

# Digital Economy Bill 2016

Written evidence to  
the Public Bill  
Committee, October  
2016

The logo for Citizens Advice, featuring a dark blue speech bubble with a white tail pointing downwards and to the left. Inside the bubble, the words "citizens" and "advice" are written in white, lowercase, sans-serif font, stacked vertically.

citizens  
advice

# Summary

1.1 Over the past thirty years, mobile phone and broadband services have evolved from niche, luxury items to essential services. The pace of change has made it difficult for regulation to keep up and, in many respects, consumer protections have fallen behind those found in other essential markets. The Digital Economy Bill is an important opportunity to redress this imbalance.

1.2 Day in and day out Citizens Advice sees first hand the impact that inadequate service provision and sharp practices have on consumers' lives. Over the past year the Citizens Advice consumer service helped people with more than 31,000 problems relating to mobile phones, broadband and landline services. Advisers across our network helped people with almost 11,000 further telecoms enquiries. The data gathered from these interactions give us unrivalled, real time insight into the problems people experience in these markets and the impact these problems have on their lives. The breadth and depth of our data also allows us to look across different markets, draw comparisons and share examples of best practice.

1.3 As currently drafted, the Bill contains a number of vital measures which will help to improve the experience of consumers in telecommunications markets and bring consumer protections more closely into line with those found in comparable essential markets.

1.4 In this submission we highlight, and make the case for, retaining aspects of the Bill which will have the most impact for consumers and align most closely with our expertise and evidence.

1.5 In summary, these measures are:

- Giving the government the power to introduce a new **Universal Service Obligation (USO) for broadband**. This will ensure that households across the UK, including those in rural areas, have the right to request a broadband connection of 10 megabits per second or above. *(Page 2)*
- Giving Ofcom the powers they need to tackle key causes of detriment, including **streamlining switching processes** and introducing **automatic compensation** for standard of service issues. *(Pages 3-5)*
- Allowing **greater data sharing** in certain circumstances amongst government departments, and between government and energy companies. *(Pages 6-7)*
- **Strengthening Ofcom's information gathering powers** to enable them to carry out and publish comparative overviews of the quality and price of communications services. *(Page 8)*
- **Changing the way appeals against Ofcom's decisions to the Competition Appeals Tribunal are considered.** *(Page 9)*

# Part one: Access to digital services

## Clause 1: A Universal Service Obligation (USO) for broadband

**2.1 This clause updates the 2003 Communications Act to allow the government to introduce a new Universal Service Obligation (USO) for broadband.** Broadband is now an essential service, relied upon by consumers for an ever widening range of activities from banking to accessing government services to ecommerce. The ongoing drive to make digital services the default way to interact with businesses and government means that access to an affordable, reliable internet connection will become even more important in the future. As a result, the impact of digital exclusion on people's ability to engage fully in modern life and reap the benefits of technological advances can be severe and wide-ranging. Citizens Advice services across the country see first hand the hardship this can cause. For example:

Sarah was unemployed and in receipt of job seekers allowance and housing benefit. However, there was a shortfall of £20 per month between her housing benefit payment and her rent, and she had fallen into arrears. She also had other debts that she needed to repay. Sarah approached her council for a payment from the discretionary housing fund to help her with her rent arrears and bridge the gap between her housing benefit and rent. However, this could only be carried out online, and an email address was required to progress through the form. Sarah had no access to the internet at home and did not have an email address. Unless she had gone to her local Citizens Advice for help she would not have been able to apply for this funding, leaving her at risk of accruing further rent arrears and, ultimately, eviction.

**2.2** One of the key drivers of digital exclusion is being unable to have an adequate broadband connection installed due to a lack of sufficient infrastructure in the area. Rural consumers are particularly likely to be affected. Research from the Universities of Aberdeen and Oxford found that more than a million consumers are excluded from, or face challenges in, engaging in normal online activities because they live in remote rural areas without high speed broadband.<sup>1</sup> People in rural areas are often faced with a choice between living without an internet connection or paying additional connection charges which can run into thousands of pounds. For example:

John lived alone in private rented accommodation in a rural area and did not have a fixed telephone or broadband connection. He contacted BT to ask about having a connection installed and was originally told that this could be done without any installation fee. An appointment was made for a few weeks

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<sup>1</sup> <http://www.ox.ac.uk/news/2015-09-04-effects-two-speed-britain-internet-access>

later, but they did not turn up. A further appointment was made for the following month, and engineers made two site visits but were unable to connect him. When John contacted BT he was told that he would be charged £7,000 for the erection of poles and connection to his house. John could not afford the fee and was left without access to a landline or internet connection.

