



Protecting consumers from mis-selling of telecommunications services

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

Consultation

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Contents

Section		Page
1	Summary	1
2	Background and legal framework	5
3	Ofcom's approach to tackling mis-selling	10
4	Mis-selling of telecommunications services: evidence of consumer harm	16
5	Mis-selling of telecommunications services: proposals for regulation	22
6	Consultation on a modification to General Condition 14.5	27
Annex		Page
1	Responding to this consultation	31
2	Ofcom's consultation principles	33
3	Consultation response cover sheet	34
4	Consultation questions	36
5	Impact Assessment	37
6	Notification	43
7	OCC framework for defining mis-selling, slamming and mis-conduct	66
8	Cancel Other (slam) reason codes	69
9	Glossary	70

Section 1

Summary

- 1.1 Ofcom exists 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 imposed requirements on all Providers who engage in sales and marketing activities for fixed-line telecommunications services to establish, and comply with, codes of practice on sales and marketing, in accordance with published guidelines.
- 1.7 The modifications to General Condition 14.5 ('GC 14.5¹') 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 telecommunications services to establish, and comply with, codes of practice for sales and marketing activity, in accordance with guidelines published by Ofcom;

¹ 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.

- 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.
- 1.8 Since the new obligations took effect in May 2005, Ofcom has pursued an active enforcement programme under GC 14.5. On 27 May 2005 Ofcom commenced an own-initiative enforcement programme to monitor performance and raise the level of awareness and compliance within the industry.
- 1.9 Ofcom currently measures the level of mis-selling using two separate sets of data: These are:
- Ofcom's mis-selling complaints data; and
 - Industry 'Cancel Other' (slam) data.
- 1.10 Ofcom has commissioned an independent study, in parallel with this consultation, to establish the accuracy of these sets of data.

Scope of this consultation

- 1.11 Under the sunset clause, the obligations are due to end on 25 May 2007. This document considers whether 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 current regulatory obligations or whether it remains a problem that continues to require continued regulatory intervention by Ofcom.
- 1.12 This document also considers 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.

Proposals

Continuing need for obligations

- 1.13 While there has been a positive improvement in reported levels of mis-selling to Ofcom over the last two years, Ofcom does not feel that sufficient progress has been made in reducing levels of mis-selling. In particular, Ofcom recognises that while there has been a downward trend in Ofcom's own complaints data, there has been no observable downward trend in respect of the Cancel Other data which continues to be in the region of 20,000 to 30,000 cancelled orders each month. These levels, when compared with other regulated markets, such as the energy sector, remain unacceptably high.
- 1.14 Ofcom's investigations activity over the last two also shows the need for continuing regulation in this area. Since the enforcement programme commenced Ofcom has opened separate investigations into six Providers, FreeCall UK Ltd, Just Telecoms UK Limited (trading as Lo-Rate), Orb Communications Ltd, Platinum Telecom UK Ltd, Universal Telecom Ltd and XLN Telecom Ltd. In addition, Ofcom is currently conducting investigations into the activities of three further providers, namely Post

Office Ltd, Scottish and Southern Energy and Universal Utilities PLC (trading as Unicom).

- 1.15 Accordingly, Ofcom is proposing to retain the obligations on Providers to establish, and comply with codes of practice for sales and marketing activity in accordance with published Ofcom guidelines.

Extension of obligation

- 1.16 Ofcom has also considered whether there is a case for extending the current mis-selling obligations to other services, as set out below:

LLU

- 1.17 Ofcom is proposing that full LLU should be included within the scope of the regulation. 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).
- 1.18 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 fixed-line telecommunications. 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.
- 1.19 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.

Other services

- 1.20 Ofcom has also considered the case for extending obligations to broadband services, cable services and mobile services. On balance, Ofcom does not believe that additional obligations relating to mis-selling are required given the greater level of customer validation required before the switch can take place for these services than is the case for fixed-line telecommunications services and full LLU services. This is as follows:
- for broadband services, customers must obtain a Migrations Authorisation Code ('MAC') from their current provider to initiate the switch;
 - for mobile services, customers must obtain a Portability Authorisation Code ('PAC') 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 new connections to the property.
- 1.21 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 each month, remain significantly below fixed-line telecommunications services.

Future reviews

- 1.22 In renewing these obligations, Ofcom does not propose to use a sunset clause. This is because Ofcom will be conducting two related reviews over the course of the next 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.
- 1.23 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 as proposed in this consultation.

Consultation

- 1.24 In reaching the proposed conclusions set out in this consultation document, Ofcom has acted in accordance with its principal duty in section 3 as well as the six community requirements in section 4 of the Communications Act 2003 ('the Act').
- 1.25 Ofcom's detailed analysis in respect of this proposed decision, including supporting information and evidence, is set out in this document.
- 1.26 We are also proposing minor changes to GC 14.5 and the supporting guidelines, to improve the clarity and effectiveness of the obligations.
- 1.27 Ofcom is inviting written views and comments by **5pm on 18 April 2007**, on the Notification and proposed modifications to GC 14.5 on Codes of Practice and Dispute Resolution, and the supporting guidelines, attached at Annex 6.
- 1.28 Details of how to respond on each of these issues can be found in Annex 1.
- 1.29 Ofcom will give careful consideration to all comments received during the consultation period, and in light of the comments received may give effect to the proposals set out in this document, with or without modification, by publication of an Explanatory Statement and Notification. Ofcom expects to publish the Explanatory Statement and Notification during May 2007.

Section 2

Background and legal framework

- 2.1 Ofcom exists 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 may 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 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 company 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 of customers' signatures on contracts 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 switch;
 - 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 customers 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 current consumer safeguards which were designed to protect consumers from mis-selling of fixed-line telecommunications services. Ofcom put forward two options for consideration:
- 1) consumers are adequately protected, and there is no need to make any changes; and
 - 2) 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 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

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 14.5² 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, LLU³ and other new voice services. However, in the absence of clear

² Formerly General Condition 14.3, but the numbering was amended to 14.5 following consultation by the Notification of Modification to a General Condition "Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services" published by Ofcom on 19 April 2006, which entered into force on 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.

³ This term is used to refer collectively to connections based on SMPF (Shared metallic Path Facility) (known as shared LLU) and MPF (Metallic Path Facility) (known as full LLU), both of which are wholesale products based on LLU provided by Openreach. LLU is a process by which a dominant Provider's local loops are physically disconnected from its network and connected to a competing

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/misselling/statement.pdf>

Provider's networks. This enables alternative Providers to use the local loop to provide services to customers.

Section 3

Ofcom's approach to tackling mis-selling

3.1 Reducing instances of mis-selling remains a priority for Ofcom. Since the new obligations took effect on 26 May 2005, Ofcom has pursued an active enforcement programme with the amended GC 14.5, requiring Providers to establish, and comply with, a code of practice for sales and marketing pursuant to GC 14.5. Ofcom's enforcement programme has involved the following:

- i) review of individual Providers' codes of practice to consider whether those codes were consistent with Ofcom's published guidelines. Of those, Ofcom considered only three codes appeared to be fully consistent with the guidelines. Ofcom was able to secure changes to all codes which were not fully consistent with the guidelines without the need for further enforcement activity;
- ii) active monitoring of Ofcom's own mis-selling complaints data as well as relevant industry data (Cancel Other (slam) reason codes) together with direct enforcement against certain Providers in order to respond swiftly and effectively with any failure to comply;
- iii) robust targets for improved performance issued to worst performing significant volume players with failure to meet the required target resulting in an Ofcom investigation; and
- iv) ongoing dialogue with the rest of market to understand best practice and continue to drive compliance.

Own-initiative investigation into compliance with General Condition 14.5

3.2 This section provides an overview of the work of Ofcom's investigations programme into compliance with GC 14.5 since 27 May 2005.

Sales and Marketing Codes of Practice

3.3 The first phase of Ofcom's programme involved an information gathering exercise to determine whether Providers had established codes of practice for sales and marketing and, if so, whether these codes conformed with Ofcom's published guidelines. Ofcom analysed over 35 individual Providers' codes to determine whether those codes were consistent with the published guidelines. Of these codes, Ofcom concluded that only three codes were consistent, with all the others being deficient in some way.

