

Ofcom General Conditions of Entitlement

C8 Sales and marketing of mobile communications services

This condition aims to protect domestic and small business customers by ensuring communications providers observe certain obligations when selling and marketing their mobile call and text services. It also requires communications providers to put in place certain minimum standard provisions in respect of the sales and marketing behaviour of their retailers.

Scope

C8.1 This **Condition** applies to any **Communications Provider** which provides a **Mobile Communications Service** to **Domestic and Small Business Customers**, including any **SMS** service sold as part of the package, except that **Conditions** C8.4(b)(iii), C8.5 and C8.7 to C8.11 do not apply to **Prepaid Mobile Services** and **SIM Only Contracts**. For the purposes of this **Condition**:

- (a) each of these **Communications Providers** is a '**Regulated Provider**';
- (b) any such **Mobile Communications Services** are '**Relevant Mobile Services**'; and
- (c) any such **Domestic and Small Business Customers** are '**Relevant Customers**'.

Obligations to prevent mis-selling

C8.2 When selling or marketing **Relevant Mobile Services**, **Regulated Providers** must ensure that:

- (a) any information they provide to **Relevant Customers** is accurate and not misleading; and
- (b) they ask **Relevant Customers** if they also want the information to be provided in a **Durable Medium** and, if they do, **Regulated Providers** must provide the information in that form.

Publication of relevant obligations

C8.3 **Regulated Providers** must:

- (a) publish a comprehensive summary of their obligations under **Condition** C8 in an easily accessible and reasonably prominent manner on their website or, where there is no such website, in such manner and form as directed by **Ofcom**; and
- (b) provide a copy of **Condition** C8 to a **Relevant Customer** free of charge upon reasonable request.

Obligation with regards to mobile service retailers

C8.4 Where the **Regulated Provider** contracts with or appoints a **Mobile Service Retailer** directly in order to sell or market the **Regulated Provider's Relevant Mobile Services** it must ensure, and where a third party acting on behalf of the **Regulated Provider** contracts with or appoints a **Mobile Service Retailer** in order to sell or market the **Regulated Provider's Relevant Services**, the **Regulated Provider** must use reasonable endeavours to ensure, that:

- (a) the **Mobile Service Retailer** is aware of **Condition** C8;
- (b) provisions are in place which require the **Mobile Service Retailer** to ensure that:
 - (i) any information it provides to **Relevant Customers** is accurate and not misleading;
 - (ii) it asks **Relevant Customers** if they also want the information to be provided in a **Durable Medium** and, if they do, the **Mobile Service Retailer** must provide the information in that form; and
 - (iii) it creates and keeps records about the sale of the **Regulated Provider's Relevant Mobile Services** for a period of not less than six months and, where applicable, about a related sales

incentive as referred to in **Condition C8.11**, 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 **Regulated Provider** monitors the **Mobile Service Retailer's** compliance with the provisions referred to in **Condition C8.4(b)**; and

(d) non-compliance by the **Mobile Service Retailer** with the provisions referred to in **Condition**

C8.4(b) is appropriately sanctioned by the **Regulated Provider**.

Relevant mobile service – information at point of sale

C8.5 **Regulated Providers** must use reasonable endeavours to ensure that before entering into or amending a contract for a **Relevant Mobile Service**, a **Relevant 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 a **Durable Medium** which is available or accessible to the **Relevant Customer** or, where the **Relevant Customer** enters into or amends the contract during a sales call, by telephone:

(i) the identity of the legal entity the **Relevant Customer** is contracting with; its address and telephone, fax and/or e-mail contact details; and

(ii) a description of the **Relevant Mobile Service**; the key charges; payment terms; the existence of any termination right, including termination procedures; the likely date the **Relevant Mobile Service** will be provided, in case the provision of the **Relevant Mobile Service** is not immediate; and any **Fixed Commitment Period**. For the purposes of this provision, key charges include minimum contract charges, any **Early Termination Charges** and, if the **Relevant Customer** is a **Consumer**, the **Access Charge** to be applied by the **Regulated Provider** for the purpose of calculating the amounts payable by that **Relevant Customer** for calls to **Unbundled Tariff Numbers** in accordance with **Condition B1**.

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

Provision of relevant mobile services

C8.6 **Regulated Providers** must ensure that the **Relevant Mobile Services** that they have contracted with each **Relevant Customer** to provide are available to each **Relevant Customer** to receive.

Records retention

C8.7 Where the **Regulated Provider** acts as a **Mobile Service Retailer**, it must create and keep records about the sale of its **Relevant Mobile Services** for a period of not less than six months and, where applicable, about a related sales incentive as referred to in **Condition C8.11**, 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

C8.8 **Regulated Providers** must use reasonable endeavours to ensure that processes are in place which ensure that a **Mobile Service Retailer** is appropriately trained to comply with **Condition C8**.

Due diligence

C8.9 Where the **Regulated Provider** contracts with or appoints a **Mobile Service Retailer** directly in order to sell or market the **Regulated Provider's Relevant Mobile Services** it must ensure that, and where a third party acting on behalf of the **Regulated Provider** contracts with or appoints a **Mobile Service Retailer** in order to sell or market the **Regulated Provider's Relevant Mobile Services** the **Regulated 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 **Regulated Provider's Relevant Mobile 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 subject to a period of disqualification from acting as a director, or 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 **Condition C8.9** 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

C8.10 Where a **Regulated Provider** acquires information from a **Mobile Service Retailer** for the purpose of monitoring compliance with this **Condition**, the **Regulated 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 **Regulated 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

C8.11 **Regulated Providers must use reasonable endeavours to ensure that where a Mobile Service Retailer** offers to a **Relevant Customer** a sales incentive, from which the **Relevant Customer** does not benefit immediately and which the **Relevant Customer** is entitled to receive after entering into the contract for the **Relevant Mobile Service**, the terms and conditions of such an offer are not unduly restrictive and that a **Relevant Customer** is provided with the following information in a clear, comprehensible and accurate manner in a **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 **Relevant Customer** has to follow to obtain the sales incentive.

C8.12 Where the sales incentive offer is made during a sales call, in addition to the oral provision of this information, the **Regulated Provider** must use reasonable endeavours to ensure that this information is sent to the **Relevant Customer** in good time following the call in a **Durable Medium**.