

Gavin Daykin  
Ofcom  
Consumer Policy Team  
Riverside House  
2a Southwark Bridge Road  
London  
SE1 9HA

27th May 2009

Dear Gavin

**Protecting consumers from mis-selling of fixed-line telecommunications services**

This response to Ofcom's consultation has been prepared on behalf of the Fixed Service Providers Group of the Federation of Communications Services, which represents more than 140 service providers and resellers of fixed telephony services including Wholesale Line Rental (WLR), calls packages and broadband. A list of our members can be found on the FCS website - [www.fcs.org.uk](http://www.fcs.org.uk)

We are pleased to have the opportunity to respond this consultation which proposes significant changes to current regulation on mis-selling and to the obligations placed on communications providers in complying with a strong possibility, therefore, of significantly increased costs for some communications providers. We caution Ofcom to ensure that there is a balance between consumer protection and increasing regulation on industry and believe more analysis is required to ensure the fulcrum is in the correct place.

We recognise that the statistics available to Ofcom suggest a need for more effective action and believe that it is important that mis-selling activity is effectively addressed to protect the interests of both consumers and the majority of communications providers who trade ethically and responsibly. However we would be cautious about over reliance on raw complaints and Cancel Other data, which does not provide sufficient analysis of the proportion of complaints which are shown to be justified or which take account of the impact of known consumer behaviours which have been demonstrated by previous Ofcom research (e.g. claimed mis-selling or slamming where the customer has had a change of mind).

However, we welcome the extra clarity that Ofcom's proposals intend to put in place. We agree that the proposals should provide a deterrent to dishonest or unfair behaviour and we suggest that they should be framed in the regulation by means of a high level obligation to avoid mis-selling, rather than an absolute obligation which would be extremely difficult to meet by every CP.

Our main concern about the current proposals, however, relates to the requirements on call recording which may, if implemented without careful consideration and a degree of flexibility, place unreasonable burdens on some communications providers. As currently proposed, the requirements are very widely drawn and do not sufficiently recognise the varying scenarios where selling takes place. The potential for mis-selling on inbound calls is significantly less than for outbound calls, for example.

We believe that Ofcom needs to differentiate its requirements for proactive, outbound sales activity from those scenarios where sales opportunities may arise incidentally from the handling of inbound calls. A requirement to record all calls in the latter category seems disproportionate.

We also note that many communications providers do business via networks of very small resellers and dealers where it would be impractical or disproportionately expensive to operate comprehensive call recording.

It has also been pointed out that, where sales agents operate outside an office environment, a significant proportion of contact with customers during the sales phase is carried out by mobile phone where the ability to record calls is more difficult.

In summary, we believe that Ofcom needs to consult further with industry prior to implementation of the requirements on call recording with a view to developing a more nuanced approach which fully recognises differing levels of risk and proportionality in the various selling scenarios described above. FCS would be happy to take part in such discussions.

Our answers to the specific consultation questions are set out below.

**Question 1** *Based on our analysis of Ofcom's mis-selling complaints data; do you agree that further improvements are achievable, and that both absolute and relative numbers of mis-selling incidences can be reduced? Please provide an explanation to support your response*

The data cited strongly suggests scope for improvement but we are cautious about the meaning of these statistics. FCS is keen to see targeted regulation which focuses on the relatively small number of companies engaged in systematic mis-selling.

**Question 2** *Based on our experience of our enforcement activities, do you agree that the regulations should be further strengthened in order to better meet Ofcom's policy objectives and aims? Please provide an explanation to support your response.*

We agree that the proposed new General Condition will make the regulation clearer and easier to understand and should help to encourage adherence to the correct procedures and behaviours. This applies particularly to the use of Cancel Other. However we reiterate that record keeping should not be a disproportionate burden on suppliers or a barrier to market entry.

**Question 3** *What are your views on appropriate implementation periods for each of the proposed measures we are consulting on as set out in sections, 5, 6, 7 and 8? Please provide an explanation to support your response.*

We believe that early publication of the new General Condition will give industry a clear signal on Ofcom's intentions and on what will be required of them. However, we are pleased that Ofcom is considering a phased implementation to ensure that compliance does not place an unreasonable burden on industry.

The ability to make changes to scripts and other sales materials including training and possible systems changes will vary across the industry and we suggest a medium term implementation period of not less than 6 months in this area following implementation of new regulations

Changes to Cancel Other rules may also involve some logistical changes and we believe that a minimum of a 6 month period would be appropriate.

