



# **Treating vulnerable customers fairly guide – proposals to amend the guide to help ensure customers in debt or struggling to pay are treated fairly**

Response to Ofcom consultation

May 2022

## Introduction

Sky welcomes the opportunity to provide comments on Ofcom's consultation on proposals to amend the *Treating vulnerable customers fairly guide* (the "Consultation") (the "Guide"), following Sky's response to the previous call for inputs submitted in September 2021 (the "CFI") (the "Sky CFI Response").

Ofcom will already be familiar with Sky's views on the relationship between vulnerability, debt, and disconnection from, *inter alia*, the Sky CFI Response and other correspondence with Ofcom.<sup>1</sup> Therefore, in the interests of efficiency, Sky is not repeating in detail the positions it has set out previously (which it maintains). Instead, this response is focused on a small number of points which Sky considers are of particular importance.

In summary, Sky welcomes Ofcom's proposals not to change the General Conditions. Regulatory certainty regarding the scope of legal obligations is critical to any business. Furthermore, the Guide cannot be used to extend the reach or scope of GCs C5.1 – 5.5. Therefore, we welcome Ofcom's confirmation that the Guide contains "*best practice recommendations*" rather than legally binding rules. It follows that any further proposed amendments to the Guide would similarly not be mandatory. A provider could meet its legal obligations without necessarily adopting any of the specific measures currently in – or later added to as a result of the Consultation – the Guide.

Notwithstanding this, as set out in detail in the Sky CFI Response, Sky considers that the proposed changes to the Guide are unnecessary and not justified. Furthermore, in some cases, they have the potential to exacerbate the very issues Ofcom is seeking to remedy.

While the Guide is not legally binding, it would be naïve to think that the changes would not have a material effect on providers in circumstances where Ofcom issues information requests and public reports that benchmark CPs' performance against the principles in the Guide.<sup>2</sup>

Sky prides itself on great customer service and delivering the right support for customers' **individual** needs. Therefore, we firmly believe that the most effective way to support the needs of vulnerable customers is for our advisors to listen and understand a customer's individual situation, to have the knowledge of the options available to best support them (e.g., payment holidays or 'right sizing' customers to a product set they can afford) and to be empowered to take the necessary actions or know where to go if they need the help of others (including signposting debt support charities to customers).

Sky therefore considers that there is a need for a more nuanced and flexible approach than that currently set out in the Consultation and Guide to assess an individual customer's circumstances. This is particularly the case in respect of (a) the identification of vulnerable customers, (b) the responsible use of service restrictions to prevent the build-up of unsustainable debt (including for customers who are "*particularly reliant*" on their services), (c) the use of debt collection agencies, and (d) the promotion of social tariffs.

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<sup>1</sup> [redacted].

<sup>2</sup> See, for example, *Vulnerable customers - Data recording: Draft notice requiring the provision of information under section 135 of the Communications Act 2003* sent by Ofcom to Sky dated 29 April 2022.

As set out in further detail below, these objectives would be better delivered by allowing CPs the flexibility to respond to customers' individual and changing needs (rather than limiting this flexibility through blanket approaches in overly prescriptive guidance).

## Ofcom's proposals to amend the Guide

### Not all customers who miss a payment are "likely to be vulnerable"

The Consultation restates Ofcom's position that arrears are the appropriate basis for identifying financially vulnerable customers. In particular, and in response to comments from various CPs, the Consultation states that:

*"the chances that providers wrongly identify a customer as financially vulnerable by using non-payment as an indicator are **relatively small**. Our guide already makes clear that we expect providers to recognise that **customers in arrears are likely to be vulnerable** and this remains our position"* (emphasis added).<sup>3</sup>

Sky considers the above statement to be an oversimplification. There are various reasons why a customer may miss a payment that are unrelated to vulnerability. That is why, when a customer fails to make payment, Sky applies segmented treatments based on the reason for missed payment, as well as previous payment history, balance value and the age of the debt. Further detail on the different reasons for missing payment are provided below. These explanations support the need for a flexible approach:

- [X]. We therefore believe that it is not appropriate to classify such customers as vulnerable compared to those who are experiencing genuine financial hardship and are **unable** to pay. Ofcom's suggestion to also treat the former as vulnerable could lead to less effective prioritisation of support for the latter, who clearly require assistance.
- Customers may also miss payment for a variety of unintentional reasons. These could include where the cycle of when payment is taken by Sky is not aligned to when customers receive income e.g. a customer may be paid weekly or have a payment date middle of the month from a previous job.<sup>4</sup> [X]. Similarly, payments may also be missed due to changes of address or updating card details.<sup>5</sup>

While Sky understands that Ofcom considers that vulnerability can be temporary, the application of this concept to a missed payment in these circumstances is excessive and results in disproportionate consequences for CPs, and poor outcomes. As above, Ofcom's approach risks CPs not prioritising genuinely vulnerable customers as effectively as they otherwise would have done.

