Broadband exit fees

An analysis of the cost of leaving fixed telecoms contracts

citizens advice

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Summary

In June 2017 Ofcom announced an investigation into the fees telecoms companies charge to consumers who change their provider before the end of their minimum contract period. This is the first substantial intervention the regulator has made in this area since reaching a voluntary agreement with industry to reduce fees in 2010.

Exit fees are a feature of many consumer markets and are not necessarily harmful to consumers. Providers often incur upfront costs when they begin providing a service, and calculate prices based on customers staying with them for a minimum amount of time. Charging exit fees allows telecoms providers to ensure they will recoup their costs without charging substantial upfront fees.

However, new Citizens Advice analysis reveals that consumers are paying 50% more to exit contracts early than they were in 2010. It is not clear whether this rise is because providers now face higher costs or are using fees to extract additional profit.

Evidence from the Citizens Advice Consumer helpline also raises concerns about the circumstances in which these fees are charged, including :

- Charging exit fees even when consumers have been experiencing persistent service faults.
- Applying the same level of exit fees to consumers who are in their second or subsequent contract with the provider, despite not needing to recover installation and initiation costs.

In this context, Ofcom's investigation into broadband exit fees is particularly timely and important. In order to address the concerns raised in this briefing, any new agreement between Ofcom and industry should include clear guidelines on the circumstances in which it is acceptable to charge exit fees, as well as establishing a clear timeline for when Ofcom will review the level of these fees again to ensure any increases are cost reflective.

Industry should also commit to:

- Report the cost of exit fees to Ofcom annually. A summary of this data should be published in Ofcom's annual Communications Market Report.
- Include clear, measurable quality of service thresholds in their terms and conditions and waive any exit fee if they are not met.
- Charge consumers less for exiting a contract they have renewed or upgraded, to reflect the fact that nextworks do not need to recover installation costs.

1. Introduction

All major fixed line telecoms providers charge customers a fee if they want to leave before the end of their minimum contract period. Exit fees are an accepted part of many markets, and have some positive outcomes for consumers. Most notably, they ensure that providers are able to recoup set-up costs such as installation and providing equipment even if a consumer leaves earlier than planned. If this wasn't possible, providers would need to ensure they recover these costs in other ways, for example through charging larger upfront fees.

However, broadband exit fees can be substantial. Under Ofcom rules providers are able to charge consumers up to 100% of the value of the remaining payments, minus the amount they save by not having to supply the product anymore. With broadband contracts typically lasting between 12 and 18 months, this means even consumers on the cheapest tariffs can be faced with bills of hundreds pounds if they try to leave early.

Table 1. Illustrative examples of the cost of leaving broadband contracts

Package	Per month exit fee	Cost of leaving contract nine months early
BT Unlimited Broadband (18 Months)	£20.25	£182.25
TalkTalk Faster Fibre (18 Months)	£16	£144
Sky Broadband Unlimited (12 Months)	£7.24	£65.16
VirginMedia VIVID 50 Fibre Broadband (12 Months)	£13	£117

It is reasonable for consumers to be required to fulfill the commitment they made when signing up to a contract with a minimum term. However, it is important that these fees are a fair reflection of the costs incurred by the broadband provider and not a means through which to extract additional profit. In addition, there are some circumstances in which it is arguably unfair for exit fees to be charged at all. For example, if a consumer is receiving a persistently slow or interrupted service and wants to switch providers in order to secure a reliable connection, is it reasonable to require them to pay the full, or close to full, remaining balance of their minimum contract term?

In recognition of these concerns, in December 2008 Ofcom issued a statement setting out that although it is legitimate to charge exit fees, there are two important restrictions on how high they should be:

1. The fee should not exceed the total of the remaining monthly payments. Specifically, providers should not add any additional charges to compensate for the loss of income such as call costs or add ons.
2. This total should normally be reduced to reflect the savings which networks make by not having to supply the service anymore.[1]

Ofcom did not explicitly state how much the discount should be. However, in June 2010 they reached a voluntary agreement with the then three largest fixed line providers (BT, TalkTalk and Virginmedia) to reduce the fees for 11 popular fixed voice and broadband deals.[2]

This agreement was the last formal intervention made by Ofcom on exit fees up until June 2017, when they announced the commencement of a new enforcement programme on the subject.[3] In the intervening years the telecoms market has changed considerably, to the extent that of the 11 tariffs covered by the 2010 agreement, only three are currently available to new customers. However, despite such fundamental changes in the rest of the market, neither the cost of exit fees nor the circumstances in which they are charged have been publicly scrutinized since the initial agreement.

