



# Protecting consumers from mis-selling of telecommunications services

This statement includes a notification of a modification to General Condition 14.5 on the requirement to establish, and comply with, a code of practice for sales and marketing activity

Statement

Publication date:

21 May 2007



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## Section 1

# Summary

## Background

- 1.1 Ofcom has a duty to further the interests of citizens and consumers through a regulatory regime which, where appropriate, encourages competition. Effective competition delivers choice and lower prices to consumers as well as opportunities for new services and Communications Providers ('Providers'). However, consumers may need protection from inappropriate and unacceptable behaviour by certain providers that may undermine confidence in the market as well as causing individual harm.
- 1.2 An example of such unacceptable behaviour concerns the mis-selling of telecommunications services. The term 'mis-selling' covers a range of sales and marketing activities, and includes 'slamming', which is where customers are simply switched from one company to another without their knowledge and consent.
- 1.3 Ofcom is committed to reducing instances of mis-selling of telecommunications services as an important priority. Mis-selling works against the interests of customers, both directly through harm and distress as well as undermining confidence in the development of competition and in the industry as a whole.
- 1.4 Instances of mis-selling and slamming result in an unacceptable customer experience. Consumers typically suffer substantial inconvenience where it occurs, particularly where transfers are not stopped in time. Consumers also suffer financial harm where a transfer goes ahead and they find themselves on a higher tariff with the new provider or face an early termination fee when attempting to return to their original provider.
- 1.5 In response to the increase in incidences of mis-selling and slamming, Ofcom introduced new measures in 2005 to improve the effectiveness of safeguards to protect consumers.
- 1.6 The modification to General Condition 14 on Codes of Practice and Dispute Resolution (specifically General Condition 14.5 ('GC 14.5'<sup>1</sup>)) which took effect on 26 May 2005:
  - placed an obligation on all Providers who provide fixed-line telecommunications services or the wholesale inputs to fixed-line telecoms services to establish, and comply with, codes of practice for sales and marketing activity, in accordance with guidelines published by Ofcom;
  - made the obligation subject to a 'sunset' clause, the effect of which was that the modification would lapse after two years unless a positive need was demonstrated to reinstate the requirement; and
  - required Providers to supply codes of practice on sales and marketing on request, and free of charge, to customers.

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<sup>1</sup> Formerly General Condition 14.3 prior to 19 June 2006. For ease of reference all references to General Condition 14.5 will be references to General Condition 14.3 prior to 19 June 2006.

## Consultation

- 1.7 On 8 February 2007, Ofcom published a consultation document on whether the mis-selling of fixed line telecommunications services has been addressed over the last two years to such an extent that it is appropriate to remove the current regulatory obligations or whether it remains a problem that continues to require continued regulatory intervention by Ofcom.
- 1.8 The consultation also considered whether the obligations should only apply to fixed-line telecommunications services or whether they should be extended to cover other services, such as, broadband services, cable services, services using Local Loop Unbundling ('LLU') and/or mobile services. It is available on the Ofcom website at: <http://www.ofcom.org.uk/consult/condocs/missellingprotection/>

## Conclusions following the consultation

- 1.9 In light of the comments received in response to that document and, in particular evidence that levels of mis-selling in the fixed line telecommunications sector remain unacceptably high, Ofcom is retaining the obligations on Providers to establish, and comply with, codes of practice for sales and marketing activity in accordance with published Ofcom guidelines.
- 1.10 Ofcom is also extending the obligations to cover services offered on full LLU. As set out in the consultation document, the process for switching to, from and across, full LLU is identical to that of fixed-line telecommunications, and works on the basis of customers being notified that they are being transferred through letters from the losing and gaining providers (the 'letter facilitation' process).
- 1.11 The letter facilitation process minimises customer involvement in the switching process ensuring customers can switch between providers easily. However, conversely, it also increases the potential for irresponsible sales and marketing activity to take place, as seen in the fixed-line telecommunications market. For this reason, where the letter facilitation process is used, Ofcom believes that it is necessary to have strong measures in place to ensure that there are adequate disincentives for gaining Providers not to engage in irresponsible sales and marketing activity.
- 1.12 Ofcom has also decided that it is not appropriate to extend mis-selling obligations to broadband, mobile and cable services at this stage. We remain of the view that the process for switching between these services involves much greater levels of customer validation upfront (which minimises the potential for mis-selling and slamming to occur) than in the case of fixed narrowband service and full LLU.
- 1.13 Ofcom has also decided that only two further changes to the guidelines are necessary in addition to those which were proposed in the consultation document. This is because the majority of comments received during the consultation relating to changes to the guidelines were more substantive in nature rather than suggested changes to improve clarity. We consider that these issues are more appropriately dealt with as part of the review of consumer related general conditions. We will therefore feed these comments into this review.

## Future reviews

- 1.14 In renewing these obligations, Ofcom is not inserting a sunset clause. This is because Ofcom will be conducting two related reviews over the course of this year which will directly impact on these obligations:
- a review of migrations, switching and mis-selling across all transferable products, including an examination of the scope for establishing a common approach to switching and consumer protection; and
  - a review of the general conditions which will include broader consideration of the use of codes of practice as part of Ofcom's approach to enforcement.
- 1.15 We expect that the implementation of these reviews, taken together with the continuing enforcement programme, should minimise the opportunity for mis-selling to occur. We will take account of the impact of these related workstreams, once implemented, in assessing the continuing need for the sector-specific obligations relating to mis-selling.

## Notification

- 1.16 Ofcom is, therefore, today giving effect to the proposals set out in the February 2007 consultation document with a modification of General Condition 14 on Codes of Practice and Dispute Resolution under section 48(2) of the Communications Act 2003 ("the Act") by means of a publication of a Notification. The published guidelines for sales and marketing codes of practice for fixed-line telecoms services are set out in the Annex to the Schedule to the Notification, published at Annex 2 to this document.
- 1.17 The Notification sets out the following:
- that there is an obligation upon all Providers who engage in sales and marketing of fixed-line telecommunications services to establish, under set guidelines, codes of practice, and to comply with the provisions set out in those codes;
  - that the requirement to establish, under set guidelines, codes of practice, and to comply with the provisions set out in those codes, is not subject to a sunset clause;
  - the amended guidelines for sales and marketing codes of practice for fixed-line telecoms services; and
  - that there is an obligation to provide codes of practice on sales and marketing on request, and free of charge, to customers.
- 1.18 This measure will ensure that codes of practice for sales and marketing are enforceable. Ofcom will have the power to take enforcement action against those providers who breach the provisions of their code, including imposing fines on Providers.
- 1.19 These requirements shall enter into force on 26 May 2007 save for services based on full LLU which will enter into force 4 weeks from the date of publication of the final statement and Notification.

## Section 2

# Background and legal framework

## What is mis-selling/slamming

- 2.1 Ofcom has a duty to further the interests of citizens and consumers through a regulatory regime which, where appropriate, encourages competition. Effective competition delivers choice and lower prices to consumers as well as opportunities for new services and Providers. However, consumers need protection from inappropriate and unacceptable behaviour by certain Providers that may undermine confidence in the market as well as causing individual detriment.
- 2.2 An example of such unacceptable behaviour concerns irresponsible sales and marketing activity, specifically the mis-selling of telecommunications services. This has the effect of undermining consumer confidence in the transfer and switching process, and causing consequential damage to the industry as a whole.
- 2.3 The term 'mis-selling' covers a range of sales and marketing activities that can work against the interests of both consumers and competition and undermines confidence in the industry as a whole. It can include:
  - the provision of false and/or misleading information (for example, about potential savings or promising offers or gifts which do not actually exist);
  - applying unacceptable pressure to change Providers, such as refusing to leave the premises until the customer signs, or using threatening or otherwise intimidating behaviour; and
  - 'slamming', an extreme form of mis-selling, where customers are simply switched from one Provider to another without their knowledge and consent. Forms of slamming can include, for example, passing off (i.e. where representatives claim to represent a different company from the company they are actually working for), customers being told they are merely signing for information and then being switched from one Provider to another, or forging a customer's signature on a contract without the customer being aware.
- 2.4 Ofcom considers that there are various aspects of detriment arising from irresponsible sales and marketing activity. These include, amongst others:
  - where customers find themselves switched to different Providers without their knowledge and consent. This will typically cause significant distress and anxiety (as well as substantial inconvenience) to consumers, particularly where transfers are not stopped in time. Also, there is likely to be financial harm involved such as where transfers go ahead and consumers find themselves on higher tariffs with the new provider. Moreover, there have been instances of consumers being slammed and then finding themselves charged a high termination fee when they attempt to return to their original Provider;
  - the risk of adverse publicity relating to dishonest sales and marketing activity discouraging switching because of 'reputational effects' that may influence customer perceptions of the sales techniques of sales agents. This has the effect of discouraging customers from switching, thereby restricting them from making any savings by moving between Providers and/or products or both. By making

competition less effective, it may limit the benefits to consumers as a whole that accrue from well-functioning markets; and

- if switching is discouraged then this could potentially raise supply side barriers, where new entrants are deterred from entering in the knowledge that it will be difficult to persuade customers to switch from their existing Provider, or indeed for customers to enter the market for the first time. Again, this will diminish the effectiveness of competition and therefore limit the benefits that consumers would otherwise derive from it.

## **The regulatory framework and basis for Ofcom involvement**

- 2.5 The regulatory framework for electronic communications networks and services entered into force on 25 July 2003. The framework is designed to create harmonised regulation across Europe, and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers.
- 2.6 Section 3(1) of the Act states that “It shall be the principal duty of OFCOM, in carrying out their functions –
- a) to further the interests of citizens in relation to communications matters; and
  - b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.”
- 2.7 In particular, section 3(3) of the Act states that “in performing their duties under subsection (1), OFCOM must have regard, in all cases, to –
- a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
  - b) any other principles appearing to Ofcom to represent the best regulatory practice.”
- 2.8 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements for regulation, including, in particular, to:
- promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
  - contribute to the development of the European internal market;
  - promote the interests of all persons who are citizens of the European Union; and
  - not favour one form of, or means of, providing electronic communications networks or services, i.e. to be technologically neutral.
- 2.9 Under the framework, Providers are subject to a number of General Conditions which apply to all persons providing electronic communications networks and services. Matters to which General Conditions can relate include conditions appropriate for protecting the interests of end-users of public electronic communications services (‘PECS’) (section 51(1)(a) of the Act). Section 52(2)(e) of the Act states that it is Ofcom’s duty to set such General Conditions as are appropriate for securing that Providers establish and maintain procedures, standards and policies necessary to



secure the effective protection for domestic and small business customers of such Providers.

- 2.10 Accordingly, the basis for Ofcom's involvement is to ensure that the regulatory environment provides appropriate safeguards to protect the interests of citizens and consumers as well as the reputation of the industry as a whole.

### **Review of consumer safeguards designed to protect consumers from mis-selling of telecommunications services (2004 to 2005)**

- 2.11 Ofcom is committed to preventing problems with mis-selling of telecommunications services. In light of evidence that mis-selling was growing as a problem as well as strong views from stakeholders, Ofcom commenced a review during 2004 on whether current safeguards designed to protect consumers from mis-selling of telecommunications services were effective, or whether it was appropriate for Ofcom to secure new enforcement powers.