- Furthermore, customers may have a temporary change in circumstances that leads to a missed payment (such as overspending at Christmas). In these situations, [X].

<sup>3</sup> Paragraph 3.44, the Consultation; see also paragraph 4.52, the Guide.

<sup>4</sup> Note, Sky allows customers to change their payment date to avoid this issue.

<sup>5</sup> Although Sky's experience is that these are a less common reason for missed payments.

For these reasons, Sky does not agree with Ofcom’s statement that “customers in arrears are likely to be vulnerable” or that a single, inflexible approach is appropriate for all customers in arrears. By contrast, Sky takes a flexible approach which treats customers as individuals and tailors their support to their needs. This enables Sky to prioritise customers who are truly vulnerable rather than those who may technically be in arrears at a given point in time but should not be considered as vulnerable.

It is vital that operators retain the ability to distinguish between circumstances when a missed payment may be interpreted as indicating financial vulnerability and where it should not. This enables CPs to treat their customers as individuals and choose the best response to suit their individual needs; the alternative is adopting a crude one-size-fits all approach based on simply missing a payment for any reason (as appears to be advocated by Ofcom, in the Consultation).

### **A responsible CP makes use of service restrictions and disconnections in the customers’ best interests**

The proposed amendment to the Guide suggests that “providers should support customers by...using a phased approach to introducing service restrictions, where practical”.<sup>6</sup> [redacted].<sup>7</sup> [redacted].

[redacted].<sup>8</sup> [redacted].

Sky notes that the Consultation does appear to partly recognise this tension, stating that:

*“in relation to the concern that a phased approach to service restrictions will lead to larger customer debt, we note that our guide already encourages providers to have conversations with customers about options for repaying a debt”.<sup>9</sup>*

However, Sky considers that the logic in the second half of the sentence is flawed. The ability of CPs to “have conversations with customers about options for repaying a debt” does not address the underlying issue of an unsustainable build-up of debt due to forbearance over service restrictions. As set out above, the longer a service is left unrestricted, the greater the debt and the harder it is for customers to ultimately repay the whole debt. That remains true, even with the potential assistance of CPs through payment plans and deferrals.

By analogy, in respect of disconnection, Ofcom recognises (without caveat) that “in some instances, a disconnection time period of less than three months may be in the customer’s best interests to avoid an unsustainable accrual of debt”.<sup>10</sup> This same logic should be applied to service restrictions, with Ofcom explicitly recognising that operators can take into account the individual customer’s circumstances and adopt an approach that mitigates the risk of an unsustainable accrual of debt.

<sup>6</sup> Paragraph 4.55, the Guide.

<sup>7</sup> Paragraph 3.107(a), the Consultation.

<sup>8</sup> [redacted].

<sup>9</sup> Paragraph 3.107(b), the Consultation.

<sup>10</sup> Paragraph 3.107(a), the Consultation.

In sum, the earlier the restriction, the lower the debt and the more CPs can help customers in the longer term. This is what a responsible CP should do and what Ofcom should be encouraging. Indeed, there is a tension between Ofcom's approach that all customers in debt should be viewed as likely to be vulnerable and its encouragement in the Guide to exercise forbearance on service restrictions. The latter ultimately risks keeping these customers in debt and in a state of financial vulnerability for a longer period.

### Ofcom's suggestion of treating customers who are "*particularly reliant*" on their services differently is impractical and could exacerbate debt problems

Ofcom suggests that providers should "*avoid service restrictions for vulnerable customers **particularly reliant on services**, unless all other options have been exhausted*". Sky strongly disagrees with this proposal.<sup>11</sup>

First, in circumstances where there is the ongoing uncertainty and a need for further guidance on the criteria for identifying vulnerable customers (see above), it seems inappropriate and misguided to create a new sub-category for vulnerable customers that are "*particularly reliant*" on their service. This will only create more confusion and practical difficulties for CPs.

