



IT Systems
IT Support
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Telephony and Communications

OFCOM Sales and Marketing Guidelines

Version:1

Release:1

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Introduction

This document contains details of the Ofcom General Conditions in relation to the Sales and Marketing of Mobile and Fixed Line Telephony services, known as General Condition 23 and 24. Full details of all Ofcom Guidelines and General Conditions can be found on the Ofcom website.

General Condition 23 – Sales and Marketing of Mobile Telephony Services

Scope

- 23.1 A Mobile Service Provider must comply with this General Condition with respect to a Customer of its Mobile Telephony Services, except that clauses 23.4(b)(iv) and 23.5 – 23.10 do not apply to Prepaid Mobile Telephony Services and SIM Only Contracts.

Mis-selling prohibition

- 23.2 When selling or marketing Mobile Telephony Services, the Mobile Service Provider must not:
- (a) engage in dishonest, misleading or deceptive conduct;
 - (b) engage in aggressive conduct; or
 - (c) contact the Customer in an inappropriate manner.

Publication of relevant obligations

- 23.3 The Mobile Service Provider must:
- (a) publish a comprehensive summary of its obligations under this General Condition 23 in an easily accessible and reasonably prominent manner on its website or, where there is no such website, by making it available in its registered office during normal office hours for inspection free of charge by members of the general public; and
 - (b) provide a copy of this General Condition to a Customer free of charge upon reasonable request.

Obligation with regards to Mobile Service Retailers

- 23.4 Where the Mobile Service Provider contracts with or appoints a Mobile Service Retailer directly in order to sell or market the Mobile Service Provider's Mobile Telephony Services it must ensure, and where a third party acting on behalf of the Mobile Service Provider contracts with or appoints a Mobile Service Retailer in order to sell or market the Mobile Service Provider's Mobile Telephony Services the Mobile Service Provider must use reasonable endeavours to ensure, that:

- (a) the Mobile Service Retailer is aware of this General Condition;
- (b) provisions are in place which require the Mobile Service Retailer:
 - (i) not to engage in dishonest, misleading or deceptive conduct; (ii) not to engage in aggressive conduct;
 - (iii) not to contact a Customer in an inappropriate manner; and
 - (iv) to create and keep records about the sale of the Mobile Service Provider's Mobile Telephony Services for a period of not less than six months and, where applicable, about a related sales incentive as referred to in General Condition 23.10, for a period of not less than ninety days after the date by which this sales incentive has to be fully redeemed, but not less than six months.
- (c) the Mobile Service Provider monitors the Mobile Service Retailer's compliance with the provisions referred to in General Condition 23.4 (b); and
- (d) non-compliance by the Mobile Service Retailer with the provisions referred to in General Condition 23.4 (b) is appropriately sanctioned by the Mobile Service Provider.

Mobile Service – Information at Point of Sale

- 23.5 The Mobile Service Provider must use reasonable endeavours to ensure that before entering into or amending a contract for a Mobile Telephony Service the customer:
- (a) is authorised to do so;
 - (b) intends to enter into this contract; and
 - (c) is provided with the information set out below in a clear, comprehensible and accurate manner in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into or amends the contract during a sales call, by telephone:
 - (i) the identity of the legal entity the Customer is contracting with; its address and telephone, fax and/or e-mail contact details;

- (ii) a description of the Mobile Telephony Service; the key charges (including minimum contract charges and any early termination charges, if applicable); payment terms; the existence of any termination right, including termination procedures; the likely date the Mobile Telephony Service will be provided, in case the provision of the Mobile Telephony Service is not immediate; and any minimum period of contract.

Where the Customer enters into a contract during a sales call, in addition to the oral provision of this information the Mobile Service Provider must use reasonable endeavours to ensure that this information is sent to the Customer in good time following the call in paper or another Durable Medium.