#### **The April 2004 Consultation**

- 2.12 In April 2004, Ofcom published a consultation document on the effectiveness of the then current consumer safeguards which were designed to protect consumers from mis-selling of fixed-line telecommunications services. Ofcom put forward two options for consideration:
- i) consumers are adequately protected, and there is no need to make any changes; or
  - ii) consumers are not adequately protected, and there is a need for additional regulation in the form of mandatory guidelines for sales and marketing codes of practice.
- 2.13 The consultation document made it clear that option 2 would only be preferred if there was evidence and support for the view, both that mis-selling of fixed-line telecommunications services was a serious problem and that the current measures did not provide sufficient protection to consumers.
- 2.14 In addition, and separate to the issue of the effectiveness of consumer safeguards, Ofcom also sought views in relation to the need for clarification of certain provisions contained within the existing guidelines for sales and marketing codes of practice for fixed-line telecommunications services.
- 2.15 Ofcom's April 2004 consultation document is available on the Ofcom website at: [http://www.ofcom.org.uk/consult/condocs/mis\\_selling/mis\\_selling.pdf](http://www.ofcom.org.uk/consult/condocs/mis_selling/mis_selling.pdf)

#### **The November 2004 Consultation**

- 2.16 In light of stakeholder responses to the April 2004 consultation document, Ofcom considered that the balance of arguments supported the conclusion that the current consumer safeguards did not provide adequate consumer protection against the mis-selling of fixed-line telecommunications services.
- 2.17 Ofcom therefore concluded that a requirement should be imposed upon Providers who engage in sales and marketing activity for fixed-line telecommunications services to establish codes of practice on sales and marketing in accordance with published guidelines, and to comply with the provisions of those codes. It was

proposed that the obligation should be subject to a 'sunset' clause, such that it would lapse two years after the date of introduction unless a positive need could be demonstrated to reinstate the obligation.

- 2.18 In order to make this obligation enforceable through a modification to the relevant General Condition ('GC 14'), it was necessary to follow the procedure for setting, modifying or revoking conditions as set out in section 48 of the Act. This required the publication of a Notification of the proposed modification. The November 2004 consultation document therefore included a consultation on a notification of a proposed modification to GC 14. It is available on the Ofcom website at: <http://www.ofcom.org.uk/consult/condocs/mis-selling/mis-selling.pdf>

### **Explanatory Statement and Notification under section 48(1) of the Communications Act 2003**

- 2.19 Ofcom's Explanatory Statement and Notification, published on 13 April 2005, gave effect, with modification, to the proposals set out in the November 2004 consultation document. The Notification and Schedule to the Notification set out the following:
- that there is an obligation upon all Providers who engage in sales and marketing of fixed-line telecommunications services to establish, under set guidelines, codes of practice, and to comply with the provisions set out in those codes;
  - that the requirement to establish, under set guidelines, codes of practice on sales and marketing, and to comply with the provisions set out in those codes, should be subject to a 'sunset' clause. The effect of such a clause is that the requirement will lapse two years after the date of introduction unless a positive need is demonstrated to reinstate the requirement;
  - the guidelines for sales and marketing codes of practice for fixed-line telecommunications services; and
  - that there is an obligation to provide codes of practice on sales and marketing on request, and free of charge, to customers.
- 2.20 The revised G.C 14.5 had the effect that codes of practice for sales and marketing were enforceable, and gave Ofcom the power to take enforcement action against those Providers who breach the provisions of their code, including ultimately imposing a financial penalty on the relevant Provider for non-compliance.
- 2.21 The obligations were only applicable to Providers who provide fixed-line telecommunications services or the 'Wholesale Inputs' to fixed-line telecommunications services. This meant for example, that where British Telecommunications PLC ('BT') was acting as the access network operator for the provision of fixed-line telecommunications services and continued to have Domestic and Small Business Customers, it would be subject to the requirement.
- 2.22 Ofcom did consider whether to extend these obligations to other services such as cable services, LLU and other new voice services. However, in the absence of clear evidence that mis-selling was a problem for these services, Ofcom did not consider that the obligation should be extended to those services at that time. Ofcom pointed out that it remained open for such classes of Providers to adopt similar guidelines for sales and marketing on a voluntary basis.

- 2.23 Ofcom's Explanatory Statement and Notification is available for viewing on the Ofcom website at: <http://www.ofcom.org.uk/consult/condocs/mis-selling/statement.pdf>

### **The February 2007 Consultation**

- 2.24 Under the sunset clause, the current obligations are due to end on 25 May 2007. Ofcom therefore published a consultation in February this year on whether mis-selling of fixed line telecommunications services had been addressed over the last two years to such an extent that it is appropriate to remove regulatory obligations or whether it remains a problem that continues to require continued regulatory intervention by Ofcom.
- 2.25 In addition, the document also considered whether the obligations should only apply to fixed line telecommunications services or whether they should be extended to cover other services, such as, broadband services, cable services, services using local loop unbundling('LLU') and/or mobile services.
- 2.26 Ofcom's February 2007 consultation document is available on the Ofcom website at: <http://www.ofcom.org.uk/consult/condocs/mis-sellingprotection/mis-selling.pdf>

## Section 3

# Responses to the consultation and Ofcom's comments

## Overview

- 3.1 In its February 2007 consultation document, Ofcom invited views and comments on the Notification and proposed modification to GC.14 , and specifically the following:
- that the obligation upon all Providers who provide fixed-line telecommunications services to domestic and small business customers to establish, under set guidelines, codes of practice for sales and marketing activity, and to comply with the provisions set out in those codes, should be retained;
  - that the obligation should be extended to services based on full LLU;
  - that the obligation to provide codes of practice on sales and marketing on request, and free of charge, and made available on public websites, should be retained; and
  - that the guidelines for sales and marketing codes of practice for fixed-line telecommunications services should be amended to simplify or clarify the drafting of various provisions.
- 3.2 Ofcom received a total of eleven responses, including from members of the industry, consumer interests and others with a particular interest in the subject. A list of respondents who submitted non-confidential responses is attached at Annex 3. The non-confidential responses themselves are available for viewing on the Ofcom website at <http://www.ofcom.org.uk/consult/condocs/missellingprotection/responses>

## Ofcom's consultation questions

### **Do respondents agree that levels of mis-selling in the fixed- line telecommunications sector remains too high, and that mis-selling obligations for fixed-line telecommunications services should be retained?**

- 3.3 Ten respondents commented on this question, with all respondents in agreement that mis-selling in the fixed-line telecommunications sector remains too high, and that current mis-selling obligations should therefore be retained. Only one Provider, Scottish and Southern Energy Energy plc ('SSE'), was not supportive of the proposal to retain the obligations on the basis of concerns relating to the true level of mis-selling. SSE noted that Ofcom had commissioned an independent study into the extent to which the current measures provide a true reflection of mis-selling, and suggested that the obligations be extended for a further six month period during which time the findings of the independent study would be reported.
- 3.4 There were different views expressed in relation to the effectiveness of current measures used to assess levels of mis-selling. The Federation of Communications Services Ltd ('FCS'), Kingston Communications (Hull) PLC ('Kingston'), the UK Competitive Telecommunications Association ('UKCTA') and SSE questioned the validity of the data used by Ofcom to measure the level of mis-selling in the fixed-line

telecommunications sector, and argued that Ofcom's mis-selling complaints data and industry 'Cancel Other' (slam) data overestimated the extent of the problem. In particular, concern was expressed in relation to the reliability of 'Cancel Other' data which was described as "flawed" and should be treated with caution. Conversely, British Telecommunications ('BT') suggested that Cancel Other (slam) data was the most reliable indication of overall mis-selling, while Vangent Ltd ('Vangent') commented that the levels of mis-selling were, if anything, under-reported because Cancel Other data did not capture all instances of mis-selling.

- 3.5 Three comments were received in relation to the sunset clause. Kingston and UKCTA argued that, in light of little evidence of mis-selling in the LLU or other markets, there should be another sunset clause to review the appropriateness in light of future market changes. BT welcomed the proposal to remove the sunset clause.

### Ofcom comments

- 3.6 Ofcom notes that all but one respondent agreed that levels of mis-selling in the fixed-line telecommunications sector remain too high, and that mis-selling obligations should therefore be retained. While a number of respondents questioned the overall reliability of current measures used by Ofcom to assess mis-selling, as set out in our consultation document in section 4, Ofcom uses two separate sets of data to measure levels of mis-selling: Ofcom's mis-selling complaints data and industry 'Cancel Other' (slam) reason codes; and having carefully examined these two measures, Ofcom continues to have the view that the levels of mis-selling in the fixed-line telecommunications sector remain too high.
- 3.7 In addition, as set out in our consultation document, we have commissioned an independent study to assess the accuracy of, and identify weaknesses in, the current measures in order to ensure that there is greater confidence in the effectiveness of our measures going forward. The question of whether we retain mis-selling obligations was not dependent on the outcome of the study.
- 3.8 As Ofcom outlined in its consultation document, we have pursued an active enforcement programme with the amended GC14.5 since the new obligations took effect on 26 May 2005, including opening separate investigations into the activities of 10 Providers. In addition, since the consultation document was published, Ofcom has further opened two additional investigations into mis-selling, by Tesco Stores Ltd trading as Tesco Telecoms<sup>2</sup> and Economy Calls Ltd.
- 3.9 Accordingly, on the balance of information and evidence received during the consultation, and evidence of our ongoing enforcement activity over the last two years, Ofcom has decided that mis-selling obligations for fixed-line telecommunications services should be retained.
- 3.10 Ofcom has also carefully considered comments received in relation to the sunset clause. While we note that two respondents argued for the retention of a sunset clause, there was little evidence to suggest that there was broad support behind this. With respect to implementing a sunset clause due to the extension of the obligations to full LLU, as discussed below, as the process for switching to, from (other fixed-line telecommunications services) and across, full LLU is identical to that of other fixed-line telecommunications services and as such a sunset clause should not apply for the same reasons, as set out below.

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<sup>2</sup> [http://www.ofcom.org.uk/bulletins/comp\\_bull\\_index/comp\\_bull\\_ocases/open\\_all/cw\\_957/](http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_957/)

- 3.11 On balance, therefore, in renewing these obligations, we are endorsing our proposal not to use a sunset clause. As set out in the consultation document, our decision to implement a sunset clause in 2005 was made on the basis that problems related to mis-selling were likely to be transient and that, should problems of mis-selling be addressed over the next two years, it would be inappropriate to maintain regulatory obligations thereafter. This has not proved to be the case.
- 3.12 In any event, as also set out in the consultation document, Ofcom will this year be conducting wider reviews of migrations and mis-selling across all transferable products as well as a review of the General Conditions (which will consider the use of codes of practice more broadly). We expect that the implementation of these reviews, taken together with the continuing enforcement programme, should minimise the opportunity for mis-selling to occur. We will take account of the impact of these related workstreams, once implemented, in assessing the continuing need for the sector-specific obligations related to mis-selling.

**Question 2: Do respondents agree that the potential for levels of mis-selling of services based on full LLU to increase as the market develops justifies extending mis-selling obligations for such services?**

- 3.13 Ten respondents commented on this question, with eight respondents supportive of the proposal to extend mis-selling obligations to services based on full LLU. It was agreed that where the letter facilitation process is used to bring about the transfer, it is essential that additional consumer protection measures are put in place. In addition, it was also noted that the implications of full LLU transfers for the range of services that a customer may have prior to service (or may take post-switch) can be complex, and “reversing” a slam is not a straightforward process.
- 3.14 SSE, while restating their belief that there was no justification for ‘service provider’ obligations in their current form, agreed that whatever obligations apply to fixed-line telecommunications services should also extend to LLU-based services on the basis it was irrelevant to the customer how the telephony service is delivered. UKCTA noted the benefits of extending the mis-selling regulations to LLU-based services, but commented that such an extension does not fit with Ofcom’s evidence-based approach to assessing mis-selling in the fixed-line telecommunications sector. It therefore urged Ofcom to review the need for this regulation on a regular basis.
- 3.15 There was disagreement about whether the obligations should be extended to other services such as broadband, mobile and cable services. Two respondents, BT and 02, agreed that the obligations should not be extended to other services. BT argued that the requirement for additional safeguards for broadband, mobile and cable services was less obvious. 02 welcomed the proposal not to extend the obligations to the mobile (and broadband) sector. While it expressed concern about the level of mis-selling by some resellers in the mobile sector, it supported market led/self-regulatory solutions to the problem at this stage rather than formal regulatory measures. 02 stated that it was committed to protecting its customers from mis-selling/slamming activities, and had already taken legal action against a number of resellers. Furthermore, it had also met with the other UK mobile operators to encourage the development of a mobile code of practice to govern distributor contracts in this area.
- 3.16 Three respondents argued that the obligations should be extended to other services. Citizens Advice supported the extension of the obligations to mobile phone providers or their retail agents and broadband services because of evidence of increasing numbers of problems in relation to these services. Kingston and UKCTA supported

the obligations being extended to all services in order to ensure that there were sufficient disincentives on all providers not to engage in irresponsible sales and marketing practice, irrespective of the service involved. It was argued that this would simplify the customer experience by avoiding confusion resulting from multiple arrangements across different products.

