



BT response to Ofcom's consultation document "Proposed guidance on protecting access to emergency organisations when there is a power cut at the customer's premises: Proposals for guidance on General Condition A3.2(b)"

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1 Executive Summary

1. We agree that the best way of ensuring that CPs can meet the needs of their customers, and guarantee they are protected in accordance with General Condition 3.1(c) (A3.2(b) from October 2018), is by Ofcom setting broad parameters in which CPs can operate, rather than taking a prescriptive approach.
2. We agree with Ofcom's assessment that technology and consumer habits in the telecoms market are changing, and that since the vast majority of customers own mobile phones, it is no longer proportionate for CPs to have to provide a free battery backup unit to all customers taking calls over broadband.
3. We disagree with those parts of Ofcom's guidance that take a less principles-based and more prescriptive approach to the issue of resilience, in particular where the proposals create disproportionate costs and complex processes for CPs and their customers.
4. We are concerned about the large volume of customers to whom it appears Ofcom expects CPs to provide a free resilience solution, not all of whom will be dependent on their landline. Requiring CPs to bear the costs of potentially providing resilience solutions for free to millions of customers is likely to result in poorer outcomes for consumers and industry generally, and slow the natural migration of customers to IP voice, leaving a larger proportion of customers to be force-migrated ahead of PSTN switch off.
5. In particular, we disagree that telecare customers or customers without a mobile are useful proxies for customers being at risk during a power cut due to dependence on their landline. It is also disproportionate and impractical to expect CPs to provide protection for customers experiencing power cuts of significant duration; this is properly the energy companies' responsibility, and the guidance is unclear about what steps CPs could actually take to assist these customers.
6. We are also concerned that preventing CPs from carrying out some part of the assessment of whether at-risk customers are eligible for a resilience solution after the product order has been completed will reduce CPs' ability to correctly identify these customers, and lessen the prospect of rapid roll-out of new digital services like calls over broadband.
7. We are grateful for the opportunity to respond to the consultation and would be pleased to discuss any of the points we make in our response with Ofcom at a later date.

2 BT response to the proposed resilience principles

8. Consumers need to know that they can make a call to the emergency services if they have to and ensuring uninterrupted access to emergency numbers is a critically important job for Communications Providers (CPs). We are pleased Ofcom has published proposed guidance on how CPs can meet their emergency calling obligations under General Condition 3.1(c) and engaged so openly with CPs in the run up to the consultation.
9. We welcome Ofcom's principles-based and technology-neutral approach to the guidance and fully support the aim of ensuring consumers making calls over broadband have the protection they need during power cuts.
10. We agree that the best way of ensuring that CPs can meet the needs of their customers is by Ofcom setting broad parameters in which CPs can operate, rather than taking a prescriptive approach, allowing CPs to choose for themselves how to implement robust processes for identifying at-risk customers and giving them the right resilience solution.
11. Ofcom notes in its consultation that technology in the telecoms market is changing: CPs are moving towards full-fibre broadband and the PSTN network is approaching the end of its life. There is now indoor mobile coverage by at least one mobile network operator for 99% of premises in the UK.
12. Consumer habits have changed too: 94% of adults own a mobile and most use this as their main method for making and receiving calls in the home. The vast majority of calls to emergency organisations are now made over mobile networks. Fixed voice calls are increasingly made using voice over IP (VoIP) technology, which uses a broadband connection rather than PSTN.
13. These changes are part of a wider trend towards convergence in telecoms services. New converged propositions are bringing together the best of broadband, mobile and Wi-Fi to provide better connectivity for UK consumers. In the future, CPs will develop fully integrated smart networks based on ultrafast fibre broadband and 5G mobile technology. This will have a range of customer benefits, including simpler billing and the ability to maintain a connection even when there is a fault on one service.
14. Smartphone and tablet use drives "converged" behaviour too. Consumers expect to have a seamless, consistent and reliably fast data connection on all their devices, even in areas with traditionally slow broadband speeds, and the market is developing to meet these needs.
15. Telecoms regulation must reflect changes in technology and consumer behaviour – Ofcom will achieve the best outcome for consumers by encouraging the development of converged networks and digital services. BT is creating a range of new digital products that will take advantage of converged fibre and mobile networks; we are thinking hard about our customers' needs and how we can give them the full benefits of

new digital voice services while leaving them no worse off, either financially or functionally, as a result of the change.

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18. BT and other CPs need Ofcom to take a consistently principles-based and proportionate approach to regulation in this area to be able to continue to create products that meet customers' needs – needs that we believe CPs are best-placed to understand and identify.