3.4 In light of this, Ofcom wrote to each provider to explain the reasons why, in Ofcom's view, the codes did not conform with the guidelines. In this way, Ofcom was able to secure changes to all these codes without the need for enforcement action. Although it is not Ofcom's role to 'approve' each code Ofcom sought to ensure that there was a high level of compliance with the requirement to establish, and maintain, a code of practice.

Monitoring of potential breaches into General Condition 14.5

- 3.5 The next phase in Ofcom's programme was to actively monitor the extent to which Providers were compliant with their individual codes. The two measures used to monitor compliance are as follows:

Ofcom's own mis-selling complaints data

- 3.6 Ofcom's Contact Centre ('OCC') is the team within Ofcom responsible for dealing with complaints and enquiries from members of the public. OCC collects data that enables Ofcom to monitor trends and take action where appropriate to address issues of concern to consumers.
- 3.7 Consumers can contact OCC by phone, letter, e-mail or by completing an on-line form on Ofcom's website.
- 3.8 OCC records all reported complaints from consumers regarding alleged unfair sales and marketing practices, including mis-selling and slamming. OCC generates a unique record for each contact and those records are assigned to various categories depending on the nature of the complaint or enquiry (see Annex 7). The same categories are used for LLU mis-selling (and slamming) complaints.
- 3.9 This complaints data is then assessed in the aggregate, together with the 'Cancel Other' data (see below), and used to help inform Ofcom's investigations programme.

Industry 'Cancel Other' (slam) reason codes

- 3.10 'Cancel Other' is the industry term for a functionality that enables the Provider losing the customer to cancel wholesale orders (during the switchover period) placed by an alternative Provider where slamming has been alleged by the customer. Ofcom considers that Cancel Other plays an important role as a consumer protection mechanism by ensuring that customers are able to cancel orders where they have been slammed.
- 3.11 In accordance with a Direction published by Ofcom on 21 January 2005, as amended on 28 July 2005⁴, concerning BT's use of Cancel Other, stricter rules were introduced as to when BT is permitted to use Cancel Other and what information it must provide to its competitors about its use of Cancel Other. While the Direction is binding on BT Retail ("BTR") only, Ofcom expects that the specified uses of Cancel Other would apply uniformly.
- 3.12 Under the amended Direction, BT is only permitted to use Cancel Other in cases of slamming, to prevent a customer from being transferred as a result of another Provider's failure to action that customer's request to cancel their transfer, and where a BT account is closed before a CPS or WLR order has matured ('line cease').
- 3.13 The Direction also includes requirements relating to information to be provided to competitors about use of Cancel Other, and the Direction requires that full records of any contact between individual customers and the losing Provider relating to the use of Cancel Other are made available, on reasonable request, to the gaining Provider.

⁴ http://www.ofcom.org.uk/consult/condocs/cancel-other/amendment2direction/amending_direction.pdf

This includes the use of reason codes for all canceled orders in line with specific categories.

- 3.14 For the purpose of Ofcom's investigations programme into compliance with GC14.5, Ofcom only takes into consideration the reason codes which relates to slamming. These are listed at Annex 8.

Investigations

- 3.15 Since the enforcement programme commenced Ofcom has opened separate investigations into six Providers, FreeCall UK Ltd, Just Telecoms UK Limited (trading as Lo-Rate), Orb Communications Ltd, Platinum Telecom UK Ltd, Universal Telecom Ltd and XLN Telecom Ltd. In addition, Ofcom is currently conducting investigations into the activities of three further Providers, namely Post Office Ltd, Scottish and Southern Energy and Universal Utilities PLC (trading as Unicom). A brief review of each is set out below:

FreeCall UK Ltd ("FreeCall") and Orb Communications Ltd ("Orb")

- 3.16 Ofcom opened this investigation following more than 600 complaints from consumers and small businesses about fixed-line telecommunications mis-selling by FreeCall and Orb. The two Providers were based in the Birmingham area.
- 3.17 Enforcement action was taken under the Act (GC 14.3(a)) for failure to establish, and maintain, a code of practice for sales and marketing, and Part 8 of the Enterprise Act 2002 (specifically the Unfair Terms in Consumer Contracts, Distance Selling Regulations 1999, Consumer Protection (Distance Selling) Regulations 2000 and the Control of Misleading Advertising Regulations 1988) in order to address ongoing consumer protection issues which included mis-selling.
- 3.18 Further details on this investigation are available on the Ofcom website at: http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_all/cw_858/

Universal Telecom Ltd

- 3.19 Ofcom opened this investigation following complaints from small businesses about fixed-line telecommunications mis-selling by Universal Telecom Ltd (company number 03513467), a Provider based in High Wycombe.
- 3.20 Evidence gathered as part of Ofcom's investigation suggested that Universal Telecom Ltd had failed to comply with the requirement to establish, and maintain, a code of practice for sales and marketing under GC 14.3(a).
- 3.21 Further details on this investigation are available on the Ofcom website at: http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_all/cw_860/

Just Telecoms UK Ltd ("JTUK") trading as Lo-Rate Telecom

- 3.22 Enforcement action was taken under GC 14.5(b) for failure to comply with the requirements of its Code of Practice. As part of its own investigation into the sales activities of JTUK, Hertfordshire County Council Trading Standards entered the premises of JTUK under warrant and were able to obtain and subsequently provide Ofcom with very strong evidence of endemic mis-selling.

3.23 Ofcom's investigation followed more than 800 individual complaints from small business customers of JTUK. Ofcom concluded there were reasonable grounds to believe that JTUK had engaged in conduct which included:

- i) misleading potential customers into believing that JTUK is part of BT or is affiliated with BT;
- ii) demanding early termination charges of up to £395 + VAT per line when customers realise they have been misled and try to cancel their service; and
- iii) disconnecting or threatening to disconnect service if these termination charges were not paid.

3.24 Further details on this investigation are available on the Ofcom website at:

http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_all/cw_857/

Platinum Telecom UK Ltd ("Platinum Telecom")

3.25 Ofcom issued a Notification under section 94 of the Act to Platinum Telecom regarding breaches of GC 14.5(b) by failing to comply with the provisions of its Code of Practice for by:

- i) failing to ensure that copies of its Code were available free of charge in various formats on request, including via its website;
- ii) failing to respect a person's wishes where they had 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;
- iii) failing to ensure that their representatives were immediately identify themselves, the company name, the purpose of the call and how long it should take; and
- iv) failing to ensure that where customers entered into a contract that they fully understood the terms.

3.26 Further details on this investigation are available on the Ofcom website at:

http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_all/cw_896/

XLN Telecom Ltd ("XLN Telecom")

3.27 Ofcom's investigation into XLN Telecom found that there were reasonable grounds to believe that XLN Telecom had breached Ofcom's rules concerning sales and marketing activity by failing to comply with its Code of Practice.

3.28 Specifically, XLN Telecom had failed to comply with the provisions of its Code by:

- i) failing to ensure that on making contact, representatives stated clearly that they represent XLN Telecom and offer only factual and accurate information about XLN Telecom's services and contracts, and not misrepresent its services or those of other companies;

- ii) failing to ensure that customers entering into a contract fully understood the terms, in particular the length of the contract and the level of the termination fee for terminating the contract within the term;
- iii) failing to ensure that the person entering into a contract with XLN Telecom were authorised to sign a contract for services and be responsible for bills at the premises in question;
- iv) failing to ensure that XLN Telecom terminated contracts without charge where customers had not understood the contract they entered into or had not agreed to a service transfer;
- v) failing to ensure that all sales agents working on behalf of XLN Telecom acted responsibly by conducting recruitment and training according to strict procedures; and
- vi) failing to ensure that the company's remuneration systems were designed to discourage misleading sales practices.

