



# **Treating vulnerable customers fairly – A proposed guide**

Response to Ofcom's consultation

November 2019



# 1 Introduction

The concept of vulnerability is not rigidly defined and is evolving. Indeed, the definition of vulnerability differs even between sectoral regulators. Any regulatory intervention must be carefully considered and focused on delivering outcomes for consumers, rather than a prescriptive formula. In particular, the potentially transitory nature of vulnerability requires a flexible response; Communications Providers (“CPs”) must have the flexibility to explore and deploy innovative methods to best serve their customers.

Identifying and addressing the needs of customers who are vulnerable poses a number of distinct challenges for CPs. First, an individual’s circumstances can change over time; a customer who was not previously vulnerable, may become so, and whilst some circumstances may result in permanent vulnerability, equally, a customer may be in a vulnerable situation for only a short period of time. Second, customers may not identify themselves as vulnerable, making identification harder. Third, any measures designed to support those customers in genuinely vulnerable conditions must be provided in such a way that limits the potential for abuse or misuse.

We welcome Ofcom’s efforts in this Consultation to share good practice regarding the identification and treatment of vulnerable customers. As this is an evolving area, a collaborative and open environment between Ofcom and the industry is in the best interests of consumers and is to be encouraged.

Ofcom will be aware that Sky, together with other CPs, has been engaging regularly with the Communications Consumer Panel on how our sector can build on experience from other sectors to look at innovative ways to serve customers whose circumstances may make them vulnerable, whether permanently or temporarily.

Each of Sections 3-7 of the Consultation contain suggested measures which CPs are encouraged to adopt. As clearly recognised by Ofcom itself, the proposed guide cannot and does not amend or replace CPs’ legal obligations under General Conditions C5.1-5.5 (“GCs C5.1-5.5”).

Ofcom provided helpful clarification on the scope of these obligations in its Statement and Consultation on the Review of the General Conditions of Entitlement dated 19 September 2017 (“2017 Statement and Consultation”), stating:

*“It is not our intention to require CPs to actively seek to collect sensitive personal information from all their customers, or to actively seek to identify customers who may be vulnerable”<sup>1</sup>.*

This interpretation is not changed by Ofcom’s proposed guide, which Ofcom emphasises is not intended to impose any burden on CPs beyond the requirements of GCs C5.1-5.5. Indeed, this informs Ofcom’s rationale for not carrying out a further impact assessment. We welcome this useful and important clarification regarding the status of the proposed guide.

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<sup>1</sup> Paragraph 12.11, 2017 Statement and Consultation.



Nonetheless, to be useful, any guidance must be good guidance. There are several specific measures suggested by Ofcom in the Consultation that are either not reasonable or practicable or where further clarification is required, including:

- a. reading out to all customers at point of sale, a statement of all services available to help vulnerable customers;
- b. any requirement to record sensitive customer information;
- c. facilitating warm handover of calls to third parties, including charities; and
- d. providing a direct contact for customers.

Several of Ofcom's suggested measures could, potentially, worsen outcomes for consumers or be unworkable in practice.



## 2 Sky prides itself on great customer service

### A focus on fairness and vulnerable customers

Sky has a proven track record in delivering first class customer service. Sky believes that treating each customer as an individual and delivering excellent customer service for *all* customers is the best way to ensure that all customers, including vulnerable customers, are treated fairly and receive the appropriate help, support and services they need.

Sky consistently delivers the best broadband communications and pay TV customer service in the UK. For the third year running, Ofcom's 'Comparing Service Quality' report found that Sky had the fewest complaints for broadband and Sky regularly features as the best performing provider in the Ofcom quarterly complaint reports across all relevant products<sup>2</sup>. The reason for this is simple: we put the customer at the heart of everything we do and treat every customer as an individual. We understand we have a duty to protect all our customers, particularly those who are vulnerable.

However, we also recognise that vulnerability is not always immediately obvious; that a customer's circumstances may change; and that we need to respond proactively in a caring way and in a way that is proportionate to the specific needs of each customer. To achieve this, we train our staff to identify potential vulnerability by looking out for warning signs and to manage risks by thinking about actions or adjustments that may be needed to provide extra support. Sky's customer service advisors are fully empowered to do the right thing for customers and are provided with ample support to allow them to do so.

We invest significant time and resource into training our customer-facing staff, using a range of training approaches, including hearing from our customers and the day-in day-out experiences of our Accessibility team.

