



Virgin Media's response to Ofcom's Review of the General Conditions of Entitlement – 20 December 2016

24 March 2017

Introduction

Virgin Media welcomes the opportunity to respond to this consultation and we support the aims of this consultation to seek to make the rules clearer and more practical, remove any redundant rules and make compliance simpler. We also support the stated aim set out in paragraph 2.1 to reduce the cost of compliance. It is important to evaluate the cost of compliance – and in particular, to consider the necessity and proportionality of any proposed changes that increase the costs of communications providers (CPs).

Virgin Media believes a number of the proposed changes make the rules clearer and more practical, and provide a consumer benefit. However, some of the changes are likely to increase uncertainty and confusion for consumers and, instead of reducing the cost of compliance, they will increase the cost of compliance but provide little consumer benefit. We have set out in our response where we believe this to be the case.

In considering whether the activity is proportionate, we believe Ofcom should not only consider the proposed changes in isolation but also the cumulative regulatory burden and the impact of these proposed changes upon CPs, and focus on those cases where action is necessary to address practices causing consumer harm.

Consultation Questions

Question 1: Do you agree with our overall approach to this review of the general conditions as set out in sections 2 and 3 of this consultation? Please give reasons for your views.

We support Ofcom's stated aims and the proposals to make the General Conditions clearer and easier to understand, implement and apply and believe that Ofcom's approach to definitions and presentational issues will lead to much greater clarity.

However, we are concerned that changes to terminology and the merging of separate General Conditions have in some cases widened the scope of obligations without any clear evidence that such an extension is necessary. We have set out in our response where we believe this is the case, but examples include changes to GC 9.6, Metering and Billing and GC 15.3 and 15.6.

We also note that Ofcom has proposed changes to General Conditions that are the subject of, or likely to be affected by separate reviews and consultations, which will run in parallel to this review. In these cases, we recommend that unless changes are needed as a matter of urgency to address consumer harm, changes should be made all at once rather than in a piecemeal manner. This will reduce the potential for unintended consequences resulting from these changes and the burden upon providers of having to change processes and systems relating to a particular General Condition twice in short succession.

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.

We do not believe that a 'one size fits all' approach is possible in relation to implementation of these proposed changes. A minimum implementation period of six months may be sufficient for some

changes, but a number of changes are likely to need considerably longer to implement, notably those relating to metering and billing, expansion of General Conditions to data services and any other changes that would require system changes as well as process changes. Any changes to a General Condition that will require changes to systems in order to implement will require an implementation period of at least 12-24 months depending on the nature of the change required. We address these issues in more detail below.

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.

In relation to the requirement to provide advance notice of any contractual modifications likely to be of material detriment to subscribers, Ofcom is proposing to specify its approach to price rises on the face of the Condition itself rather than in separate Guidance. Ofcom further suggests that this would render the Guidance redundant and so could be withdrawn.

Virgin Media believes that the existing GC9 has largely worked well, that the changes are not necessary and are likely to lead to confusion. In particular, since the Guidance addresses wider issues ancillary to price rises (such as approach to bundling and the form and content of Notifications), we consider that its withdrawal would be counter-productive, as it serves as a useful benchmark in connection with general obligations under GC9.6. The withdrawal of the Guidance would remove certainty and create a lacuna, where some CPs may continue to adhere to the withdrawn Guidance as some indication of best practice, and others may choose to develop their own processes. This could lead to increased uncertainty and confusion for consumers and therefore we suggest that the Guidance be retained, or, if it is to be “transposed” into the General Condition, its existing scope should be reflected in that.