Records retention

- 23.6 Where the Mobile Service Provider acts as a Mobile Service Retailer, it must create and keep records about the sale of its Mobile Telephony Services for a period of not less than six months and, where applicable, about a related sales incentive as referred to in General Condition 23.10, for a period of not less than ninety days after the date by which this sales incentive has to be fully redeemed, but not less than six months. Such records must include the date of the sale, the means through which the contract was entered into and the place where the contract was entered into, where applicable.

Training

- 23.7 The Mobile Service Provider must use reasonable endeavours to ensure that processes are in place which assure that a Mobile Service Retailer is appropriately trained to comply with this General Condition.

Due diligence

- 23.8 Where the Mobile Service Provider contracts with or appoints a Mobile Service Retailer directly in order to sell or market the Mobile Service Provider's Mobile Telephony Services it must ensure that, and where a third party acting on behalf of the Mobile Service Provider contracts with or appoints a Mobile Service Retailer in order to sell or market the Mobile Service Provider's Mobile Telephony Services the Mobile Service Provider must use reasonable endeavours to ensure that, it, or a person acting on its behalf, carries out and retains a record of the following minimum procedures with regards to any Mobile Service Retailer, contracted or appointed to sell or market the Mobile Service Provider's Mobile Telephony Services:

- (a) a credit reference search and check that the Mobile Service Retailer does not have a history of failing to meet its financial undertakings to creditors;
- (b) a check that any director of a Mobile Service Retailer concerned has not been a director of a third party that has filed for bankruptcy or gone into administration; and
- (c) appropriate checks to ensure that any due diligence information referred to in this General Condition 23.8 remains up-to-date and relevant.

These procedures must be carried out before contracting with or appointing the Mobile Service Retailer.

Use of information for the purpose of monitoring compliance

- 23.9 Where a Mobile Service Provider acquires information from a Mobile Service Retailer for the purpose of monitoring compliance with this General Condition, the Mobile Service Provider shall use that information solely for the purpose for which it was supplied and keep the information confidential. For the avoidance of doubt, the Mobile Service Provider shall not pass the information on to any other party (including its subsidiaries or partners) for whom such information could provide a competitive advantage.

Sales Incentives – Information at Point of Sale

- 23.10 The Mobile Service Provider must use reasonable endeavours to ensure that where a Mobile Service Retailer offers to a Customer a sales incentive, from which the Customer does not benefit immediately and which the Customer is entitled to receive after entering into the contract for the Mobile Telephony Service, the terms and conditions of such an offer are not unduly restrictive and that a Customer is provided with the following information in a clear, comprehensible and accurate manner in paper or another Durable Medium, or, where the sales incentive offer is made during a sales call, by telephone:
- (a) the identity of the legal entity which makes the sales incentive offer and undertakes to meet the obligation(s) tied to this offer; its address; and telephone, fax and/or e-mail contact details;
 - (b) a description of the sales incentive itself; and
 - (c) the terms and conditions of the sales incentive, including a detailed and clear explanation as to the process the Customer has to follow to obtain the sales incentive. Where the sales incentive offer is made during a

sales call, in addition to the oral provision of this information, the Mobile Service Provider must use reasonable endeavours to ensure that this information is sent to the Customer in good time following the call in paper or another Durable Medium.

Definitions

23.11 For the purpose of this Condition:

- (a) "Customer" means Domestic and Small Business Customer as defined in section 52 (6) of the Act;
- (b) "Durable Medium" means a medium on which a Customer can store and retrieve unaltered information for a period of time adequate for the purposes of the information;
- (c) "Mobile Service" means a service consisting in the conveyance of signals, by means of a mobile Public Electronic Communications Network, through the agency of Wireless Telegraphy to or from Apparatus designed or adapted to be capable of being used while in motion;
- (d) "Mobile Telephony Service" means a Publicly Available Telephone Service that is a Mobile Service (and includes any SMS service sold as part of the package);
- (e) "Prepaid Mobile Telephony Service" means a Mobile Telephony Service for which the Customer pays charges in advance of the service being provided;
- (f) "Mobile Service Provider" means the provider of a Mobile Telephony Service;
- (g) "Mobile Service Retailer" means any person who sells or markets a Mobile Telephony Service directly to a Domestic or Small Business Customer; and
- (h) "SIM Only Contract" means a contract for a Mobile Telephony Service where the Customer only obtains a Subscriber Identity Module ('SIM') card from the Mobile Service Provider and the notice period for cancelling this contract does not exceed one calendar month.