3.29 Further details on this investigation are available on the Ofcom website at: http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_all/cw_897/

Scottish and Southern Energy ("SSE") (under investigation)

- 3.30 Ofcom received a complaint from BT, that during September 2006, SSE had written to its existing 'talk' customers (i.e. customers who had signed up to SSE's calls-only telephone service) informing them that their retail line rental service would be transferred from BT to SSE unless the customer contacted SSE to object. BT's view was that placing orders on such terms would equate to "slamming" as the customer has not provided their explicit consent to the transfer.
- 3.31 In light of the above concerns raised by BT, Ofcom opened an investigation into the activities carried out by SSE in transferring customers to its WLR-based line rental service. Further details on this investigation are available on the Ofcom website at: http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/open_all/cw_924/

Post Office Ltd (under investigation)

- 3.32 Ofcom opened this investigation following complaints from consumers who claimed to have been mis-sold the 'HomePhone' fixed-line telephone service by the Post Office or have had their service switched without their consent.
- 3.33 Ofcom's investigation is examining whether the Post Office has failed to comply with the requirements of its Code of Practice. Further details on this investigation are available on the Ofcom website at: http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/open_all/cw_940/

Universal Utilities PLC trading as Unicom (under investigation)

- 3.34 Ofcom has opened this investigation following complaints from consumers who claim to have been mis-sold their fixed-line telephone service by Unicom or have had their service switched without their consent.

- 3.35 Ofcom's investigation is examining whether Unicom has failed to comply with the requirements of its Code of Practice. Further details on this investigation are available on the Ofcom website at:
http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_941/

Ongoing dialogue with rest of market to understand best practice and continue to drive compliance.

- 3.36 Ofcom has also pursued a programme of activity to tackle industry-wide practices related to failure of compliance.
- 3.37 This has included an ongoing monitoring and enforcement programme into fixed-line telecommunications mis-selling, following through on the policy initiatives which resulted in a new obligation on providers in the market to establish and comply with a Code of Practice for Sales and Marketing.
- 3.38 The programme has included formal investigation and enforcement as mentioned above and this has secured significant changes to behaviour to ensure consumer rights are protected, but additional work has also been undertaken.
- 3.39 Ofcom has also communicated specific targets on better performance to Providers making progress but where further improvement is required and maintained ongoing dialogue with better performers in the market to understand best practice and to continue to drive compliance.

Section 4

Mis-selling of telecommunications services: evidence of consumer harm

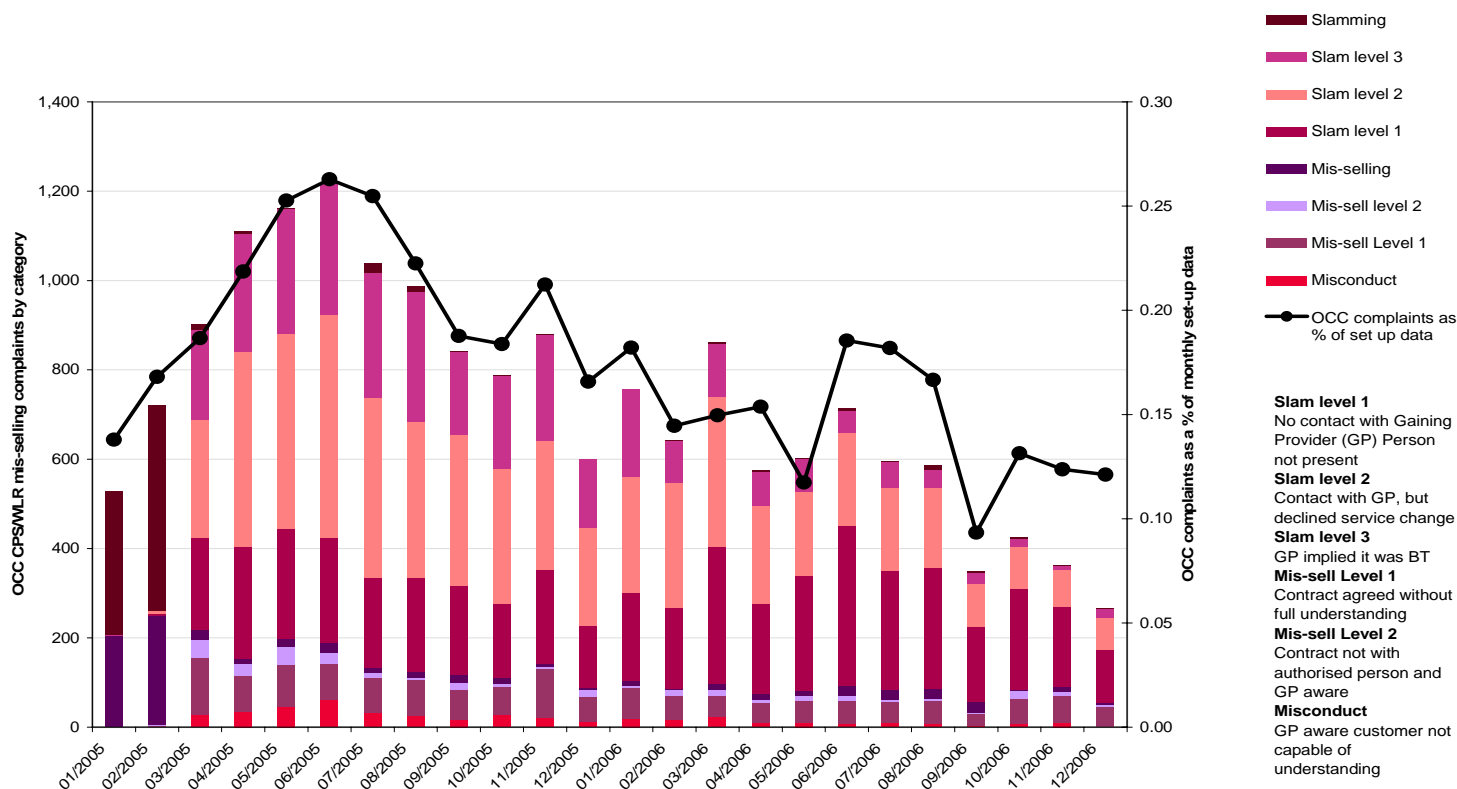
Overview

- 4.1 As discussed in Section 2, the obligation for Providers to establish, and comply with codes of practice for sales and marketing in accordance with published guidelines was introduced following concerns that mis-selling of fixed-line telecommunications services was growing as a problem, and that additional safeguards were required to protect consumers.
- 4.2 Ofcom proposed that the obligations should be subject to a sunset clause of two years. Ofcom's view in the Explanatory Statement and Notification, published on 13 April 2005 was that, "should the problem be addressed during the two year period, with the result that the problem of mis-selling is reduced, it would be inappropriate to maintain regulatory obligations thereafter".
- 4.3 This Section, therefore, assesses the extent to which mis-selling of fixed-line telecommunications services remains a problem that continues to require regulatory intervention. An important factor in Ofcom's decision would be the extent to which there have been significant improvements in the measures which Ofcom currently uses to establish levels of mis-selling across the industry.
- 4.4 This Section also considers the extent to which there is a case for extending the current mis-selling obligations to other services, including broadband services, cable services, full LLU services and mobile services. An important factor in this assessment would be the extent to which problems related to mis-selling have increased over the last two years and the risks of it occurring as services develop.
- 4.5 Ofcom currently measures levels of mis-selling of telecommunications services using two separate sets of data. These are as follows:
- Ofcom's mis-selling complaints data; and
 - Industry 'Cancel Other' (slam) reason codes.
- 4.6 Both sets of data are assessed in the aggregate, and used to inform Ofcom's investigations programme in terms of whether or not, on the basis of that data, it is appropriate for Ofcom to open an investigation onto a particular provider. These are discussed in more detail below.

