

General Condition 24 on Sales and Marketing of Fixed-Line Telephony 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; and
- (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 Telephone 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.

Guidelines in respect of General Condition 24

Guidelines to General Condition 24: Sales and Marketing of Fixed-Line Telecommunications Services

Introduction

- A6.1 General Condition 24 ('GC24') sets out a number of provisions in respect of the sales and marketing of Fixed-Line Telecommunications Services³¹ with which the relevant Communications Provider providing a Fixed-Line Telecommunications Service ('the Gaining Communications Provider') must comply.
- A6.2 GC24 also comprises provisions relating to the use of Cancel Other with which the relevant Communications Provider providing a Fixed-Line Telecommunications Service ('Losing Communications Provider') must comply. Cancel Other is a consumer protection mechanism designed to ensure that Customers are not switched between Communications Providers without their permission. Therefore, Cancel Other should only be used in certain circumstances, in particular, where the Customer believes they are a victim of slamming.

Purpose of these guidelines

- A6.3 These guidelines are produced by Ofcom to help Communications Providers and Customers understand their rights and obligations under GC24 and are intended to assist Communication Providers in achieving compliance.
- A6.4 The guidelines set out some useful summaries, examples and guidance on the approach Ofcom is likely to take to enforcing GC 24. In particular, these guidelines:
- seek to provide clarity on the meaning of some of the terms and concepts used in GC24 so as to inform Communications Providers and stakeholders of Ofcom's general view on them; and
 - describe factors that Ofcom might consider when applying the relevant requirements or obligations set out in GC24.

Disclaimer

- A6.5 For the avoidance of doubt, where the guidelines set out examples of the way in which Ofcom considers a Communications Provider may comply with a GC, Ofcom is not bound by this and Ofcom will at all times determine compliance on the basis of individual circumstances whilst having regard to these guidelines. If in any given situation we decide to depart from the principles set out in these guidelines we will normally set out our reasons for doing so.

³¹ means narrowband calls and/or line rental services provided to Domestic and Small Business Customers, including Carrier-Pre Selection, Wholesale Line Rental and services provided over full LLU.

A6.6 These guidelines are not in any way incorporated into the GCs set by Ofcom. The obligations which apply to a Communications Provider will be determined solely according to the GCs. However, when applying GC24, as stated in A6.5 above, Ofcom will have regard to these guidelines and will normally set out its reasons when departing from the principles set out therein. Ofcom advises Communications Providers to seek independent legal advice if they are unsure of their obligations under the GCs.

Scope of General Condition 24

A6.7 GC 24.1 specifies that this GC is applicable to all Communications Providers which offer a Fixed-Line Telecommunications Service to Domestic and Small Business Customers (who are referred to in this document as 'Customers').

A6.8 GC24.2 specifies that this GC is only applicable where the Customer is transferring to, from or between Fixed-Line Telecommunications Providers for the relevant service in question. For the avoidance of doubt, therefore, it does not cover situations where there is an existing relationship between the Communications Provider and the Customer for the relevant Fixed-Line Telecommunications Service in question.

Mis-selling prohibition

A6.9 GC 24.3 sets out prohibitions on the Gaining Communications Provider regarding inappropriate types of sales and marketing behaviour (generally described as 'mis-selling'). Such prohibited mis-selling behaviour includes, but is not limited to:

- the omission of relevant information (for example, the terms and conditions attached to a specific offer including any restrictions on, or limitations of the offer).
- the provision of false and/or misleading information (for example, about tariffs, potential savings or promising offers or gifts which do not actually materialise). Misleading conduct includes deceiving a customer or providing the customer with misinformation which is likely to affect a customer's purchase decision;
- aggressive conduct, such as harassment, coercion, or applying unacceptable pressure on a Customer to enter into a contract, such as threatening or intimidating behaviour or refusal to leave (in case of doorstep selling); and
- as set out in GC24.19(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:
 - where the Customer has never been contacted by the Gaining Communications Provider;
 - 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;

- 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 by submitting a request for a different product or service which the Customer has not agreed to purchase; or
- where the Customer has agreed to transfer some of 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.