### Ofcom comments

- 3.17 Ofcom notes that the vast majority of respondents expressed support to the proposal to extend mis-selling obligations to services based on full LLU. Only SSE expressed reservations who, while opposing retention of mis-selling obligations more generally, nevertheless agreed that whatever obligations apply to fixed-line telecommunications services should also apply to LLU-based services.
- 3.18 Accordingly, in light of the comments received, Ofcom is endorsing its proposal to extend mis-selling obligations to services based on full LLU. These obligations will only apply to Providers of services based on full LLU four weeks from the date of publication of this Statement.
- 3.19 The mechanism for extending the mis-selling obligations to full LLU services is by amending<sup>3</sup> the definition of “fixed-line telecommunications service” in GC 14.9(h). Instead of defining “fixed-line telecommunications service” by reference to an inclusive list of the types of fixed-line telecommunications services that will be covered by GC 14.5, this definition now covers all types of fixed-line telecommunications services (excluding cable, as discussed below) which will capture those services based on full LLU.
- 3.20 By doing so, we have also simplified GC 14, as the relevant definitions of the various types of fixed-line telecommunications services are now redundant and have been deleted in GC 14.9. As a result, all Providers of narrowband call and/or line rental services will be subject to the obligations in GC 14.5.
- 3.21 Ofcom has been careful not to include those Providers who are not intended to be subject to the obligations in GC 14.5 (see below). As such, those fixed-line telecommunications services provided over a cable network have been specifically excluded.
- 3.22 There was a mixed response in respect of whether mis-selling obligations should extend to other services. While Ofcom believes that the arguments are finely balanced, on balance, in light of the responses received, and consistent with the reasoning we set out in our consultation document, Ofcom considers that it is not appropriate to extend mis-selling obligations to broadband, cable and mobile services at this stage. In particular, we remain of the view that the process for switching between these services involves much greater levels of customer validation upfront (which minimises the potential for mis-selling and slamming to occur) than in the case of fixed narrowband service and LLU.
- 3.23 While complaints relating to mis-selling of mobile services have risen of late, it is Ofcom’s view that a self-regulatory initiative by the mobile industry may be more

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<sup>3</sup> Since the publication of the consultation document, GC 14 has been amended by the publication of the Statement entitled Regulation of VoIP Services which is available at <http://www.ofcom.org.uk/consult/condocs/voipregulation>. The modification to GC 14 will be made to the General Conditions taking into account the modifications made by the Regulation of VoIP Services Statement.

effective in addressing the problem at this stage. To this end, we recently wrote to the mobile industry to provide them with an opportunity to consider collectively what measures can be introduced quickly to fix the problem and made it clear that failure to do so would result in Ofcom moving quickly to consider formal regulatory options.

- 3.24 In any event, as referred to above, Ofcom is currently undertaking a wider review of migrations, switching and mis-selling across all transferable voice and broadband products, and as part of this review is considering the case for moving to a single uniform migrations process. Ofcom, therefore, considers that issues related to the need for consistent approaches will be more appropriately addressed as part of this review.

**Do respondents consider that there should be any additional changes to the current guidelines for sales and marketing codes of practice for fixed-line telecommunications services? And, if so, please give a description of these changes and the reasons for them.**

- 3.25 Seven respondents commented on the current guidelines for sales and marketing codes of practice, with a wide range of views expressed.
- 3.26 Kingston, UKCTA and SSE expressed concern that the current guidelines were overly prescriptive and, it was argued, the same outcome could be achieved by simplifying the guidelines. In addition, there was a view that the guidelines should be stripped back given that protection offered to consumers was already covered by existing regulations outside sector specific regulation. Kingston and UKCTA, by way of example, referred to the provisions prescribing procedures for recruitment and training. While acknowledging the need for regulation to ensure standards in recruitment and training, it was argued that the responsibility for doing so should reside with the employer and is covered by existing employment legislation.
- 3.27 SSE made a similar point, noting that regulations are already in place to protect customers from unfair telesales activities. It referred to Ofgem's decision in 2006 to reduce the scope of one its licence conditions and remove its application to telesales on the basis that Distance Selling Regulations provided adequate protection against unfair telesales activities. In addition, SSE suggested three further changes to the guidelines which were:
- that paragraph 1.6 of the current guidelines should be amended to a specific job title with appropriate contact details rather than a 'named person' given issues around turnover of staff;
  - sales and marketing campaign records should be maintained for no more than three months. This was on the basis that customers were likely to complain shortly after this type of call was made rather than wait for a longer period; and
  - reviewing the relevance of referring to the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998 SI 1998 No. 1580 on the basis that it has been repealed by the Communications Act 2003.
- 3.28 BT commented that it had raised a number of specific issues relating to the mandatory guidelines over recent years but recognised that the primary purpose of the current consultation was limited to the renewing the current regulatory regime. It therefore agreed there was little value in pushing for major changes as part of the current exercise and was content for the majority of these to be considered as part of the forthcoming review of the General Conditions and/or the wider migrations work.



BT did, however, outline some measures which it considered could be implemented immediately that would have a significant impact upon mis-selling, including:

- rescinding the current 'Cancel Other' direction and replacing it with cancellation provisions in the revised GC14.5 which are applicable to all Providers;
- extending the protection afforded to all business customers (not just to small business customers);
- inserting descriptions of slamming from the Cancel Other Direction into the revised GC14.5 in order to expressly prohibit those activities; and
- providing some clarity on the use of opt-out clauses for effecting transfers.

3.29 Age Concern expressed a preference for a single mandatory code, applying equally to all Providers (a view supported by BT, albeit as part of the planned future work). It did not consider that changes were necessary to the current guidelines except for reflecting the legislative changes as a result of the passing of the Consumers, Estate Agents and Redress Bill.

3.30 FCS proposed that the current requirement on Providers to make codes available "on" its website should be replaced by the term "through" or "via" its website. FCS argued that this would provide a more appropriate degree of flexibility.

3.31 Vangent argued that the obligations should go further than currently prescribed and proposed a range of additional measures related to accreditation of sales personnel and third party verification of sales which it believed would strengthen the current safeguards.

### **Ofcom Response**

3.32 Ofcom has given careful consideration to comments received in relation to proposed changes to the guidelines. Ofcom proposed a number of amendments to the guidelines in Annex 6 of the consultation document which were intended to simply clarify the drafting of various provisions in the guidelines. The reasons for each proposed amendment were footnoted to each of the proposed amendments in Annex 6 of the consultation document.

3.33 On balance, Ofcom has decided that only two further changes to the guidelines are necessary in addition to those which were proposed in the consultation document (these amendments are discussed below). This is because the majority of comments made were more substantive in nature rather than merely seeking to provide clarity. In Ofcom's view, such comments are more appropriately dealt with as part of the planned review of consumer related General Conditions, a key objective of which is to simplify regulation.

3.34 However, Ofcom is keen to acknowledge some of the specific points that were mentioned in consultation.

3.35 Ofcom has also considered SSE's proposal to replace the reference to "person" with that of a specific job title. However, on balance, as set out in our 2005 statement, Ofcom remains of the view that a requirement for a named individual would provide for greater accountability. Accordingly, Ofcom is retaining the reference to a "named person" in the guidelines.

- 3.36 Ofcom is not removing or decreasing the obligation on Providers to keep campaign records for a minimum of six months, even when the customer did not agree to the sales proposal. The availability of such evidence is crucial to the successful conduct of investigations by Ofcom that focus on all types of sales activity.
- 3.37 Ofcom will remove the reference to the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998 as this was revoked by section 406(7) and schedule 19(2) of the Act.
- 3.38 Ofcom has also considered BT's comments, and notes that BT outlined various measures which it felt could be implemented as part of this review and would have a significant impact upon mis-selling.
- 3.39 First, BT proposed to rescind the current 'Cancel Other' direction and replace it with cancellation provisions in the revised GC14.5 which are applicable to all Providers. Ofcom accepts that there is a need to consider the current application of 'Cancel Other' rules given the increased use of 'Cancel Other' by other Providers. However, we anticipate taking this issue forward as part of either the review of the General Conditions or the wider migrations review and in the meantime intend to widen the current enforcement programme into GC14.5 to include issues relating to abuse of cancel other, currently covered under GC 1.2 (as a form of 'inappropriate 'save' activity').
- 3.40 BT also proposed that GC14.5 should be extended not just to small business customers but to all customers. Ofcom has considered this view, but remains persuaded that this is not necessary and that the risks of mis-selling in relation to large business customers are very different to those for smaller business customers as telephony services tend to be tailored around particular needs and requirements of larger organisations. In any event, section 52 of the Act limits the application of the General Conditions to undertakings where no more than ten persons work.
- 3.41 BT also proposed that descriptions of slamming from the Cancel Other Direction should be inserted into the revised GC14.5 in order to expressly prohibit those activities. While Ofcom agrees that there is some merit in looking at moving to an approach of absolute prohibitions as opposed to guidelines on sales and marketing activity, this is an issue being taken forward through the review of General Conditions. Accordingly, Ofcom will consider this proposal in the context of that review.
- 3.42 BT also proposed that there should be clarity on the use of opt-out clauses for effecting transfers. Ofcom agrees with BT that it is important that there is clarity on this issue. However, we consider that the additional wording to paragraph 6.1 provides such clarity as it refers to the need for "explicit consent of the Customer... before transferring a line". Accordingly, Ofcom believes that the rules are clear that attempting to switch customers via the use of 'negative opt-out letters', which advise customers that they will be switched unless they object to the transfer, would be a breach of these rules.
- 3.43 Accordingly, in light of the comments received, Ofcom is making those changes to the guidelines to the sales and marketing codes of practice as set out in Annex 6 of the consultation document as well as:
- a) correcting a typographic error in paragraph 6.3 which clarifies that information must be given to the customer in writing **and** during the sales call; and

- b) deleting the reference to the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998.

**Do respondents agree that the obligation to provide codes of practice on sales and marketing on request, and free of charge, should be retained?**

- 3.44 The question on whether to retain the obligation to provide codes of practice on request, and free of charge, should be retained was supported by the majority of respondents commenting on this point, with eight respondents expressing their support. No Providers opposed the obligation although SSE reiterated their disagreement with detailed requirements on service providers to produce a Code of Practice with prescribed content.

**Ofcom comments**

- 3.45 In light of the strong support received during the consultation, Ofcom has decided to retain the obligation to provide codes of practice on sales and marketing on request and free of charge.

## Section 4

# Conclusions following the consultation

## Legal background

4.1 In modifying General Conditions Ofcom is required to meet various tests set out in the Act. These tests and Ofcom's assessment of how these are met in connection with the modification to GC 14.5 are set out below.