With regard to record keeping, the main issue relates to implementing new call recording facilities which will require the greatest level of planning and investment and therefore requires the longest implementation period. We consider that anything less than 12 months would not be reasonable bearing in mind the budget setting cycle of suppliers

**Question 4** *To what extent do you consider our assessment of the potential costs and benefits outlined in the IA at Annex 5 is dependent on the implementation periods for each of the proposed measures we are consulting on as set out in sections, 5, 6, 7 and 8? Please provide an explanation to support your response*

As noted in our response to Question 3 above, there are potential costs associated with the implementation of all the new requirements. Not allowing an adequate lead time for implementation will undoubtedly increase costs. There will be additional costs associated with ongoing storage and information retrieval. Our members also report that there would be significant cost for dealers, resellers and agents.

**Question 5** *Do you agree that it is appropriate to modify, or remove, the July 2005 Cancel Other Direction (or any provision saving in effect this Direction) so that any changes take effect before the end of the implementation period for modifications to the General Conditions? Please provide an explanation to support your response.*

Any change to regulation should ensure that there is a continuous regulation on BT, the dominant market player, during any changeover period

**Question 6** *Do you agree with our preferred option on clarifying and simplifying the regulations, namely that we should?*

*(i) improve clarity of the regulations by redrafting in order to aid understanding and  
(ii) simplify the regulations by moving away from a code of practice (process-based) approach to an outcome driven approach based on absolute prohibitions of mis-selling?*

*Please provide an explanation to support your response.*

We agree, on the basis that the introduction of a new General Condition which incorporates specific prohibitions will make the requirements clearer for communications providers and easier and more direct for Ofcom to enforce. As noted elsewhere more reflection on the text of the new General Condition is needed

**Question 7** *Do you consider there are other parts of the existing GC14.5 obligations where we could clarify and simplify the regulations, but have not proposed to do so? If so, please explain and set out the reasons for this.*

No comment.

**Question 8** *Do you agree with our preferred option to provide better information to consumers on the potential consequences of switching? Please provide an explanation to support your response*

We agree that this can be helpful to the customer but should not be made onerous for communications providers to introduce.

**Question 9** *Do you agree that Cancel Other should primarily only be permitted for reasons of slamming, as defined by Ofcom, or are there other circumstances where you feel use of Cancel Other should be permissible?*

We agree that use should be primarily limited to this type of mis-selling.

**Question 10** *Do you have any other suggestions for improvements to the reliability of the Cancel Other data and, in particular, the existing reason codes?*

We believe that Ofcom should take this opportunity to review the codes and that the General Condition should contain clear guidance on appropriate use of each of the codes.

**Question 11** *Do you agree with Ofcom's proposals not to transpose information sharing obligations relating to use of Cancel Other as part of the proposed new General Condition? Please provide an explanation to support your response.*

We agree that such a requirement would not be either practical or proportionate. Disclosure requirements should be restricted to where Ofcom has a reasonable suspicion of the companies under investigation.

We suggest that the wording of paragraph 24.3 is amended to avoid an absolute prohibition, which is in practical terms very difficult to meet, towards an emphasis on suppliers having systems and processes in place that avoid mis-selling and any other similar problems in future and follow up if it occurs.

**Question 12** *Do you agree with our preferred option on record keeping for sales? Please provide an explanation to support your response.*

We understand that call records are the best means to assist in Ofcom investigations but, as noted in the introduction to this response, the requirements must be proportionate. We believe that Ofcom must review its requirements in this area and provide for differentiated levels of

recording in differing scenarios (e.g. inbound calls which are not primarily sales related in nature).

**Question 13** *Do you agree with our preferred option on record keeping where Cancel Other is used? Please provide an explanation to support your response.*

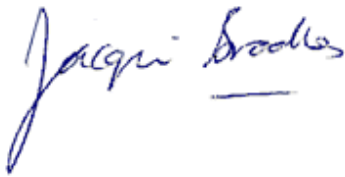
See 12 above.

**Question 14** *What are your views in relation to consideration of other options described in section 9? Please provide an explanation to support your response.*

We believe that the case for implementation of these more disruptive interventions has not been demonstrated. The likely costs involved preclude serious consideration of these options at this stage.

We trust that the above comments are helpful and would welcome the opportunity to discuss any of the issues further with Ofcom. In particular we believe that further consultation and consideration is required before the requirements on call recording are finalised.

Yours sincerely

A handwritten signature in blue ink that reads "Jacqui Brookes". The signature is written in a cursive style with a horizontal line underneath the name.

**Jacqui Brookes OBE**  
**CEO**