A6.10 Below we have included means of approaching Customers that Ofcom considers to be inappropriate:

- current or prospective Customers should not be approached at an inappropriate time of day. For example, we would not expect any outbound Customer contact, including doorstep selling and telesales to take place at an unreasonable time of day, say before 8.00am and after 8.00pm, unless the Customer requests otherwise;
- where sales representatives do not introduce themselves clearly and fully and state the purpose of the contact at the start of any sales and marketing activity to current or prospective Customers. The representatives should clearly state the name of the Communications Provider they represent.
- where sales representatives are discourteous, use inappropriate language (for example aggressive and/or intimidating language) and do not offer clear and straightforward explanations;
- where sales representatives do not cease contact with any person who indicates that the contact is inconvenient, unwelcome, inappropriate or too long. If the Customer requests it, the discussion should be ended immediately and, if making a doorstep call, the sales representative should leave the premises immediately; and
- where sales representatives with direct Customer contact take advantage of vulnerable Customers; e.g. those who are elderly or whose first language is not English.

Responsibility

A6.11 GC24.4 states that the Communications Provider, where it engages representatives, such as any sales agency, to act on its behalf, must procure that such representatives comply with the requirements of GC24.

A6.12 In other words:

- the Communications Provider may engage representatives or agents to act on its behalf; but
- the obligations under the GC are always the Communications Provider's;

- the Communications Provider is responsible for the actions of those it engages to sell and market its services; and
 - the Communications Provider is liable where it, or those it engages on its behalf, act in breach of the GC.
- A6.13 Accordingly, the Communications Provider must ensure that it and its staff, sales representatives and agents who are involved in sales and/or cancellations of Fixed-Line Telecommunications Services to Customers on behalf of the Communications Provider:
- are aware of GC 24; and
 - are required to comply with the obligations therein.
- A6.14 The Communications Provider must also monitor its and its representatives' and agents' compliance with those obligations. And, it is responsible for the creation and retention of records in accordance with the GC, even where the relevant contact with the Customer is by its representative or agent on its behalf and even if the relevant records are created and/or retained by the representative or agent on its behalf.
- A6.15 There are a number of ways in which Communications Providers could seek to ensure they comply with the GC and, in particular, where they engage representatives or agents to act on their behalf. Ofcom does not intend to prescribe exactly how the requirements are to be met. However, there are a number of practical steps a Communications Provider could take, in Ofcom's view, to assist it in meeting its obligations under GC 24.4 (although taking them would not necessarily amount to compliance with the GC). Such steps include:
- in order to ensure awareness of the GC amongst its representatives and agents, the Communications Provider could communicate the GC through account managers, in print through sales bulletins or newsletters, or on websites dedicated to its representatives' or agents' sales and cancellation channels;
 - in order to put provisions in place which require representatives and agents to comply with the behavioural obligations, the Communications Provider could include such requirements in contracts with those representatives and agents; and
 - in order to ensure appropriate compliance monitoring, the Communications Provider could carry out spot checks and mystery shopping and conduct sample checks of its representatives' and agents' sales and marketing and cancellations material. In addition to its own complaints data, the Communications Provider could also put provisions in place which allow it to collect complaints data made directly to its representatives and agents.

Publication of relevant obligations

- A6.16 GC 24.5 sets out that the Gaining Communications Provider has to provide a copy of this GC, or a link to a copy of this GC, published on Ofcom's website, on its website or, where there is no such website, make it available in its registered office. Upon reasonable request, a copy of the GC should be provided to customers, free

of charge. The Communications Provider could do this by providing the customer with a paper copy of the GC in their shops, by sending a hard or soft copy to the customer, or by making it available for download or printing on their website.

- A6.17 Ofcom considers reasonable requests to include all requests made by consumers, unless proven to be trivial or a repeat request. Free of charge means there should be no cost to the consumer other than those costs incurred for the provision of the GC (i.e. postage costs).
- A6.18 In relation to the obligation to publish this information on a Communication Provider's website, Ofcom considers 'an easily accessible and reasonably prominent manner' to mean providing a clear reference to the obligations under GC24 on a consumer related part of the Communications Provider's website.

Information at Point of Sale

- A6.19 GC 24.6 contains a number of provisions relating to information requirements that the Gaining Communications Provider must comply with at the point of sale, when the Customer expresses a positive intention to transfer their service to a new Communication Provider.
- A6.20 Ofcom requires that the Gaining Communications Provider must use reasonable endeavours to ensure these requirements are met. There are a number of ways for the Gaining Communications Provider to achieve this goal and we do not intend to prescribe exactly how these requirements are met. However, there are some practical steps that Gaining Communications Providers could take, in Ofcom's view, to assist them in meeting their obligations (although, again, taking them may not necessarily amount to compliance), including the following:
- in order to ensure Customers are authorised to take out a contract, the Gaining Communications Provider may wish to consider whether to require sales records to include an explicit check of the Customer's identity, age and/or address (for example, utility bills, a copy of a passport or driving licence);
 - in respect of the provision of information to the Customer, Gaining Communications Providers may wish to ensure there is a check list available or include such a checklist in their training material for their sales representatives which ensures that Customers are provided with all the key relevant information about a service as part of their decision making. In essence, Customers must be able to make an informed choice as to whether or not to enter into a new contract;
 - any claims, offers or incentives to attract customers must not mislead them by stating an untruth or half-truth or through failing to state or not make sufficiently prominent an important term or condition likely to affect their decision;
 - order forms and contract forms may be designed such that the contractual nature of the document is clear to the Customer such as by containing a statement of the contractual nature of the document immediately adjacent to where the Customer signs the document so that the statement cannot easily be obscured or concealed. Alternatively Customers to sign over the word contract; and
 - take all reasonable steps to ensure that before entering into relevant contracts Customers are authorised, and intend to enter into, a new contract. This includes