19. Where we disagree with Ofcom's proposals is when they diverge from this approach and create prescriptive obligations that could create disproportionate costs and complex processes for CPs. This risks disincentivising investment in future services and indeed may inadvertently act against Ofcom's aim of protecting consumers by constraining CPs' ability to take practical steps to protect customers, as described in the paragraphs above.

20. We note that a principles-based and proportionate approach already operates in this area in the mobile market, Ofcom having recognised that as consumer behaviour changes, the degree to which direct regulatory intervention is required changes too: GC 3 requires mobile operators to take "all necessary measures to maintain uninterrupted access" to the emergency services. However, Ofcom does not go so far as to regulate the operation of the mobile handsets themselves. No one is checking that consumers' phones are charged or have sufficient signal to make an emergency call – it is simply recognised that consumers understand the limits of the technology and are capable of assessing the risks for themselves.

21. Ofcom's consultation question is:

Do you agree with the four proposed principles? If not, please give reasons. Please set out your comments on each of the principles separately.

We develop our answers below, taking each principle in turn.

2.1 Principle 1: CPs should have at least one solution that enables access to emergency organisations for a minimum of one hour in the event of a power outage in the premises

22. We welcome Ofcom's proposal that CPs providing calls over broadband should have at least one solution (hereafter "resilience solution") that enables access to emergency

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organisations for a minimum of one hour in the event of a power outage at a customer's premises.

23. We recognise the safety of life implications inherent in this issue and are committed to ensuring that customers taking new digital services like calls over broadband have the protection they need.
24. We are pleased that Principle 1 is technology-neutral and Ofcom does not intend to prescribe what type of resilience solution CPs should employ. Allowing CPs the flexibility to develop resilience solutions that meet the genuine needs of their will help avoid wasteful provision of battery backup units and ensure the guidance remains fit for purpose in a converged future.
25. While the spirit of the guidance is technology-neutral, we believe that initially most CPs are likely to offer a battery backup solution.² Ofcom recognises that due to widespread mobile ownership the best resilience solution for many consumers will be a mobile or mobile-based device.³ However, unless Ofcom is able to provide clearer guidance on how CPs can verify whether a customer is likely to be at risk owing to poor mobile signal (see section 2.3.2 below), it will be challenging for CPs to develop innovative, mass market mobile-based resilience solutions.
26. We consider that for business customers, the responsibility for any upkeep of the resilience solution should lie with the customer rather than the CP. Business customers have different needs and expectations from consumers and CPs providing these services cannot be expected to maintain a resilience solution over the long term.

2.1.1 Longer-duration power cuts

27. Paragraphs 3.10-11 of the consultation set out how Ofcom considers CPs should approach the issue of longer-duration power cuts, stating that

...some individual consumers may require protection beyond one hour, for example if they live in households that have a history of long-duration power outages. We consider therefore that CPs should take appropriate steps to identify and address the needs of customers who would benefit from additional protection.

28. It is disproportionate for Ofcom to expect CPs to provide protection for customers experiencing power cuts of significant duration. CPs cannot be expected to take account of power supply edge cases that are properly the energy companies' responsibility.
29. CPs may be able to develop solutions that cater for the minority of customers who experience power cuts of a relatively short, albeit non-standard, duration. However, the guidance is unclear about when, after the one-hour period, Ofcom believes CPs' responsibilities actually end, creating an open-ended obligation on CPs that is very

² Ofcom notes in paragraph 3.7 of the consultation that CPs are looking at a range of options for resilience solutions, which is likely to include battery backup and other energy storage devices.

³ Paragraphs 1.7, 2.17-18, 3.2a, 3.26-27 in Ofcom's consultation document.

difficult to comply with. It is impractical, for example, to expect CPs to provide a secondary resilience solution that lasts for several hours since even a one-hour battery backup unit is large and heavy compared to other home telecoms equipment.⁴

30. It is also far from clear how CPs could identify the particular customers Ofcom believes would benefit from additional protection. Ofgem and other energy industry experts advise that power cuts can have a number of causes, from weather conditions such as heavy rain, high winds or floods to contractors accidentally cutting through underground cables, or even faulty meters.⁵ The random nature of these events means that simply asking customers if they have a history of long-duration power outages is unlikely to be an accurate way of determining the likelihood of future power cuts of greater than one hour occurring.
31. Ofcom should amend the guidance to remove the open-ended obligation on CPs to be responsible for providing a resilience solution beyond one hour.
32. Ofcom should also bear in mind that requiring CPs to develop additional non-standard resilience solutions for customers will create extra complexity in customer order journeys, making it more challenging to migrate customers to new digital services like calls over broadband (see paragraphs 42-43 and 60-63 below).