Whilst we accept that Article 20(4) of the USD will apply, we are very concerned by the proposal that the additional paragraph to be inserted into the Condition (GC 9.7) should apply to all subscribers, notably large businesses. We do not agree with this proposed change. The existing Guidance applies to consumers and small businesses and Ofcom does not present evidence as to why an extension to large business customers is needed. GC 9.7 goes beyond what is required under Article 20(4), is not proportionate and will have a significant negative effect on CPs providing services to large businesses. As noted by Ofcom, larger businesses have much stronger bargaining power in relation to CPs and will negotiate terms. It is very difficult to see how a large business would suffer material detriment as a result of contractually permitted price rises. Extending this General Condition to large businesses is likely to lead to unintended consequences and in many cases is unnecessary, since the majority of such contracts are tendered fixed price contracts which do not permit price increases during the initial term.

The benefit of not retaining the regime applying to contracts concluded before 26 May 2011 is likely to be relatively small, as most existing contracts will have been concluded after this date. While some contracts (both business and residential) do exist which were entered into before 26 May 2011, the administrative burden of bringing these contracts within scope would far outweigh any benefit. We therefore believe that GC9.2 should remain as currently drafted in this regard.

Question 4: Are there any other modifications to the proposed revised condition in relation to contracts requirements that you consider would be appropriate?

No.

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?

Virgin Media believes that clarity is required on how Ofcom proposes to exercise its powers under the Digital Economy Bill and Ofcom should be mindful of the cumulative burden on industry of all proposed changes to the General Conditions as well as additional regulation set out in the Digital Economy Bill to ensure that they are proportionate. Given these new powers, it is difficult to see what additional benefit is gained through retaining the separate condition.

Question 6: Do you agree with our proposal to replace the existing detailed requirements in relation to small businesses with a general obligation to ensure price transparency and to notify small business customers where the terms and conditions that apply to them differ from those that providers are required to comply with in relation to consumers?

Virgin Media agrees with the principle of transparency, but we have concerns with the obligation set out in the new proposed GC10.8 and question its necessity.

Ofcom does not present any evidence as to why a business needs to be informed where a Regulated Provider applies different tariffs for small businesses to the tariffs it applies to consumers under the revised GC 10.4 to 10.7 (unbundled tariff and personal numbers information publication requirements). When Ofcom introduced the new tariff arrangements for number translation services in 2015, Ofcom expressly excluded business customers. We are unclear what has changed.

We are concerned that this proposal will create an incentive for business customers to buy consumer packages – which, in many cases, are unlikely to be suitable for their needs and may explicitly exclude business use in the terms and conditions. Most CPs offer different packages for small businesses with additional benefits and features to those offered to consumers and the associated price is therefore normally higher. Ofcom's proposal effectively classifies business and consumer products as equivalent – and therefore appears to be intended to encourage smaller businesses to take a consumer package. This is likely to lead to complaints from businesses taking a service which has not been developed to meet, and is therefore not satisfying, their needs

The scope of the proposed new GC10.8 is also unclear. We would need guidance as to how this should operate in practice and how compliance would be measured across all the sales channels.

Question 7: Are there any other modifications to the conditions relating to information publication and transparency requirements that you consider would be appropriate?

Virgin Media believes modifications should be kept to a minimum, with changes adding clarity but with no change to substance, and making changes to substance only where addressing a particular consumer harm. Although we support the principle of transparency, by increasing the obligations

relating to transparency, there comes a point of saturation where additional information is likely to confuse customers rather than provide clarity and any associated consumer benefit. We believe it is important to concentrate on simplifying and clarifying transparency obligations to maximise consumer benefit.

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?

Virgin Media understands why Ofcom wishes 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, but we have a number of practical concerns with these proposals, which we set out below.

Metering and Billing Approval Scheme – time for implementation

The extension of approval to data services has the potential to fall into the category of extension of scope to an existing approval (section 3.4 of the metering and billing direction). Virgin Media believes that Ofcom should clarify and confirm a timetable in line with a first time approval (section 3 of the Metering and Billing direction). This would be two years, which is a more realistic and achievable timeline for implementation, given the complexity of expanding accreditation to data services and the need to engage an external accreditor.