General Condition 24 – Sales and Marketing of Fixed Line Telecommunication Services

Scope

- 24.1 A Communications Provider who provides a Fixed-Line Telecommunications Service to Domestic and Small Business Customers ('the Customer') must comply with this General Condition with respect to such Customers.
- 24.2 This General Condition is only applicable where the Customer is transferring a Fixed-Line Telecommunications Service between Communication Providers.

Mis-selling prohibition

- 24.3 When selling or marketing Fixed-Line Telecommunications Services, the Gaining Communications Provider must not:
- (a) engage in dishonest, misleading or deceptive conduct;
 - (b) engage in aggressive conduct;
 - (c) contact the Customer in an inappropriate manner; or
 - (d) engage in Slamming.

Responsibility

- 24.4 Where the Communications Provider engages representatives, such as any sales agency, to act on its behalf in the sale and marketing of Fixed-Line Telecommunications Services, the Communications Provider shall procure that such representatives comply with the requirements of this General Condition.

Publication of relevant obligations

24.5 The Communications Provider must:

- (a) publish a copy of this General Condition, or a link to a copy of this General Condition, published on Ofcom's website, in an easily accessible and reasonably prominent manner on its website or, where there is no such website, by making it available in its registered office during normal office hours for inspection free of charge by members of the general public; and
- (b) provide a copy of this General Condition to a Customer free of charge upon reasonable request.

Information at Point of sale

24.6 The Gaining Communications Provider must take all reasonable steps to ensure that before entering into a contract for a Fixed-Line Telecommunications Service the Customer who is transferring the line:

- (a) is authorised to do so;
- (b) intends to enter into the contract; and
- (c) is provided with the information set out below in a clear, comprehensible, prominent and accurate manner, in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:
 - (i) the identity of the legal entity the Customer is contracting with and its telephone, website and/or e-mail contact details;
 - (ii) a description of the Fixed-Line Telecommunications Service requested; the key charges, including minimum contract charges, and any early termination charges, if applicable; payment terms; the existence of any termination right, termination procedures and the Customer's right to cancel at no cost from the point of sale to the completion of the Transfer Period; the arrangements for provision of

the service, including the order process and, as accurately as possible, the likely date of provision of the service and any minimum period of contract.

Post-sales information

24.7 Where the Customer enters into a contract for a Fixed-Line Telecommunications Service, the Gaining Communications Provider and the Losing Communications Provider must each send the Customer a letter, in accordance with the industry-agreed process, stating that the Customer is transferring their Fixed-Line Telecommunications Service, in paper or another Durable Medium, which clearly sets out, as appropriate:

- (i) the date of the letter;
- (ii) the Calling Line Identification of all Electronic Communications Services which are affected;
- (iii) the list of services affected/unaffected;
- (iv) the proposed switchover date;
- (v) relevant contact details; and
- (vi) the right to terminate the contract, the means by which the right to terminate from the point of sale to the completion of the Transfer Period can be exercised and the date by which the right to terminate must be exercised;

24.8 The letter must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.

Customer's termination rights

24.9 When the Customer enters into a contract to transfer a Fixed Line Telecommunications Service the Gaining Communications Provider must allow the Customer to terminate the contract from the point of sale to the completion of the Transfer Period without charge or any other form of compensation being required to be given by the Customer to the Gaining Communications Provider.

24.10 The Gaining Communications Provider must have procedures in place to enable the Customer to exercise their right to terminate their contract pursuant to General Condition 24.9 without unreasonable effort. These procedures must include the ability to contact the Gaining Communications Provider to terminate the contract by any of the following contact methods:

- (i) telephone;
- (ii) e-mail;
- (iii) post.