2.2 Principle 2: *The solution should be suitable for customers' needs and should be offered free of charge to those who are at risk as they are dependent on their landline*

33. We welcome Ofcom's recognition that widespread mobile use has changed the voice market and that the 2011 Guidance, which required CPs to always provide a battery backup unit for calls over broadband services, is no longer a proportionate obligation.
34. Principle 2 appropriately focuses on those customers who are at risk as they are dependent on their landline. We agree that this customer group is most likely to be vulnerable during power outages and most in need of additional protection in the form of a resilience solution, though we do not believe that the customers who have chosen not to buy a mobile will necessarily require the same protection as those whose personal circumstances or location force them to rely on their landline.
35. We are concerned about the total volume of customers to whom Ofcom expects CPs to provide a free resilience solution.

⁴ See footnote 3.

⁵ Ofgem advice: <https://www.ofgem.gov.uk/consumers/household-gas-and-electricity-guide/extra-help-energy-services/power-cuts-help-and-compensation-under-guaranteed-standards> and Energy and Climate Intelligence Unit report, p.3: <https://eciu.net/assets/The-Lights-Seem-to-be-Staying-On-Realities-behind-%E2%80%98Blackout-Britain%E2%80%99-October-2015.pdf>

2.2.1 Volume of battery backup CPs will need to supply

36. The guidance states that CPs should offer a resilience solution “free to those consumers who are at risk as they are dependent on their landline”. We conclude from the broad customer segments and detailed categories of consumers who may have disability or accessibility requirements that the total UK-wide figure may run into the low millions.⁶
37. We do not believe Ofcom has struck the right overall balance between correctly identifying those customers genuinely in need of protection and the risk of creating an onerous burden on CPs developing new digital services to serve a post-PSTN market.
38. Requiring CPs to bear the costs of potentially providing resilience solutions for free to millions of customers is disproportionate, fails to target those customers who are genuinely “at risk”, is out of step with international requirements, and is likely to result in poorer outcomes for consumers and industry generally.
39. In particular, Ofcom should reconsider the requirements that customers without a mobile and telecare customers are automatically eligible for a free resilience solution. Paragraphs 40-48 below set out our general comments on these issues, and sections 2.2.2 and 2.2.3 below deal with these specific customer segments.

Competition issues

40. Ofcom estimates that two million adults live in a home with a landline and no mobile phone.⁷ Principle 2 would impose additional costs on serving landline-only customers by requiring CPs to automatically give them a free resilience solution. This risks reducing competitive choice in this market: CPs migrating their customers from PSTN to new digital services like calls over broadband will face significant additional costs per acquisition/upgrade and reduced margins.
41. BT will continue to serve this segment of the market but other providers, in particular smaller CPs, may view the costs associated with upgrading customers to new digital services as a ‘tax’ on serving landline-only customers that could discourage them from supplying this segment.

Effect on migration from PSTN services

42. Ofcom notes that the PSTN is approaching the end of its life as the availability of spare parts and engineering knowledge to maintain and repair it is decreasing. Openreach has signalled its intention to retire this network in the next few years and withdraw WLR.
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⁶ Paragraphs 3.26-36 in Ofcom’s consultation document

⁷ 75% of these consumers would be classed as landline-only i.e. they also do not take a broadband service. See Ofcom Communications Market Report 2017, p.138: 4% of UK households do not own a mobile phone, 1% have a landline and broadband, and 3% a landline only

https://www.ofcom.org.uk/_data/assets/pdf_file/0017/105074/cmr-2017-uk.pdf

43. Ofcom has stated, and we agree, that it is important that migration does not cause disruption for consumers. Migration will work best where people choose a service voluntarily, and where CPs' migration strategies rely on developing new services which make it attractive to move.⁸
44. Increasing the overall cost of migrating customers from WLR to new digital services will disincentivise rapid roll-out of these services. At best, CPs may simply seek to push additional costs onto consumers, though there is a risk that providers may delay or shelve migration plans, significantly reducing the number of customers who choose to migrate voluntarily.
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International context

46. In the EU, no other National Regulatory Authority (NRA) has mandated provision of a free resilience solution to customers.¹⁰
47. In the US, the FCC places limited backup power obligations on CPs to ensure they meet their obligations to provide access to 911 during a power outage: consumers should fully understand the risks associated with non-line powered voice services and CPs may charge subscribers for any resilience solution they offer.¹¹
48. We do not agree with these stances: we believe it is appropriate for CPs to provide a free resilience solution to some at-risk customers. However, it is important to consider the international context as it sheds light on the fact that Principle 2 goes considerably further than regulation in other comparable countries. We urge Ofcom to strike a more even balance between customer protection and costs to CPs by refocusing the guidance on addressing the needs of customers who are genuinely at risk.