Access to adequate billing information free of charge/Itemised billing for data

What this might mean in the context of data services is unclear and should be clarified. With GC11 (metering and billing), GC12 (itemised bills) and GC13 (non-payment of bills) merging, and with data being brought into scope, is there an expectation of itemised billing for data? This is not practical and a CP's obligations in this regard should be clarified. We agree that total volumes of data consumed over a period of time is likely to be of interest to consumers, to verify whether they have exceeded a data allowance, but further itemisation is disproportionate and unlikely to be wanted by customers. There are legal, privacy and practical issues with a CP being required to log and then itemise which websites or services a customer has used and what (and how much) data has been downloaded in the process, and any such requirement would involve significant system changes. For these reasons, we believe there should be no further obligation to itemise data usage beyond total volume of data consumed over the billing period at a particular price point. For example, a mobile data package that has a 10Gb allowance during a month, and additional per MB charges thereafter, could show total 'in allowance' usage and total 'out of allowance' usage during that month, but should not have to break down data usage beyond what is necessary to bill accurately.

For 'unlimited' services, there would be no consumer need for CPs to provide information on the total data consumed unless a fair usage policy is enforced, and in Virgin Media's opinion a requirement to provide information on data consumed in these circumstances would be disproportionate.

Non-itemisation of calls which are free of charge – GC12

Virgin Media has previously raised with Ofcom the issue that GC12.4, combined with the effect of the July 2015 Non-Geographic number changes that made 080 calls free from mobiles, meant that a number of calls to service industries (such as electricians or plumbers, for example) were excluded from any itemised billing provided to the customer.

This has led to some instances of customers calling for information on calls made to commercial organisations that a CP is not able to provide under GC12.4, including a request for call records in relation to a contractual dispute. Whilst we welcome additional clarity on when information on calls to such numbers must be withheld (from just bills to all records made available to the subscriber), we would also welcome consideration as to whether there is any process to allow access to records which relate to commercial services that, prior to July 2015, would have been itemised as charged calls from mobiles (although those same commercial services would have been free from fixed lines).

Real-time charging applications

In paragraph 6.10, Ofcom proposes to extend the remit of GC11 to any format where a customer can 'pro-actively check' their bill. Whilst we agree with Ofcom that it is important to ensure that customers are charged accurately, there may be situations where, due to circumstances outside the CP's control, providing accurate 'real-time' information may not be possible (for instance with certain roaming services). For this reason, the extension of the formal requirement to real-time charging applications that help customers manage their usage and accounts is likely to lead to customer misinformation and confusion and could unnecessarily undermine confidence in services and discourage the provision, use and flexibility of such applications.

Other comments

Ofcom refers to increased complaints about 'data' services but does not specify if those complaints are from consumers, small businesses or large businesses. If this is a consumer-driven issue, then there is a strong proportionality argument for confining any extension of the current protections to consumers and small businesses only. An extension to 'data' services is likely to need significant system changes which will mean all CPs caught by the provision incurring significant cost. Those costs will only increase if large business customers are caught, while giving no real incremental benefit to those large business customers.

Question 9: Do you agree with our provisional assessment that our proposals to extend the regulatory requirements for billing to fixed and mobile voice call and data services does not impose a disproportionate burden on industry? Do you have any further information on the likely costs of these proposals?

Virgin Media believes that these proposals will place a significant additional cost and operational burden on CPs. However, the extent to which extensions to 'data' services would impose a significant additional cost burden on industry cannot be measured and quantified unless and until the scope of the requirement for data is clarified and the proposals are subject to a formal impact assessment.

We note Ofcom's provisional view that the additional cost of complying would not place a disproportionate burden on industry. However, the assessment fails to consider the proposed extension in light of all the other changes to the General Conditions being proposed by Ofcom (and their associated costs of compliance by CPs). We believe, therefore, that it is necessary for Ofcom to undertake a proper cost benefit analysis before drawing any conclusions on extending the regulatory requirement.

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

Metering and Billing Direction Extension of scope to an existing Approval:

Under section 3.4 of the M&B direction, timelines to approval are unclear where there is an extension of scope to an existing approval. Virgin Media, following discussions with the Approval Body, would suggest a two year approval route (as per a new approval) to ensure sufficient compliance data can be gathered in relation to any extension of scope.