2.3 Alongside the impact on individual consumers, these gaps in provision further erode the viability of rural life, with knock on impacts for small businesses and the rural economy. **If designed and implemented well, a universal service obligation which guarantees households access to an adequate, affordable broadband connection will go a long way towards addressing digital exclusion in rural areas.**

## **Clause 2: Streamlining switching processes**

2.4 **Clause 2 amends section 51 of the 2003 Communications Act to make it explicit that Ofcom has the power to set rules on the processes for switching between telecommunications providers.** Specifically, this will clarify that it is possible for the regulator to require mobile networks to establish a gaining provider system for mobile services. Citizens Advice strongly approves of this move and welcomes its inclusion in the Bill.

2.5 The mobile market is one of the last essential regulated markets to operate a 'losing provider led' switching system. Currently, consumers have to contact their original provider to cancel their contract before moving to a new service. If they want to keep their phone number, they must also request a 'Porting Authorisation Code' (PAC) from their losing-provider, and give this to the gaining provider in order to transfer the phone number.

2.6 This system of switching can be time consuming for the consumer. At best the process is unnecessarily bureaucratic, at worst it can lead to consumers becoming confused and failing to switch successfully. For example, some of our clients assume that requesting a PAC means that their account will be closed automatically, whether they pass it on to their new supplier or not. Others think that they can leave simply by cancelling their direct debit. In both scenarios consumers only discovered that their old account had not been closed when they were later pursued for unpaid bills by the provider.

2.7 In addition, consumers currently risk temporarily losing their mobile service during the switching process. The losing provider led system involves no direct communication between the consumer's old and new provider - except on occasion to port the number - which means that consumers are only guaranteed a continuous service if they personally make sure that the old contract ends on the exact day the new one starts. This can be difficult for consumers to co-ordinate even if the whole process runs to schedule. In cases when the start of the new

service is delayed by technical difficulties consumers can be left with no service until the problem is solved. For example:

Joe took out a new mobile phone contract and gave the new provider his PAC. They told him that the transfer would take place within 24-48 hours. A week later his number had still not been transferred, despite Joe making several calls to the provider. Joe found this experience very stressful. His family and friends had been unable to reach him and he had spent a significant amount of money on a pay as you go sim calling the networks to resolve the issue.

2.8 Finally, the current system can lead to consumers paying for two services simultaneously during and immediately after the switch. Some chose to double pay in order to ensure continuous service, while others had bought a new contract before they became aware of the length of the notice period required by the old provider. We also see cases where an overlap has been caused by mistakes made by the network or the consumer.

2.9 Introducing a gaining provider led switching process would address many of these of these issues. In a gaining provider led system, the consumer's new supplier takes responsibility for ensuring that the old account is closed and a new account is opened. This system has several advantages for consumers. For instance, it removes the requirement for consumers to contact multiple suppliers to switch service and ensures that losing providers can not discourage switching by making their contract exit procedures unduly laborious. Furthermore it ensures that the switch is managed by the party whose interests are most clearly aligned with the consumer's - the gaining provider, who benefits from giving the consumer a swift, efficient switching experience. This reduces the chance of errors - including gaps in service and double payments - and makes it clear who consumers should hold accountable if something goes wrong.

2.10 The introduction of gaining provider led switching in the mobile phone market is long overdue - the first call for inputs on the topic was issued nearly two years ago. Following the passage of this Bill through parliament, we hope that Ofcom is able to move swiftly forward to implementation.

