

Communications Consumer Panel response to Ofcom's statement and consultation: Helping consumers to get better deals in communications markets - mobile handsets

The Communications Consumer Panel, established by the Communications Act 2003, is a group of independent experts with direct sectoral experience. We ensure the citizen and consumer voice is represented in communications policy development.

The Panel's job is to ensure that the sector works for consumers, citizens and micro businesses - and in particular people who may be in a more vulnerable position in society. We carry out research, provide advice and encourage Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and micro businesses.

The Panel pays particular attention to the needs of older and disabled people, people living in rural areas and people on low incomes. The Panel also pays attention to the needs of micro businesses, which face many of the same issues as individual consumers.

We work across the UK communications sector, commission independent research and have a Memorandum of Understanding with Ofcom which enables us to act as a 'critical friend', highlighting issues of concern to consumers, citizens and micro businesses early on. There are also statutory powers through Ofcom's General Conditions, requiring communications providers to meet the Panel from time to time (which Ofcom has recently strengthened to 'upon request'). In practice it has not been necessary to enforce these powers to date, as communications providers engage with us willingly and have told us that they find our research and input helpful in improving their processes to benefit consumers.

Four members of the Panel also represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues.

We publish an annual report¹ and an annual workplan.² Additionally, this year we published new plans to further strengthen the consumer voice in telecoms³, which will further expand our understanding of the issues facing consumers across the UK.

Response

The Panel welcomes this statement and consultation. We have engaged regularly with Ofcom and communications providers (CPs), to help consumers to get better deals in communications markets.

¹ <https://www.communicationsconsumerpanel.org.uk/news-latest/latest/post/737-our-annual-report-2018-19>

² <https://www.communicationsconsumerpanel.org.uk/news-latest/latest/post/735-strengthening-the-consumer-voice-in-the-communications-sector>

³ <https://www.communicationsconsumerpanel.org.uk/downloads/strengthening-the-consumer-voice-in-communications---statement.pdf>

We advised Ofcom of our concerns about the transparency of pricing in the mobile market and have highlighted non-coterminous contracts as a barrier to switching. In our response to Ofcom’s review of its General Conditions (GCs) in 2017, we said:

“We would also encourage consideration of the GCs’ covering greater transparency in relation to additional elements of a communications service such as the handset purchase element of mobile tariffs and the provision of security software for broadband/data connections.

In relation to mobile contracts, Ofcom’s 2016 Tech Tracker found that of those with a contract including a subsidised phone element, 6% were out of their minimum contract period. Of those out of contract (albeit a small base of 107), 72% were paying a similar monthly tariff compared to when they signed up. In other words, although they had effectively paid off the cost of their handset, they were continuing to pay monthly amounts for it. In terms of treating consumers fairly, we believe that CPs need to be much more proactive in contacting consumers when they have reached the end of their contract. Although some CPs offer the separation of the handset and service element of the tariff, this is by no means common practice - as we believe it should be.”⁴

Having regularly urged Ofcom to treat fairness to all consumers as a priority, we welcomed the focus placed on fairness in Ofcom’s latest Annual Plan and have been pleased to see that CPs have, this year, signed up to Ofcom’s Fairness Commitments. We continue to work with CPs to facilitate learning and improvements in the quality of customer service, particularly where vulnerable consumers are concerned. We welcomed the improvements committed to by Vodafone, EE, Tesco Mobile, Virgin Media and O2 and look to Three to make a similar commitment to fairness towards their customers - as well as O2 to those served through third party providers.

As seen in our response to Ofcom’s 2016 consultation on mobile switching⁵, we have also raised concerns about unfairness where CPs fail to unlock handsets automatically at the end of a contract, meaning that consumers must pay to be able to use the handset on another network:

“We believe a holistic approach to the [switching] reforms is needed, taking into account all aspects of the process where consumers may be subject to harm - for example, ensuring that contracts are fair and consumers are not subjected to unfair fees for early termination. This should include consumers’ ability to unlock handsets when they switch provider and clear information should be available on this.”

We consider that handset unlocking presents a particular barrier to consumer switching. In our view it is unfair that some CPs charge consumers for their handset to be unlocked - and make them wait significant periods - if they have already completed their contracted period

⁴ <https://www.communicationsconsumerpanel.org.uk/downloads/ccp-acod-gcs-14-march-2017.pdf>

⁵ <https://www.communicationsconsumerpanel.org.uk/downloads/mobile-switching-june-2016.pdf>

and, therefore, paid for their handset. We cannot see any justifiable rationale for any CP to charge a consumer for unlocking in this circumstance - it is an example of unjustified enrichment.