See also Virgin Media's response to question 8 and 9 above.

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.

Scope of Proposed Ofcom Code

Virgin Media understands and supports the need to have an equitable complaints handling regime that provides an appropriate level of redress to consumers. However, we are concerned that some of the proposals will not improve the customer experience but in fact make the complaints process more cumbersome and unwieldy.

Ofcom proposes to extend the scope of complaints that CPs should handle in accordance with the Code, and which are therefore capable of referral to ADR, to include complaints about general customer service. ADR should be seen as a last resort where a CP has not been able to resolve the complaint. Complaints about general customer service are likely to be particularly problematic for ADR to resolve in an equitable manner due to the subjective nature of these types of complaints.

We believe that the operation of the ADR procedure needs careful review and existing problems with the process and decisions properly addressed before expanding the scope of complaints subject to ADR. Ofcom will be aware that ADR providers charge significant sums of money to CPs who are sufficiently incentivised to resolve an issue to a customer's satisfaction *before* reference to ADR. What is concerning to CPs is that the standard of decision-making of ADR providers can be variable and in some cases manifestly wrong. This leads both to a lack of trust in the process and to CPs "losing" cases and incurring significant costs even when they are not in the wrong. There is no incentive for an ADR provider to make the correct decision or ensure strict quality control as they are paid in any event, and there is no form of appeal. There is therefore an incentive for CPs to try to

settle frivolous or unreasonable demands as well as genuine customer complaints for fear of incurring the costs and associated reputational damage associated with ADR. This allows exploitation of the system and places a disproportionate burden on industry.

Notwithstanding the incentive to settle claims, we understand that ADR schemes are finding it difficult to cope efficiently with the volumes of complaints they are receiving (some genuine, some not), which is causing delays in resolution (to the detriment of customers) and increasing our existing concerns regarding the quality of decision-making. We believe it is important that existing problems with the process and decisions are properly addressed before expanding further the scope of complaints subject to ADR and the associated burden on this system.

Recommendation:

We believe that there is an urgent need to introduce some form of oversight of, and accountability for, ADR providers' decisions, together with a process for redress where those decisions are incorrect.

In addition, we need greater clarity and/or guidance on what is considered 'frivolous or vexatious' and what exactly constitutes 'resolution to a customer's satisfaction', with a clear guide as to when a customer will cease to have any right to refer that complaint to ADR.

This is particularly important if, in accordance with paragraph 7.74 of the Consultation, Ofcom removes the three prescribed exceptions to the obligation to inform the customer of the right to go to ADR. We disagree with the complete removal of these exceptions and suggest they are retained but amended so they operate to determine the circumstances when a CP is able to close a complaint and a customer does not have the right to go to ADR. We would welcome guidance as to how these exceptions should be interpreted in practice so they do not impact genuine customer complaints but instead ensure those customers using it to game the system are prevented from using the ADR process in respect of 'frivolous' or unreasonable complaints.

As recognised by Ofcom at paragraph 7.79 of the consultation, certain customers can and do 'game' the system as a means of achieving a better offer from the CP, and customers are incentivised to do so since the ADR process is free of charge to the customer, even if the ADR scheme rules in favour of the CP. Encouraging more customers to use the ADR process and expanding the scope of complaints subject to ADR will exacerbate this problem, particularly if ADR providers continue to be devoid of accountability.

Proactively informing customers of the process

Under the revised Conditions, CPs would have a responsibility to proactively inform the customer about the process according to which the complaint would be handled and the timeline for that process. Virgin Media supports the policy intent but believes Ofcom should avoid being overly prescriptive in how a CP should handle a complaint and what information needs to be provided, particularly by telephone. An overly prescriptive approach could have a negative effect on the customer experience and restrict a CP's ability to meet customer expectations that it will resolve complaints quickly and efficiently. An alternative approach is to oblige CPs to include a reference to their Customer Complaints Code, which would include the full complaints process, at each of the

three stages referred to in paragraph 7.38 (on receipt of complaint, upon telling a customer of the outcome of a complaint, and in all bill forms other than text).