2.2.2 Inclusion of customers without a mobile in free resilience solution segment

49. Ofcom recognises that mobile networks are fast becoming the platform of choice for voice services, that most emergency calls are now made from mobiles, and that with most adults personally using a mobile phone, not being able to contact emergency organisations via a landline in the event of a power cut is very unlikely to affect them or to cause a safety of life concern.¹²

⁸ BEREC advises that across Europe there were fewer issues with the post-PSTN migration process where it was customer-driven: Ofcom Connected Nations Report 2016, pp.66-67

https://www.ofcom.org.uk/_data/assets/pdf_file/0039/95898/CN16-07.pdf

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¹⁰ Comreg consultation on requirements regarding battery back-up, pp.65-71

https://www.comreg.ie/media/dlm_uploads/2016/12/ComReg-16109.pdf

¹¹ FCC Report and Order on availability of 911 services <https://docs.fcc.gov/public/attachments/FCC-15-98A1.pdf>

¹² Paragraphs 1.7, 2.17-18, 3.26-27 in Ofcom's consultation document.

50. The guidance states that CPs should provide a free resilience solution to “the 2 million adults living in a home with a landline and no mobile phone”. This is a very broad customer segment that likely encompasses many customers who would not consider themselves to be vulnerable or at risk – they have simply chosen to date not to buy a mobile.
51. Customers who have made a conscious decision not to make a purchase do not necessarily require the same level of protection as consumers whose circumstances force them to rely on their landline.¹³
52. Using a broad category such as ‘customers without a mobile’ as a proxy for genuinely at-risk consumers will result in CPs having to provide a resilience solution to some customers who would, in all likelihood, be better off taking a mobile phone package than a receiving a large and heavy battery backup unit.¹⁴ This obligation is disproportionate to the problem Ofcom is trying to solve and will create unnecessary costs for CPs who will have to supply unneeded resilience solutions.
53. Ofcom should amend its guidance on this principle to give CPs greater flexibility to provide a resilience solution that is right for the customer’s needs. Given that the vast majority of consumers choose to use a mobile to call the emergency services, CPs should be allowed to offer customers without a mobile the opportunity to purchase a mobile package in the first instance, rather than automatically providing a free resilience solution.¹⁵

2.2.3 Inclusion of telecare customers in free resilience solution segment

54. Ofcom states that if customers use a telecare service it indicates that they “may have disability or accessibility requirements that make them more reliant on their landline”, potentially making them eligible for a free BBU. We are concerned that this is another catch-all customer category that will include many customers who would not consider themselves to be vulnerable or at risk.
55. Given the broad range of services covered by the term ‘telecare’, and the fact that anyone can buy one of these services without having to provide evidence of need, we do not consider that use of a telecare service is a good proxy for having disability or

¹³ Either because they have disability or accessibility requirements or have no mobile signal at home.

¹⁴ Ofcom appears to acknowledge battery backup will be most CPs’ default solution.

¹⁵ To ensure that these consumers get the protection they require, CPs should also engage in effective communications so customers understand both the risk of their landline phone not working in a power cut and the eligibility criteria for receiving the CP’s primary resilience solution free of charge. Customers without a mobile who also have disability or accessibility requirements, or no mobile signal at home, should continue to be automatically eligible for a free resilience solution.

accessibility requirements.¹⁶ Ofcom previously considered this question in a previous consultation and came to the same conclusion.¹⁷

56. We therefore consider that Ofcom should amend its guidance on this principle to remove the recommendation that CPs should treat the use of a telecare service as an indication that a customer has disability or accessibility requirements and is eligible for a free resilience solution. CPs using the other customer categories Ofcom outlines in paragraphs 3.32 and 3.33 of the consultation document will be able to reliably identify consumers who have disability or accessibility requirements.

2.3 Principle 3: CPs should i) take steps to identify at risk customers and ii) engage in effective communications to ensure all customers understand the risk and eligibility criteria and can request the protection solution

57. We welcome Ofcom's guidance that CPs should have robust processes for identifying at-risk customers and engage in effective communications to ensure all customers understand the power outage risk.
58. We are particularly pleased with Ofcom's emphasis on the importance of communicating with customers, as we believe that many consumers are currently unaware that cordless phones will not work in a power cut. As customers move to new digital services like calls over broadband, CPs have an invaluable opportunity to educate customers about the risks associated with power cuts and reduce the number of customers who may not currently be getting the protection they need due to use of a cordless phone.