Analysis of Ofcom mis-selling complaints data

- 4.7 There has been a reduction in the numbers of complaints related to mis-selling of fixed-line telecommunications services reported to Ofcom since the mis-selling obligations were introduced. These complaints, both in absolute terms and as a proportion of monthly set-up data, are set out at Figure 1 below:

Figure 1: fixed-line telecommunications mis-selling complaints received by Ofcom as a proportion of monthly transfers

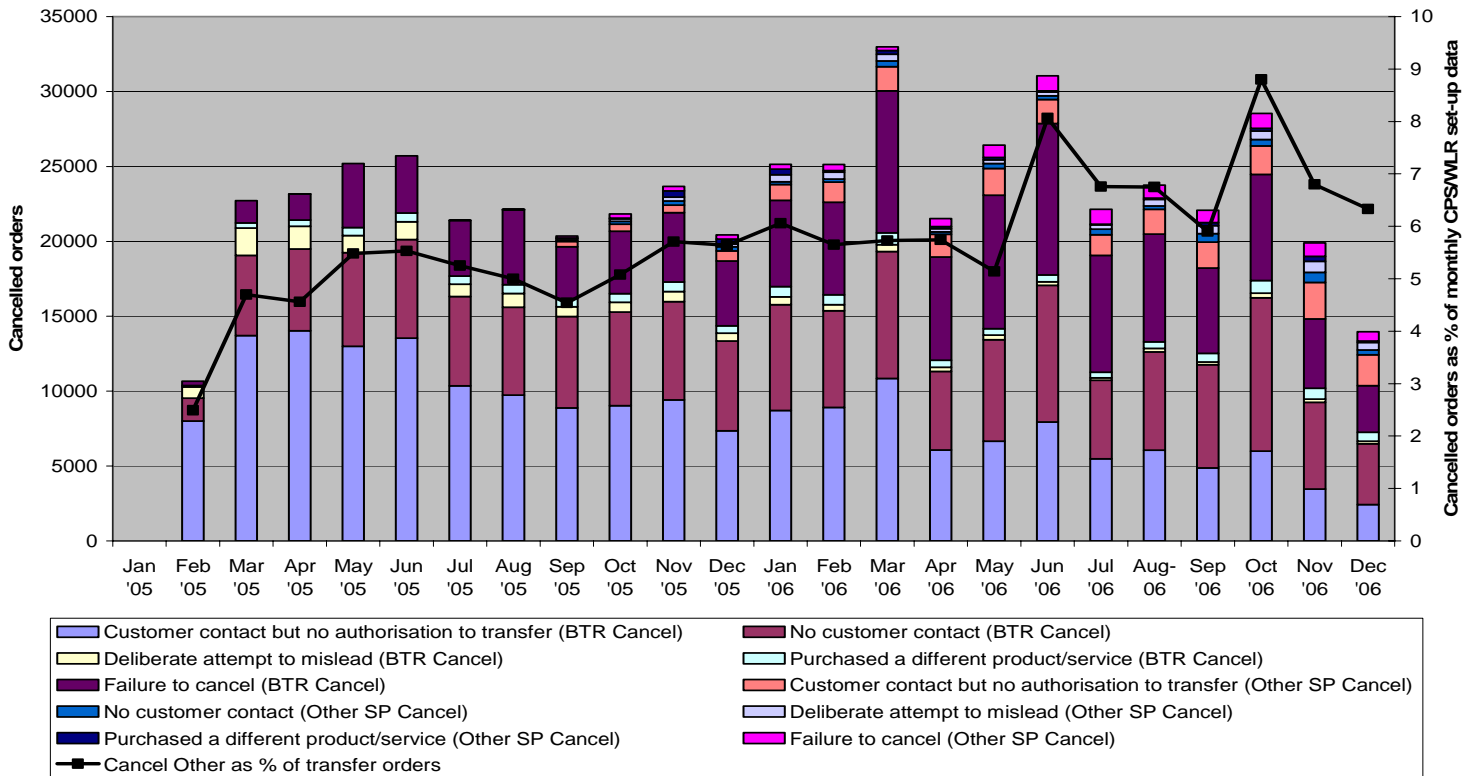


4.8 The figure above shows that there has been a steady improvement in the number of mis-selling complaints being received by Ofcom since the new obligations came into force. This is the case for both absolute volumes where levels have dropped fallen from 1,163 in May 2005 to 267 in December 2006 but also when considered as a proportion of successful monthly set-up orders from 0.25% in May 2005 to 0.12% in December 2006. Ofcom notes, however, that in looking at December complaints data a degree of caution should be applied as there is typically a ‘seasonal trend’ factor to be taken into account where the drop of complaints may differ from trends observed in previous months.

Analysis of Cancel Other (slam) data

4.9 However, the trend for Cancel Other (slam) data shows little overall improvement in the volume of order cancelled each month since the mis-selling obligations were introduced. These volumes, both in absolute terms and as a proportion of monthly set-up data, are set out at Figure 2 below:

Figure 2: Cancel other (slam) volumes as a proportion of monthly transfers

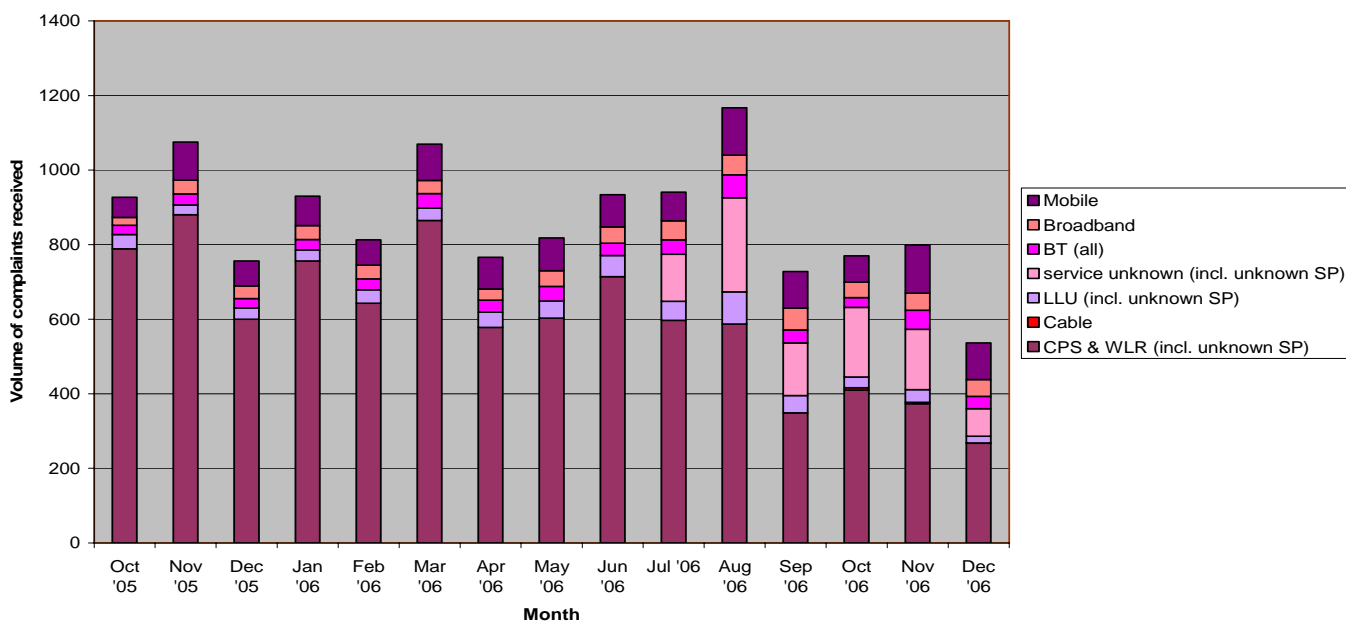


4.10 The figure above shows no observable trend (save for the last two months where there has been a positive downward trend), with volumes of cancelled orders typically remaining in the region of 20,000 to 30,000 each month. Again, while the December volumes have dropped sharply, a degree of caution should be applied to the December fall due to seasonal trends.

Mis-selling in other services

4.11 Ofcom also currently monitors levels of mis-selling complaints reported to Ofcom across all services including, in addition to fixed-line telecommunications services, broadband services, cable services, LLU services, mobile services and where it is unclear about which service the complaint has been made. These complaints are set at Figure 3 below:

Figure 3: mis-selling complaints across all services received by Ofcom



- 4.12 In looking at mis-selling complaints generally, it is notable that fixed-line telecommunications services (albeit falling) do remain, by some margin, the significant cause of complaints relating to mis-selling, typically accounting for some 50% of all mis-selling complaints reported to Ofcom each month.
- 4.13 In terms of other sources of mis-selling complaints, there continues to be a steady level of complaints related to broadband and mobile services. These complaint levels should, however, be considered in the context of the market. Broadband has been one of the fastest-growing new consumer technologies in recent years, and latest figures indicate that around 13 million UK households subscribe to broadband services, with more than 60,000 households installing a new broadband connection every week. The same is true of mobile telephony. In Q1 2006 there were around 66 million mobile subscribers, approximately 9% of which were new connections in that quarter. In the case of mobile telephony, this is largely related to churn, although the subscriber base is still growing⁵. Reported mis-selling arising from these two sectors is low as a percentage of customers who have been sold service, and this is in line with Ofcom's expectations given that a key feature of both the MAC process used for the majority of non-LLU broadband migrations and PAC process used for mobile switching is the protection it offers against slamming.
- 4.14 This was a finding which came out of research into broadband complaints commissioned by Ofcom last year for the purpose of its broadband migrations review⁶. For this review, Ofcom commissioned external consultants to undertake a review of Ofcom broadband complaints data over the previous year (1 May 2005 – 30 April 2006). The results showed issues related to mis-selling and slamming only accounted for 4% of broadband complaints received over the year.