Expanding the means by which a complaint can be made

Ofcom proposes that CPs extend complaints channels to include web form/email. Ofcom currently requires CPs to offer two out of three complaint channels, but notes that this can mean that a web-based channel is not provided. Virgin Media considers that Ofcom needs to consider the availability of web-based channels more widely than currently proposed in the consultation. Ofcom has narrowed the choice to web form or email, effectively marginalising other potentially effective web-based contact methods including via social media or web chat.

We consider that, in extending formal regulation to include a web-based channel, Ofcom should be technology neutral and not be prescriptive as to how that is delivered so long as it provides the basic level of benefits Ofcom discusses in the consultation. In particular, we consider that greater consumer benefits can be achieved through offering a complaints channel through web chat services.

We believe there are genuine problems in offering email or web form as an option to raise complaints. Customer expectation, given the electronic nature of the communication, is that the complaint will be resolved immediately. Instead, there is inevitably some time-lag since email and web form is not real time or interactive.

Through real time, interactive communication channels, such as Virgin Media's web chat option, CPs are able to achieve first time resolution for many customers in a way that is not possible through web form or email. Real time, interactive communication allows a CP to gather all necessary information to resolve a complaint in an efficient manner in a way that is simply not possible by web form or email. Information necessary to resolve a complaint inevitably takes much longer to obtain by means of a web form or email exchange – and the time lag negatively affects customer satisfaction.

One of the key benefits that email or web form is said to bring is the ability to ensure that the customer has a record of the complaint made, and the time that it was lodged with the CP, something that is not normally available in making a telephone complaint. Virgin Media's web chat service is available Monday – Saturday 8am to 8pm and web chat sessions can be saved or printed by a customer, so they can easily be used to make a complaint and keep a copy of that complaint. This not only brings the key benefit of creating a permanent record, but also ensures that the complaint is initially handled at the time contact is made, something which email and web form do not provide.

In respect of customers with disabilities and other vulnerabilities, Virgin Media understands and agrees that complaints handling procedures should be sufficiently accessible to enable them to lodge and progress a complaint. However, we believe the broader consumer benefit Ofcom is trying to achieve here can be met by allowing CPs to offer web chat during a minimum set of operating hours as an alternative to email or web form.

In addition, Virgin Media already has a specialist on-shore support team, which is set up to deal with queries and complaints by disabled customers. We find this is effective to handle complaints and is compatible with video and text relay.

We believe that a requirement to expand the means of contact to email or web form would place a significant increased burden on CPs for no incremental consumer benefit over and above what other web-based channels such as web chat can offer, and to restrict the manner in which a web based complaints channel can be offered would be disproportionate and discriminate against differing technologies.

Time for implementation

The changes to complaints handling are significant and will require both process and system changes. We believe that a minimum of twelve months (and more likely up to eighteen months) will be required for implementation.

Question 12: Do you have any other comments on our proposals in relation to complaints handling and access to alternative dispute resolution?

Virgin Media's comments are set out in response to Question 11. As we state, we believe that there is an urgent need to introduce some form of oversight of, and accountability for, ADR providers' decisions, together with a process for redress where those decisions are incorrect. In addition, there are some circumstances where a CP should be able to close a complaint. We disagree with the complete removal of the exceptions and suggest they are retained but amended so they operate to determine when a customer does not have the right to go to ADR. We would welcome guidance as to how these exceptions should be interpreted in practice so they do not impact genuine customer complaints but instead prevent customers from using the ADR process in respect of 'frivolous' or unreasonable complaints.

Question 13: Do you agree with our proposals in relation to the codes of practice that communications providers are currently required to establish, maintain and comply with – including replacing these with direct obligations to make information available, where appropriate?