The guiding principle behind any interaction with customers is doing the right thing for each individual customer. Thinking about each customer's needs and priorities is built into the way our staff interact with customers and is fundamental to our customer service philosophy. For example, Sky's approach includes:

- a. 'right sizing' customers to the product set that they can afford;
- b. providing extra support for certain customers through our dedicated accessibility team (where we have recently increased headcount by 20%); and
- c. making options available for customers who fall behind on making their payments, such as offering payment plans and general advice on managing payments (including a payment holiday on mobile consumer credit contracts if the customer is experiencing financial difficulty).

<sup>2</sup>

See, for example, 'Telecoms and pay TV Complaints data for Q2 (April to June) 2019', published by Ofcom on 19 November 2019. (<https://www.ofcom.org.uk/research-and-data/multi-sector-research/telecoms-complaints-data>)



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## Managing the needs of vulnerable customers

The first step to protecting vulnerable customers is identifying customers who are at risk. We appreciate that vulnerability can be a sensitive subject. Many customers may not want to disclose issues with us directly, so we need to use our judgement, listen actively and ask the right questions in an empathetic way without making any presumptions about a customer.

We provide a wide range of support for vulnerable customers, including offering a variety of contact channels and our front-line staff are specifically trained to determine whether a customer exhibits behaviours or characteristics that may put them at risk. The training includes reference to online learning resources for our team leaders as well as 'appropriate awareness' face-to-face training workshops across all customer-facing areas.

Whilst our front-line advisors are empowered to help customers in vulnerable circumstances, we also have a dedicated accessibility team who can offer additional help for those customers who need specialist assistance; e.g. bills in braille.

We provide a wide range of support for vulnerable customers, ranging from a variety of ways a customer can contact us, access to a dedicated team that deals with specific accessibility or vulnerability issues, and steps to proactively manage vulnerable customers to minimise the impact of that vulnerability.

## Financial issues

The most important way to mitigate financial concerns is to try to make sure that customers purchase a product that they can afford. We do this by ensuring that our advisors are well trained and are aware that customers' needs vary. We also empower staff to offer the right products to customers.

In scenarios where customers find themselves struggling financially and are unable to pay for their Sky services, we are also able to offer advice and guidance on how best to manage Sky payments and debt. Where appropriate, advisors are able to offer a range of options which may help, for example, by offering payment plans or payment holidays.

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## Access to additional assistance

We try to make sure that every customer feels ready and able to contact Sky and discuss their needs with us. We have a dedicated accessibility team for customers who have accessibility or vulnerability needs and we have published a vulnerable customer policy and vulnerable customer guidelines on our website. These list a range of organisations that customers can turn to for extra help (for instance, Dementia friends, Independent Age, RNIB, Money Advice, National Debt Line and Citizen's Advice)<sup>3</sup>.

We work proactively with different agencies to make sure that vulnerability is considered in the development of new products and services. For example:

- We worked with the Royal National Institute for the Blind to understand their views on our Sky set top box display, our apps and websites.
- We engage closely with blind and partially sighted customers and staff to make sure that their needs are considered from day one.
- We worked with Action on Hearing Loss when we launched subtitles on demand, helping us test our service with people affected by hearing loss.
- We have recently launched a programme of work to train our Home Service engineers on basic British Sign Language, so they are better able to engage and support the needs of our deaf or hearing impaired customers.

We provide third party bill management which supports those who are managing a vulnerable customer's account on their behalf through our password process by allowing them to manage the majority of aspects of the account, including billing matters. This means, for instance, that a person with power of attorney or deputyship over an account will be fully able to deal directly with Sky on behalf of the customer.

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<sup>3</sup> 'Supporting Vulnerable Customers Policy; What is a vulnerable customer and why is it important to know?' (<https://www.sky.com/help/articles/supporting-vulnerable-customers-policy>) and 'Supporting the needs of our vulnerable customers' (<https://www.sky.com/help/articles/vulnerable-customers-guidelines>).



### 3 Sky agrees that the proposed guidance does not amend or replace CPs' legal obligations

#### Ofcom's confirmation of the status of the proposed guidance

Regulatory certainty regarding the scope of legal obligations is critical to any business. Our understanding of Ofcom's position is that the proposed guide cannot and will not be used to extend the reach or scope of GCs C5.1-5.5. For example, we welcome Ofcom's confirmation that the Consultation contains non-exhaustive guidance, and that it does no more than suggest "*measures that providers could adopt to meet their obligations under GCs C5.1-5.5*"<sup>4</sup> (emphasis added).

