

# Consultation Response



## StepChange Debt Charity response to the Ofcom consultation on the general conditions relating to consumer protection

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We are an independent charity dedicated to overcoming problem debt. Our advice and solutions services are effective, tailored and importantly, free.  
Foundation for Credit Counselling Wade House, Merrion Centre, Leeds, LS2 8NG trading as StepChange Debt Charity and StepChange Debt Charity Scotland.  
A registered charity no.1016630 and SC046263. It is a limited company registered in England and Wales (company no.2757055).

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# Introduction

## Background

StepChange Debt Charity welcomes the opportunity to respond to this consultation. We are the largest specialist debt advice charity operating across the UK. In 2016, 600,000 people contacted our telephone helpline or online debt remedy tool for advice and information.

Our response covers proposals on contracts, debt collection, vulnerable customers and nuisance calls.

### *Contracts and debt collection*

On average StepChange Debt Charity clients with debts to Communication Providers (CPs) owe £452 per debt and £616 in total (taking into account clients with multiple debts to CPs). A survey of our clients has shown that a third believed they had been treated unfairly by a mobile phone company collecting arrears<sup>1</sup>. It is important that General Conditions on contracts and debt collection work to alleviate these issues and ensure CPs act appropriately.

### *Vulnerable customers*

How to deal with vulnerable customers is an increasingly key issue for companies, especially when a credit relationship may be involved. Vulnerable customers are generally more liable to suffer financial harm because they can find it more difficult to understand and defend their rights. Many will even be afraid to reveal their vulnerability because they are afraid they will be exploited. Research indicates that for every customer who does disclose a mental health problem, potentially two customers will choose not to tell out of worry and fear<sup>2</sup>. A broken credit relationship can exacerbate this because debt collection practices create extra stress and complexity.

Therefore it is crucial for Ofcom to focus on the need to protect vulnerable customers and ensure that firms' policies are aligned to this need.

### *Nuisance calls*

More than half of adults in Britain (29.5 million people) have received unsolicited phone calls offering high-risk financial products<sup>1</sup> and around one in eight are being called every day<sup>3</sup>. The problem is particularly acute for financially vulnerable people who are already struggling with debt. A survey of our clients found that a third received more than five nuisance calls a week. Where our clients took out high cost credit as a result of these calls it added an average of £1,052 to their existing debts<sup>4</sup>.

We would ask Ofcom to consider how to address these problems as part of a consumer protection strategy.

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<sup>1</sup> High cost credit or fee-charging debt management services

**Question 3: Do you agree with our proposals in relation to contract requirements? If you consider that we should retain the regime applying to contracts concluded before 26 May 2011, please explain why, giving reasons for your views.**

We agree with the Ofcom proposal to amend the minimum information in GC 9.2 to make it more consistent with GC 10.2. Clear information on costs and services in contracts can help consumers seek redress more easily in the case of a dispute.

Ofcom could additionally amend GC 9.2 further by requiring CPs to include in contracts company policy on non-payment of bills (as specified in GC 13) as adequate information on debt collection procedures also allows customers to better understand their rights.

We note a recent Citizens Advice report found significant problems with the way mobile phone companies deal with contract disputes and collect debts. Our clients' experiences bear this out. For example, the following recent cases have been reported by our Social Policy network.

**Case Study**

*A StepChange client tried to upgrade his mobile telephone and was told by his provider that there was nothing remaining to pay on his previous contract. However, he was then sent a demand to settle an outstanding balance. The provider told him not to make any further payments while this situation was investigated. However, during the period he did not make payments further charges were added to his bill.*

**Case Study**

*A StepChange client had her mobile phone stolen and an excessive bill built up as a result, which she was not able to pay. Despite the client informing her provider about this it proceeded to pass her arrears onto a debt collection agency. The client contacted the agency and found it had been misinformed as to the reason for her arrears. In order to keep on top of her debts the client eventually had to leave university and find work.*

Placing more emphasis on appropriate debt collections procedures would also help ensure CPs pay greater attention to their behaviour in this area.