Virgin Media generally supports these proposals, in particular removing the information requirements as described in paragraph 8.19 to 8.22 of the consultation. However, in revising the approach to the General Conditions by removing Codes of Practice and Guidance, and setting obligations as formal conditions, care needs to be taken to ensure that there is no inadvertent increase in regulation on CPs.

Virgin Media notes that the role of Personal Numbers appears to have taken on increased significance now that 0870 number and NTS numbers are dealt with separately as Unbundled Tariff numbers. The proposed condition now requires CPs to give equal prominence to Personal Numbers as to geographic numbers, mobile and the costs of call packages. Whilst Virgin Media does not dispute that call costs need to be clearly set out on websites, it seems that the effect of this proposal is to overemphasise the importance of Personal Numbers in a way that could create rather than reduce confusion over call pricing for consumers.

We support Ofcom's clarification in paragraph 8.16 that it is not proposing to expand the scope of any of the requirements relating to VOIP providers and to limit the scope of application to Domestic and Small Business Customers. However, we do not believe that the proposal as amended goes far enough to address the concern we raised in response to the August 2016 consultation, which we duplicate below, and which remains an issue in relation to Small Business Customers:

"We also had some concerns with the new GC 3.7(b) and believe this should be deleted, or at least not moved from Annex 3 to GC 14, until further discussions have taken place on how this should best work in practice. As currently drafted, there is a lack of clarity and a risk of unintended consequences. The GC is most likely to affect the provision of multi-line Business VOIP solutions, which is a developing service. We believe it is premature to hard code a General Condition which may impact the development of efficient policy and standards which are being discussed across industry. Instead, we would welcome an industry working group-led approach, and/or a consultation to address these issues further, perhaps with an appropriate GC to follow. The GC should be both practical and practicable and we question whether GC 3.7(b) is the appropriate means to achieve the desired aim to properly capture, record and update multiple locations."

Specific comments on matters such as CLI, special measures for end users with disabilities, non-itemisation of free calls and the Code of Practice for Complaints Handling are set out in our response to other questions in this consultation.

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?

Virgin Media is committed to ensuring that customers who are genuinely vulnerable are protected and that any specific needs that they may have are met. A specific example of this is our Talk Protected tariff. However, we believe that Ofcom's proposals for Communication Providers to put in place clear and effective policies for identifying vulnerable customers are unworkable in practice.

The current GC 15 provisions have worked well to date. The difficulties with the new GC proposals stem from the proposed wide ranging set of criteria and circumstances which could make a customer vulnerable either at a single point in time, on a temporary basis or on a longer term basis. This is impractical to manage effectively – particularly for those providers who have millions of customers (and where those customer bases are continually fluctuating as a result of customer switching). There are certain disabilities or other circumstances, which should unquestionably result in a customer being classified as vulnerable, and therefore eligible for additional protections and other enhancements that make it easier to use communications services (for example, a Braille Bill and text relay). However, widening the concept to circumstantial and temporary vulnerability in general not only introduces ambiguity but makes compliance unworkable and open to wide-scale abuse by customers. It also raises concerns about the collection, storage and deletion of this sensitive information on customer management systems. This is exacerbated by the absence of any clear direction from Ofcom of what special provisions providers are required to implement to address the multitude of vulnerabilities. Ultimately, these factors could divert attention from those customers who genuinely need protection or additional assistance.

We note the more pragmatic approach of the UK Regulatory Network, of which Ofcom is a member, which seems to tie the concept of vulnerability to the adjustments service providers are required to make. <http://www.ukrn.org.uk/wp-content/uploads/2016/07/UKRN-accessibility-leaflet.pdf>.

We note also that Ofcom has not managed to deal effectively with a broader concept of vulnerability. In its Access and Inclusion Report, Ofcom deals with specific types of vulnerability and disabilities by reference to the adjustments required. https://www.ofcom.org.uk/data/assets/pdf_file/0030/98508/access-inclusion-report-2016.pdf.