### Section 3 – Ofcom's general duties

4.2 Section 3(1) of the Act sets out the principal duty of Ofcom. Ofcom is required by this section to carry out its functions in line with this duty. That duty is:

- a) to further the interests of citizens in relation to communications matters; and
- b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

4.3 Ofcom has also considered when carrying out its functions, amongst other things, the requirements in section 3(2) of the Act to secure the availability throughout the UK of a wide range of electronic communications services, and section 3(4) of the Act, namely that in performing its duties Ofcom must also have regard to such of the following as appears to be relevant in the circumstances, in particular:

- the desirability of promoting competition in relevant markets;
- the desirability of encouraging investment and innovation in relevant markets;
- the needs of persons with disabilities, of the elderly and of those on low incomes; and
- the opinions of consumers in relevant markets and of members of the public generally.

4.4 Ofcom considers that the extension of GC 14.5, as set out in this document is in line with its primary duties. In particular, Ofcom considers that the requirement meets the above criteria and that, in particular, consistent rules which set minimum standard requirements in this area are beneficial to competition given that a loss of consumer confidence in the switching process would damage the industry as a whole. Ofcom also considers that the requirement would have the effect that all Providers who engage in sales and marketing of fixed-line telecommunications services would be subject to the same rules, and that this would also be beneficial to competition due to there being a "level playing field".

### Section 4 – European Community requirements for regulation

4.5 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements for regulation, including the requirement to promote the interests of all persons who are citizens of the European Union and to promote competition in relation to the provision of communications services.

- 4.6 Ofcom considers that measures outlined above promote the interests of all persons who are citizens of the European Union by enabling consumers to benefit from competition and greater choice. Further, the measures above also protect consumers from dishonest sales and marketing activity i.e. mis-selling. Ensuring proper protection against dishonest sales and marketing activity is likely to enhance competition and promote consumer confidence in the underlying services.

### Section 47 – Test for setting or modifying conditions

- 4.7 As set out under section 47(1) of the Act, in modifying a condition, Ofcom must be satisfied that the test set out under section 47(2) has been met. The test is that the modification of the condition is:

- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- b) not unduly discriminatory against particular persons or against a particular description of persons;
- c) proportionate to what it is intended to achieve; and
- d) transparent in relation to what it is intended to achieve.

- 4.8 The modification meets the tests set out in section 47(2) of the Act being:

- a) **objectively justifiable** because Ofcom considers that complaints related to mis-selling of fixed-line telecommunications services remain too high, particularly when viewed in the context of other regulated sectors, such as the energy sector. Also, Ofcom believes that the decision to extend the obligations to full LLU is objectively justifiable because the process for switching to, from and across, full LLU services is identical to other fixed line telecommunications services, and there is potential for problems related to mis-selling of full LLU services to increase as the market develops.

As set out in this document, instances of mis-selling can be distressing to consumers, particularly where they are particularly vulnerable, and can result in a loss of consumer confidence in the switching process.

In addition, Ofcom considers that the risk of not taking positive steps to reduce mis-selling, including that of increased negative publicity, is likely to damage consumer confidence in the switching process, and that this will have a detrimental effect upon competition.

- b) **not unduly discriminatory against particular persons or against a particular description of persons** because the modification applies to all Providers who provide fixed-line telecommunications services and engage in sales and marketing activity. While a similar requirement is not being imposed in the context of Providers of other services such as broadband, cable and mobile services because:
  - o there is little evidence that mis-selling is a problem for other services at the present time, and complaint levels, particularly when viewed as a proportion of transfers going through each month, remain significantly below fixed-line telecommunications services;

- unlike the letter facilitation process, a key feature of both the MAC process (used for the majority of non-LLU broadband migrations) and the PAC process (used for mobile switching) is the protection it offers against slamming due to the customer validation required prior to switching; and
- where consumers move to cable services, the process (unlike CPS/WLR and full LLU), is not invisible to the consumer at the point of take-up (given that cables have to be physically connected to the property before the service can start). This significantly minimises the potential for slamming to occur.

Under the modification, all Providers are required to have sales and marketing codes of practice in place and, in the event of problems relating to mis-selling, Ofcom has the power to take action directly against those Providers that are selling or marketing to domestic and small business customers, and causing the problems in the first place.

- c) **proportionate to what it is intended to achieve**, which is ensuring adequate protection for consumers from irresponsible sales and marketing activity and, in particular, mis-selling and slamming. Ofcom considers that the modification is proportionate on the grounds that there should be little burden on responsible Providers who should already be following industry best practice in this area as set out in the guidelines. In addition, Ofcom remains of the view that the obligation represents one of the least intrusive options available to Ofcom; and
- d) **transparent** in relation to what it is intended to achieve insofar as the nature and obligations are clearly set out in this document for all Providers who provide fixed-line telecommunications services and engage in sales and marketing activities.

## Annex 1

# Impact Assessment

## Introduction

- A1.1 The analysis presented in this annex represents an impact assessment, as defined in section 7 of the Act.
- A1.2 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on our website:  
[http://www.ofcom.org.uk/consult/policy\\_making/guidelines.pdf](http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf)

## The citizen and/or consumer interest

- A1.3 As set out in paragraphs 2.2 to 2.4 irresponsible sales and marketing activity, specifically the mis-selling of fixed-line telecommunications services, has the effect of undermining consumer confidence in the switching process, and causing consequential damage to the industry as a whole.
- A1.4 Ofcom considers that serious consumer detriment arises from mis-selling and, in particular, slamming, including significant distress and anxiety (as well as substantial inconvenience) to consumers, particularly where transfers are not stopped in time. Also, there is likely to be financial harm involved such as where a transfer goes ahead and a consumer finds him or herself on a higher tariff with the new provider. Moreover, there have been instances of consumers being slammed and then finding themselves charged a substantial early termination fee when they attempt to return to their original Provider.
- A1.5 The aim of the new obligations examined in this Impact Assessment, is therefore to minimise the potential for consumer harm arising from mis-selling of fixed-line telecommunications services by ensuring that there are strong measures in place which require relevant Providers to establish, and comply with, codes of practice for sales and marketing, in accordance with published guidelines, and enforceable by Ofcom.

## Ofcom's policy objective

- A1.6 The objectives set out in Section 3 of this Statement are:
- to ensure that consumers have adequate protection from the potential for irresponsible sales and marketing activity and, in particular, mis-selling and slamming;

- to ensure that consumer confidence in the switching process is not undermined, which is beneficial to competition, given that a loss of consumer confidence in the switching process would damage the industry as a whole; and
- to give Ofcom the power to take enforcement action against those Providers who are non-compliant with the requirements of the obligations.

A1.7 Four options are considered in this impact assessment:

- do nothing (no formal regulation);
- retain the current mis-selling obligations for fixed-line telecommunications services only;
- retain the current mis-selling obligations for fixed-line telecommunications services and extend the scope of services currently captured to full LLU services; and
- retain the current mis-selling obligations for fixed-line telecommunications services and extend the scope of services currently captured to all transferable products (that is fixed-line narrowband services, LLU services, broadband, cable services and mobile services).

### **Analysis of the different options**

#### **Do nothing (no additional formal regulation)**

A1.8 Under this option the obligations would not be renewed when it lapses on 26 May 2007. Ofcom could encourage Providers to develop codes of practice voluntarily and follow guidance that Ofcom may develop.

A1.9 Under section 6 of the Act, Ofcom has a duty to ensure that it does not impose or maintain unnecessary burdens. A 'no change' option would be an appropriate course of action to take if there was no clear evidence and support that mis-selling of fixed-line telecommunications services is a significant problem which needs to be addressed through regulatory obligations.

#### Issues for consumers

A1.10 Given current levels of complaint volumes, and evidence of consumer harm arising from mis-selling as shown through Ofcom's enforcement programme, Ofcom is concerned that without sector-specific regulation, Ofcom would be unable to deal promptly and effectively to problems related to mis-selling. Ofcom would be required to encourage industry to develop voluntary initiatives on sales and marketing activity in order to ensure that consumer confidence in the switching process is not damaged.

A1.11 As already set out, the guidelines are essentially aimed at providing consumers with standards of protection by providing a clear framework within which responsible Providers should be working and ensuring best practice in the sales and marketing of fixed-line telecommunications services. These include requirements around recruitment and sales, customer contact, entering into contracts, and customer complaints procedures.



### Issues for Providers

A1.12 This option would mean that Providers seeking to adopt best practice and to demonstrate clearly that they have processes in place to protect consumers against mis-selling would incur similar costs to those they would face by following the current mandatory guidelines. Indeed compliance costs may be higher given the need to demonstrate that the provider's individual approach meets a range of consumer protection law. Moreover, lower costs may be incurred only by those Providers not seeking to follow best practice.

### Impact on competition

A1.13 The principal risk of this option is that work being undertaken by Ofcom, working with the industry, to tackle problems related to mis-selling will be undermined. Ofcom considers that it is highly likely that problems related to mis-selling will continue or, indeed, increase and Ofcom will have no adequate powers to intervene.

A1.14 If consumer outcomes fail to improve, especially given the growing numbers of complaints, there is a strong risk that there will be a negative impact on competition given that consumers will be less confident in switching to new Providers. The outcome of this could potentially stifle growth and entry opportunities for Providers into the fixed-line telecommunications market, which may in turn have a negative impact on the prices and services offered to consumers.

A1.15 Ofcom considers that, based on the evidence it has gathered so far, declining to introduce formal targeted regulation would not be fulfilling Ofcom's statutory duties to act in a way that further the interests of consumers and promotes competition.

### **Option 2: Retain the current mis-selling obligations for fixed-line telecommunications services only**

A1.16 Under this option, the current obligations would be renewed with Providers who engage in sales and marketing activity for fixed-line telecommunications services (as currently defined) being required to establish, and comply with, codes of practice on sales and marketing in accordance with published Ofcom guidelines.

### Issues for consumers

A1.17 This option would ensure that all consumers of fixed-line telecommunications services continue to be protected through:

- a minimum set of standards being adopted by all Providers; and
- Ofcom's ability to act effectively and promptly against Providers who do not establish or comply with codes of practice in accordance with Ofcom guidelines.

### Issues for Providers

A1.18 Providers who comply with the existing regulations should not face any additional costs if the regulations continue to be in force after 25 May 2007. Any costs would only be borne by those Providers who have not adopted the current guidelines (and are therefore failing to meet their regulatory obligations) or new entrants who do not currently meet minimum standards for sales and marketing.

- A1.19 Moreover, Ofcom does not consider the existing requirements to be an unreasonable burden as they only seek to ensure minimum standards in sales and marketing.
- A1.20 Providers will benefit from a high-level of consumer confidence in the switching process and the competitive market that the obligations are intended to support.

### Impact on competition

- A1.21 If the measures work as intended, and Providers establish, and comply with, codes of practice in accordance with Ofcom guidelines and consumers are protected, competition could be enhanced as consumers become more confident in switching to new Providers. The outcome of this could potentially encourage growth and entry opportunities for Providers, which may in turn have a positive impact on the prices and services offered to consumers.
- A1.22 One risk associated with this option is that, by limiting the obligations to fixed-line telecommunications services (as currently defined), there is potential that gaps in protection will emerge as markets develop and converge.

### **Option 3: Retain the current mis-selling obligations for fixed-line telecommunications services and extend the scope of services to cover full LLU**

- A1.23 Under this option, the current obligations would be renewed and, additionally, Providers who engage in sales and marketing activity for full LLU services will be required to establish, and comply with, codes of practice on sales and marketing in accordance with published Ofcom guidelines.

