

Treating Vulnerable Customers Fairly  
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## **Hyperoptic Response: Ofcom proposals to amend the guide to help ensure customers in debt or struggling to pay are treated fairly**

### **Introduction**

Hyperoptic welcomes the opportunity to comment on Ofcom's proposed changes to its guide to treating vulnerable customers fairly. We agree wholeheartedly with Ofcom that customers, particularly people in vulnerable circumstances, should be treated fairly, and that vulnerable customers are at most risk of harm if this is not the case. This is particularly important given the cost-of-living squeeze currently facing families in the UK<sup>1</sup>.

We are, however, mindful of the need to strike the correct balance between treating customers in debt or struggling to pay fairly on the one hand, and on the other hand, ensuring that those who do not fall into this category fulfil their contractual obligation to pay for services received. We are also concerned about striking the correct balance between informational remedies to ensure that customers are fully informed as to their options and where to get help, whilst not placing disproportionate obligations on companies to proactively identify or resolve the underlying issues causing financial vulnerability.

### **Background**

Hyperoptic is a 'Fibre to the Premises' (FTTP) network operator, with a vertically integrated Internet Service Provider (ISP) function. Our business model focuses on the delivery of gigabit capable, FTTP connectivity in dense urban environments.

At the time of this submission, our network passes over 850,000 premises and serves over 240,000 customers.

### **Consultation question**

#### **Question 1: Do you agree with the proposed revisions to our guide? Please provide your views with supporting evidence.**

As a general comment, as Ofcom notes in the guidance, there are legal obligations such as the Breathing Space Regulations<sup>2</sup> that govern certain activities in this space. Therefore, as an industry we need to be mindful that sectorial guidance does not move out of step with legal obligations. It is also much simpler, both for vulnerable customers as well as providers, not to have overlapping obligations that result in differing consumer experiences depending on the utility involved.

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<sup>1</sup> The Resolution Foundation forecast that families are facing the biggest real-terms fall in income since the mid-1970's. <https://www.resolutionfoundation.org/app/uploads/2022/03/Living-Standards-Outlook-2022.pdf> p10

<sup>2</sup> The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020

The first and most basic step that can be taken to help customers who are in debt or struggling to pay is to provide informational remedies e.g., by providing clear and prominent information about sources of free debt advice in payment and collection related communications. This is in addition to making such information more widely available e.g., on the website, so that customers can proactively seek out relevant information should they wish to do so. Firms should also recognise and respond to customer needs where these are clear. Additionally, firms should take steps to encourage disclosure where they see clear indicators of vulnerability. We are however concerned about wording suggesting that providers should “ask questions to understand the customer’s financial situation and ability to pay”<sup>3</sup> (including using the Standard Financial Statement). This appears to impose an expectation to proactively identify vulnerability. This goes beyond guidance issued by the FCA for example, who set out that “staff should take steps to encourage disclosure where they see clear indicators of vulnerability *but are not expected to go further than this to proactively identify vulnerability.*”<sup>4</sup> Providers need to be mindful to the sensitivity that financial vulnerability can elicit and cannot start probing all customers about their financial circumstances.

At paragraph 5.58 Ofcom set out that providers should seek to understand a customer's individual circumstances before instructing a debt collection agency. As above, this suggests that there is an obligation to proactively ascertain any customer’s circumstances prior to engaging in the debt collection process. Providers can only respond to information provided to them by customers and by recognising and responding to indicators of vulnerability as well as customer disclosures. This is of course in addition to signposting to customers all the help options that are available to them from the provider as well as externally e.g., debt organisations or charities that can provide free debt advice and support. It should also be noted that debt collection agencies in the UK are regulated by the FCA and may well have additional expertise in supporting financially vulnerable customers, including the option of passing the debt back to the provider and explaining that the debt is unrecoverable due to the customer’s circumstances. Therefore, engaging such agencies may be to the customer’s benefit.

By virtue of being in a section entitled “Act fairly when a customer is in debt or struggling to pay,” paragraph 4.55 appears to conflate vulnerability in respect of those who are reliant on their communications and financial vulnerability more generally. To do so would be unwise and disproportionate. If this refers only to customers who are more broadly reliant on their communications – in a comparable way to those identified as at risk under GC A3.2(b) - it would be understandable, as these customers require additional protection due to their reliance on communication services. However, when read together with footnote 77, this suggests that providers may want to treat all customers who have missed a payment as if they are financially vulnerable (or more generally vulnerable) and avoid service restrictions for them. This interpretation is then much wider in scope. If Ofcom’s intent is that any customer who misses a payment should be deemed as vulnerable and therefore service restrictions should be avoided for them this would have a disproportionate impact on a provider's ability to recover payment for services. Payment data would suggest that missing a payment cannot be automatically equated with vulnerability. In an average month, circa [X] % of customers do not make their payment on the due date. Within the first [X] days of the collections process, the percentage of customers

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<sup>3</sup> Ofcom Treating vulnerable customers fairly guide Consultation, last bullet on page 40.

<sup>4</sup> FG21/1 Guidance for firms on the fair treatment of vulnerable customers para 3.11

remaining outstanding reduces by circa [redacted]<sup>5</sup>. Despite the majority of customers utilising direct debit as their payment method, only an exceedingly small percentage of those who do not pay are direct debit customers. Were the initial failure to pay to be because of financial vulnerability, we would expect the percentage of direct debit customers to be broadly consistent with the percentage of customers who pay by direct debit across the customer base. The fact that it is not, suggests that there are other contributory factors leading to non-payment including the fact that other payments methods are reliant on the customer to proactively make the payment. It would therefore be disproportionate to effectively preclude service restrictions for all customers based on an erroneous assumption that everyone who misses a bill payment is financially vulnerable.

### Conclusion

In summary, it is important to protect customers who are financially vulnerable, particularly given current circumstances. Whilst providers can and should provide and make available to customers information about where they can seek help as well as review the options available to them, providers cannot and should not be expected to meet needs they are not aware of. Ofcom needs to give a firm signal to industry that it is not intending to introduce an obligation to proactively ascertain financial vulnerability. Ofcom should also recognise that missing a payment does not mean that a customer is financially vulnerable. Even though it may be difficult to identify customers who are financially vulnerable, it would be disproportionate to effectively preclude service restrictions for all customers based on erroneous assumptions. This is particularly the case where providers take steps to encourage disclosure if they see clear indicators of vulnerability and a customer chooses not to disclose.

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<sup>5</sup> Based on Hyperoptic collections data over [redacted]