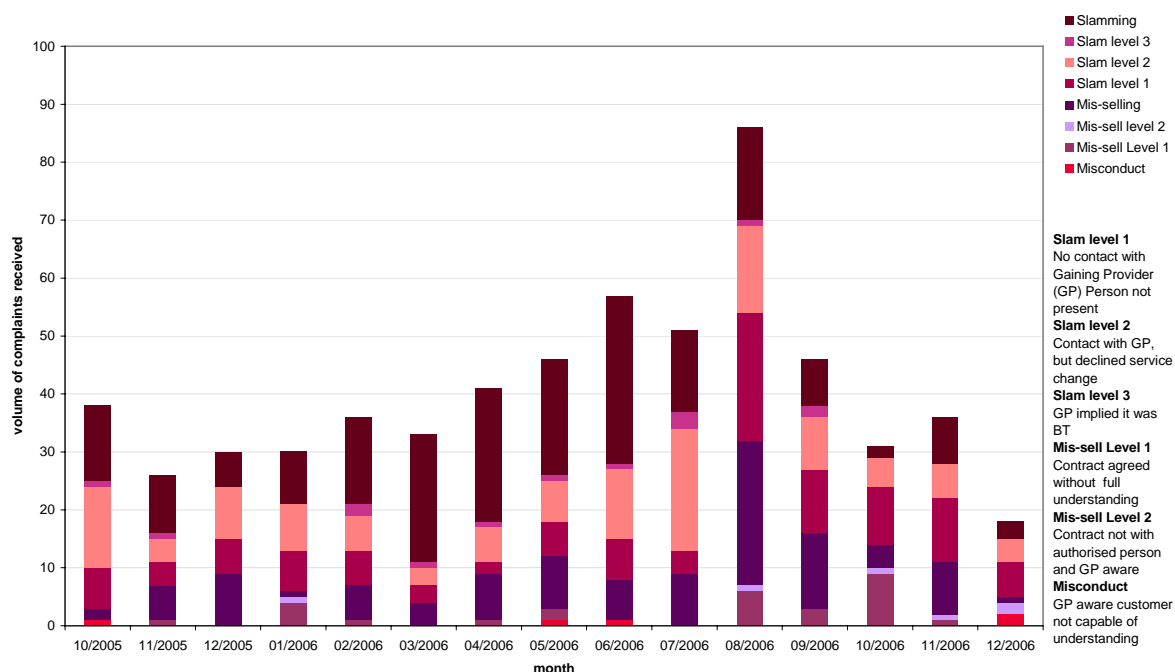
⁵ See page 148 of Ofcom's Communications Market Report:

<http://www.ofcom.org.uk/research/cm/cm06/main.pdf>

⁶ <http://www.ofcom.org.uk/consult/condocs/migration/migrations.pdf>

4.15 Ofcom notes that there continues to be a steady volume of mis-selling complaints related to full LLU services despite the fact that monthly transfers to full LLU remain relatively small (310,000 transfers in total to date to full LLU). While complaints levels remain low (albeit there were some 86 complaints reported to Ofcom related to mis-selling of full LLU in August 2006), this, again, needs to be placed in the context of low monthly transfer rates. Figure 4 below shows the volume of LLU mis-selling complaints received by Ofcom:

Figure 4: LLU mis-selling complaints received by Ofcom



4.16 There is little evidence to support mis-selling and slamming being a problem for cable services. Again, this is in line with Ofcom’s expectations given that, unlike CPS/WLR and full LLU, the process is not invisible to the consumer at the point of take-up (cables have to be physically connected to the property before the service can start). This significantly minimises the potential for slamming to occur.

Study of mis-selling data

4.17 Ofcom acknowledges that there continues to be concern from some industry stakeholders on the extent to which both sets of measures used by Ofcom represent an accurate assessment of levels of mis-selling. Ofcom believes that it is important to have as accurate data as possible in order to ensure that Ofcom’s enforcement programme can effectively monitor whether Providers are acting compliantly with their codes.

4.18 Ofcom has therefore commissioned an independent study in parallel to this consultation to consider the extent to which mis-selling complaints data and Cancel Other (slam) data provide a true reflection of mis-selling as opposed to other issues that may have been generated by other unrelated causes (including, for example, customer miscommunication, customer confusion about the service, customer misunderstanding about the transfer process or, indeed, Provider and consumer abuse). The study will consider how the data can be improved on an ongoing basis to

ensure that earlier identification of problems related to mis-selling on an ongoing basis.

Section 5

Mis-selling of telecommunications services: proposals for regulation

5.1 Section 4 assessed levels of mis-selling in relation to fixed-line telecommunications services as well as other services looking at the two key pieces of evidence outlined above in order to measure the extent to which mis-selling is a problem, namely:

- Ofcom's mis-selling complaints data; and
- Industry 'Cancel Other' (slam) reason codes.

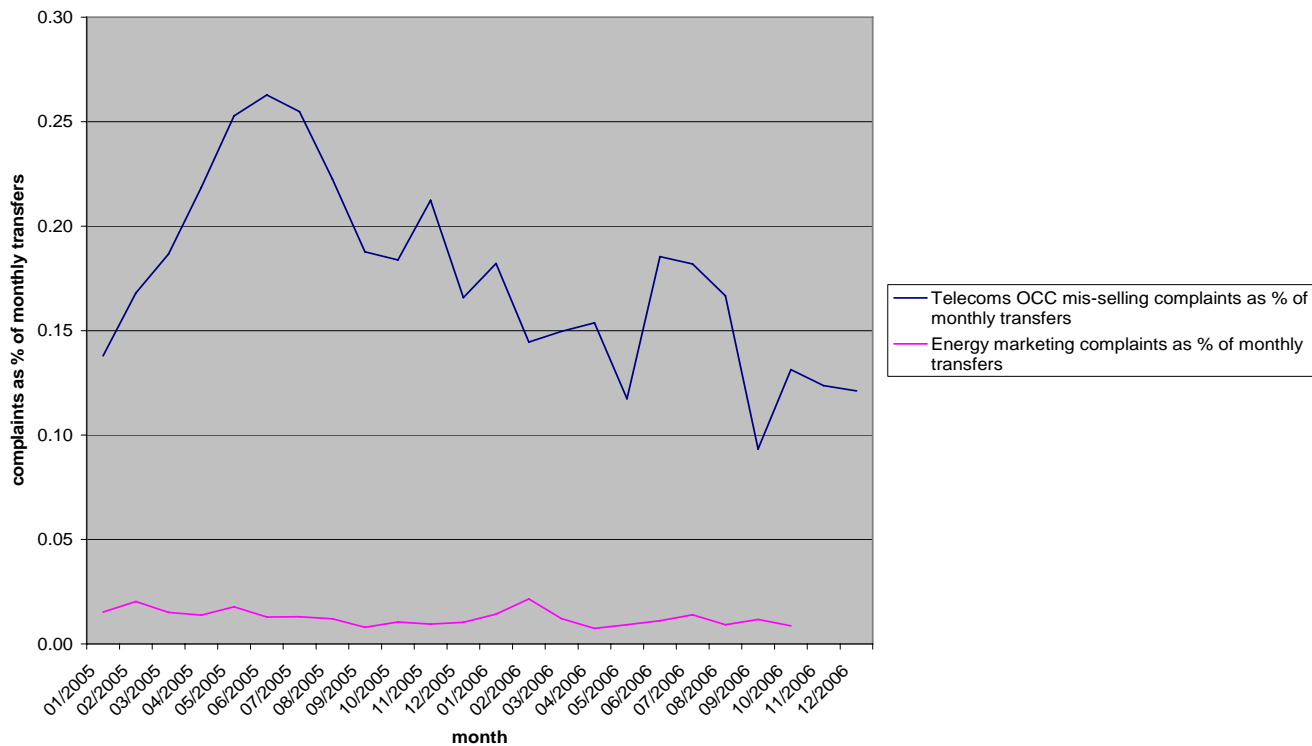
Fixed-line telecommunications services

5.2 Having carefully examined these two measures, Ofcom continues to have concerns about the levels of mis-selling in the fixed-line telecommunications sector, which, in our view, remain too high. In particular, while there has been some decline in reported levels of mis-selling to Ofcom over the last two years, there has been no similar observable downward trend in respect of the Cancel Other data which continues to be in the region of 20,000 to 30,000 cancelled orders each month.