**Question 5: Do you agree with our proposals in relation to information publication and transparency requirements, including removing the separate condition relating to publication of quality of service information?**

We strongly support extending the scope of the current condition from the providers of Publicly Available Telephone Services to all providers of Public Electronic Communications Services. It is vital that customers of mobile and broadband providers are provided with adequate information and are able to check their rights when needed.

**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 agree that the current protections for end-users in relation to billing should be extended to apply to fixed and mobile voice call and data services. Furthermore we agree with the consultation proposal to extend the scope of the current requirements on the debt collection and disconnection policies for non-payment of bills (GC 13) from fixed telephony providers only to all providers of fixed and mobile telephony and data services.

However, Ofcom should also take this opportunity to extend and strengthen the provisions of GC 13. Currently the Condition contains little on the way in which CPs should treat customers in arrears. For example, it contains no reference to the need to signpost customers with payment difficulties to free, independent debt advice.

Accessing free and impartial debt advice early is the key to avoiding longer term financial harm.

- Over two-thirds (68%) say debt advice resolved the problems they asked about completely or to a great extent.
- 3–6 months after advice, nearly two-thirds (65%) of those with debts are either currently repaying them or have already repaid in full.
- The majority (59%) feel their financial situation is better than it was previously, with around a third (32%) saying it is much better<sup>5</sup>.

We believe a strengthened GC 13 would include a requirement for CPs to sign-post or refer individuals in arrears to free and independent debt advice. In addition, GC 13 should place upon CPs the need to treat customers in arrears with appropriate forbearance and allow reasonable time and opportunity to repay the debt.

- There should be a responsibility on creditors to refer to sources of free debt advice in a pre-emptive way before accounts are sent for enforcement
- Creditors should be required to offer “breathing space”, where interest, fees and enforcement actions are frozen to allow people to seek free debt advice and recover from their financial difficulties without seeing their debts spiralling out of control
- There should be an obligation on creditors to be proactive and find out about the person’s circumstances, and ability to pay before sending accounts for enforcement
- Creditors should be required to accept offers for affordable payment arrangements without passing on the account for further action using an accepted objective standard such as the Common Financial Statement (CFS) or Standard Financial Statement (SFS)

These changes would bring the communications sector more in line with good practice requirements for firms in the consumer credit sector; as outlined in the Financial Conduct Authority Consumer Credit Sourcebook 7.3, which we think is currently the best regulatory standard in this area<sup>6</sup>.

**Question 11: Do you consider that our proposed revised condition for complaints handling and access to alternative dispute resolution, together with our proposed revised code of practice on complaints handling, will improve the transparency, accessibility and effectiveness of communications providers' complaints handling procedures, and improve access to alternative dispute resolution? If not, please give reasons, including alternative suggestions.**

We agree with proposed revised conditions for complaints handling. However, we would additionally recommend a requirement for staff to be trained in sign-posting or referring to free and independent advice in line with a revised GC 13.

**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?**

It is vital service providers have adequate policies in place to support individuals with vulnerabilities.

There are a range of vulnerabilities that CPs must be aware of. For example, people with mental health conditions are more likely to have had a landline or mobile phone cut off<sup>7</sup>.

Financial difficulty is similarly a cause of additional vulnerability. People in financial difficulty, including those who are in or at risk of problem debt, face constrained choices, exacerbated by creditor action demanding repayment.

### **Case Study**

*Due to a building up of arrears, a client's mobile telephone provider recently cut off his line. This is despite the client being vulnerable and requiring the line to be able to connect to a community care facility. The client spoke to his provider about this issue and requested reconnection but it refused, demanding he repay the arrears in full before it considers reconnection.*

When people are in problem debt, dealing with creditors is often seen as more important than seeking advice, even when seeking advice is the rational thing to do. This can make matters worse in the medium to long term.