### Issues for consumers

- A1.24 The process for switching to, from (other fixed-line telecommunications services) and across, full LLU is identical to that of other fixed-line telecommunications services, and works on the basis of the customer being notified through 'notification of transfer' letters (the letter facilitation process).
- A1.25 The letter facilitation process has a number of advantages – not least that it minimises customer involvement in the switching process ensuring customers can switch between Providers easily. However, conversely, it gives rise to increased potential for irresponsible sales and marketing activity to take place, as seen in fixed-line telecommunications services. Where the letter facilitation process is used, it is therefore necessary to ensure adequate measures are in place to ensure gaining Providers do not engage in irresponsible sales and marketing activity.
- A1.26 This option would ensure that all consumers of full LLU services will be protected through:
- a minimum set of standards being adopted by all Providers; and
  - Ofcom's ability to act effectively and promptly against Providers who do not establish or comply with codes of practice in accordance with Ofcom guidelines.
- A1.27 While complaints relating to mis-selling of LLU services currently remain low, we expect that as the market evolves, services converge, and Providers increasingly

migrate their services using full LLU, the potential for consumer harm arising from irresponsible sales and marketing activity will also increase.

### Issues for Providers

- A1.28 Ofcom does not consider the requirement to establish, and comply with, codes of practice on sales and marketing in accordance with published Ofcom guidelines to be a significant burden. First, all responsible Providers should, in any event, already be following the provisions set out in the guidelines which have been designed to ensure that consumers are entitled to a minimum standard of consumer protection from sales and marketing. Indeed LLU Providers who also offer fixed narrowband calls and/or line rental services should already be operating to these requirements in respect of those services.
- A1.29 The option would also address the risk that LLU Providers would be particularly affected by negative perceptions of consumers who have had a bad experience when migrating from LLU-based broadband, leading to an impact on competition in the emerging LLU sector.

### Impact on competition

- A1.30 The intention of the extended requirement would be to ensure that LLU Providers establish, and comply with, sales and marketing codes of practice in accordance with Ofcom guidelines to protect consumers against mis-selling. Competition could be enhanced as consumers become more confident in switching to new Providers. This could encourage growth and entry opportunities for Providers, which may in turn have a positive impact on the prices and services offered to consumers.
- A1.31 Ofcom considers that, based on the evidence it has gathered so far, this option would further the interests of consumers and promote competition in view of the risks of mis-selling in the provision of LLU services.

### **Option 4: Retain the current mis-selling obligations for fixed-line telecommunications services and extend the scope of services to cover all transferable products (i.e. cable services, mobile services, LLU services and broadband services)**

- A1.32 Under this option, the current obligations would be renewed and, additionally, Providers who engage in sales and marketing activity for cable services, mobile services, LLU services and broadband services will be required to establish, and comply with, codes of practice on sales and marketing in accordance with published Ofcom guidelines.

### Issues for consumers

- A1.33 This option would ensure that consumers of all transferable products would be assured of equivalent protection, irrespective of the technology involved, through:
- a minimum set of standards being adopted by all Providers; and
  - Ofcom's ability to act effectively and promptly against Providers who do not establish or comply with codes of practice in accordance with Ofcom guidelines.

## Issues for Providers

- A1.34 Ofcom does not consider the requirement to establish, and comply with, codes of practice on sales and marketing in accordance with published Ofcom guidelines to be a high burden as they only seek to ensure minimum standards.
- A1.35 However, in the case of cable services, mobile services, LLU services and broadband services, existing switching processes require a much greater level of validation upfront than is the case for fixed-line telecommunication services (including full LLU) which means that opportunities for mis-selling and slamming, in particular, are significantly reduced:
- for the majority of non-LLU broadband migrations, the customer has to obtain a MAC from their current provider if they wish to switch Providers;
  - for mobile services, the customer has to obtain a PAC code from their current Provider if they wish to switch Providers and retain their number; and
  - for cable services, the process is highly visible to the consumer given the need for the gaining provider to install new connections to the property.
- A1.36 Moreover, there is little evidence that mis-selling is a problem for these services at the present time, and complaint levels, particularly when viewed as a proportion of transfers going through each month, remains significantly below fixed-line telecommunications services.
- A1.37 The widening of the obligation to these additional services, while unlikely to lead to significant additional costs, would appear to be an unnecessary extension of regulation in light of the existing safeguards and evidence available.

## Impact on competition

- A1.38 Limited impact on competition would be expected if the obligations were extended to cable, mobile and broadband services given the level of alternative safeguards already in place and the lack of evidence of mis-selling.

## **Conclusion**

- A1.39 Having considered the evidence set out in this impact assessment and in the body of this statement and in light of comments received to the consultation document, Ofcom's preferred option is Option 3 - to retain the current mis-selling obligations for fixed-line telecommunications services and extend the scope of services to cover full LLU services. This option is set out in more detail in Sections 3 and 4 and a notification of the amended GC 14.5 is set out at Annex 2.

## Annex 2

# Notification

## Notification of a modification under section 48(2) of the Communications Act 2003

### **Modification to General Condition 14 on Codes of Practice and Dispute Resolution for the purpose of imposing requirements upon all Communications Providers who provide Fixed-Line Telecommunications Services to establish codes of practice for sales and marketing activity in accordance with published guidelines, and to comply with the provisions of those codes**

1. OFCOM in accordance with section 48(2) hereby makes the following modification to General Condition 14 on Codes of Practice and Dispute Resolution;
2. The modification is set out in the Schedule to this Notification;
3. The effect of, and OFCOM's reasons for making, the modification referred to in paragraph 1 above, is set out in the accompanying explanatory statement;
4. OFCOM considers that the modification referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the modifications;
5. In making the modifications set out in this Notification, OFCOM has considered and acted in accordance with its general duties in section 3 and of the Act and the six Community requirements in section 4 of the Act;
6. The modification shall enter into force on the 26 May 2007 save for services based on Full LLU which will enter into force four weeks from the date of publication of the final statement and Notification; and
8. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.
9. In this Notification:
  - a. **"the Act"** means the Communications Act 2003;
  - b. **"Cable Network"** means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;
  - c. **"Fixed-line Telecommunications Services"** means Narrowband call and/or line rental services provided to Domestic and Small Business Customers;

- d. **“Full LLU”** means services where the provision of access to the copper wires from the customer premises to a BT exchange allows a competing provider to provide the customer with both voice and data services over such copper wires;
  - e. **“General Condition Notification”** means the notification setting general conditions under section 45 of the Communications Act 2003, issued by the Director on 22 July 2003;
  - f. **“Narrowband”** means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network;
  - g. **“OFCOM”** means the Office of Communications;
  - h. **“Publicly Available Telephone Services”** means a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for End-Users with disabilities or with special social needs and/or the provision of non-geographic services; and
  - i. **“Public Telephone Network”** means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data.
10. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
11. For the purpose of interpreting this Notification:
- a. headings and titles shall be disregarded; and
  - b. the Interpretation Act 1978 shall apply as if this Act were an Act of Parliament.
12. The Schedule to this Notification shall form part of this Notification.

A person authorised by OFCOM under paragraph 18 of the Schedule to the Office of Communications Act 2002

**21 May 2007**

The General Condition and Guidelines shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference):

#### 14. CODES OF PRACTICE AND DISPUTE RESOLUTION

##### Basic Code of Practice regarding provision of Public Electronic Communications Services

14.1 The Communications Provider shall produce a basic Code of Practice for its Domestic and Small Business Customers which sets out at least where such customers may avail themselves of the information required to be published under Condition 10.2, as relevant to the provision of Public Electronic Communications Services. The Code of Practice shall be drafted in plain English which is easy to understand, and copies of the Code of Practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

##### Codes of Practice for Premium Rate Services and NTS Calls

14.2 Within two months of this Condition entering into force, all Originating Communications Providers who provide Premium Rate Services or NTS calls, as appropriate shall:

- (a) establish and thereafter maintain a Code of Practice for the provision of information relating to Premium Rate Services for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 1 to this Condition;
- (b) establish and thereafter maintain a Code of Practice for NTS Calls for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 2 to this Condition; and
- (c) comply with the provisions of the Codes of Practice referred to at 14.2 (a) and (b) above.

14.3 The codes of practice referred to in Condition 14.2 shall be drafted in plain English which is easy to understand, and copies of the codes of practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

##### Codes of Practice for Complaints

14.4 Within one month of this Condition entering into force, the Communications Provider shall establish and thereafter maintain procedures that conform with any applicable Code of Practice for Complaints for the handling of complaints made by its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

##### Codes of Practice for Sales and Marketing



- 14.5 ~~During the Relevant Period, t~~hose Communications Providers who provide Fixed-line Telecommunications Services ~~or the Wholesale Inputs to Fixed-line Telecommunications Services,~~ shall:
- (a) establish and thereafter maintain a Code of Practice for Sales and Marketing for dealing with its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 3 to this Condition; and
  - (b) comply with the provisions of the Code of Practice for Sales and Marketing established according to Condition 14.5(a) above.
- 14.6 The Code of Practice for Sales and Marketing shall be drafted in plain English which is easy to understand, and copies of it shall be provided on request and free of charge to any Domestic and Small Business Customer, and be prominently available on the Communications Provider's public website.

#### Dispute Resolution

- 14.7 The Communications Provider shall implement and comply with a Dispute Resolution Scheme, including any final decision of the Dispute Resolution Body made in accordance with that Scheme, for the resolution of disputes between the Communications Provider and its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

#### Code on the provision by Service Providers of consumer protection information for the provision of Services

- 14.8 Within two months of this Condition entering into force, all Service Providers shall:
- (a) comply with the requirements set out in the Code at Annex 4.
- 14.9 In this Condition:
- (a) **“Carrier Pre-Selection”** means a facility which allows a Subscriber to whom a Publicly Available Telephone Service is provided by means of a Public Telephone Network to select which Pre-selected Provider of such Services provided wholly or partly by means of that Network is the Pre-selected Provider he wishes to use to carry his calls by designating in advance the selection that is to apply on every occasion when there has been no selection of Provider by use of a Telephone Number;
  - (a) **“Cable Network”** means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;

- (b) **“Communications Provider”** means a person who provides Public Electronic Communication Services to Domestic and Small Business Customers;
- (c) **“Code of Practice for Complaints”** means a Code of Practice approved from time to time by the Director for the purpose of this Condition in accordance with sections 52 and 53 of the Act;
- (d) **“Code of Practice for Sales and Marketing”** means a Code of Practice established in accordance with Condition 14.5(a);
- (e) **“Dispute Resolution Body”** means the body of persons responsible for administering a relevant Dispute Resolution Scheme;
- (f) **“Dispute Resolution Scheme”** means procedures approved or established from time to time by the Director for the purpose of this Condition in accordance with sections 52, 54 or 55 of the Act;
- (g) **“Domestic and Small Business Customer”** means, in relation to a Communications Provider, a Customer of that Provider who is neither-
  - (i) himself a Communications Provider; nor
  - (ii) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);
- (h) **“Fixed-line Telecommunications Services”** means narrowband calls and/or lines rental services provided to Domestic and Small Business Customers by means of Indirect Access, Carrier-Pre Selection, Wholesale Line Rental or Wholesale Calls;
- (i) **“Guidelines”** mean the guidelines as set out in either Annex 1, 2 or 3 to this Condition;
- (j) **“Narrowband”** means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network;
- (j) **“Indirect Access”** means a facility which allows a Subscriber to whom a Publicly Available Telephone Service is provided by means of a Public Telephone Network to select which such Service provided wholly or partly by means of that Network is the service he wishes to use by the use of a Telephone Number on each separate occasion on which a selection is made;
- (k) **“NTS Calls”** means calls to numbers identified in the National Telephone Numbering Plan as Special Services operating on the 08 number range and including calls to 0500 freephone numbers, but excluding calls to 0844 04 numbers for Surftime internet access

services and calls to 0808 99 numbers for flat rate internet access call origination;