We further welcome Ofcom's clarification that the proposed guide "*does not amend or replace [providers'] previous obligations*"<sup>5</sup>. Whilst Ofcom states that "*[i]n assessing whether a provider is meeting its obligations, we would take into account whether a provider has adopted any of these measures*"<sup>6</sup> (emphasis added), we welcome Ofcom's clarification that "*[i]t would remain open for providers to consider taking other reasonable steps (other than those set out in this document) to ensure they comply.*"<sup>7</sup>

This is further reinforced by Ofcom's statement that the suggested measures:

*"will give stakeholders clarity about the types of things we expect providers to do to comply with their obligations"*<sup>8</sup> (emphasis added).

We understand this to mean that a provider could meet its legal obligations without necessarily adopting any of those specific measures.

#### The importance of regulatory transparency and consistency

Operating within a regulated environment imposes a significant burden on communications providers with resulting costs and complexities ultimately being passed on to customers in one way or another. Although Ofcom's proposed guide reflects only suggested good practice for providers to consider, we would urge Ofcom to be mindful of the need for certainty. Ofcom must ensure that any specific suggested practices are appropriate.

When carrying out its duties, Ofcom's activities must be transparent, accountable, proportionate, consistent and targeting only at cases in which action is needed, as well as conforming to best practice.<sup>9</sup>

Ofcom set out the new General Conditions in its 2017 Statement and Consultation. Importantly, Ofcom provided clarity on the scope of the obligations on CPs under GCs 5.1-5.5, and the proposed guide does not change that scope.

<sup>4</sup> Paragraph 2.17, Consultation.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> Paragraph 2.18, Consultation.

<sup>8</sup> Paragraph 2.5, Consultation.

<sup>9</sup> Section 3(1), Communications Act 2003.



For example, the drafting of GC C5.3 envisages a reactive approach to identification of vulnerable customers, and this was echoed by Ofcom at the time that it was brought into force. In the 2017 Statement and Consultation, Ofcom stated that: *“It is not our intention to require CPs...to actively seek to identify customers who may be vulnerable.”*<sup>10</sup>

Ofcom then responded to concerns raised by stakeholders regarding the scope of the new GC C5.3(a), stating:

*“our proposal was intended to require CPs to have policies in place setting out the actions they would take when they are informed or otherwise made aware of a customer’s disability or any other circumstances which may make them vulnerable. For example, when a customer voluntarily and pro-actively makes a CP aware of a disability or circumstance that may make them vulnerable. It is not our intention to require CPs to actively seek to collect sensitive personal information from all their customers, or to actively seek to identify customers who may be vulnerable (emphasis added)”*<sup>11</sup>

Ofcom went on to clarify that *“CPs are not required to actively seek to obtain information about customers’ vulnerability”*<sup>12</sup> and that GC C5.3(a) *“is not intended to require CPs to ask all their customers whether they are vulnerable”*<sup>13</sup>.

These statements do not appear to be consistent with the suggested measures in the proposed guide regarding identification of customers, where Ofcom suggests that:

*“providers should do all they can to encourage consumers to tell them about any specific accessibility or customer services needs they have”*<sup>14</sup> (emphasis added).

The proposed guide then goes further, suggesting that:

*“Some people might not be willing or able to tell providers they are vulnerable or have a specific customer service need. So, providers should train their employees to listen carefully and be aware of the potential characteristics, behaviours or verbal cues of someone who might be vulnerable or who might benefit from the help, support and services that are available. They can then offer them when needed”*<sup>15</sup>.

To conclude, the 2017 Statement and Consultation provides relevant and helpful clarification of how to interpret GCs 5.1-5.5. That interpretation is not changed by Ofcom’s proposed guide, which is far more aspirational in nature as shown by exhortations for providers to *“do all they can”*. Such wording cannot amount to a legal test; it is not proportionate and, clearly, does not meet the threshold for Ofcom’s activities set down in Section 3(1) Communications Act 2003.

Further, the legal obligations on CPs under GC C5 include requirements to establish, publish and comply with clear and effective policies, procedures and practices for

<sup>10</sup> Paragraph 12.11, 2017 Statement and Consultation.

<sup>11</sup> *Ibid.*

<sup>12</sup> Paragraph 12.12, 2017 Statement and Consultation.

<sup>13</sup> Paragraph 12.14, 2017 Statement and Consultation.

<sup>14</sup> Paragraph 4.5, Consultation.

<sup>15</sup> Paragraph 4.6, Consultation.





the fair and appropriate treatment of vulnerable customers. Whilst from time to time, isolated failures by individual customer service advisors to follow or apply such policies or procedures may occur, these cannot amount to a contravention of the General Condition.

