



Introduction and summary

Vodafone UK ('Vodafone') welcomed Ofcom's review of the General Conditions ('GCs'). Ofcom's main objective of the review was to tidy up the rules, and to make it easier for providers to comply. Vodafone understood that apart from complaints handling, and to a lesser extent, billing, existing policies in all areas were being maintained. This is largely reflected in the updated GCs. However, both the consultation and statement are silent on what prompted this consultation on termination procedures guidance. We understand it may have been driven by Ofcom's enforcement work in this area, and potential difficulties Ofcom encountered during its enforcement of GC9.3. If this is the case, it would be helpful if Ofcom could clarify what these issues were, and how the guidance would address these.

More generally, we do not think Ofcom should issue guidance every time it encounters difficulties in its enforcement process. Providers are obliged to comply with the GCs, and should not be found in breach if they comply with them, irrespective of what any non-binding guidance says. If Ofcom deems individual GCs are not sufficiently effective or clear, it should consult on amending the GC itself, as Ofcom has done in a number of areas as part of the review.

Ofcom recently published a consultation on mobile switching¹, and a document on triple play switching both of which were equally silent on the need for specific guidance in this area.

Ofcom's preferred solution for mobile switching aims to address the harm it believes arises from the current mobile switching processes. Under the proposal, providers should allow customers to request a PAC or N-PAC via SMS, online account or phone. Both the SMS and online options enable customers, who do not want to have a save conversation, to avoid it. On triple play switching, Ofcom's latest document, published in July 2017², set out that 'it is now generally less concerned about the effects of reactive save activity than was previously the case'. Indeed, as part of the review of the GCs, Ofcom decided to remove the prohibition on reactive which was included in GC22.15.

With this in mind, Vodafone considers that if Ofcom questions the effectiveness of its switching proposals or decisions, or considers additional safeguards are required under its proposals, it should have done so as part of the switching consultations, and not by publishing guidance as part of the review of GCs.

In addition, we are concerned about Ofcom moving away from principle based regulation. The principle set out in the new GC C1.3 (and the old GC 9.3) is clear, and one Vodafone fully agrees with:

¹ https://www.ofcom.org.uk/__data/assets/pdf_file/0013/102037/Proposals-to-reform-switching-of-mobile-communications-services.pdf

² https://www.ofcom.org.uk/__data/assets/pdf_file/0013/104503/Decision-on-switching-between-platforms.pdf



'Without prejudice to any Fixed Commitment Period Regulated Providers shall ensure that conditions or procedures for contract termination do not act as disincentives for End-Users against changing their Communication Provider.'

The way the principle is worded allows providers to organise their processes and systems in a way that suits their operating model. Apart from our comments above, a high level of prescriptiveness is unnecessary and is likely to be costly if providers' current processes are organised differently.

In the past Ofcom has investigated providers' compliance with GC9.3. In addition, from June 2015 until December 2016 it ran an own-initiative monitoring and enforcement programme into cancellation and termination arrangements. The programme was closed less than a year ago. In its closing statement, Ofcom set out that 'given the improvements a number of CPs have made to their procedures, and the reductions we have seen in complaint numbers, we have decided to close this programme'. Again, the closing of this programme does not appear to indicate that there is a strong need for guidance in this area.

Whilst we will comment below on the detailed provisions in the guidance, we urge Ofcom, before proceeding to a statement, to carry out a proper consultation on this subject. At the very least, this should include an analysis of the harm Ofcom tries to address, the extent to which the mobile switching proposals and the proposed guidance address similar issues, and how it relates to Ofcom's comments about reactive save in the triple play switching processes.

We would also like further clarification on the timing of these proposals. The new GCs will take effect in October 2018. Ofcom's proposed implementation time in its consultation for the mobile switching proposal is 18 months. Should Ofcom decide to proceed with the guidance and the mobile switching changes, there is a risk mobile providers would have to make two sets of changes, which would be costly. In that case, Ofcom should consider aligning the timings of both sets of proposals.

Comments on the detailed guidance

Communication options and accessibility of contract termination procedures

Ofcom proposes that providers offer customers a range of communication options for customers to terminate their contracts. Fixed providers are already required through GC22.6 to allow customers to terminate their contract via telephone, email or post. If Ofcom considers this is insufficient, it should set out its reasons. In addition, it would be helpful if Ofcom could clarify how the existing GC22.6 would interact with any potential guidance.

Ofcom's preferred switching option in the mobile switching consultation sets out three mandatory communication channels for customers to request a PAC or N-PAC (for porters



and non-porters). If Ofcom decides to go ahead with this, we would expect Ofcom to include the exact requirements in an updated GC, rather than rely on guidance, similar to the requirements for fixed contract termination.

If Ofcom includes these channels in the GC itself, there appears to be little value in having additional guidance in this area. Providers who want to offer their customers additional communications channels, because it suits their operating model, can always decide to do this, but it is unnecessary to issue guidance for this.

We agree that the communication options should be clear to customers. Vodafone's website contains clear information about how customers should contact us when they want to terminate their contract.