- (l) **“Originating Communications Provider”** means a Communications Provider on whose network a call originates;
- (m) **“Publicly Available Telephone Services”** means a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for End-Users with disabilities or with special social needs and/or the provision of non-geographic services;
- (n) **“Public Telephone Network”** means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data;
- ~~(o) **“Pre-selected Provider”** means a provider of a Public Telephone Network who has notified the Communications Provider with Significant Market Power in the Relevant Market that it is able and willing to provide Carrier Pre-selection to Subscribers to whom the Communications Provider with Significant Market Power in the Relevant Market provides Publicly Available Telephone Services;~~
- ~~(p) **“Relevant Period”** means a period of two years beginning on 26 May 2005 and ending on 25 May 2007;~~
- ~~(q)(o) **“Service”** means a Public Electronic Communication Service, but only to the extent it comprises the conveyance of speech, music or sounds;~~
- ~~(r)(p) **“Service Provider”** means a provider of a Service;~~
- ~~(s) **“Subscriber”** means any person who is party to a contract with the provider of Publicly Available Telephone Services for the supply of such Services in the United Kingdom;~~
- ~~(t) **“Wholesale Calls”** means end-to-end calls sold by one Communications Provider to another for the purposes of providing services to End-Users;~~
- ~~(u) **“Wholesale Inputs”** means facilities that are provided by a Communications Provider to another Communications Provider to allow for the provision of Indirect Access, Carrier-Pre Selection, Wholesale Line Rental or Wholesale Calls;~~

- (v) **“Wholesale Line Rental”** means a facility which allows OCPs without Significant Market Power in the Relevant Market to provide an integrated service comprising calls and access by renting the exchange lines on wholesale terms from the Communications Provider with Significant Market Power in the Relevant Market, and sending customers a single bill for both calls and line rental.

## **Annex 1 to General Condition 14**

### **Guidelines for codes of practice for handling customer enquiries and complaints about Premium Rate Services**

#### **1. Introduction and overview**

- 1.1 The key objective of these Guidelines is to ensure that Originating Communications Providers provide their domestic and small business customers with readily accessible and accurate information relating to Premium Rate Service (“PRS”) calls;
- 1.2 These Guidelines seek to ensure that there is a clear framework within which Originating Communications Providers should be working, providing reassurance to customers and consumer representatives as to what constitutes good practice in the provision of information to customers in relation to complaints and enquiries about PRS calls.

#### **2. Status of code**

- 2.1 All Originating Communications Providers who provide PRS are required under General Condition 14.2 to establish a Code of Practice for PRS Calls for their domestic and small business customers (the “Code”), which conforms with these Guidelines, and to comply with the provisions of the Code.
- 2.2 Compliance with the Code does not guarantee compliance with any other legal requirements.
- 2.3 Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.

#### **3. Customer information and advice**

- 3.1 Originating Communications Providers shall provide the following information and advice to their customers:
  - (i) information about the role of Originating Communications Providers in relation to:
    - a. general PRS enquiries and requests for number checks via the number-checker facilities provided by the Independent Committee for the Supervision of Telephone Information Services (“ICSTIS”) on the ICSTIS website ([www.icstis.org.uk](http://www.icstis.org.uk));
    - b. dealing with formal complaints about abuses of service content, the ICSTIS Code of Practice and alleged scams.
- 3.2 In so doing Originating Communications Providers shall provide:
  - (i) information about the role and remit of ICSTIS in dealing with complaints and how to go about making a formal complaint to ICSTIS via the website, helpline or by in writing;
  - (ii) information about the tariffs that apply on their network for calls to any PRS number range;

- (iii) basic information about how PRS services work including whether the call(s) in question were routed to service providers (SPs) hosted on the Originating Communications Provider's own network or on the network of a Terminating Communications Provider (TCP), together with a basic explanation of how revenue sharing with SPs operates;
- (iv) information about how consumers can bar access from their telephone to all or specific PRS number ranges for reasons of cost or content;
- (v) information about the purpose of the Telephone Preference Service ("TPS") and Fax Preference Service ("FPS") and how to go about registering with such services;
- (vi) information about how internet diallers operate and how consumers can identify and take action, such as improving their computer's security, to avoid further instances of these or similar scams;
- (vii) in the case of mobiles, in addition to the above, information about how premium rate SMS/MMS/WAP billed services operate and how consumers can unsubscribe from these;
- (viii) information on the role of the Telecoms Ombudsman schemes in resolving disputes concerning PRS calls;
- (ix) information on other options available to consumers for seeking refunds in cases of abuse or scams involving PRS calls;
- (x) contact details of individual SPs or the TCPs which host them; and where available – typically via ICSTIS" website at [www.icstis.org.uk](http://www.icstis.org.uk);
- (xi) SPs customer service contact details where consumers can obtain further information about services provided on the PRS numbers found on their bills.

#### **4. Processes and Procedures**

- 4.1 Procedures should be in place for Originating Communications Providers' enquiry and helpdesk staff to know of the existence and content of the Code in order for them to be able respond to complaints and enquiries about PRS calls and to monitor their compliance with the Code.
- 4.2 There should be fully documented procedures in place to make customers and advice agencies aware of the existence and content of the Code, for example by referring to the Code in sales and marketing literature and by making the Code available through Originating Communications Providers' websites.
- 4.3 The Code shall be drafted in plain English, which is easy to understand, and copies of the Code are to be provided on request, and free of charge, to customers.
- 4.4 The Code shall include the name and contact details (including e-mail address) of the Originating Communications Provider's representative who is responsible for the Originating Communications Provider's compliance with the Code.

#### **5. Terms used in these Guidelines**

5.1 Terms used in these Guidelines shall have the same meaning, if any, as set out in Condition 14.

## **Annex 2 to General Condition 14**

### **Guidelines for codes of practice for the publication of prices of calls to Number Translation Services**

- 1.1 The key objective of these Guidelines is to ensure that Originating Communications Providers provide their Domestic and Small Business Customers with readily accessible and accurate information relating to the usage charges for NTS Calls on their networks.
- 1.2 These Guidelines seek to ensure that there is a clear framework within which Originating Communications Providers should be operating in relation to the publication and provision of information to domestic and small business customers about usage charges for NTS Calls.
2. **Status of code**
  - 2.1 All Originating Communications Providers who provide NTS Calls are required under General Condition 14.2 to establish a Code of Practice for NTS Calls for their domestic and small business customers (the “Code”), which conforms with these Guidelines and to comply with the provisions of the Code.
  - 2.2 Compliance with the Code does not guarantee compliance with any other legal requirements.
  - 2.3 Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.
3. **Customer information and advice: published price lists and websites**
  - 3.1 The Originating Communications Provider that is responsible for the retail billing of NTS Calls to the end-user shall publish the usage charges required to be published under General Condition 10.2(d)(ii) for NTS Calls on its website and in published price lists in a way that gives those charges the same prominence in terms of location and format given to charges for geographic calls, calls to mobiles and call packages, including bundles.
  - 3.2 Without prejudice to the generality of paragraph 3.1, Originating Communications Providers shall give prominence to the following, in particular:
    - (i) any usage charges that apply for calls to freephone numbers including details of when those charges will apply;
    - (ii) usage charges for NTS Calls which include variations by time of day. For example, “08xx calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax”;
    - (iii) whether or not any special offers, discount schemes or call bundling arrangements apply to NTS Calls, including details of which of those arrangements apply to which number range;
4. **Customer information and advice: advertising, promotional material and new customers**



4.1 Originating Communications providers shall publish in their advertising and promotional material which refer to call pricing, alongside maximum prices applying to NTS Calls, a clear reference as to where on websites and published price lists the complete set of NTS Call charges, as specified in paragraph 3.2, can be found.

4.2 When a new customer signs up for the provider's service, Originating Communications Providers shall provide, alongside maximum prices applying to NTS Calls in the relevant correspondence, a clear reference as to where on websites and published price lists the complete set of NTS Call charges, as specified in paragraph 3.2, can be found.

## 5. **Processes and Procedures**

5.1 Procedures should be in place for Originating Communications Providers' enquiry and helpdesk staff to know of the existence and content of the Code in order for them to be able respond to complaints and enquiries about PRS calls and to monitor their compliance with the Code.

5.2 There should be fully documented procedures in place to make customers and advice agencies aware of the existence and content of the Code, for example by referring to the Code in sales and marketing literature and by making the Code available through Originating Communications Providers' websites.

5.3 The Code shall be drafted in plain English, which is easy to understand, and copies of the Code are to be provided on request, and free of charge, to customers.

5.4 The Code shall include the name and contact details (including e-mail address) of the Originating Communications Provider's representative who is responsible for the Originating Communications Provider's compliance with the Code..

## 6. **Terms used in these Guidelines**

6.1 Terms used in these Guidelines shall have the same meaning, if any, as set out in Condition 14.

## Annex 3 to General Condition 14

### Guidelines for sales and marketing codes of practice for Fixed-Line Telecommunications Services

The following **Key** elements to be included within sales and marketing codes of practice

#### 1. Introduction and overview

##### 1.1 **Key** Objectives to be outlined:

- ~~To provide~~ ensure that Communications Providers (“Providers”) provide their Domestic and Small Business Customers (“Customers”) with standards of protection from harmful conduct arising from irresponsible sales and marketing activity; over and above those provided by the law (see table below for examples);
- ~~To~~ ensure good practice and responsible selling in the marketing of Fixed-line Telecommunications Services, and to help Customers understand the service and behaviour to be expected;
- ~~To~~ provide a clear framework within which responsible Communications Providers (“Providers”) should be working, providing reassurance to Customers and consumer representatives as to what constitutes good practice in the sales and marketing of Fixed-line Telecommunications Services.

##### 1.2 The code focus to be sales and to marketing of Fixed-line Telecoms Services to Customers, dealing primarily with issues arising before, during and at the point of sale, with particular emphasis on the avoidance of mis-selling and misrepresentation, and ensuring customer understanding of the services offered and the key terms of any contracts they are entering into.

##### 1.3 Procedures to be in place for sales and marketing staff, and agents, to be informed of the Codes of Practice for Sales and Marketing (“the Code”) and its contents, and for monitoring their compliance with it.

##### 1.4 Procedures to be in place, and fully documented, for Customers and advice agencies to be made aware of the Code and its contents such as, for example, making reference to the Code in sales and marketing literature, as part of the Providers’ “notification of transfer” letter (referred to in paragraphs 6.11 and 6.12), and by making available on Providers’ public websites.

##### 1.5 Codes to be drafted in plain English which is easy to understand, and to be made available on public websites, and copies of it to be provided on request, and free of charge, to Customers.

##### 1.6 Providers’ accountability to be visible in the form of aA named person, responsible for compliance, with relevant contact details, including an e-mail address, to be provided.

#### 2. Status of code

##### 2.1 Codes to explain that All Providers who engage in sales and marketing for Fixed-line Telecoms Services are required under General Condition 14.53 to establish the

Code in accordance with these Guidelines, and comply with the provisions of the Code.

2.2 **Codes to explain that c**Compliance with the Code does not guarantee compliance with any legal requirement.

2.3 **Codes to explain that n**Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.

### 3. **Sales, marketing advertising and promotion**

3.1 Customer approaches may occur in a wide range of ways e.g. by TV, radio or press advertising, promotions in shops or shopping centres, post, fax, electronic mail, telephone or in person. Regardless of the way in which sales and marketing activities are conducted, Providers to act responsibly and compliantly.

3.2 Customers' legal rights and wishes to be respected where they have registered with any relevant preference service, including the Mailing Preference Service, the Telephone Preference Service, the Fax Preference Service and the E-mail Preference Service.