5.3 Therefore, Ofcom proposes 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.

5.4 Moreover, this view is, if anything, strengthened when levels of reported mis-selling in the telecom sector are considered in the context of other regulated sectors, such as the energy sector, in particular. In the energy sector, compliance levels remain significantly better there than in telecoms. This is shown in figure 5 below which highlights that reported levels of mis-selling in the fixed-line telecommunications market (as a proportion of total monthly sales) are still running at up to 10 times higher than in the energy market.

Figure 5: Comparison of selling complaints as % of monthly transfers: OCC complaints about mis-selling of fixed-line telecommunications vs Energywatch marketing complaints



Question 1: Do respondents agree that levels of mis-selling in the fixed-line telecommunications sector remain too high, and that mis-selling obligations for fixed-line telecommunications services should be retained?

Other services

5.5 Ofcom has also considered whether it is necessary to extend the current mis-selling obligations to other services: broadband services, cable services, mobile services and LLU services.

5.6 Having given careful consideration to the evidence set out above, Ofcom is not persuaded that it is appropriate to extend the obligations to broadband, mobile or cable services, at this stage. In particular, Ofcom notes that:

- 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 those of fixed-line telecommunications services;
- a key feature of both the MAC process (used for the majority of non-LLU broadband migrations) and PAC process (used for mobile switching) is the protection it offers against slamming; 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.

- 5.7 However, having carefully considered the risks to consumers arising from potential irresponsible sales and marketing practices, Ofcom is persuaded that the balance of evidence supports including full LLU within the scope of the regulation. In particular, the process for migrations to, from and across, full LLU is identical to that of fixed-line telecommunications, and works on the basis of the customer being notified through 'notification of transfer' letters (the 'letter facilitation' process). This means that there is less validation upfront than is the case for migrations processes used for other service migrations (as set out above) which typically require the customer to contact their losing Provider first to initiate the transfer which reduces the opportunity for mis-selling and slamming to occur.
- 5.8 The letter facilitation process⁷ has a number of advantages – not least that it minimises customer involvement in the switching process ensuring customers can switch between Providers easily. This helps ensure that the burden of switching is not artificially inflated. However, this also gives rise to increased potential for irresponsible sales and marketing activity to take place, as seen in fixed-line telecommunications. For this reason, Ofcom considers that, where the letter facilitation process is used, it is necessary to have strong measures in place to ensure that there are adequate disincentives upon gaining Providers not to engage in irresponsible sales and marketing activity.
- 5.9 While complaints related to mis-selling of LLU services currently remain low, Ofcom is concerned that as the market evolves, and consumers increasingly look to bundle their services by migrating to services offered using full LLU⁸, problems related to mis-selling will also increase. It is clear that differences between fixed-line telecommunications and full LLU are likely to be largely invisible (and irrelevant) to consumers, and any differences (as perceived by consumers) will relate to the retail package on offer only and not the underlying delivery mechanism, the way in which the product is sold and marketed or, as described above, the actual switching process involved. For this reason, Ofcom believes that it is anomalous to retain obligations around sales and marketing activities for fixed-line telecommunications services only without covering services offered on full LLU. Ofcom is therefore proposing to extend the current mis-selling obligations to cover services offered on full LLU.

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?

Guidelines

- 5.10 Ofcom is proposing to make revisions to the wording of the current guidelines in order to simplify the drafting of various provisions contained in the guidelines and to provide clarification. This is intended to make the regulations clearer and enforcement easier and more effective. The guidelines, including proposed

⁷ For further details of the letter facilitation process, please see paragraphs 4.8 to 4.13 of Ofcom's consultation document, *Migrations, switching and mis-selling*, published on 16 February 2006 and available for viewing on the Ofcom website at:

<http://www.ofcom.org.uk/consult/condocs/migrations/migrations.pdf>

⁸ See Ofcom's report, *Review of the wholesale broadband access markets 2006/07*, at:

<http://www.ofcom.org.uk/consult/condocs/wbamr/wbamr.pdf>

changes, are footnoted in Annex 3 to the Schedule to the Notification at Annex 6. Ofcom would welcome comments on these, as well any other proposed changes, which respondents consider are desirable.

Question 3: 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.

Question 4: Do respondents agree that the obligation to provide codes of practice on sales and marketing on request, and free of charge, should be retained?

Future reviews

- 5.11 In introducing the new obligations in 2005, Ofcom made them 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. As set out in paragraphs 5.2 to 5.4, Ofcom continues to have concerns about the levels of mis-selling in the fixed-line telecommunications sector, which, in our view, remain too high.
- 5.12 In renewing these obligations, Ofcom does not propose to use a sunset clause. Instead Ofcom will be conducting two related reviews over the course of the next year which will directly impact on these obligations. These are as follows:
- as part of Ofcom's broader work on migrations processes, Ofcom is considering whether there should be a single migrations process across all services, rather than different processes applying to different products; and
 - as set out in Ofcom's Consumer Policy Statement⁹, published on 8 December 2006, Ofcom will shortly commence a project which will review the consumer-related General Conditions to see if they can be simplified and better targeted towards offending Providers.
- 5.13 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 as proposed in this consultation.

Consultation

- 5.14 Ofcom is inviting written views and comments by **5pm on 18 April 2007**, on the Notification and proposed modifications to GC 14.5 on Codes of Practice and Dispute Resolution, and the supporting guidelines, attached at Annex 6, which set out:
- 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;

⁹ <http://www.ofcom.org.uk/consult/condocs/ocp/statement/statement.pdf>

- 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
- the guidelines for sales and marketing codes of practice for fixed-line telecommunications services should be amended to simplify the drafting of various provisions and to provide clarification.

Section 6

Consultation on a modification to General Condition 14.5

The purpose of this consultation

- 6.1 As detailed in Section 5, and on the basis of the reasoning set out in the Impact Assessment (see Annex 5), Ofcom is proposing:
- 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
 - the guidelines for sales and marketing codes of practice for fixed-line telecommunications services should be amended to simplify the drafting of various provisions and to provide clarification.
- 6.2 This will require a modification to GC 14.5. The relevant procedures for setting, modifying or revoking conditions are set out in section 48 of the Act. Under section 48 of the Act, Ofcom is required to publish a notification of the proposed modification ('the 'Notification'), and to consult for a period of not less than one month after the day of publication of the Notification.
- 6.3 The Notification and proposed modification is attached at Annex 6. The guidelines for sales and marketing codes of practice for fixed-line telecommunications services are set out in Annex 3 to the Schedule to the Notification.
- 6.4 Ofcom is inviting written views and comments by **5pm on 18 April 2007**, on the Notification and proposed modifications to GC 14.5 on Codes of Practice and Dispute Resolution, and the supporting guidelines, attached at Annex 6, and set out in paragraph 6.1 above
- 6.5 Details of how to respond on each of these issues can be found at Annex 1.

Legal background

- 6.6 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 proposed modification to GC 14.5 are set out below.

Section 3 – Ofcom's general duties

- 6.7 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.

6.8 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.

6.9 Ofcom considers that the proposed continuation of GC 14.5 set out in this document is in line with its primary duties. In particular, Ofcom considers that the proposed requirement set out in this document meets the above criteria and that, in particular, consistent rules which set minimum standard requirements in this area would be 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 proposed 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.

Section 4 – European Community requirements for regulation

6.10 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.

6.11 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. 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

6.12 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.

6.13 The proposed 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 proposal to extend the obligation to full LLU is objectively justifiable because the process for switching to, from and across, full LLU services is identical, 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, as set out in Section 5, this is because:

- 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, remains 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; 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 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 to consumers, 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

proposed 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

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 18 April 2007**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/mis-sellingprotection/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email gavin.daykin@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Gavin Daykin
Floor 6
Consumer Policy Team
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3706
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Gavin Daykin on 020 7981 3859.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement during May 2007.
- A1.12 Please note that you can register to receive free mail updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

Question 1: Do respondents agree that levels of mis-selling in the fixed-line telecommunications sector remain too high, and that mis-selling obligations for fixed-line telecommunications services should be retained?

