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Consultation response: Ofcom Review of the General Conditions of Entitlement

Response by the Money Advice Trust

Date: March 2017

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Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

Over 1.35 million people were supported by the Trust in 2015, both directly through our advice services or indirectly through training advisers in charities across the UK. This includes almost 400,000 individuals assisted through National Debtline, over 50,000 small businesses through Business Debtline and over 900,000 through our adviser training. We support advisers by providing training through Wiseradviser, innovation and infrastructure grants.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Public disclosure

Please note that we consent to public disclosure of this response.

Introductory comment

We welcome the opportunity to comment on Ofcom's proposals to revise the General Conditions of Entitlement. The communications industry and the way in which people use communications have changed markedly in recent years, and there is a real need to review consumer protections in the light of these changes. We are particularly pleased that Ofcom is reviewing provisions on debt collection and proposing to include reference to consumers in vulnerable circumstances. Given our particular areas of expertise as an organisation, we have chosen to make comments only on these areas and questions directly related to these areas.

As a debt advice charity, the Money Advice Trust has witnessed significant increases in the number of clients with telecoms debt, particularly mobile phone debt. We first highlighted this trend in 2013¹ and have more recently drawn attention to the particular affordability issues faced by young people.² This growth in telecoms debt issues among our clients reflects the widespread take-up of communications services and their increasingly essential nature, as well as pressure on household budgets.³

The Trust has also played a role in highlighting consumer vulnerability. Research by the Royal College of Psychiatrists and the Money Advice Trust on debt and mental health was published in 2010. It has since been expanded to cover vulnerability more widely and updated to reflect fresh challenges and the growing body of good practice examples from across industries. This work has led to the development of tools and protocols such as TEXAS, CARERS, and IDEA, which have been widely recognised and adopted. We maintain an active training function which, to date, has trained more than 5,000 staff from more than 200 organisations. More information about these activities is available from the Money Advice Trust website.⁴

Key points:

- The proposals to extend the scope of the current requirements on debt collection and debt management are welcome. However, we would like Ofcom to go further by requiring providers as part of this condition to make consumers aware of sources of independent advice and to assess affordability of debt repayments.
- We support Ofcom's intention in proposing to require providers to take into account vulnerability. We are concerned however, that the document does not define the

¹ <http://www.moneyadvicetrust.org/media/news/Pages/Smartphone-contracts-driving-debt.aspx>

² <http://www.moneyadvicetrust.org/researchpolicy/research/Documents/Borrowed%20Years,%20Mobile%20phones,%20Nov%202016%20FINAL.pdf>

³ <https://www.nationaldebtline.org/EW/Documents/Changing%20household%20budgets.pdf>

⁴ <http://www.moneyadvicetrust.org/training/creditsector/Pages/Vulnerability-training.aspx>

meaning of vulnerability as explicitly as other regulators have done and that this may undermine outcomes for consumers.

- We also feel that a time frame of 3-6 months is insufficient for providers to properly tackle the issue of consumer vulnerability and that by setting a short, fixed time frame Ofcom may deter providers from addressing this area properly.

Responses to individual questions

Question 2: Do you agree with our proposed implementation period for the revised general conditions of 3 to 6 months following publication of our final statement? If you think a longer implementation period is necessary, please explain why, giving reasons for your views.

While this timescale may be appropriate in other areas, we do not think it allows for the scale of work some companies may need to do around vulnerability. Vulnerability is an on-going challenge and companies will, we think, inevitably need to evolve their approach over time. In view of this, it may not be appropriate to set a fixed timescale for this area at all but instead to require regular reporting from providers. We have expanded on our thinking on this area below, in answer to question 16.

Question 8: Do you agree with our proposals for updating the current conditions that relate to billing? In particular, do you agree with our proposals to extend the current protections for end-users in relation to billing so that they would apply, more generally, to fixed and mobile voice call and data services?

We welcome the proposal to equalise protections for consumers of different communications services in this area. We think Ofcom could go further by requiring providers to signpost towards sources of consumer advice, including free independent debt advice, and take into account affordability where consumers are repaying a debt. We have expanded on this in answer to question 10.

Question 10: Are there any other modifications to the billing conditions that you consider would be appropriate?

As noted above, we strongly support the proposals to extend current protections for end-users, but there is an opportunity to do more. The revised GC 13.2 will require regulated providers to send details of the measures they may take to effect payment or disconnection to any subscriber who may request it and publish such details on their websites. Our view is that providers should also be required to make consumers aware of how they can obtain consumer advice, including free, independent debt advice, from appropriate sources, and take into account affordability where consumers are repaying a debt.

Many consumers who fail to pay do so due to genuine financial difficulty or changes to their personal circumstances. Such consumers are likely to need help and advice to help them resolve their situation. They may, for example, require help with budgeting, managing debt, dealing with court claims and judgments and so on. For such customers, information about the measures their telecoms provider intends to take will not be sufficient. In several other sectors, companies are required to send information in a prescribed format to consumers at specific points. FCA authorised firms for example must send an information sheet to consumers in arrears, which includes basic information about consumer rights and sources of independent help.⁵ Energy companies send the leaflet 'Know your rights in a changing energy market' to all customers once a year.⁶ We would urge Ofcom to introduce a similar provision. This will ultimately benefit providers as well as companies by providing for speedier resolution of problems. It is unlikely to impose significant costs on providers since it can potentially be combined with existing communications to customers in arrears.