obtaining Customers' explicit consent to enter into contracts. Getting Customers to enter into contracts through negative opt-out means should therefore be avoided. Ofcom considers this to mean that Customers have been informed that they are entering into a contract and have given positive consent, either verbally or in writing.

A6.21 The information must be provided in one of two ways.

- first, in paper or another Durable Medium which is available or accessible to the Customer. This is likely to mean the information must be provided in written format, to be handed over to the Customer at the point of sale (including, but not restricted to leaflets, letters etc.); and
- second, where the Customer enters the contract by telephone, the information must be provided in the sales call. The information must also then be sent to the Customer in paper or another Durable Medium within three Working Days of the sales call. What this is likely to require is described above.

Post sales information

A6.22 GC24.7 contains provisions relating to the sending out of mandatory 'Notification of Transfer' letters from both the Gaining and Losing Communications Providers which are to be sent out according to the industry agreed process that the customer is transferring their Fixed-Line Telecommunications Service.

A6.23 The post sales information requirements set out at GC24.7 (i) to (vi) specify a number of pieces of information that must be provided to the Customer by the Communications Providers as part of the mandatory 'Notification of Transfer' letters. For GC24.7 (iii), the Communications Provider should warn the Customer of the services which may be disrupted as a result of the transfer, such as ancillary services, alarm care systems, hardware that was provided specifically for that service and online services which may be provided as a part of the broadband package (such as e-mail and online files storage).

A6.24 Under GC 24.8 the notification must be by letter unless the Customer has explicitly agreed to receive correspondence electronically. Ofcom considers this to mean that the letter may be sent electronically where Customers have initiated contact by applying online, and have confirmed online that they wish the information to be sent electronically. Ofcom also considers that such agreement must only be given on an opt-in basis (i.e. 'please tick this box to receive notification electronically') rather than opt-out (i.e. 'please untick this box if you do not wish to receive notification electronically'). Otherwise, Customers would need to positively request by written correspondence that information be sent electronically.

Customer's termination rights

A6.25 GC24.9 sets out that there should be "no cost" cancellation for Customers where they change their mind at any point from the point of sale to the completion of the Transfer Period. Ofcom considers "no cost" to mean that there should be no charge to the Customer. In Ofcom's view, the only legitimate costs should be those costs incurred for using the means of cancellation (e.g. the price of a stamp or non-premium rate phone call).

- A6.26 GC24.10 contains provisions relating to the need for Gaining Communications Providers to have procedures in place so that Customers are able to terminate contracts without unreasonable effort in the termination procedure such as where the consumer is required to take unreasonable steps to terminate e.g. reliance on letters/faxes.
- A6.27 At a minimum, Ofcom would expect that Customers should be able to terminate using the three prescribed contact methods set out in GC24.10 (i) to (iii). Ofcom would also expect that there should be no onerous or expensive administrative steps or conditions to be followed, such as onerous validation requirements or complex IVR systems.

Records retention

- A6.28 GC 24.11 requires the Gaining Communications Provider to use reasonable endeavours to produce and keep all records regarding the sale of its Fixed-Line Telecommunications Service for a period of not less than six months from the date the record was created.
- A6.29 Ofcom considers examples of records in this respect to include (but not be limited to) signed copies of contracts, either in electronic or paper form, check lists intended to confirm that the consumers agrees, and understands, what they are signing up to, copies of emails and correspondence, notes of a conversation with the Customer or the Customer's internet confirmation to buy a certain service and where, telesales are used, voice recordings.
- A6.30 By "the means through which the contract was entered into", we mean retail outlets, telesales or websales. In the event a Contract was entered into at a retail outlet, the records should contain sufficient information to be able to identify the outlet, for instance by providing the address of the outlet.
- A6.31 Ofcom considers that records should be such as to provide sufficient information to validate that the Customer provided positive consent for the purpose of the transaction and all its terms, as well as information about the type of Contract, the date the Contract was entered into or amended and the sales representative involved in case the Customer questions having entered into a Contract, or has complaints or queries regarding their Contract.