3.3 Advertising and promotion to comply with the British Codes of Advertising and Sales Promotion and all other applicable advertising codes. In addition, advertising and promotional literature to be clear, unambiguous, accurate and fair, containing no false or misleading information about price, value or service and, in particular, must not denigrate other Providers.

### 4. **Recruitment and sales training**

4.1 Appropriate procedures to be set up for the selection of staff involved with direct contact with customers for the purposes of sales and marketing activity.

4.2 Providers to be responsible for ensuring that sub-contractors (third party agencies) also set up equivalent selection procedures. **For the avoidance of doubt, t**Third party agencies shall not include resellers to whom telephony services are sold on a wholesale basis.

4.3 Whilst operating within current employment legislation, recruitment of sales staff to have regard to:

- behaviour and appearance, recognising that the sales person may be seen as the "public face" of the industry;
- security – references and relevant convictions for criminal offences to be checked and taken into account;
- evidence of mis-selling or lack of integrity in any previous selling employment.

4.4 The following requirements related to sales staff based in the UK to be observed:

- the applicant must provide proof of National Insurance number, proof of address and two references;
- referees cannot be related to the applicant;

- business referees must not both be from the same company;
  - if a sales person leaves for any reason a copy of his or her sales records (including all recordings and notes on sales) will be retained for a minimum period of six months;
  - reasonable endeavours to be made to retrieve the identification badges of staff leaving the company.
- 4.5 For sales-staff not based in the UK, equivalent procedures to be applied, and documented.
- 4.6 Providers to satisfy themselves that they have taken reasonable steps to ensure that every such person is trained so as to have a sufficient understanding that any relevant advice given by such person is not misleading. Topics covered to include:
- arrangements for competition in the supply of telecommunications in the UK;
  - the different telephone options provided by the company and how these differ from other competitive telecoms products (which may or may not be offered by the company); for example, Indirect Access, Carrier-Pre Selection, Wholesale Line Rental or Wholesale Calls;
  - the process for ordering the telephone service;
  - the relevant principles of consumer protection law;
  - the prices charged by the employing company and its other terms and conditions of service and, in particular, methods of payment, duration of contract and any termination fees;
  - the nature, and cost, of any additional services on offer;
  - the process for cancelling the contract both during the cooling-off period and at any time following commencement of the service;
  - the existence of the sales and marketing Code of Practice and the benefits provided; and
  - the procedure for handling customer complaints.
- 4.7 Responsibility for compliance with the Code by representatives, and any sales agency acting on their behalf, to lie with the Provider. The Provider to identify the title of the person accountable for ensuring that the company and its agents observe the Code, and the title of the person responsible for handling complaints relevant to the code.
- 4.8 Remuneration systems, to be documented, and not to be such as to encourage misleading or exploitative sales practices. The Provider to be kept informed of incentive schemes used by any agencies it employs for sales and marketing.
5. **Customer contact**
- 5.1 Discretion to be used when visiting consumers' homes, particularly during the hours of darkness. No face to face contact to be made outside the hours of 08.00 to 20.00,

and no telephone calls to be made outside the hours of 08.00 to 21.00, unless at the customer's request

- 5.2 Representatives involved in face-to-face sales and marketing to be issued with identity badges that clearly display the name of the Provider they represent and a unique identification number for that representative. The identity badge to also display the representative's name, a photograph of the representative and an expiry date for validity of the card. The information on the card to be presented in such a way that does not require close examination. Identity cards must also be made available with key information in Braille, on request
- 5.3 All representatives to immediately identify themselves, the company they represent and the purpose of the call and the expected call duration. If visiting or meeting in person, they should draw the Customers' attention to their identity card.
- 5.4 Reasonable steps to be taken to keep informed of local authority initiatives, password schemes etc, such as the Local Distraction Burglary Initiative.
- 5.5 All representatives to be courteous, use appropriate language and offer clear and straightforward explanations. All information should be factual and accurate. Representatives should not misrepresent the services being offered by the Provider nor those of other Providers. Representatives should not engage in conduct that misleads or deceives or is likely to mislead or deceive Customers. Representatives to-should also check-ensure that Customers entering into contracts understand, and intend to enter into them.
- 5.6 Representatives to cease contact with any person who indicates that the contact is inconvenient, unwelcome, inappropriate or too long. If the Customer requests it, the discussion to be ended immediately and, if making a doorstep call, the premises to be left immediately.
- 5.7 Representatives not to abuse the trust of vulnerable Customers e.g. those who are elderly or whose first language is not English, or who have special needs. Providers should have a policy regarding such Customers, including that their representatives do not pursue sales presentations to Customers whom they believe may be vulnerable.
- 5.8 Where there is sheltered housing, nursing homes or residential care facilities contact to be made with the warden or other person in authority before any approach is made to the Customer.
- 5.9 No sales or marketing activity to be conducted that is directed to those who are under the legal age for entering into contracts.
- 5.10 Sales and marketing campaign records to be maintained for six months, including the date and the approximate time of the contact with the Customer. Records to be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

## 6. **Entering into a contract – information, order forms and contracts**

- 6.1 All reasonable steps to be taken to ensure that the person entering into a contract is authorised to enter into the contract for the Fixed-line Telecommunications Services/bills at the premises, and that the person entering into a contract understands, and intends to enter into the contract (i.e. explicit consent of the Customer is obtained before transferring a line).

- 6.2 Order forms and contract forms to be designed such that the contractual nature of the document is clear to the Customer, and it contains a statement of the contractual nature of the document immediately adjacent to where the Customer signs the document so the statement cannot easily be obscured or concealed. Customers to sign over the word “contract”.
- 6.3 ~~Where a direct approach to the Customer takes place,~~ The Customer to be given the information set out in this paragraph, in writing, and during the sales call, in a clear, and comprehensible, prominent and accurate manner.
- essential information including the identity of the company, its address, telephone, fax and e-mail contact details, as appropriate;
  - a description of the telephone service sufficient to enable the customer to understand the option that the customer has chosen, and how it works;
  - information about the major elements of the service, including the cost of any standing charges, the payment terms, line rental, key call types and details of “protected or special support” arrangements;
  - the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision. Where there may be significant delay in the likely date of provision, the Customer to be informed;
  - the existence of a right of cancellation, the duration of the switchover period during which time that right may be exercised and the process for exercising it;
  - the period for which the charges remain valid; and
  - any minimum period of contract, and minimum contract charges, and any early termination charges, if applicable any.
- 6.4 Customers to be made aware of the existence of the Code, and preferably provided with a summary. Copies of it to be provided on request, and free of charge, to Customers.
- 6.5 At the Customers request, full written information about tariffs to be made available.
- 6.6 If a Customer signs an order form following face to face contact, or enters into a written contract, the customer must be given a copy of the order form or contract, as well as the following details in writing either at the same time or within 5 working days, unless previously supplied in writing prior to contract:
- Information about any after-sales services or guarantees; and
  - Arrangements for the termination of the contract.
- 6.7 Orders placed by distance selling means to comply with Distance Selling Regulations, which are set out in the table below.
- 6.8 In the case of internet orders, a well sign-posted hyperlink to this information which is easily visible to the web site visitor to be prominently displayed with the information being capable of being easily downloaded and printed.

- 6.9 During the switchover period (**i.e. the period before a Customer's order can be activated**) there should be "no cost" cancellation for Customers where they change their mind. Customers to be made aware that they have the right to change their mind during the switchover period.
- 6.10 Customers to be permitted to cancel orders and terminate contracts by telephone, in writing, by fax or by e-mail.
- 6.11 Providers to send a mandatory letter in accordance with the industry-agreed process informing the customer of the details of the transfer, and the following to be clearly communicated:
- date of notification;
  - CLI(s) affected;
  - list of services affected/unaffected, e.g. IA call barring;
  - date of switchover;
  - the sender's contacts details for any queries.
- 6.12 The notification will be by letter although may be sent electronically where Customers have initiated contact by applying online, and have confirmed online that they wish all future correspondence to be sent electronically. Otherwise Customers would need to positively request by written correspondence that information be sent electronically.
- 6.13 Providers to keep under review the procedures by which contracts are agreed and to take appropriate steps to prevent recurrence of any problem identified.
- 6.14 In all cases, Customers to be contacted along similar timescales to the industry-agreed process described in paragraph 6.11 to confirm that the Customer understands that they have entered into an agreement, are happy to proceed with the agreement and are content with the way in which the sales and marketing activity was conducted.
- 6.15 Such Customer contact to be either part of the mandatory Customer "notification of transfer" letter referred to in paragraph 6.11 or through a separate process. This contact to be made by a person not engaged directly in activities leading to the promotion of sales contracts.
- 6.16 If it is found that the contract was not understood or intended, or if the order matured before the expiry of the switchover period, and the Customer wishes to cancel, Providers to terminate the contract without charge or other penalty to the Customer.
- 7. Consumer protection and other legal requirements**
- 7.1 Procedures to comply with all applicable legislation and appropriate amendments (see table below for examples).
- 8. Audit**
- 8.1 Providers to carry out regular audits of systems, procedures and documentation to ensure that they are acting compliantly with all aspects of the Code.

**9. Customer complaints procedure**

- 9.1 Providers' internal procedures for handling Customer complaints to also include those relating to their sales and marketing activities. Providers to ensure that all their staff and representatives who deal directly with Customers are made aware of this procedure, and that they should inform Customers of the existence of their complaints procedure in accordance with their current obligations.
- 9.2 The complaints procedure to set out how Customers may complain about the company's sales and marketing activity and what further steps are available if they believe their complaint has not been dealt with satisfactorily.
- 9.3 In addition, Customers also to be made aware of any dispute resolution arrangements as recognised by Ofcom. Currently Ofcom has approved two schemes: the Office of the Telecommunications Ombudsman ("Otel0") and the Communications and Internet Services Adjudication Scheme ("CISAS").
- 9.4 Providers to liaise regularly with Ofcom and the relevant consumer groups to monitor the number and nature of complaints under its code.