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?

Question 3: 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.

Question 4: Do respondents agree that the obligation to provide codes of practice on sales and marketing on request, and free of charge, should be retained?

Annex 5

Impact Assessment

Introduction

- A5.1 The analysis presented in this annex represents an impact assessment, as defined in section 7 of the Communications Act 2003 (the Act).
- A5.2 You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- A5.3 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

The citizen and/or consumer interest

- A5.4 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.
- A5.5 Ofcom considers that there are various aspects of consumer detriment arising 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 the consumer finds themselves 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 switch.
- A5.6 The aim of the proposals set out in Sections 5 and 6 above, and 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

- A5.7 The objectives of the proposals set out in Sections 5 and 6 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.

A5.8 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, cable services and mobile services).

Analysis of the different options

Do nothing (no additional formal regulation)

A5.9 Under this option the obligations would not be renewed when it lapses in May 2007. Ofcom could encourage Providers to develop codes of practice voluntarily and follow guidance that Ofcom may develop.

A5.10 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

A5.11 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.

A5.12 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 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

A5.13 This option would mean that Providers seeking to adopt best practice and to demonstrate clearly that they have processes in place to protect customers 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

A5.14 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 would have no adequate powers to intervene.

A5.15 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.

A5.16 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

A5.17 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

A5.18 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

A5.19 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.

- A5.20 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.
- A5.21 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

- A5.22 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.
- A5.23 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

- A5.24 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

- A5.25 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).
- A5.26 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.
- A5.27 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.

A5.28 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

- A5.29 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.
- A5.30 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

- A5.31 The intention of the extended requirement would be to ensure LLU Providers establish, and comply with, codes of practice in accordance with Ofcom guidelines, and 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.
- A5.32 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 other broadband services)

A5.33 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 other 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

- A5.34 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

- A5.35 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.
- A5.36 However, in the case of cable services, mobile services, LLU services and other 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.
- A5.37 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.
- A5.38 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 the light of the existing safeguards and evidence available.

Impact on competition

- A5.39 Limited impact on competition would be expected if the obligations were extended to cable, mobile and other broadband services given the level of alternative safeguards already in place and the lack of evidence of mis-selling.

Conclusion

- A5.40 Having considered the evidence set out in this impact assessment and in the body of this 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 5 and 6 and a notification of the proposed GC 14.5 is set out at Annex 6.

Annex 6

Notification

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

Proposal for a 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 make the following proposals for a modification of General Condition 14 on Codes of Practice and Dispute Resolution;
2. The draft modification is set out in the Schedule to this Notification;
3. The effect of, and OFCOM's reasons for making, the proposals 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 proposed modifications;
5. In making the proposals set out in this Notification, OFCOM has considered and acted in accordance with their general duties in section 3 and of the Act and the six Community requirements in section 4 of the Act;
6. Representations may be made to OFCOM about the proposals set out in this Notification by **5pm on 18 April 2007**;
7. 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;
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.

Claudio Pollack

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

8 February 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 Calls¹⁰

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.

¹⁰ Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.

Codes of Practice for Sales and Marketing¹¹

- 14.5 ~~During the Relevant Period¹² Those Communications Providers who provide Fixed-line Telecommunications Services or the Wholesale Inputs to Fixed-line Telecommunications Services,¹³~~ 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 website¹⁴.~~

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.
- 14.8 In this Condition¹⁵:
- ~~(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~~

¹¹ Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005.

¹² This is redundant.

¹³ This is redundant due to the change to the definition of Fixed-Line Telecommunications Services – see below.

¹⁴ This clarifies the requirement in paragraph 1.4 (now 1.5) of the Guidelines for a copy of the Code of Practice to be made available on the Providers' public website.

¹⁵ Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005 – applies to insertion of definitions (a), (d), (h), (j), (m) – (t), Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006 – applies to insertion of definitions (i), (k) and (l).

~~selection that is to apply on every occasion when there has been no selection of Provider by use of a Telephone Number;~~¹⁶

- ~~(a) **“Cable Network”** means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable.~~¹⁷
- (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 ~~n~~ 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~~¹⁸
- (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;~~¹⁹
- ~~(j) **“Indirect Access”** means a facility which allows a Subscriber to whom a Publicly Available Telephone Service is provided by means of a Public~~

¹⁶ This is redundant due to the change to the definition of Fixed-Line Telecommunications Services – see below.

¹⁷ This has been added for the purpose of excluding cable services, which may be captured by the change to the definition of Fixed-Line Telecommunications Services.

¹⁸ This definition has been simplified to be an exclusive rather than inclusive definition. This results in a large number of definitions in the General Condition being redundant, hence simplifying the General Condition. In addition, it clarifies the applicability of the obligations to Providers of call services only and uses the commonly understood term of “calls” and “line rental”.

¹⁹ This definition has been added to exclude broadband voice services and cable services.

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;²⁰

- (i) **“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;
- (j) **“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;²¹
- (p) **“Relevant Period”** means a period of two years beginning on 26 May 2005 and ending on 25 May 2007;²²
- (q) **“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;²³
- (r) **“Wholesale Calls”** means end-to-end calls sold by one Communications Provider to another for the purposes of providing services to End-Users;²⁴

²⁰ This is redundant due to the change to the definition of Fixed-Line Telecommunications Services – see above.

²¹ This is redundant due to the change to the definition of Fixed-Line Telecommunications Services – see above.

²² This is redundant due to the change to the definition of Fixed-Line Telecommunications Services – see above.

²³ This is redundant due to the to the definition of change of Fixed-Line Telecommunications Services – see above.

(s) **“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;²⁵

(t) **“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.²⁶

²⁴ This is redundant due to the change to the definition of Fixed-Line Telecommunications Services – see above.

²⁵ This is redundant due to the change to the definition of Fixed-Line Telecommunications Services – see above.

²⁶ This is redundant due to the change to the definition of Fixed-Line Telecommunications Services – see above.

Annex 1 to General Condition 14²⁷

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);
 - 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;

²⁷ Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.

- (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;
- (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 14²⁸

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 the Providers’ 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 a named person, responsible for compliance, with relevant contact details, including an e-mail address, to be provided.

²⁸ Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005.

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 cC** Compliance with the Code does not guarantee compliance with any legal requirement.
- 2.3 **Codes to explain that nN** 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, †** 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-ensure²⁹** 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.

²⁹ To clarify that explicit consent of the customer is required before transferring a line.

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).³⁰

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, or during the sales call,³¹ in a clear, and comprehensible, prominent and accurate³² 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 exercised³³ 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 charges³⁴, if applicable any.

³⁰ To clarify that explicit consent of the customer is required before transferring a line.

³¹ To clarify that the information detailed in paragraph 6.3 is required where sales and marketing activity is conducted over the telephone (and not only in the verification part of the call).

³² To clarify that, in addition to being clear and comprehensible, the information detailed in paragraph 6.3 must also be prominent and accurate.

³³ To clarify that Providers must be clear in respect the period during which the customer is entitled to a right of cancellation.

- 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.

³⁴ To clarify that Providers are required to inform customers of any applicable early terminations charges.