As Ofcom notes: *“it is not possible to impose specific rules to try to address all possible risks of vulnerability, so we are also consulting on a proposal for a broad requirement for communications providers to establish, publish and implement clear and effective policies and procedures for the fair and appropriate treatment of consumers whose circumstances may make them vulnerable”*. If it is not possible to impose specific rules, how is Ofcom going to adjudicate if a provider has appropriately dealt with a customer who is vulnerable in any particular circumstance? How does a provider understand how it must deal with that customer in order to satisfy its obligations?

Ofcom’s own research in the Access and Inclusion Report does not address or investigate issues arising from vulnerability due to life events (such as isolation) or an individual’s particular circumstances. This highlights just how difficult it is to capture an individual customer’s vulnerability, which may at any particular time be fluid. We would welcome Ofcom conducting specific research in this regard so we can have a clearer idea of circumstantial and life events vulnerability and what adjustments should be made when we are managing a customer base of millions of people.

We note Ofcom’s suggestion in the Consultation about CPs offering alternative security checks when a customer cannot remember a password because of a head injury or learning disability. Whilst we understand that it is extremely frustrating for a customer not to get access to their details, all CPs need to comply with data protection laws and security is a very significant (and growing) concern. It would be helpful for Ofcom to liaise with the ICO and specify best practice. For example, we have seen cases of family members trying to alter an elderly relative’s package where there is no power of attorney in place. It cannot be for the CP to decide if the relatives are acting in the elderly person’s best interest.

Ofcom’s requirement for CPs to take “reasonable steps” to identify customers who may be vulnerable is unclear. As discussed above, there is a lack of clear guidance on what vulnerability means. It is also unclear what level of discretion a CP has to determine how such customers can be identified. We do not consider that prescriptive guidance is appropriate in this area, as this could lead to overly intrusive regulation that would undermine CPs’ existing approaches and lead to customer confusion and dissatisfaction.

In Virgin Media’s experience, CPs already have a strong incentive to identify vulnerable customers and ensure that they are protected and their needs met. Indeed, we have numerous measures and processes in place to this effect.

We are concerned that Ofcom is considering extending priority fault repair to broadband and other data services such as mobile. In its call for inputs “Improving access to electronic communications services for disabled people” dated December 2012, in paragraphs 3.34 and 3.35, Ofcom asked for “submissions and evidence from interested parties on the possible costs and benefits in light of the foregoing analysis” of making broadband a priority fix. It did not receive adequate information and therefore concluded that the cost/benefit analysis did not support mandating priority fix. Whilst we agree the demand for data has grown exponentially and many consumers are reliant on their broadband and mobile data connections it is unclear why the current provision where CPs such as Virgin Media take a case by case approach to priority fix, is not working. We consider this a huge area for potential gaming by consumers claiming they need a priority fix for a whole host of reasons, and on the other hand offence is often taken by genuinely disabled customers who are asked to prove that they need this adjustment.

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?

See comments in response to Question 14.

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?

Ofcom proposes to replace “Subscriber” with “End User” in provisions corresponding to GC15.3 in relation to text relay and GC15.6 in relation to priority fault repair (which in the case of GC15.6 Ofcom proposes to extend to data services).

Virgin Media considers that, in the case of residential subscriptions, it is important for CPs to understand whether members of a household use a service such as text relay (and to put in place the necessary safeguards), rather than to assume usage is restricted to the account holder. However, we do not consider that the proposals address the important issue raised by BT in its input, summarised at paragraph 9.9 of the consultation.

BT made the point that in the context of business customers, the primary responsibility for communications services available to employees in their working environment should be assumed by the employer, and not the CP providing the service. To require otherwise would not only be disproportionate, it would also be impractical. We similarly believe that the extension of priority fault resolution facilities to all voice and data services provided to businesses would be disproportionate.