In this briefing we draw on new analysis of data on the level of exit fees charged by major providers and evidence from the Citizens Advice Consumer Helpline to highlight areas of concern Ofcom's investigation must address. In section one we set out the extent to which exit fees have risen since the 2010 voluntary agreement. In section two we consider whether there are circumstances in which consumers shouldn't be required to pay an exit fee at all, or should pay a reduced fee. We conclude by setting out the measures Ofcom should take as a result of its investigation and ensure that exit fees are, and continue to be, fair and proportionate.

[1] Ofcom, *Review of additional Charges* (2008)
[2] Ofcom, *Cheaper charges for UK consumers to end phone contracts* (2010)
[3] Ofcom, *Own-initiative monitoring and enforcement programme into early termination charges* (June 2017). Between these two interventions Ofcom did issue additional guidance on the effect of the passage of the Consumer Rights Act 2015, as well as banning automatically renewable contracts from December 2012 onwards.

2. Exit fees have risen over the last eight years

Before Ofcom published its initial statement, the cost of exiting a contract for the deals covered was between £11.48 and £34.48 per month of the remaining minimum contract period. After the agreement it had been reduced to between £2 and £9 per month.[4] On average this change meant that a consumer leaving any of the 11 contracts would pay a fee worth slightly less than a third (32%) of their remaining monthly payments.

Establishing how the level of exit fees has changed since 2010 has its challenges. Only 3 of the 11 tariffs included in the original agreement are still available to new customers, making a direct comparison impossible. The overall fixed line telecoms market has also changed substantially. In 2010, all three of the providers who signed the agreement offered landline-only packages, which made up six out of 11 of the tariffs contained in the original agreement. Now, of the major providers, only BT offer this service to new customers. Furthermore, in the last seven years the number of consumers using Sky's fixed services has substantially increased, increasing the number of major providers from three to four.

However, it is still instructive to look at how exit fees have changed as a proportion of remaining contract costs. To make a comparison between exit fees then and now, we selected 11 tariffs, chosen to be representative of the range of different fixed voice and broadband services available to consumers in 2018. We included the three landline-only services still available to new customers, which were part of the original agreement. We also added each of the four main providers' cheapest basic broadband service, and their highest speed fibre service[5]. This selection ensures that our analysis is broadly representative of the products on the market, and allows us to analyse whether fees have changed more for any particular category of product.

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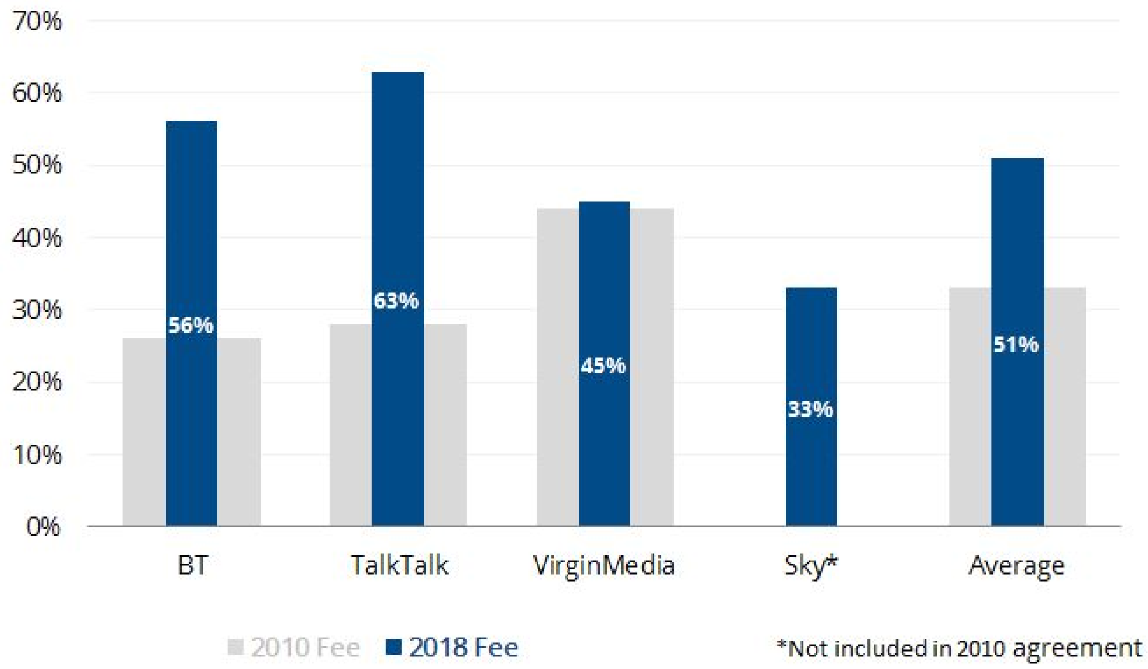
[4] See table in Ofcom, Cheaper charges for UK consumers to end phone contracts (2010).
[5] By 'basic broadband tariffs' we mean the cheapest broadband contracts available with the minimum number of additional services. In all cases other than Virginmedia this included a voice service.