**10. Distributing the code: creating awareness**

10.1 The Code to be available to Customers on request, free of charge and in a reasonable range of formats, **and to be made available on the Provider's public website.**

**10.2 The head office of the Citizens Advice (address: Myddleton House, 115-123 Pentonville Road, London, N1 9LZ) plus other head offices of relevant major advice agencies normally to be sent copies of the code and any subsequent update. Providers with restricted operations such as those operating only in specific regions to circulate copies to advice agencies as appropriate.**



## Legislation of particular relevance to sales and marketing of particular telephony products

Particular attention is drawn to the following regulations (as amended, where appropriate), in addition to all other appropriate consumer protection law and advertising Codes of Practice

	Title	Comment
1.	The Unfair Terms in Consumer Contracts Regulations 1999 SI 1999 No 2083	<ul style="list-style-type: none"> <li>introduces controls over unfair standard terms in contracts with consumers</li> <li>requires written contracts with consumers to be in plain, intelligible language</li> </ul>
2.	The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 SI 1987 No 2117	<ul style="list-style-type: none"> <li>requires that written notice of cancellation rights (min 7 days) in prescribed form is given to consumers entering into contracts at their homes or in other places (e.g. shopping precincts)</li> </ul>
3.	The Consumer Protection (Distance Selling) Regulations 2000 SI 2000 No 2334	<ul style="list-style-type: none"> <li>requires extensive information to consumers before and after consumers enter into contracts using channels of marketing such as direct response press or TV adverts, telemarketing, mail order, etc</li> <li>requires cancellation rights (min 7 working days) to be given to consumers, starting from the date of delivery of prescribed information</li> <li>provides that making demands for payment for services not ordered by consumer is a criminal offence</li> </ul>
4	Telecommunications (Open Network Provision)(Voice Telephony) Regulations 1998 SI 1998 No. 1580	<p>Extensive requirements for system-less resellers and operators of systems licensed by DTI to</p> <ul style="list-style-type: none"> <li>offer written contracts to consumers complying with the regulations;</li> <li>to publish their terms and conditions and tariffs by placing copies in every major office for public inspection during prescribed hours</li> </ul>
5 4	Various Misleading Advertising Regulations	
6 5	Consumer Protection Act 1987 (Part III)	

<p>7 6</p>	<p>Consumer protection legislation</p>	<p>Civil responsibilities</p> <ul style="list-style-type: none"> <li>• Misrepresentation Act 1967</li> <li>• Unfair Contract Terms 1977</li> <li>• Sales of Goods Act</li> <li>• Supply of Goods and Services Act 1982</li> <li>• Consumer Protection 1987</li> <li>• Sale and Supply of Goods Act 1994</li> <li>• Control of Misleading Advertising Regulations 1988 SI 1988 No 915</li> <li>• Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 SI 1987 No 2117</li> <li>• Unfair Terms in Consumer Contracts Regulation SI 1999 No 2083</li> </ul> <p>Criminal liabilities</p> <ul style="list-style-type: none"> <li>• Trade Descriptions Acts 1968</li> <li>• Administration of Justice Act 1970</li> <li>• Fair Trading Act 1973</li> <li>• Price Act 1974</li> <li>• Consumer Protection Act 1987 (Parts II, III, IV and V)</li> <li>• Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 SI 1987 No 2117</li> <li>• Consumer Protection (Distance Selling) Regulations 2000 SI No 2334</li> </ul>
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## **Annex 4 to General Condition 14**

### **Code on the provision by Service Providers of consumer information to Domestic and Small Business Customers for the provision of Services**

#### **Provision**

1. This code (the 'Code') sets out the minimum requirements for all Service Providers to ensure that their Domestic and Small Business Customers are provided with information about any feature and/or limitation in that Service Provider's Service that differs from a Publicly Available Telephony Service provided over the Public Telephone Network, in the ways set out in paragraph 4 below.
2. Different sections of the Code may be applicable to different Service Providers, depending on what Services the Service Provider is providing.
3. These requirements are in addition to the information required to be made available by the Service Provider under the General Conditions of Entitlement and any Codes of Practice set under the General Conditions of Entitlement.

#### **Scope**

4. The Code requires the Service Provider to provide information to its Domestic and Small Business Customers on:
  - a) service reliability;
  - b) Emergency Calls;
  - c) the ability to Port Numbers; and,
  - d) Other information for Domestic and Small Business Customers.

#### **Service Reliability**

5. Each Service Provider shall provide to its Domestic and Small Business Customers clear and readily accessible information regarding whether its Service may cease to function if there is a power cut or power failure, or a failure of the Broadband Connection.
6. The information in paragraph 5 above shall be provided during the Sales Process, within the Terms and Conditions of Use, and in any User Guide issued by the Service Provider.
7. The following text is an indicative example of the information to be provided in paragraph 5 above, that can be adapted to the specific requirements of Service Providers:

"IMPORTANT INFORMATION: If your Broadband Connection fails, your voice service will also fail. Your service may cease to function if there is a power cut or failure. These failures may be caused by reasons outside our control."

#### **Emergency Calls**

8. Some Services may not offer any access to Emergency Calls or access to Emergency Calls may be offered by the Service Provider over its Service but the reliability of this access may be affected by a power cut or power failure, or by failure of the Customer's Broadband Connection.
9. This section is intended to ensure that Service Providers provide their Domestic and Small Business Customers with relevant information about their ability to make Emergency Calls.

### **No Access to Emergency Calls**

10. Where the Service provided by the Service Provider does not provide access to Emergency Calls, the Service Provider shall:
  - a) provide the Domestic and Small Business Customers, clear and readily accessible information at the Point of Signature, in the Terms and Conditions of Use and in any User Guide; that its Service does not provide access to Emergency Calls. The same information must also be provided to prospective Domestic and Small Business Customers as part of the Sales Process;
  - b) take reasonable steps to ensure that Domestic and Small Business Customers acknowledge in the form of a signature (or online equivalent), at the Point of Signature, that they understand that the Service will not provide any access to Emergency Calls, (the following text is an example of the wording that could be used):

"I understand that this service does not allow calls to the emergency services numbers 999 and 112."
  - c) provide evidence to Ofcom of the acknowledgement in paragraph 10 (b) above, within five working days; following a written request from Ofcom;
  - d) as part of the Terms and Conditions of Use, supply its Domestic and Small Business Customer with a clear and readily accessible printed statement, or an on-screen statement that the Domestic and Small Business Customer is encouraged to print out, that Emergency Calls cannot be made using the Service;
  - e) during the Sales Process, give the Domestic and Small Business Customer the choice whether to receive Labels (at no charge, other than reasonable postage and packaging if applicable) which state that Emergency Calls cannot be made using the Service, and recommend that the Domestic and Small Business Customer use these Labels on or near the relevant Service Access Terminal;
    - where a screen or display is used with the Service, a Label could be an on-screen message or display using a clear and readily accessible graphic, words or icon that Emergency Calls cannot be made using the Service; or
    - in these and other circumstances a Label could be (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file).
  - f) if Emergency Calls are made from the Service Access Terminal, provide a network announcement stating (for example):

“Calls to Emergency Services cannot be made from this handset; please hang up and call from an alternative telephone service such as a traditional landline or mobile phone.”

- g) This announcement shall be interspersed with a Number Unavailable Tone for the benefit of hearing-impaired users.

### **Reliability of Access to Emergency Calls**

11. Where the Service Provider provides access to Emergency Calls but the Service may cease to function if there is a power cut or failure or a failure of the Broadband Connection the Service Provider shall:

- a) provide its Domestic and Small Business Customers with clear and readily accessible information, during the Sales Process, in the Terms and Conditions of Use and in any User Guide; that, although access to Emergency Calls is provided, the Service may cease to function if there is a power cut or failure, or a failure of the Broadband Connection;
- b) take reasonable steps to ensure that Domestic and Small Business Customers acknowledge in the form of a signature (or online equivalent), at the Point of Signature, that they understand that Emergency Calls will fail if there is a power cut or failure, or a failure of the Broadband Connection, (the following text is an example of the wording that could be used):

“I understand that this service allows calls to the emergency services numbers 999 and 112. However I understand that calls will fail if there is a power cut or my broadband connection fails.”

- c) provide evidence to Ofcom of the acknowledgement in paragraph 11 (b) above, within five working days; following a written request from Ofcom;
- d) during the sales process, give the Domestic and Small Business Customer the choice whether to receive (at no charge other than reasonable postage and packaging if applicable), Labels which state that Emergency Calls may fail:
- where a screen or display is used with the Service, a Label would normally be an on-screen message or display using a clear and readily accessible graphic, words or icon that Emergency Calls cannot be made using the Service; and
  - in other circumstances a Label would normally be (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file).

### **Emergency Location Information**

12. In respect of Emergency Location Information:

- a) where the Service provided by the Service Provider does provide access to Emergency Calls and the Service is to be used principally at a single fixed location, the Service Provider shall require its Domestic and Small Business Customers to register with it the address of the place where the Service is going

to be used prior to activation of the Service (the location information), so that up-to-date location information can be used for Emergency Location Information;

- b) where the Service Provider has reasonable expectation that, or has been informed that, the service is to be accessed from several locations, the Service Provider shall recommend that its Domestic and Small Business Customers register and update the location information with it, whenever accessing the Service from a new location, so that up-to-date information can be used for Emergency Location Information;
- c) the Service Provider shall advise its Domestic and Small Business Customer at the Point of Signature, in any User Guide, and in any Terms and Conditions of Use of any limitations on the location information that will be provided to the Emergency Services as Emergency Location Information, if the location information they have provided is not up-to-date. This advice shall be clear and readily accessible;
- d) where the Service Provider does not provide Emergency Location Information, it shall provide clear and easily accessible information to this effect to all Domestic and Small Business Customers at the Point of Signature, in any User Guide, and in any Terms and Conditions of Use. The same information shall also be made available to prospective Domestic and Small Business Customers as part of the Sales Process.

### **Ability to Port Numbers**

13. Where the Service Provider does not offer Number Portability, the Service Provider shall provide clear and readily accessible information to its Domestic and Small Business Customers in any User Guide and the Terms and Conditions of Use to this effect. The same information shall also be provided to prospective Domestic and Small Business Customers as part of the Sales Process.

### **Other information for Customers**

14. In addition to the requirements set out above, the information describing the Service made available by a Service Provider to a prospective Domestic and Small Business Customer shall make it clear and readily accessible as part of the Sales Process if any of the following facilities or features are not available by means of the Service:
  - access to a Directory Enquiry Facility;
  - access to operator assistance services (as described in General Condition 8.1);
  - Calling Line Identification Facilities;
  - provision of a Directory on request;
  - special measures for end users with disabilities (as described in General Condition 15); and
  - the non-itemisation of calls which are made from a Subscriber's telephone which are free of charge.
15. The Service Provider shall also make clear and readily accessible, any restrictions on the Number Ranges or Country Codes that may be called using the Service. Where

such numbers cannot be dialled, it is recommended that dialling such numbers should produce the standard Number Unavailable Tone.

## DEFINITIONS

For the purposes of the Code, the definition of the following terms is:

**'Broadband Connection'** means the Domestic or Small Business Customer's broadband service which provides speeds which are higher than those attainable over a dial up connection which are 56kbit/s over an analogue line; 64kbit/s over an ISDN2 digital channel and 128kbit/s over the two bonded channels of an ISDN2 line;

**'Calling Line Identification Facilities'** means facilities by which the Telephone Number of a calling party is presented to the called party prior to the call being established;

**'Country Codes'** means the international dialling code e.g. 44 for the UK;

**'Emergency Calls'** means calls to 999 or 112 or its equivalent;

**'Emergency Location Information'** means information concerning the location from where a call to the Emergency Organisations can be made, that is provided by Service Providers to Emergency Organisation's Operators as part of the handling of such a call;

**'Internet Protocol'** means the method by which data is sent over the internet or intranet;

**'Label'** means a mechanism for annotating a Service Access Terminal with a brief message. A Label can consist of an electronic notice that is displayed whenever the Service is used or (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file);

**'Number Portability'** the facility by which a Domestic and Small Business Customer can transfer their Telephone Number when switching between Service Providers;

**'Number Ranges'** means a set of contiguous numbers of a specified or unspecified size;

**'Number Unavailable Tone'** means a continuous tone which differs from dial tone and indicates a dialled number is unavailable or out of service;

**'Point of Signature'** means the point in the process of concluding a contract immediately before the Domestic and Small Business Customer indicates his/her agreement to enter into the contract;

**'Port Numbers'** means the process to transfer Telephone Numbers to a new Service Provider;

**'Sales Process'** means the process of providing information to the prospective Domestic and Small Business Customer about the Service and of establishing the Domestic and Small Business Customer's requirements for the Service before the making of the contract to provide that Service. This includes leaflets and marketing material. It does not include advertisements;

**'Service Access Terminal'** means the equipment used to access the Service;

**'Terms and Conditions of Use'** means the contract agreed by the Domestic and Small Business Customer for the provision of the Service;

**'User Guide'** means the document giving the Domestic and Small Business Customer information about how to use the Service. This does not include any document concerned solely with the operation of a Service Access Terminal.



### Annex 3

# Non-confidential respondents to the consultation document

Age Concern

BT

Citizens' Advice

Federation of Communication Services

Kingston Communications

02

Scottish and Southern Energy

UKCTA

Vangent