Records retention

24.11 The Gaining Communications Provider must use reasonable endeavours to create and keep all records regarding the sale of its Fixed-Line Telecommunications Service, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place where the Contract was entered into, where relevant, and be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

Training

24.12 The Communications Provider must ensure that all its staff or any representatives of any sales agency engaged by it, involved in direct contact with Customers for the purpose of sales and marketing activity and/or Cancel Other are appropriately trained to comply with this General Condition.

Monitoring

24.13 The Communications Provider must monitor, including conducting regular audits, its compliance with this General Condition, including compliance on its behalf by any representatives or sales agency engaged by it, and take appropriate steps to prevent the recurrence of any problem(s) identified.

Cancel Other process

- 24.14 The Losing Communications Provider shall only be permitted to use Cancel Other in the following circumstances:
- (a) where Slamming has occurred;
 - (b) at the Customer's request, where the Gaining Communications Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");
 - (c) where the telephone line is or will be, ceased during the Transfer Period ("Line Cease");
 - (d) for other specified reasons not related to a Customer's request to cancel a transfer, and agreed by the relevant industry forum and approved by Ofcom; and
 - (e) in such other circumstances as defined by Ofcom.
- 24.15 Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Communications Provider shall take reasonable steps to establish that Slamming and/or Failure to Cancel has actually taken place.
- 24.16 After using Cancel Other, the Losing Communications Provider shall confirm the cancellation of the order by Durable Medium to the Customer, unless this is not possible or appropriate, including where the customer is deceased.
- 24.17 The Losing Communications Provider shall record its reasons for using Cancel Other in each case, selecting the appropriate reason code from a list corresponding to permitted use of Cancel Other and consistent with GC24.19(m)(i) to (iv), as agreed by the industry, and approved by Ofcom.
- 24.18 Where the Losing Communications Provider communicates with the Customer in order to comply with this General Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Communications Provider and/or remain in a contract with the Losing Communications Provider.

Definitions

24.19 For the purpose of this Condition:

- (a) **“Cable Network”** means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;
- (b) **“Cancel Other”** means the industry term for a functionality that enables the Losing Communications Provider to cancel wholesale orders (during the Transfer Period) placed by the Gaining Communications Provider which can only be used in the circumstances set out in 24.14;
- (c) **“Communications Provider”** means the provider of an Electronic Communications Network and/or Electronic Communications Service, both as defined in section 32 of the Act;
- (d) **“CPS”** means Carrier Pre-Selection, a facility which allows a customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a telephone number;
- (e) **“Domestic and Small Business Customer”** has the meaning set out in section 52 (6) of the Act;
- (f) **“Durable Medium”** means any instrument which enables the Customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- (g) **“Failure to Cancel”** means where the Gaining Communications Provider has not cancelled a transfer, after a request from the Customer during the Transfer Period;
- (h) **“Fixed-Line Telecommunications Services”** means Narrowband call and/or line rental services provided to Domestic and Small Business Customer;

- (i) **“Gaining Communications Provider”** means the Communications Provider to whom the customer is transferring;
- (j) **“LLU”** means Local Loop Unbundling, the process by which a dominant provider’s local loops are physically disconnected from its network and connected to a competing provider’s network.
- (k) **“Losing Communications Provider”** means the Communications Provider from whom the customer is transferring;
- (l) **“Narrowband”** means services provided over a traditional Public Communications Network, excluding services provided over a Cable Network;
- (m) **“Slamming”** means where a request for CPS, WLR and/or LLU has been made without the Customer’s express knowledge and/or consent; that is in the following circumstances:
 - (i) where the Customer has never been contacted by the Gaining Communications Provider;
 - (ii) where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;
 - (iii) where the Customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or
 - (iv) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider;
- (n) **“Transfer Period”** means the period of 10 Working Days from before a customer’s order can be activated;

- (o) “**WLR**” means Wholesale Line Rental, a facility which BT provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) on the BT line; and
- (p) “**Working Days**” means the hours between 09.00 – 17.00 on Monday to Friday with the exception of bank holidays.