Fig. 1. Exit fees as a proportion of the remaining contract costs



Source: Citizens Advice analysis of provider websites[6]

Across the market as a whole fees have increased by 55% in the last seven and a half years. On average, in 2010 consumers would pay 33% of their remaining contract costs. They now pay 51%.

Although all three providers who signed the original agreement have raised their fees, there is significant variation between them. Whereas Virgin Media's fees have only moved from 44% to 45% of the remaining cost, BT and TalkTalk's fees have risen from 26% to 56% and 28% to 63% respectively.

Our analysis did not, however, reveal a high level of variance between the exit fees for different categories of services. Consumers are being charged 47% of the remaining costs for landline-only services, 52% for basic broadband, and 49% for high speed fibre.

In cash terms this means that a consumer leaving an average basic broadband contract six months early will pay £79, £34 more than they would have paid if fees were still at 2010 levels. A consumer leaving the fastest fibre broadband

[6] For 2010 the full cost of the tariff was determined by looking at the providers' websites on the nearest date to the agreement which could be accessed at www.webarchive.org. Two tariffs were excluded from the analysis as the original price was not available in the archive. 2018 fees were accurate as 5th March 2018.

contract would pay £46 more. Subscribers to the remaining three voice-only tariffs would have to pay an additional £27.[7]

Table 2. Average cost of leaving contract six months early by product type

	Current Average Fee	2010 Level Fee	Difference	Percentage rise
Landline-only	£73.78	£46.53	£27.25	59%
Basic Broadband	£79.36	£45.10	£34.26	76%
High Speed Broadband	£137.90	£91.92	£45.98	50%

Overall this means consumers are paying more to exit contracts early with all three major providers who signed the 2010 agreement, across all types of fixed voice and broadband services. The reason for this rise is not clear - providers do not publicly explain how exit fees are calculated. We understand that Ofcom has made information requests to the networks as part of the current enforcement action, which they will use assess the extent to which these rises actually reflect a change in providers' costs. Although this is a welcome step from the regulator, it is concerning that such a substantial rise in consumers' costs has received so little scrutiny since 2010.

[7] Difference calculated by applying the 2010 level of discount to the 2018 prices.

3. Exit fees are not always charged fairly

Alongside ensuring that the exit fees charged by broadband providers are proportionate, it is equally important that these fees are only charged when it is fair to do so. Last year the Citizens Advice Consumer Service helped consumers with over 8,000 problems with their fixed line telecoms services.[8] In the case of broadband nearly one in four (23%) of these problems involved difficulties cancelling and/or switching broadband provider.[9]

These cases reveal three circumstances in which providers are currently charging exit fees which may be considered to be unfair. First, consumers are sometimes charged exit fees despite receiving persistently poor quality services. Second, networks sometimes charge consumers exit fees when they move house, even if the service is not available at the new address. Finally, consumers are occasionally being charged fees when they have not realised they have entered into a new minimum contract.

Exit fees are sometimes charged even when consumers experience persistently poor service

A recent survey conducted by Comres for Citizens Advice found that over a third (35%) of consumers had contacted their broadband provider about either poor speeds or service faults in the last 12 months. Although the majority of people who complained about these issues eventually had them resolved, nearly one in five (17%) reported they were still trying to resolve the problem or had given up entirely.[10]

Consumers who experience such persistent problems should be able to leave their contract early without paying an exit fee. Under the Consumer Rights Act 2015, if a service is not provided with 'reasonable care and skill', consumers have a right to receive a reduction in the cost of their services if the provider is unable to provide a repeat performance. Furthermore, the Act also states that contracts

[8] 8,188 cases across Landline, Internet, TV and other bundled core communications services. See *Consumer Advice Trends* (December 2017).
[9] Analysis of 1,000 records from between May 2016 to May 2017. See, A. Pardoe, C.Smith and G. Byrne, *Access Denied: The case for stronger action to protect telecoms consumers* (Citizens Advice, 2018).
[10] See *Ibid.*

cannot force consumers to fulfill their obligations (including payments) when a trader has not fulfilled theirs.[11]

However, our case records indicate that providers do not always recognise this and continue to charge exit fees even when they have not provided the service promised, as the case study below illustrates:

Case study: Nyssa

Nyssa bought her TV and broadband services from the same company. One day she found that she was unable to switch channels on the set top box her network had provided. The network promised to send an engineer to fix the problem, but they missed the appointment.