2.3.1 Pre-sales assessment of whether customer is eligible for a free resilience solution

59. We agree that CPs should be transparent in their communications with customers, ensuring they understand why they are or are not being offered the resilience solution. However, we are concerned by the recommendation that

*...as a minimum... [CPs should] share the outcome reached as to whether the customer is at risk or not, and the reasons for this with the customer pre-sale, or ask them to confirm they do not need or want the solution when signing a contract.*¹⁸

¹⁶ The TEC Services Association (TSA) is the industry body for telecare (TEC) services. The TSA defines telecare as 'technology enabled care', which is a range of services including telehealth, telecare, telemedicine, telecoaching and self-care support. TEC also includes personalised sensors and apps that can support fitness, health, care and wellbeing for individuals and carers: <https://www.tsa-voice.org.uk/what-is-tec>

¹⁷ Ofcom consultation statement on access to electronic communications services for disabled consumers, pp.22-23. See attached document

¹⁸ Paragraph 3.49b in Ofcom's consultation document.

60. Preventing CPs from carrying out some part of the identification of at-risk customers, or having conversations about eligibility, after the product order has been completed, will reduce CPs' ability to correctly identify at-risk customers and dampen the prospect of rapid roll-out of new digital services like calls over broadband.
61. We are working to pre-identify as many at-risk customers as we can to ensure we know in advance who will need a resilience solution. However, given the complexity of the eligibility criteria CPs will be expected to apply – including numerous categories of customers with disability or accessibility requirements and an untested method of determining whether a customer has a mobile signal in their house – from a practical perspective it is inevitable CPs will need to carry out some part of the eligibility assessment post-order.
62. This obligation would also impact CPs' ability to migrate customers to new digital services. CPs aim to keep online order journeys and agent sales conversations as quick and as simple as possible, focusing on the needs of the customer. The more elements that are added to the order journey, the more challenging it is to get customers to complete the order.¹⁹
63. If CPs are obliged to have every conversation about eligibility for the resilience solution up front, it will be considerably more challenging to persuade customers to choose new digital services voluntarily, reducing prospects of a customer-driven migration from PSTN.
64. Ofcom should amend the guidance to allow CPs to carry out some part of the identification of at-risk customers and have conversations with customers about eligibility post-order.

2.3.2 Use of Ofcom's mobile checker to support assessment of whether a customer is "at risk"

65. Ofcom proposes CPs use information available on the Ofcom mobile checker to support their assessment of whether a customer is likely to be at risk owing to poor mobile signal. We do not consider that this is likely to help CPs assess whether a customer is genuinely at risk.
66. As the signal strength threshold Ofcom uses to determine indoor signal strength is based on the characteristics of the average UK residential building, it cannot take individual circumstances such as building structure or a person's location within the building into account (many people get a signal on the upper floors but not on the lower floors).²⁰ The mobile checker will therefore return false positives and false

¹⁹ Annex 1 [§<] contains more detail about the BT order journey.

²⁰ We understand that to determine whether a customer has sufficient mobile coverage in their home to make a call, Ofcom uses a signal strength threshold (subtracted from its outdoor signal strength measurement), designed to take into account loss of signal indoors in the average UK residential building.

negatives. Given the risks involved we do not believe it can be relied upon to give an accurate result CPs on which can base eligibility for the resilience solution.

2.4 Principle 4: *CPs should have a process to ensure that customers who move to a new house or whose circumstances change in some other way are aware of the risk and the protection solution available*

67. We agree that CPs should have a process to ensure that customers who move to a new house, or whose circumstances change in some other way, are aware of the power cut risk and the resilience solution CPs make available.
68. Paragraph 3.56 suggests that to ensure customers are aware of the risk and resilience solution available on an ongoing basis, CPs should consider referring to these issues in scripts or announcements used when customers contact the CP for other matters. This recommendation is impractical and undesirable: customers calling about other matters will not want to hear about resilience issues relating to their landline service. Also, it is overly onerous to require customer service agents to provide additional regulatory information, on a topic unrelated to the customer's query, during a call.
69. Making relevant information clearly accessible on CPs' websites and in appropriate correspondence with their customers, as well as having robust processes to ensure customer service agents act when given information about changes in consumers' circumstances, will be sufficient to protect customers who move house or whose needs change in some other way.