilities is already built into the guidance, and the need to propose an additional obligation in paragraph A11.16 is unnecessary and therefore disproportionate.

Overall, Virgin Media considers that Ofcom's intention to ensure that inappropriate save conversations do not occur is both understandable and well intentioned. However, consulting on specific guidance that imposes a considerable, additional regulatory burden on providers, and will likely lead to consumer confusion, without providing any, evidence or rationale to justify it, or assessing its impact, is inappropriate. To proceed as proposed would risk disrupting the market, and Virgin Media suggests that Ofcom should review its approach to the reactive save guidance.

Virgin Media
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⁶ Proposed Guidance paragraphs A11.15(c), (d) and A11.17

⁷ Paragraph A11.15(d) Proposed Guidance