Identification and verification procedures

We agree that verification procedures should not act as a disincentive to switch providers. At the same time, we want to stress the importance of these procedures, in particular for mobile services, where fraud is prevalent, and where the person with the handset is not necessarily the account holder, and authorised to terminate a contract. Whilst in principle we agree that the verification procedures should be appropriate for the channel in question, in our response to the mobile switching consultation we set out our concerns about the SMS channel for requesting PACs and N-PACs. Without building in additional verification steps (by sending customers SMS messages asking them to provide certain verification information, or by using a multi-channel approach, whereby verification information will have to be provided via a customer's online account if they request a PAC via SMS) we are unable to authenticate account holders. We would like Ofcom to clarify that such steps are not considered to be a disincentive against contract termination.

Minimum notice periods

Ofcom proposes that providers should allow customers to give more than the minimum notice period specified within the terms and conditions. Whereas we would be technically able to increase the window within which customers can give notice we would like to point out a few potential issues.

- A longer time period could lead to customers forgetting about their request, and customers could end up being without service because they failed to remember they gave notice. This could be mitigated by sending reminders to customers, but this would lead to additional costs.
- We consider that there is little point in having very long time periods to give notice. Most customers are unlikely to take a termination decision a long time in advance. Combined with our point above about customers potentially forgetting they gave notice we believe a 3 months' maximum notice period should be sufficient.
- If the mobile switching process continues to rely on PACs (and potentially N-PACs) we need to ensure the termination process includes an automatic trigger which generates the PAC or N-PAC by the end of the notice period, since the PAC validity



period is still 30 days. The current process does not allow for that and development will be needed to ensure it is planned for, budgeted for and implemented.

Internal processes for customer service agents handling termination requests

In terms of waiting times, Ofcom does not want customers terminating their contracts to be subject to significantly longer waiting times than customers signing up to a new contract. Vodafone uses different teams for both activities. These teams are resourced based on the expected demand for their services. If the demand is different from forecast, then waiting times can be either longer or shorter. The waiting times for customers are therefore likely to differ between the teams, but they each can be either longer or shorter than the other. So on occasion, waiting times for customers terminating their contract may be longer than for customers signing up.

Ofcom sets out that the incentive schemes for advisors should not encourage poor behaviour that gives rise to a disincentive to switch. In addition, Ofcom proposes a number of highly detailed activities around advisors identifying customers who are not interested in retention conversations, providing guidance and carrying out monitoring regarding advisors' behaviour. We believe that these provisions are unnecessarily prescriptive and interventionist. Our advisors are highly trained, and incentivised to provide our customers with a good experience, whether they want to leave us or renew their contract. We listen to advisors' calls, and provide feedback or additional training to them if required. In addition, Ofcom's GCs 22 and 23 contain fixed and mobile mis-selling prohibitions relating to selling and marketing services. Ofcom has not put forward any evidence that there is a widespread issue with advisors' behaviour and the way GC9.3 is worded allows it to investigate any complaints related to retention behaviour, without putting in place such prescriptive guidance.

Informed choice and Express Consent

Ofcom considers that while the definition of Express Consent is clear, it would like to clarify that the timing of Express Consent and the method by which it is obtained are important for customers to be able to make an informed choice. Ofcom distinguishes between renewing a fixed commitment period on the one hand and offering an upgrade or different deal on the other hand. We are unclear what the purpose of the distinction is. In Ofcom's revised GCs, the definition of fixed commitment period is:

'Fixed Commitment Period' means a period beginning on the date that contract terms agreed by a **Communications Provider** and a **Subscriber** take effect and ending on a date specified in that contract, and during which the **Subscriber** is required to pay for services and facilities provided under the contract and the **Communications Provider** is bound to provide them and in respect of which the **Subscriber** may be required to pay a charge to terminate the contract;

This definition does not distinguish between renewing a contract and upgrading or taking



out a different deal. In any event, Vodafone does not offer customers the option to renew the fixed commitment period of an existing service. The offer will typically involve a new deal, with a different set of benefits, for a different price.

We agree that behaviours such as 'stacking' (customers providing a one-off consent covering all fixed commitment periods that a customer may subsequently enter into), and seeking consent too far in advance are undesirable. However, we consider that both GCs 22 and 23 contain a number of provisions that Ofcom could use in this context:

- ensuring that a customer intends to enter into a contract;
- providing the customer with information about the likely start date of the contract;
- prohibition to engage in aggressive conduct.

To summarise, we have the following main comments on Ofcom's proposed guidance:

- It is unclear what prompted this consultation on termination procedures or which potential issues it tries to address. Ofcom should carry out a proper consultation, including an assessment of potential harm, options, and overlaps with other current initiatives.
- Ofcom should move away from prescriptive guidance, and rely on principle based regulation instead. This will allow providers to differentiate themselves and to implement the principles in a way that suits their operating models.
- Ofcom's approach does not appear to be joined up in the areas of consumer switching and termination procedures. This also evidenced by the difference in timelines proposed for the different related initiatives.