Nyssa repeatedly phoned to arrange another appointment with no success. After seven weeks of not being able to use her television service she decided to switch provider, only to be told that she would have to pay a final £300 bill to be allowed to leave the contract

The way contracts are currently drafted makes it difficult for consumers to establish that companies have failed to meet their obligations. As Ofcom's consultation on automatic compensation noted, broadband providers' terms and conditions display 'a frequent lack of concrete and meaningful commitments to service levels'.[12]

Our own analysis of providers terms and conditions demonstrates that this problem also applies to the specific issue of when exit fees should be waived. Two of the four providers (BT and Sky) specify that consumers will not have to pay if they experience persistently slow speeds or service faults. The standard TalkTalk contract only mentions slow speeds. Virgin Media specifies that consumers should be able to leave in the event a *permanent* loss of service or if 'quality of the broadband service you are getting from us is regularly below what is reasonable.'

[11] Consumer Rights Act 2015, Schedule 2: Consumer terms which may be regarded as unfair, Part 1, clause 8.
[12] Ofcom, Automatic Compensation: Protecting consumers from quality of service problems (2017).

Table 3: Service related exemptions in terms and conditions

	Specified circumstances when fees are not payable
BT[13]	'If you have regular or repeated, continuous or irregular faults' 'Consistently low broadband speeds'
Sky[14]	'Slow line speed' 'Continuous or regularly recurring unplanned loss of service'
Virginmedia[15]	'[Q]uality of the broadband service you are getting from us is regularly below what is reasonable'
TalkTalk[16]	'When speeds fall below the 'minimum guaranteed access line' speed'

Nb. All providers give exemptions for the following: a) cancellation within the statutory 14 day cooling off period for distance sales, and b) if the provider changes the terms and conditions in a way which causes 'material detriment' (e.g. rises in prices) to the consumer.

However, even those terms and conditions which do include service related exemptions do not set specific thresholds. For instance, it is not clear how many times there has to be a fault on a line for it to be considered as 'regular'. The exception to this ambiguity is problems with speeds, which are covered by the Broadband Speeds code. This a voluntary agreement between Ofcom and the largest providers under which providers have to guarantee that customers will receive a minimum speed at point of sale. If the consumer isn't receiving this speed, after the provider makes reasonable attempts to solve the problem, they have a formal right to exit the contract without paying any fees.

Ofcom is currently embarking on several initiatives to increase quality of service across the telecoms market, including implementing an automatic compensation scheme and publishing annual service standard reports. This workstream is an opportunity to more explicitly define the level of service which consumers can expect beyond speeds, and make it clearer when consumers should be allowed to exit contracts without paying.

[13] BT Phone and BT Broadband terms and conditions (last updated September 2017).
[14] Sky Broadband and Sky Talk Terms and Conditions (from February 2018).
[15] Virginmedia Terms and Conditions for Fibre Optic Services.
[16] TalkTalk Customer Terms and Conditions (10 January 2018).

Consumers sometimes do not realise they have entered into a new contract

The second type of exit fee problem we see is when consumers did not realise they were in a minimum contract period at all. This often happens because the consumer changed an aspect of their existing service, and did not realise that this entered them into a new minimum contract period. For instance:

Case study: Tegan

Tegan was phoned by her broadband and TV provider, offering her free movies as a loyal customer. She took the initial offer but was surprised seven months later that her monthly bill had gone up £17 a month.

It turned out that the movies were only free for a six month period and she was now being charged. Tegan found it difficult to remove the movies and eventually decided to leave her provider who she had been with for seven years. When she asked to leave she was told that she would be charged an exit fee of £240, because in accepting the movies she had entered into a new 18 month contract.

Others had not realised they had been entered into a new contract when they moved house, or when they had received a new router. These practices raise two questions.

First, are networks currently making it clear enough to consumers that they are entering new contracts? The cases that Citizens Advice sees indicate that some consumers do not intuitively recognise that such modifications amount to a new contract, and it is possible that networks need to make this clearer (including the implications for the cost of exit) during their sales processes.

Second, is it reasonable to charge extensive early exit fees to consumers who enter new contracts in cases where there is little or no additional cost to the service provider? Minimum contracts and exit fees exist to give providers some certainty about their future income, and help to ensure that upfront costs can be recouped. Modifications such as receiving new TV channels will have negligible costs to the network compared to the installation of entirely new services - we therefore question whether exit fees should be charged on the same basis.

