

This is a copy of General Condition 23 as published by Ofcom in its statement of 17 March 2009 'Protecting consumers from mis-selling of mobile telecommunications services'¹. The new General Condition comes into force on 16 September 2009.

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:

¹ <http://www.ofcom.org.uk/consult/condocs/mobmisselling/statement/>

- (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.
- (v) the Mobile Service Provider monitors the Mobile Service Retailer's compliance with the provisions referred to in General Condition 23.4(b); and
- (vi) 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 Protecting consumers from mis-selling of mobile services 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) 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.