For example, there may be cases where a business customer takes an IP-based voice service, which is not backed up in the event of a power outage. This could result, for example, in a text relay service being temporarily unavailable (and therefore incapable of supporting emergency calls). Clearly, a duty of care should exist to ensure that any users of the service are protected in such situations. However, we do not consider that it is appropriate, or practical, for that duty to rest with CPs. In contrast to a residential account, it is very challenging for a CP to determine if a business customer

has vulnerable employees. Similarly, a CP is unlikely to be able to determine if a business previously having no vulnerable employees subsequently employs a vulnerable person. The obligation to ensure that a business customer's vulnerable employees are appropriately protected should therefore rest with the business concerned.

Question 17: Do you agree with our proposal to remove the condition relating to the provision of tone-dialling? Please give reasons for your views.

We have no comments on this.

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 note Ofcom's proposal that CPs should take reasonable steps to identify and block calls on which invalid or non-dialable CLI is provided, to reduce the number of nuisance calls being made on which invalid or non-dialable CLI is used. Virgin Media believes this requirement is not necessary, given that CPs have been working voluntarily with Ofcom on a project to reduce nuisance calls, dedicating time, effort, funding and resource into tackling the problem of nuisance calls in a co-operative way. We also believe that it is important to ensure that any obligations introduced via General Conditions are commercially and technically feasible and enable CPs to provide the best possible solutions to protect customers from nuisance calls. A requirement to identify and block calls of this nature would be challenging, prohibitively costly and take much longer than three to six months to implement given the likely system changes required.

We understand the value of CLI display to some customers and make this facility available to Virgin Media customers for a small monthly cost – reflecting competitive provision of this facility within the market. However, we also recognise that certain customers are more adversely affected by nuisance calls than others are, so we have included it at no additional cost in our Talk Protected tariff.

Requiring CPs to provide this facility to all customers at no cost would be disproportionate and, more importantly, ineffective. It is possible to manipulate or "spoof" CLIs to give the impression that a call is valid or from a credible source.

Additionally, in seeking to address nuisance calls, Ofcom has not fully taken account of the problem. CLI presentation will only address a small area of the problem and, as stated above, will not affect spoofed CLIs. The work being undertaken on nuisance calls by Ofcom and industry will continue to bring improvements at a network level and other advances in technology, for example the move to IP voice, will allow much greater protection to be provided at the customer level. Therefore, to introduce intrusive price regulation at this time, when any benefits may be overtaken by technology in the reasonably near term seems wholly disproportionate.

We note also that some CPs (for example TalkTalk) already provide this facility free of charge. This demonstrates that it is subject to competitive provision and that if consumers genuinely attribute a high value to it they have the option to switch. Notwithstanding this, there is no evidence that the absence of complimentary CLI display is a barrier or deterrent to consumers switching provider.

We believe therefore that the provision of CLI display at no cost should remain at the discretion of the CPs, save for those customers (such as those on Virgin Media's Talk Protected tariff) who are most affected by nuisance calls.

Question 19: Do you have any comments on our proposals in relation to the proposed revised general condition on switching?

Ofcom has made changes to GC 22 and GC23 but states that it will review GC22 and GC23 further. Where a GC is subject to further review and change, we recommend that unless changes are needed as a matter of urgency to address consumer harm, substantive changes should be made all at once rather than in a piecemeal manner. This will reduce the potential for unintended consequences resulting from these changes and the burden upon providers of having to change processes relating to a particular General Condition twice in short succession.

Question 20: Do you agree with our proposal to remove the current provision which expressly prohibits so-called 'reactive save' activity (in GC 22.15)?

See our response to Question 19 above.

Question 21: Do you agree with our proposal to replace the current mis-selling provisions with rules that focus on the information that communications providers give to customers when selling or marketing fixed-line or mobile communications services? Please give reasons for your views.

Virgin Media has no comments additional to our comments in response to Question 19.

Question 22: Do you have any comments on the consequential changes we are proposing to make to the national telephone numbering plan, the premium rate services condition or the metering and billing direction?

No.

Question 23: Do you have any comments on our equality impact assessment?

No.

Question 24: Do you have any other comments on the matters raised by this consultation?

No.