[redacted].

Notwithstanding the Guide, [redacted]. However, the Guide appears to be suggesting CPs replace this individual and flexible assessment with a blanket approach:

*"[as] identifying customers who are in vulnerable circumstances that make them particularly reliant on communication services can be challenging for providers, and that providers may therefore decide that it is **practical to implement this for all their customers**"* (emphasis added).<sup>12</sup>

[redacted]. Finally such 'a one-size-fits all approach' is also inconsistent with Ofcom's suggestions elsewhere in the Consultation to avoid blanket approaches.<sup>13</sup>

Therefore, rather than attempting to sub-categorise customers based on unclear and meaningless criteria, a better solution is to allow CPs the flexibility to assess a customer's individual position, responding to their specific needs and degree of vulnerability with appropriate and measured solutions.

<sup>11</sup> Paragraph 4.55, the Guide; see also paragraph 107(c), the Consultation.

<sup>12</sup> Footnote 77, the Guide.

<sup>13</sup> See, for example, paragraph 3.109, the Consultation: "*We agree with the suggestions that providers should make efforts to understand a customer's circumstances and needs rather than taking a blanket approach to effect payment*".

## Sky works in partnership with debt collection agencies to help manage a customer's debt journey

Ofcom's proposed amendments to the Guide state that:

*"Providers should help customers by seeking to understand a customer's individual circumstances **before instructing a debt collection agency to pursue them** and by using debt collection agencies that have strong policies for treating vulnerable customers fairly" (emphasis added).<sup>14</sup>*

Sky respectfully submits that Ofcom's proposed amendments indicate a misunderstanding of the difference between: (i) debt collection agencies that work in partnership with CPs to manage a customer's debt journey; and (ii) third parties to whom CPs may ultimately sell a debt and who may in turn "pursue" a customer.

Debt collection agencies are not a harder step in the collection process that Sky "instruct[s]...to pursue" customers. Rather, Sky works in partnership with debt collection agencies (as subject matter experts on debt) to understand a customer's individual circumstances, with information flowing between Sky and these agencies to aid this process. [REDACTED]. In addition, the debt collection agencies that work with Sky have skilled and trained workforces that are attuned to managing customers in debt. [REDACTED]. This relationship between Sky and debt collection agencies is therefore better characterised as a partnership that manages the debt process for a customer's benefit – it is something Ofcom should be seeking to encourage.

In respect of interactions between debt collection agencies and customers, Sky only uses fully-accredited agencies and signs-off all communications between these agencies and the customer. [REDACTED].

Therefore, Sky considers the proposed changes to the Guide as unnecessary. Indeed, inherent in Sky's partnership with debt collection agencies is an understanding of customers' individual needs and oversight to ensure that customers (vulnerable or otherwise) are treated fairly.

## Non-vertically integrated providers should be given more flexibility on the extent to which they pro-actively promote their social tariffs, and further protections are needed to prevent abuse

Ofcom suggests that providers should offer social tariffs and further promote them by: (a) pro-actively informing people who are in debt or struggling to pay about their social tariff, the eligibility criteria and how to sign up for it; and (b) working with consumer bodies and charities to promote the availability of social tariffs.<sup>15</sup>

[REDACTED].<sup>16</sup> [REDACTED].

## Non-vertically integrated providers should be given more flexibility on the extent to which they promote their social tariffs

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<sup>14</sup> Paragraph 5.48, the Guide.

<sup>15</sup> Paragraph 4.56, the Guide; see also paragraphs 3.129-3.130, the Consultation.

<sup>16</sup> [REDACTED].



First, it is important to appreciate that different CPs are active at different levels of the broadband supply chain which makes the economics of promoting social tariffs materially different between them. Sky is only active at the retail level i.e., Sky does not have its own fixed network, unlike Openreach or Virgin Media/O2. This means that to provide retail broadband services (social tariff or otherwise) to consumers, Sky has to acquire wholesale network access from a supplier (Openreach).

[REDACTED]<sup>17</sup>, [REDACTED].

[REDACTED].

**Further protections are needed to prevent abuse**

[REDACTED].

[REDACTED].<sup>18</sup> [REDACTED].

[REDACTED].

Sky

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<sup>17</sup> [REDACTED].  
<sup>18</sup> [REDACTED].