We have also highlighted the plight of micro businesses, which face similar challenges to residential consumers and face the unfair choice of missing out on business services that might help keep their business running, by operating under a residential contract, or facing lengthy contracts, of up to five years.

Complexity in the mobile market

We agree that pricing in the mobile market is complex and confusing for consumers and we support Ofcom's proposals to make mobile pricing fairer. While evidence shows the number of overpaying, out-of-contract consumers is declining, 1.4 million consumers are still overpaying by £182m a year, collectively, which we find unacceptable. We suggest that Ofcom considers tracking and publishing annually this level of overpayment as a measure of fairness. We strongly support prompt action by Ofcom and CPs to reduce this number further, making the market fairer, so that consumers can engage with providers with more trust and confidence.

In our response to Ofcom's November 2018 consultation⁶ we advised that consumers should be able to receive information that they can easily understand and use to their advantage and agreed with Ofcom's proposal that CPs should "inform customers when they purchase services, and in a clear and transparent manner, of the different cost elements of the mobile package a consumer is purchasing, particularly where this includes handset, airtime and any other services. This information should also be provided at the end of the minimum contract period to provide the customer with a breakdown of what they are continuing to pay for". As a practical step, we would suggest that Ofcom and industry develop standards for what 'clear and transparent' look like, in collaboration with the Panel and other consumer groups.

We also urged, in the above response, that information be provided in an accessible format, where appropriate and consistent with any arrangements the customer has with the provider already and should include details that help to inform consumer choices. Accessible, accurate and digestible information for consumers is key. Information to clarify pricing and make switching easier should be inclusive, especially of those who have specific access needs in relation to their engagement with CPs. Increased tariff transparency - and simplicity - for both a consumer's existing contract and the potential new contract would greatly aid people's ability to make a fully informed decision. Ideally, this information should be in an easily comparable form. The information should not be categorised or treated as marketing, otherwise those who have opted out of marketing communications will miss out.

⁶ <https://www.communicationsconsumerpanel.org.uk/downloads/ccp-acod-response-to-ofcom-consultation-on-mobile-handsets---submitted-7-november-2018.pdf>

Linked split contracts

While we support the splitting of contracts to allow consumers to switch airtime provider, we agree with Ofcom that CPs must not impose unfair terms to prevent this from happening, as set out in the consultation document. We have - as referred to earlier in this response - highlighted the problem of non-coterminous contracts during our engagement with Ofcom over the past few years. We agree that the European Electronic Communications Code (EECC) provisions preventing the linking of split contracts where the handset contract is over 24 months will provide a valuable partial solution to many of the origins of mobile consumer harm.

We value Ofcom's thorough research seeking consumers' views and experiences as well as CP's billing data in the mobile market, providing evidence of the extent and range of consumer harm. The evidence also provides further support to the idea that switching is not always a possible or desirable option for consumers. Some consumers may be better off on their current tariff and we have previously stressed the importance of protecting consumers who choose not to switch or are unable to do so.

Conclusions

- In the absence of power to switch consumers to a default tariff that best suits their needs, we support the measures that Ofcom proposes for the protection of mobile consumers and agree with the proposed implementation period of 'within three months'.
- We support an ongoing review of the effectiveness of these measures by Ofcom, with enforcement where necessary, which, as highlighted in the consultation document, may require new legal powers.
- We support Ofcom's proposal to implement the relevant provisions of Articles 105 and 107 of the EECC by amending General Condition C1.4 on contract duration, to apply to both consumers and micro businesses. We have long supported the view that micro businesses should be treated as residential consumers, as they are subject to the same potential harm as those consumers. We see no reason that they should be tied into contracts of longer than 24 months.
- We share Ofcom's concern that CPs could continue to operate non-coterminous contracts of under 24 months and welcome Ofcom's commitment to monitor this closely and we would urge them to consider new initiatives if this monitoring identified further consumer harm and unfairness.
- We welcome the opportunity to respond to a further consultation on a new transparency measure for bundled contracts later this year.
- We are due to publish soon our independently commissioned research on the experiences of consumers from low income households, to whom an overpayment of £5.91 on their monthly bill (as quoted in the consultation document) would have a significant impact. We look forward to discussing our findings with Ofcom and other stakeholders in the coming weeks.