- 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 (“Otel”) 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"> introduces controls over unfair standard terms in contracts with consumers requires written contracts with consumers to be in plain, intelligible language
2.	The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 SI 1987 No 2117	<ul style="list-style-type: none"> 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)
3.	The Consumer Protection (Distance Selling) Regulations 2000 SI 2000 No 2334	<ul style="list-style-type: none"> 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 requires cancellation rights (min 7 working days) to be given to consumers, starting from the date of delivery of prescribed information provides that making demands for payment for services not ordered by consumer is a criminal offence
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"> offer written contracts to consumers complying with the regulations; to publish their terms and conditions and tariffs by placing copies in every major office for public inspection during prescribed hours
5.	Various Misleading Advertising Regulations	

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

Annex 7

OCC framework for defining mis-selling, slamming and mis-conduct

Slamming

Level 1 slams – No contact with GP and no contract made		
	Sub-category	Examples
Slam level 1.1	Person not present (e.g. not in country, on holiday, deceased)	* customer had no contact with GP (and physically absent at time of sale)
Slam level 1.2	Nobody in household or company has spoken with GP	* customer has no awareness of any contact with GP;
Slam level 1.3	Number mistakenly transferred (e.g. from a previous account)	* number mistakenly transferred by GP, without the customer's knowledge
Slam level 1.4	Transfer from IA (dialler or prefix)	* customer's existing IA service transferred without due notification or permission
Level 2 slams – Contact but no contract made		
	Sub-category	Examples
Slam level 2.1	Told GP did not want to change	*customer had contact with GP but told GP that it did not want to transfer
Slam level 2.2	Did not tell GP wanted to change	* customer had contact with GP and is transferred even though it did not tell GP wished to transfer
Slam level 2.3	Non-decision maker told GP needed to speak to decision maker; no agreement for service given	* GP spoke to non-decision maker and non-decision maker made no agreement; * non-decision maker referred GP to decision maker
Slam level 2.4	Requested information only	* customer had contact with the GP but agreed/requested information only. Customer did not agree to transfer of service
Slam level 2.5	Purchased another service e.g. digital TV, utility or mobile	*customer agreed other service with GP but did not agree to take up CPS/WLR
Slam level 2.6	Purchased another calls service e.g. international option	* customer agreed other call service with GP but did not agree to take up CPS for all calls
Slam level 2.7	Thought they were signing for something else	* customer given the impression they were signing a contract for something different; * customer did not know transferring to CPS/WLR
Level 3 slams – Misrepresentation		
	Sub-category	Examples
Slam Level	GP said was part of	* customer was told GP representative

3.1	BT/connected to BT	represented BT or a company operating on its behalf; * customer did not think a transfer to separate company was involved
Slam level 3.2	GP strongly implied was from BT	* GP representative did not directly say was from BT; * GP implied the service was associated with BT; * GP implied no transfer involved
Slam level 3.3	GP said was part of a different company (not GP, not BT)	* GP falsely claimed to be operating on behalf of a third company (not BT or actual GP)

Misconduct

Level 1 Misconduct		
	Sub-category	Examples
Misconduct level 1.1	[GP aware that] customer not capable of understanding the offer (thru ill health, general infirmity)	* customer incapable of understanding for health or age reasons;
Misconduct level 1.2	[GP aware that] customer not capable of understanding the offer (language problems)	* customer incapable of understanding for linguistic reasons;

Mis-selling

Level 1 mis-sell – Contract agreed without full understanding / acceptance (GP at fault)		
	Sub-category	Examples
Mis-sell level 1.1	GP told lies about the competition	* customer agreed/signed a contract with the GP on the basis of false information about BT (or other competitors)
Mis-sell level 1.2	Customer was told line rental included in CPS	* customer falsely told by GP that line rental included in price/ package
Mis-sell 1.3	Web click through: customer misled by package agreed on web	* customer agreed transfer on the web; * customer misled by information on the web; * reality of service different from that promised
Mis-sell level 1.4	Misinformed regarding service costs/features	* costs and/or features of package/service sold differ from those of the product delivered
Mis-sell level 1.5	Special offer did not materialise	* customer agreed transfer on basis of special offer which did not materialise
Mis-sell level 1.6	Customer did not receive information promised	* customer was promised information to review decision to transfer; * transfer undertaken without having

		received the information
Mis-sell level 1.7	GP said could only send information if customer agreed to contract	* customer agrees to transfer as told can only receive information if transfers service
Mis-sell level 1.8	Misleading/inadequate information given about transfer and billing	* GP fails to explain adequately the nature of the transfer process and/or the billing implications of transfer (e.g. two bills)
Mis-sell level 1.9	Customer accepted service as told existing service (e.g. International) no longer exists	* GP implies transfer to CPS mandatory, because existing service are being replaced
Mis-sell level 1.10	Customer agreed on the basis of false information	* customer agrees to transfer service on the basis of false and/or misleading information
Level 2 mis-sell – Contract not with authorised person with GP at fault		
	Sub-category	Examples
Mis-sell level 2.1	GP aware not speaking to authorised person	* GP made aware not speaking to authorised decision maker; * GP ignores this fact and continues to execute sale
Mis-sell level 2.2	GP aware not speaking to account holder, but made no effort to check if person authorised	* GP made aware not speaking to account holder; * GP does not attempt to establish if respondent is an authorised decision maker; * GP continues to execute sale

Annex 8

Cancel Other (slam) reason codes

Reason codes	Ofcom definition from its Direction
9020 (BTR)	Customer has been contacted by Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of his telephone calls and/or line rental to the Gaining Provider
9050 (BTR)	Customer has never been contacted by the Gaining Provider
9060 (BTR)	Customer has agreed to transfer some or all of his telephone calls and/or line rental to the Gaining Provider having understood, as a result of a deliberate attempt by the Gaining Provider to mislead, that he is making an agreement with a different communications provider
9070 (BTR)	Customer has agreed to purchase a product or service from the Gaining Provider and the Gaining Provider has submitted a request for a different product or service which the customer has not agreed to purchase
9080 (BTR)	At a customer's request, where the Gaining Provider has failed to cancel the request after being directed by the customer to do so ("Failure to Cancel")
9120 (SP requested)	Customer has been contacted by Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of his telephone calls and/or line rental to the Gaining Provider
9150 (SP requested)	Customer has never been contacted by the Gaining Provider
9160 (SP requested)	Customer has agreed to transfer some or all of his telephone calls and/or line rental to the Gaining Provider having understood, as a result of a deliberate attempt by the Gaining Provider to mislead, that he is making an agreement with a different communications provider
9170 (Srequested)	Customer has agreed to purchase a product or service from the Gaining Provider and the Gaining Provider has submitted a request for a different product or service which the customer has not agreed to purchase
9180 (SP requested)	At a Customers request, where the Gaining Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel")

Annex 9

Glossary

Broadband: a service or connection which is capable of supporting 'always-on' services which provide the end-user with high data transfer speeds.

BT: British Telecommunications plc.

Cable Network: means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable.

Cancel Other: is the industry term for a functionality that enables the Provider losing the customer to cancel wholesale orders (during the switchover period) placed by an alternative Provider where slamming has been alleged by the customer.

Communications Act ("the Act"): the Communications Act 2003.

Communications Provider ("Provider"): a person who provides an Electronic Communications Network or provides an Electronic Communications Service, as defined in the Act.

Carrier Pre-Selection ("CPS"): 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

Fixed-line Telecommunications Services: means Narrowband call and/or line rental services provided to Domestic and Small Business Customers;

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;

Gaining Provider: Provider to whom the customer is transferring

General Conditions of Entitlement: a set of regulations that apply to anyone who provides an electronic communication service or an electronic communications network.

Local loop: The access network connection between the customer's premises and the local serving exchange, usually comprised of two copper wires twisted together.

Local Loop Unbundling (LLU): a process by which a dominant provider's local loops are physically disconnected from its network and connected to a competing provider's networks. This enables Communications Providers other than the incumbent to use the local loop to provide services including broadband to end users.

Losing Provider: Provider from whom the customer is transferring

Migration Authorisation Code (MAC): a unique code that a customer obtains from the

losing broadband service provider and gives to the gaining provider, that allows the service to be transferred from an existing service provider seamlessly and with little or no disruption of service.

Migrations Consultation: Ofcom's *Migrations, switching and mis-selling* consultation published on 16 February 2006. The Migrations Consultation reviewed current approaches to migrations, switching and mis-selling across transferable voice and broadband products.

Narrowband: means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network

Ofcom: Office of Communications. The regulator for the communications industries, created by the Act.

OCC (Ofcom Contact Centre): the team within Ofcom responsible for dealing with complaints and enquiries from members of the public

Openreach: BT's access services division

Portability Authorisation Code (PAC): a unique code that a customer obtains from the losing mobile service provider and gives to the gaining provider, that allows the customer number to be transferred from the losing provider.

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.

PSTN: Public Switched Telephone Network.

Slamming: where a customer is switched from one provider to another without the express knowledge and consent of that customer.

Switchover period: the period before a customer's order can be activated.

Wholesale Line Rental (WLR): A service offered by BT to other service providers allowing them to offer their own branded telephony service.