### Sky TV is not an ECS

Ofcom asserts that the proposed guide is for *“phone, broadband and pay TV services (emphasis added)”*<sup>16</sup>. As Ofcom is aware, Sky disagrees with any assertion by Ofcom that the obligations in GCs C5.1-5.5 apply to pay TV services, and specifically, Sky’s pay TV service (“Sky TV”) as it is not an Electronic Communications Service.<sup>17</sup> For the avoidance of doubt, Sky expressly reserves its position regarding the non-application of the General Conditions to Sky TV.

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<sup>16</sup> Title page, Consultation.

<sup>17</sup> Sky’s arguments on this issue are set out in Section 3 of Sky’s response to the consultation: *‘Making switching easier and more reliable for consumers- proposals to reform landline, broadband and pay TV switching between different platforms’*, July 2016.



## 4 Sky has concerns regarding a number of measures proposed by Ofcom

### Sky's concerns regarding specific measures

Ofcom asserts that the proposed guide contains “*examples of reasonable, practical steps*”<sup>18</sup>. However, Sky is concerned that several of the suggested measures, as set out below, either require further clarification or are not practical for providers or their customers. For these reasons, the inclusion of these measures in the proposed guide could be counter-productive.

### Providing a statement to all customers regarding support for vulnerable customers

Ofcom is encouraging providers to do all they can to raise awareness of the help, support and services on offer to new, existing and re-contracting customers to enable customers to decide if any of these services would be useful to them. In particular, Ofcom proposes that at the point of sale, providers should give all customers a statement about the help they offer customers who are vulnerable or have specific accessibility or customer service needs and explain how they can sign up for it.

Ofcom proposes a range of means to deliver this statement:

*“The statement could be sent by post or email or provided as a paper copy in store where available. It should also be published on providers’ websites, so it is widely accessible to customers. Over the telephone, customer-facing representatives could refer to the statement and offer to send it to customers or verbally explain the services available.”*<sup>19</sup>

Whilst Sky welcomes and supports the drive to raise awareness of the services available for vulnerable customers, we are concerned by a suggested measure to read a statement at point of sale or recontract. As Ofcom will recall, industry has long voiced concerns about ‘information overload’ and ‘T&Cs fatigue’. The implementation of the Consumer Rights Directive required a significant volume of information to be delivered at point of sale and there is a raft of other information that must also be communicated over the phone, such as the broadband speeds code and mobile spend cap requirements.

Sky provides many services to assist vulnerable customers (including, but not limited to, text relay, video relay using BSL, braille bills, coloured paper, larger font, a dedicated Accessibility Team, help with debt issues, power of attorney or third party account management etc.). It would not be practical to go over all these services at point of sale and explain how customers can sign up for each service when the vast majority of callers will not require additional support and will find them irrelevant.

Such an approach would mean customers were overloaded with information, making it very hard for them to determine which information are most important for them. Another impact being that phone calls would be significantly extended, which in

<sup>18</sup> Paragraph 2.16, Consultation.

<sup>19</sup> Paragraph 4.25, Consultation.



itself is not helpful. Sky's website provides a wealth of information on all the varied services that Sky offers to help vulnerable customers. Sky does not consider it reasonable or practical to suggest that CPs read out a lengthy statement detailing these services to all customers at point of sale.

### Record and maintain detailed notes about vulnerable customers on the Customer Relationship Management (CRM) tool

Ofcom suggests that customer service advisors "*should make clear and detailed notes on their internal systems*"<sup>20</sup> about vulnerable customers. Sky would welcome clarification that notes should be restricted to customer service needs and not information about an individual customer's personal circumstances or the conditions affecting them. This is an important distinction.

If the latter, this suggestion goes far beyond the legal obligation in GC C5.3, which is limited to recording the needs of vulnerable customers. We are concerned that Ofcom's suggested measure asks advisors to make and record subjective judgements or the customer's personal circumstances; for example, domestic abuse, which may cause offence or danger to customers.

### Written/ email summary of conversation post call

Ofcom's proposed guide states:

*"some people, including vulnerable people, might find it useful to receive information on writing following a telephone call or web chat, so that they can review and digest in their own time."*<sup>21</sup>

To address this, Ofcom suggests offering follow-up information in writing, including, where appropriate:

*"information about services they are purchasing or upgrading/downgrading and any help, support or services that might assist them."*<sup>22</sup>

This suggested measure bears no resemblance to the legal obligations in General Condition GC C5.3. It reflects an over-simplified view of customer interactions and the operations of a customer contact centre.