Ofcom’s current guidance on the cost of exit fees is based on the savings providers make through no longer having to supply the service (such as VAT, network cost savings etc). The guidance and the exit fees charged therefore do not reflect the reduced cost of installing services for consumers' additional contracts, nor the lower costs of acquiring new customers. Under the current regulations there would be no basis for Ofcom to require such a discount in any new guidance they issue. However, it is a measure which could form part of any new voluntary agreement which comes out of the current enforcement programme.

Consumers are charged exit fees when they move home

Most providers will charge an exit fee to consumers who move house before the end of their contract, unless they transfer the service to their new address. However, not all networks or specific services are available at every address in the country. Our case records show examples where consumers have been charged a fee despite it being impossible for them to transfer the service to their new home. For instance:

Case study: Adric

Adric moved house and phoned his broadband provider to transfer his contract to the new address. The provider informed him that their service was not available at the new address and that they would need to pay an exit fee equal to the payments for the 12 months left on the contract - £221 in total.

Adric complained as the provider had said when he signed up that that the service could be transferred to a new address. The company explained that this wasn't a guarantee but a 'goodwill gesture' and that they would charge the fee because 'it's not [the provider's] fault that you have decided to move.'

Ofcom have launched a separate investigation into VirginMedia's policies in this area and are expected to announce whether they think such charges are fair and reasonable in the spring.[17] However,there are also many other circumstances when a consumer may not be able to move their service even though the product is technically available at their new address. For instance, they may be moving in with a parent or partner who already has their own internet provider, or to a property where internet is included in the rent.

[17] Ofcom, *Own-initiative investigation into Virgin Media concerning compliance with GC9.3 and the Consumer Rights Act 2015 - early termination* (2017).

Situations like these further highlight why it is so important for the cost of exit fees to be monitored robustly. Such fees, which can amount to more than £100, are a significant addition to the already considerable cost of moving home - something which consumers on lower incomes are more likely to do frequently[18]. Networks should be able to recover their costs if consumers do not complete their contract, but the amounts charged should reflect the costs to the network and not be used to extract extra profit from a group of people already facing substantial expense.

All three of the types of problem we see point to a flaw in the 2010 agreement. Ofcom succeeded in reducing exit fees for several popular packages, but did not agree a framework for when they should be charged, and what could justify future rises. The current enforcement action needs to clarify these points.

[18] See Shelter, *The need for stable renting in England* (2016).

4. Conclusion and recommendations

Exit fees allow telecoms providers some certainty of income and can guarantee that they are able to recover the set-up costs incurred when providing a new service to a customer. They should not, however, be used as a method to extract extra profit, or to oblige consumers to pay for products which networks are unable to supply.

Ofcom's decision to launch an enforcement initiative is therefore to be welcomed. The investigation is an opportunity to establish whether these rises actually reflect additional network costs, to crack down on any unfair practices uncovered and, if justified, reduce exit fees accordingly. However it is crucial that any action taken as a result of the investigation, whether a voluntary arrangement or a new regulation, is more sustainable than the 2010 agreement Consumers should not have to wait another seven years until exit fees are subject to scrutiny.

The 2010 agreement temporarily reduced some fees - and established a framework for what it was acceptable to charge. However , all three providers who signed the agreement explicitly stated that they still believed their previous fees to be fair, and no system was put in place to monitor future rises in fees.[19] That fees have risen so significantly since this agreement may indicate the need for a formal regulatory solution.

At a minimum, any new voluntary arrangement emerging from this review should set out clear guidelines on when it is acceptable to charge exit fees and contain a commitment to robustly monitor any future rises. Specifically, any agreement between Ofcom and industry should include commitments from industry to:

- **Report the cost of exit fees to Ofcom annually.** The headline figures from this data should be published in Ofcom's annual Communications Market Report. If fees have risen above inflation, networks should also provide explanation of how their costs have risen.

- **Include clearly understandable quality of service thresholds in their terms and conditions.** Consumers who do not receive this level of service should not be charged fees if they decide to leave.

- **Charge consumers less for exiting a contract they have renewed or upgraded**, to reflect the fact that networks do not need to recover installation costs.

The adoption of these measures will help to ensure that exit fees are fair, and, most importantly, continue to be fair.

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[19] Ofcom, *Cheaper charges for UK consumers to end phone contracts* (2010).

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Published March 2018

Citizens Advice is an operating name of The National Association of Citizens Advice Bureaux.

Registered charity number 279057.