### **Clause 3: Automatic compensation for failure to meet performance standards**

2.11 **Clause 3 further amends Section 51 of the Communications Act 2003 to allow Ofcom to require telecommunications providers to make compensation payments to consumers when they fail to meet certain standards of service.** This will allow the regulator to establish a system of automatic compensation for service faults, similar to those which already exist in the energy and water markets.

Citizens Advice strongly welcomes this move. The introduction of automatic compensation will ensure that consumers receive redress for the inconvenience caused by poor service while incentivising providers to improve standards of the service across the sector.

2.12 Telecommunication services are now an essential part of everyday life. When they fail, consumers can find themselves unable to carry out even some of the most basic day to day tasks. For example:

Barbara had just moved house and had been told by her broadband provider that they could transfer her account to her new house. Shortly before the new service was due to be installed the provider stated that they would be delayed for 6 to 8 weeks due to building work being carried out on the street by the council. Barbara contacted the council, which inspected the cables and reported that there was no reason that the service could not be installed. She then tried to book another installation with the broadband provider, but they only agreed to a provisional appointment date. Barbara was left unable to connect to the internet for weeks, and had no clear idea of when her service would be restored. Since she had signed an 18 month contract she was unable to switch to another provider. This was particularly distressing because she had mobility problems and relied on the internet to do her shopping and order her prescriptions.

2.13 Consumers who experience problems like Barbara's face the dual harm of paying for a service they are not receiving, combined with the frustration and time wasted trying to resolve the problem.

2.14 Consumers already have the right to seek some compensation for poor service under the 2015 Consumer Rights Act. However consumers are often of unaware or uncertain about what forms of redress are available to them, or how they should go about claiming them. For instance in many circumstances consumers have the legal right to pursue compensation through the Alternative Dispute Resolution (ADR) Schemes. However, Ofcom's own research indicates that only a small percentage of the cases which are eligible for such schemes are ever referred<sup>2</sup>.

2.15 The proposed scheme will circumvent this problem by making an automatic payment whenever certain problems occur, instead of relying on consumers to make a formal claim. In addition, automatic compensation payments will mean that failure to improve consumers' experiences in these areas will have a clear, measurable cost for companies and encourage them to address the underlying causes of these problems. Similar schemes already exist in the comparable regulated markets, including energy and water.

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<sup>2</sup> GFK, Alternative Dispute Resolution Research (Ofcom, 2013)

# Part 5: Digital Government

## Clauses 30-35: Disclosure of information to gas and electricity suppliers

3.1 **These clauses will allow the government to inform energy suppliers which of their customers qualify for the Warm Home Discount.** This means that consumers who are in receipt of certain means tested benefits could automatically receive a £140 rebate from their energy bill without the need for them to apply and prove their benefit status. Data matching already exists, and works well, for those in receipt of the guaranteed element of pension credit. This measure would allow these arrangements to be extended to all eligible consumers, it has the potential to increase take up and ensure that people receive the support they need to keep their homes warm through the winter.

3.2 We support this clause. If this process is established, the [Government predict that it will reduce processing costs by 97% \(from £30 per customer to £1\)](#). We would therefore like to see most, if not all suppliers being required to participate in the scheme. Currently only the 11 largest suppliers (with over 250,000 customer accounts) are required to provide the discount, out of a total of over 40 suppliers now in the market. Some smaller suppliers who do not meet this threshold, including Our Power, GB Energy and Bristol Energy already offer Warm Home Discount to their customers voluntarily. However, the existing threshold means that many vulnerable consumers who are eligible for support miss out because they have switched to a smaller provider.

3.3 It is, however, important to bear in mind the need for transparency in how data is collected, stored and used. Consumers should be made aware of the way in which their data is being shared, the purpose for which it is being shared and have the opportunity opt out if they wish to.

## Clauses 40-47: Disclosure of information to reduce debt owed to the public sector

3.4 **These clauses give the UK and the devolved governments the power to allow public authorities to share data about debts with specific public authorities.** Citizens Advice has seen a big growth in the demand for help with debts to government - £1 in every £5 of debt owed by Citizens Advice clients is estimated to be debt to government - and Citizens Advice has found that our clients can suffer detriment when public bodies have overly aggressive, uncoordinated

and inconsistent approaches to debt collections.<sup>3</sup> Our evidence also shows that central government debt collection lags behind the higher standards expected of other creditors, including water companies, council tax collection departments, banks and private debt collectors.