We therefore support Ofcom's move to ensure the needs of vulnerable consumers are reflected in the General Conditions. Up-to three-quarters of our clients could be affected by some form of vulnerability, including ongoing mental health conditions<sup>8</sup>. Work by the Royal

College of Psychiatrists has shown that if creditors do not address this sensitively it could result in<sup>9</sup>:

- a broken repayment arrangement
- additional costs of negotiating a new arrangement for the creditor
- a financial impact on the customer in the form of penalty charges, further arrears, and legal action
- a potential worsening of the customer's mental health (e.g. due to distress and anxiety)
- a reduced likelihood of the customer engaging with the creditor or addressing their financial problems

Bearing this in mind we would suggest two additions to the current proposals.

1. The consultation is unspecific about how Ofcom itself intends to monitor CP progress on vulnerability issues. We would appreciate a greater amount of information of its plans in this regard. In particular, we would like to know more about the outcomes Ofcom believes this new focus on vulnerability will produce and how it will monitor against these outcomes.
2. We believe the Ofcom definition of vulnerability may be too narrow and encourage firms to focus too much on permanent vulnerabilities. As the FCA paper on vulnerability describes, 'some circumstances that cause vulnerability may be longstanding, others may happen almost overnight, and could affect anyone, whatever their circumstances, level of income or capability.'

We would therefore suggest a more broadly drawn definition of vulnerability. An excellent example would be the definition from Ofgem's Consumer Vulnerability Strategy, which defines vulnerability as when a consumer's personal circumstances and characteristics combine with aspects of the market to create situations where they are:

- 'significantly less able than a typical consumer to protect or represent his or her interests in the energy market
- significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial'

This is relevant to Ofcom because, as our data has shown, issues with financial vulnerability are as present in the communications market as in other markets.

**Question 15: Do you agree with our proposals to update regulation by extending the current protections for end-users with disabilities, which currently apply only in relation to telephony services, to cover all public electronic communications services?**

We agree the current protections for end-users with disabilities should be extended to cover all public electronic communications services.

**Question 18: Do you agree with the changes we are proposing to make in relation to the provision of calling line identification facilities, including the new requirements we are proposing to add? Please give reasons for your views.**

We agree with the changes Ofcom is proposing to make in relation to the provision of calling line identification facilities. However, we would like Ofcom to provide some additional information on how it intends to monitor the roll-out and success of CLI.

In addition, we believe Ofcom could be doing far more to combat the harm caused by nuisance calls.

- The UK's Telephone Preference Service (TPS) 'opt-out' system is the lowest level of protection permitted by EU legislation, reducing its effectiveness as a consumer safeguard. A higher level of consumer protection is an 'opt-in' system, where people are assumed not to want telemarketing calls unless they register that they want to receive them. Germany and Austria are examples of countries at this level.

In order to ensure protection the greatest number of households and the most vulnerable, the UK should switch from an opt-out do not call register to an opt-in register similar to countries such as Germany. Ofcom could look into making this change during the next tender for the TPS.

- US regulators have had success with so-called "honeypots", banks of monitored telephone lines which attract and then detect automatic calls and patterns of calls by telemarketers, in ways that will help enforcers to trace perpetrators. Ofcom should work alongside industry and the Information Commissioner's Office (ICO) to start using such "honeypots" to successfully trap and enforce against organisations engaged in illegal nuisance calling.

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1 StepChange Debt Charity (2016), Creditor and Debt Collector Conduct

<sup>2</sup> Money Advice Trust / Royal College of Psychiatrists (2015), Lending, debt collection and mental health:12 steps for treating potentially vulnerable customers fairly

3 StepChange Debt Charity (2016), More than half of adults getting nuisance calls offering high-risk financial products

4 Ibid

<sup>5</sup> Money Advice Service (2017), Understanding the impact of debt advice

6 Financial Conduct Authority Consumer Credit Sourcebook 7.3

<sup>7</sup> Mind (2008), In the red

8 StepChange Debt Charity (2016), Creditor and Debt Collector Conduct

<sup>9</sup> Money Advice Trust / Royal College of Psychiatrists (2015), Lending, debt collection and mental health:12 steps for treating potentially vulnerable customers fairly