Consumers may need time to repay the debts they have incurred. While telecoms debts will often be relatively small, this does not always hold true, particularly where consumers have multiple devices / contracts, have very high usage, are repaying contracts that have been cancelled due to non-payment, have very limited surplus income or have multiple additional debts to repay. Setting repayments at too high a rate can place further pressure on stretched budgets and increases the risk of further non-payment of both their telecoms debts and their other essential household bills. Our view is that providers should be required to set out what measures they will take to ensure that debt repayments are affordable and realistic as part of their published policies.

Question 14: Do you agree with our proposals to introduce a new requirement for communications providers to take account of, and have procedures to meet, the needs of consumers whose circumstances may make them vulnerable?

We welcome this proposal but we have some reservations about how the revised condition is drafted and also about the timescale proposed. We have expanded on this point below.

Question 16: Are there any other modifications to the proposed revised condition on measures to meet the needs of vulnerable consumers and end-users with disabilities that you consider would be appropriate?

The consultation and the proposed condition provide some guidance about factors that may make a consumer vulnerable. We are concerned that this is not sufficiently detailed or explicit. It is not clear whether Ofcom intends to produce more detailed guidance at a later stage or whether it intends the guidance in the condition to be its key statement on this issue. If the latter, we are concerned it may result in a lack of clarity among providers and

⁵ <https://www.fca.org.uk/publication/information-sheets/information-sheet-arrears.pdf>

⁶ <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/citizens-advice-consumer-work/know-your-rights-in-the-energy-market/>

undermine outcomes for consumers. Based on the wording of the revised condition itself however we would raise the following points

- ✓ **Circumstances and broader factors:** The guidance given makes reference to circumstances as a source of vulnerability and notes various examples including serious illness, bereavement, communication difficulties and age-related conditions. We note that there is no reference to the behaviour of companies themselves or to broader market or economic factors that may contribute to or exacerbate vulnerability. This puts Ofcom out of step with the definitions adopted by other regulators of essential services (FCA, Ofwat, Ofgem). We would recommend that Ofcom include a reference along similar lines to highlight to providers that their own behaviour towards customers may be a (contributing) factor in making consumers vulnerable or for their vulnerability continuing.
- ✓ **Detriment:** Unlike definitions adopted by the FCA, Ofgem and Ofwat there is no reference to *detriment* in Ofcom's proposed condition. Making an explicit link between vulnerability and the risk of detriment underlines the point that companies should focus on the *impact* on consumers. The circumstances of consumers are important, but need to be considered in the round and it is ultimately the risk of detriment, rather than the circumstances themselves, that makes consumers vulnerable. We would suggest that if Ofcom does not clarify this point there is a risk that providers may be drawn into taking a "tick box" approach and simply identify consumers with a given set of characteristics.
- ✓ **Mental capacity:** Through our training and consultancy work, the Trust has identified mental capacity as a particularly important area within vulnerability. Mental capacity is a sometimes complex legal area. It is both a legal obligation on companies and a key element in treating customers fairly. However, it is often overlooked or mistakenly conflated with mental health. A clear reference to mental capacity would go some way to highlighting this area to telecoms providers and encouraging them to give it the attention it requires.
- ✓ **Identification:** We would suggest that the proposals place considerable weight on how telecoms providers should go about identifying consumers in vulnerable circumstances. However, we would suggest that there is little detail on about how such consumers ought to be treated. We believe that the proposals should go much further in setting out the requirements on providers once vulnerability has been identified. This is a key missing component in the current proposals.
- ✓ **Timescales for implementation:** In the consultation it is suggested that providers should be able to bring their policies and practices into line with these proposals within a relatively short period of time (3-6 months). We are concerned that this may send the wrong signal to providers and prove counterproductive. It is right that providers should be encouraged to prioritise this area and make progress as rapidly as they can, but they need to achieve the right outcomes. This may require activities that extend well beyond a 3-6 month time frame.

Amongst other activities, companies may need to undertake wide-ranging reviews of their policies and processes, establish specialist teams, recruit external expertise, devise and deliver large scale training programmes, develop partnerships with third-sector organisations, make significant changes to systems and customer-facing communications and establish monitoring and review processes. This will take time. We would also note, based on our experiences, that tackling vulnerability is an on-going process and that companies will need to regularly review, refine and refocus their efforts. We would not want companies to feel encouraged to consider tackling vulnerability as a one-off event or deterred from going beyond minimum requirements.

As an alternative to requiring companies to demonstrate compliance within a 3-6 month time frame, providers could be required to report their progress and future plans for addressing vulnerability at regular intervals, as an adjunct to on-going monitoring.

For more information on our response, please contact:

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