Training

- A6.32 GC 24.12 requires Communications Providers to ensure that any person selling their service ('involved in direct contact with Customers') is 'appropriately trained' to comply with GC 24 as well as consumer protection law. Direct contact includes telesales and marketing as well as face to face contact.
- A6.33 There are a number of ways for the Communications Provider to achieve this goal and we do not propose to prescribe exactly how this requirement is to be met. However, there are some practical steps that Communications Providers can take to assist with meeting their obligations (although, again, taking them may not necessarily amount to compliance), including where they engage sales representatives and agents:
- putting contractual provisions in place in respect of mandatory training;

- providing all their staff, representatives and agents with training courses, manuals and product information regarding the Fixed-Line Telecommunications Service;
- providing all their staff, representatives and agents with training courses and manuals on using sales related systems;
- providing all their staff, representatives and agents with information on new products; and
- providing all their staff, representatives and agents with training and information on processes, such as ordering a new phone or Customer credit checking.

A6.34 In respect of ensuring there is appropriate training, Ofcom considers 'appropriately trained' to include that all staff, sales representatives, and any sales agencies, acting on the Communications Provider's behalf have been made familiar with and gained sufficient understanding of:

- arrangements for competition in the supply of telecommunication in the UK;
- the different telephone options provided by the Gaining Communications Provider and how these differ from other competitive telecoms products (which may or may not be offered by the Communications Provider (e.g. IA, CPS, WLR, LLU);
- the process for ordering the telephone service;
- the major elements of the Communications Provider's services;
- the key terms and conditions of the Communications Provider's contracts including information listed at GC24.6 (c)(i) and (ii);
- 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 relevant principles of consumer protection law; and
- the relevant obligations under GC24.

Monitoring

A6.35 GC24.13 requires that Communications Providers ensure that they have procedures in place to monitor compliance with GC24, including compliance by any representatives or sales agencies engaged by it, and to take appropriate steps to prevent the recurrence of any problem(s) identified.

A6.36 There are a number of ways for the Communications Provider to achieve this goal and we do not propose to prescribe exactly how this requirement is to be met. However, there are some practical steps that Communications Providers can take to assist them to meet their obligations (although, again, taking them may not necessarily amount to compliance). These include the following:

- on discovery of an instance of non-compliance with the regulations, Communications Providers will vigorously pursue the matter and will ensure that the complaint is properly investigated within reasonable timeframes (e.g. no more than ten working days) and identify an appropriate explanation for any apparent breach of the Code;
- in the case of serious or repetitive breaches of the regulations by its staff or sales representatives and agents who are involved in sales and cancellations of Fixed-Line Telecommunications Services on its behalf, Communications Providers should send a written warning to the offending party. The written warning will include details of sanction(s) that will be imposed on that party should that party continue to be in breach of the regulations; and
- providing always that it acts proportionately, a Communications Provider may wish to invoke contractual penalties, including termination of that party's contract, if it fails to cease and desist its non-compliant behaviour after a written warning.

Cancel Other

- A6.37 Cancel Other is a consumer protection mechanism designed to ensure that Customers are not switched – transferred between Communications Providers - without their express knowledge and/or consent. Therefore, Cancel Other should only be used in certain circumstances, in particular, where the Customer believes they are a victim of slamming.
- A6.38 To ensure compliance with GC24 Ofcom expects all Losing Communications Providers to apply Cancel Other only in the circumstances set out in GC24.14.
- A6.39 Ofcom considers that the primary purpose of Cancel Other is to protect consumers from slamming, and the Losing Communications Provider must take reasonable steps to ensure that slamming has actually taken place before cancelling the order.
- A6.40 The Losing Communications Provider is not permitted to use Cancel Other where a Customer has placed the order, but wants to change their mind, for e.g. because the information he has received from the service provider does not seem consistent with what they were told at the time of the sale, or because they felt pressured by the sales agent into placing an order. In such cases, the Losing Communications Provider should direct the consumer back to the Gaining Communications Provider to cancel the order.
- A6.41 In respect of 'Passing off', Ofcom considers that this constitutes Slamming because the customer has no knowledge of, and has not consented to, a transfer to the Gaining Communications Provider which placed the order. In this case, they are likely to believe, for e.g., that they have ordered a new service or payment method from the Losing Communications Provider. Ofcom considers that this is qualitatively different from other types of mis-selling where the service provider correctly identifies itself, but gives misleading information about the products or services that it is providing.
- A6.42 Other permitted instances of Cancel Other by the Losing Communications Provider include the following:
- in cases of Failure to Cancel, i.e. where a Gaining Communications Provider has failed to cancel a transfer after the customer has requested this. While the

Gaining Communications Provider is required to cancel a transfer if the Customer asks it to do so during the transfer period, Ofcom considers that Customers also need a “safety net” mechanism that enables them to cancel a transfer when a Gaining Communications Provider has failed to do so.