Sky acknowledges that there will certainly be customers who may find a written summary of a discussion helpful, but rather than expecting the general service estate to provide written summaries which would take a significant amount of time and upskilling, those customers are warm transferred through to our dedicated Accessibility Team who will be able to manage those customers' requests.

Ofcom must also recognise that many CPs, including Sky, offer an online/SMS based messaging service. This provides an existing alternative for customers who prefer to discuss options with advisors in writing, and that service provides them with a written record of their messaging chat.

<sup>20</sup> Paragraph 4.14 a), Consultation.

<sup>21</sup> Paragraph 4.20, Consultation.

<sup>22</sup> Paragraph 4.21, Consultation.



Therefore, whilst Sky acknowledges that there are likely to be some customers who may find a written summary of a discussion helpful, it is unreasonable to expect the general service estate to provide these.

It would be helpful if Ofcom could clarify that it is not suggesting that all advisors would be expected to prepare written summaries. To do so would significantly lengthen calls, as advisors would have to take notes as they went along, meaning that the customer is on the phone for longer than necessary, and note-taking disrupts the flow of conversation between the customer and the advisor. It would also reduce the ability of advisors to respond to customers promptly, increasing waiting times for customers. It is also worth noting that many CPs have offshore call centres whose advisors speak excellent English but whose written language skills might not be as proficient.

There is an additional safeguard for customers who wish to change their minds once they have had an opportunity to read the terms of an offer in full: Sky offers an extended cooling off period of 31 days post activation, significantly more than the 14 days required by law.

### Signpost to other organisations that support vulnerable customers

In Section 4 of the Consultation, Ofcom suggests that:

*“it may be appropriate to refer customers to a third-party organisation such as Citizens Advice, debt charities, mental health charities, the Samaritans”<sup>23</sup>.*

Ofcom encourages CPs, where possible, to:

*“have direct telephone or digital routing available for consumers who might need urgent assistance. In less urgent circumstances, providers could promote third-party services over the telephone or send links to useful information”<sup>24</sup>.*

Sky is concerned that direct routing to charities might not be appropriate, nor is it the role of CPs. Whilst Sky is pleased to raise awareness and signpost to relevant charities, we do not consider customers should be direct routed to charities straight from a conversation with Sky. Customers may feel pressured if advisors suggest that they are immediately transferred to a charity and we would have concerns if our advisors were asked to make that judgement call.

Sky would also be interested to understand if Ofcom has explored the impacts of direct routing to charities and other third parties, and whether or not those organisations would have the resource to be able to cope with increased demand from customers being transferred directly from industry’s many CPs.

### A direct contact should be available for consumers who would benefit from this

Ofcom suggests that a *“direct contact should be available for consumers who would benefit from this”<sup>25</sup>*. Sky would be grateful for clarification on this point.

<sup>23</sup> Paragraph 4.30, Consultation.

<sup>24</sup> Paragraph 4.31, Consultation.

<sup>25</sup> Paragraph 4.14 (d), Consultation.



We assume that Ofcom does not mean that customers should have access to an individual personal advisor and that by direct contact, Ofcom means that customers are able to contact our Accessibility team easily and directly.

## Compliance with data protection legislation

Having particular regard to the principle of data minimisation, Sky has concerns from a data protection perspective regarding the collection, handling and recording of personal data including potentially sensitive personal data (i.e. special category data relating to a customer's health) on our systems in the way suggested by Ofcom. Ofcom should be mindful that the Information Commissioner's Office has extensive powers (including fining and other enforcement powers) and that compliance with Ofcom's requirements is not a defence to breach of data protection laws.

Although data protection laws would not block implementation of the guidance, Ofcom should recognise that it is expecting providers to walk a fine line between different regulatory regimes with potentially serious consequences for subsequently being found to be wrong.

This is a concern given Ofcom's apparent preference for information about customers' personal circumstances including sensitive information on vulnerability being more widely shared within each CP's systems and across different teams within large organisations, to enable those needs to be better served<sup>26</sup>.

We encourage Ofcom to do more than merely state that providers are responsible for complying with all data protection requirements and properly consider what this might mean for providers in terms of ensuring information is appropriately protected as the costs and complexity of doing so may be considerable and ultimately to the detriment of customers.

**Sky**

**November 2019**

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See, by way of example, Ofcom's suggestion regarding customer service advisors discreetly passing on information regarding a vulnerable customer's personal circumstances. Paragraph 4.14(c), Consultation.