3.5 The Cabinet Office has engaged constructively with Citizens Advice and consulted us on drafting their Fairness Principles for the Debt Data Sharing Code of Practice. This new power is an opportunity to advance the fairness and professionalisation agenda in government debt collection. We believe that the government should extend its use the Common Standard Financial Statement (or its successor, the Standard Financial Statement) to set affordable payments as the energy, water, banking and commercial debt collection sectors do. Sharing data between debt collecting departments will create improved opportunities for better treatment of people in vulnerable situations, and must be matched with fairer and more effective dispute resolution processes.

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<https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/debt-and-money-policy-research/the-state-of-debt-collection/>

# Part 6: Ofcom and other regulation

## Clauses 70 - 3 - Expanding Ofcom's power to gather and publish information

4.1 Telecoms products are complex and it can be difficult for consumers to quickly and easily compare deals across the market to find the best deals for them. A number of websites already offer price comparison services for telecoms products. However, these sites rarely offer impartial, whole of market comparisons and either exclusively promote, or give greater prominence to, the deals offered by providers they have commercial arrangements with. In addition, these tools only allow consumers to compare based on price - they do not provide consumers with comparable, impartial information on other aspects of providers' performance such as customer service, complaints handling and network coverage. Clause 72 gives Ofcom the power to publish cross sector comparisons, addressing this crucial gap in the market.

4.2 A key barrier to developing tools which allow for such comparisons is a lack of consistency in the way in which providers gather and record information on service quality. Clauses 72 and 73 give Ofcom the power to require providers to routinely record specified information in a specified format and share this data with the regulator.

4.3 Taken together, these powers would allow Ofcom to gather, analyse and publish data across the market on key performance indicators far more systematically and in a consistent format, allowing them to make robust cross-market comparisons. **This information would be invaluable to the regulator, both in terms of allowing them to spot worrying trends and bad practice and in producing tools which help consumers to quickly and easily compare deals on more than price alone.**

4.4 Wherever possible Ofcom should routinely publish the data it gathers under the Open Data initiative in order to allow consumer groups and others to develop new tools to help consumers to find the best deal and switch.

## Clause 74: Changes to the process for appealing Ofcom decisions

4.5 Clause 74 changes the way appeals made by communications providers to the Competition Appeals Tribunal (CAT) against Ofcom's decisions are considered. Currently, appeals to the CAT are considered based on the merits of the case. As a result the Tribunal can be asked to reconsider any aspect of Ofcom's decision - including a full consideration and interrogation of the regulator's evidence and analysis and whether the decision was correct. On a number of occasions providers

have also been able to introduce entirely new evidence not made available to Ofcom during their original decision making process at the appeals stage.

4.6 This results in a lengthy appeals process in which decisions lag behind the pace of technological change and market development. The prospect of a lengthy appeal, with considerable cost and human resource implications, can also make the regulator more risk averse - leading them to water down, or step back altogether from measures which could have a real impact for consumers but are likely be unpopular with industry.

4.7 Telecommunications markets are extremely complex. The decisions Ofcom makes are similarly complex, and can have significant, wide-ranging impacts on the market. It is vital, therefore, that the regulator is transparent and accountable and market players have the opportunity to appeal decisions which they believe will have a disproportionate or damaging effect on the market and their ability to compete. However, it is equally important that the appeals process is proportionate and not open to abuse.

4.8 Clause 74 removes the requirement for the CAT to consider appeals on their merits. Instead, it requires the CAT to consider the case in the same way as it would a judicial review. This means that the appellant can only appeal on the basis that Ofcom's decision making process was not lawful - for example, because they failed to consult fully before reaching a decision. **This change would ensure a better balance between the need for appropriate scrutiny of regulatory decisions and enabling the regulator to make bold, timely interventions on behalf of consumers. It would also bring appeals arrangements in telecoms markets into line with those found across the EU and other essential, regulated UK markets.**

## Contact us

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