Losing Communications Providers will therefore be permitted to use Cancel Other where a Gaining Communications Provider has failed to cancel a transfer when the Customer has requested this. However, Ofcom considers that this safety net should be implemented in such a way that it will only be used where a Gaining Communications Provider fails to cancel a transfer, and not simply because a Customer has contacted the Losing Communications Provider for peace of mind and asked it to ensure that the transfer has been cancelled.

Before it uses Cancel Other in cases of Failure to Cancel, the Losing Communications Provider must, therefore, take reasonable steps to ensure that Failure to Cancel has, in fact, taken place. Ofcom considers that the Losing Communications Provider should only use Cancel Other if the customer would otherwise be transferred to the Gaining Communications Provider against their wishes. In practice, where the Losing Communications Provider submits a Cancel Other in response to a Customer’s allegation that the Gaining Communications Provider has failed to cancel the transfer, this Cancel Other will not be actioned unless no instruction to cancel has been received from the Gaining Communications Provider by day 9 of the Transfer Period (or day 8 for WLR orders). If the Gaining Communications Provider submits a cancellation before day 9 (or day 8 for WLR orders), this cancellation order will take precedence and no Cancel Other will be recorded.

- In cases of Line Cease and other cases not related to slamming or failure to cancel. Unlike the category discussed above (slamming) the Losing Communications Provider’s use of Cancel Other in cases of Line Cease does not follow a conversation with a customer about an order. When the Losing Communications Provider places an order to cease a line, a consequence of this is that any pending orders relating to that line are cancelled automatically. Such cancellations are recorded as Cancel Other.

Ofcom considers that the Losing Communications Provider’s ability to use Cancel Other where the line is going to be, or has been, ceased is a necessary administrative mechanism.

A6.43 To give Customers certainty and transparency, Ofcom proposes that Losing Communications Providers should be required to confirm the cancellation of the order wherever it uses Cancel Other, unless this is not possible.

A6.44 Cancel Other should not be used by the Losing Communications Provider in the following circumstances:

- to frustrate the transfer process, particularly in situations where, for example, the Customer has not yet paid their bill, the notice period has not been served or where disconnection or termination of charges apply. These charges should be included in the final bill, and settled in accordance with standard payment terms;

- in cases of internal miscommunication which is where a request for service has been or may have been made by a person other than the person named on the bill but who may have identified themselves as an authorised decision maker.

In many cases, where a Customer contacts a Losing Communications Provider following internal customer miscommunication, it will appear to the Customer that slamming has occurred. However, Ofcom considers that this is not an appropriate use of Cancel Other given that the named account holder may not be the only authorised decision maker in a household or business, where decisions about fixed-line telecoms services are often made jointly. In such circumstances, Ofcom considers that where the named account holder disagrees with this decision, it is up to those individuals, and not the Losing Communications Provider to resolve. Similarly, in the case of businesses, Ofcom considers that if an individual takes a decision they are not authorised to make, this is a matter for the organisation concerned, and should not be for the Losing Communications Provider to resolve. Where internal customer miscommunication has occurred, the customer can cancel the transfer by contacting the service provider within the Transfer Period, if the household or organisation has decided it does not want it.

Accordingly, Ofcom believes that it is therefore necessary for the Losing Communications Provider to investigate the possibility that such apparent slams are, in fact, the result of internal customer miscommunication, by asking questions, for example whether anyone else in the household or organisation or business could have placed the order. Losing Communications Providers should therefore ensure that there are adequate procedures in place which enable individuals other than the named account holder to make decisions on an account, subject to a verification process which requires those individuals to provide information that would only be available to an authorised decision maker.

Reason codes

- A6.45 Each time the Losing Communications Provider uses Cancel Other, it must record the reason, selecting the appropriate “reason code” from a list corresponding to the permitted uses of Cancel Other and consistent with GC24.19(m)(i) to (iv), as agreed by the industry, and approved by Ofcom.