

**Ofcom's proposed guidance on protecting access to emergency organisations when there is a power cut at the customer's premises**

**Consultation on guidance on General Condition A3.2(b)**

**TalkTalk's response to Ofcom's consultation document**

**5 July 2018**

**NON-CONFIDENTIAL**

This is TalkTalk's response to Ofcom's consultation on proposals for guidance on General Condition A3.2(b) ("the consultation") published on 24 May 2018. The response reflects TalkTalk's views as a Communications Provider and also takes account of its plans with Infracapital to invest £1.5bn to roll-out full fibre to 3m homes and businesses in mid-sized towns and cities.

## 1 Overview

- 1.1 We welcome Ofcom's decision to update the guidance for GCA3.2(b) in recognition of the changes to the way people contact the emergency services. Increasingly calls from landlines will be made over broadband and will therefore not continue to work when there is a power cut. Proportionate, clear guidance will help to protect consumers in the event of a local power cut at the same time as supporting an efficient transition to voice services delivered over IP. As Ofcom identifies in its consultation, the transition to IP voice is underway: driven by the move to full fibre broadband connections and retiring the Public Switched Telephone Network (PSTN). It is vital for industry to make these changes in order to deliver higher bandwidth connectivity to meet growing demand and to rationalise legacy networks.
- 1.2 We support Ofcom's overall approach to defining the guiding principles for GC3.2(b) compliance and its focus on ensuring specific protection for those who are dependent on their landline. We agree that most consumers will use their mobile to contact the emergency services in the event of a power cut and no additional protection on their landline will be required. An additional protection solution for landlines will only be needed for a small proportion of customers.
- 1.3 The following amendments would improve the guidance in line with Ofcom's duties and objectives:
- Limit the definition of customers who are dependent on their landline so that a protection solution will only be required for:
    - customers with disability and/or accessibility requirements in line with GC15;
    - customers with limited or no mobile signal in their homes on any network.
- Customers who do not own a mobile should be excluded from the proposals.
- Add a principle to make explicit that CPs have primary responsibility for GC3.2(b) compliance but network providers and wholesale partners also share responsibility for ensuring continued access to the emergency services.
  - Amend Principle 4 to make clear that the only relevant changes in circumstances are those that would affect a customer's reliance on their landline.

- 1.4 In addition, we consider that Ofcom should conduct a further review following this consultation to ensure consistency between the regulation of the services offered by OTT providers and traditional CPs.

## 2 Comments on the basis of Ofcom's proposals

### Regulatory obligations and duties

- 2.1 We agree the considerations and regulatory principles set out at §§2.3-2.4 are relevant to Ofcom performing its duties in relation to developing guidance and monitoring compliance with GCA3.2(b). Ofcom notes that proportionality and encouraging investment and innovation are important factors for it to take account of in developing the principles. We consider that these factors are primary and should be given equal weight alongside "the circumstances of citizens who to appear [Ofcom] as needing special protection." For example, appropriately protecting consumers who are dependent on their landline will need to be achieved at the same time as managing costs in order for a solution to be proportionate and encourage investment and innovation. Excessively high cost solutions would not be in consumers' interests as this could lead to higher prices and impede the roll-out of new technologies. These factors should therefore be given equal weight and explicitly recognised in the guidelines to give industry certainty about Ofcom's approach to compliance.

### Scope of the proposed guidelines

- 2.2 We note that the guidelines are not intended to be definitive and only cover compliance with GCA3.2(b). We also note that the new guidelines will take precedence where there is overlap with the 2007 "Guidelines on the application of PATs obligations to VoIP service providers." This is a pragmatic approach but we also consider it would be appropriate for Ofcom to conduct a further review of the obligations of traditional CPs and OTT providers delivering voice services. This review should take account of technological and market developments to support competition and ensure consumers are appropriately protected.
- 2.3 We understand that GCA3.2(b) applies to businesses as well as residential consumers. We anticipate, given the principles proposed, that only a very small number of businesses would be likely to require a protection solution. We expect that some sole traders may require a protection solution but larger businesses are by nature likely to have greater communications resilience.

### To whom the principles apply

- 2.4 Ofcom explains at §2.31 that CPs (including resellers and OTT providers) offering a Publically Available Telephone Service (PATS) and providers of Public Electronic Communication Networks (PECN) used for a PATS are subject to GCA3.2(b). All such providers are therefore required to take "all necessary measures to ensure uninterrupted access to emergency

organisations.” As discussed below, it would be helpful for the principles to reflect more directly that they apply to a range of parties.

- 2.5 We note that the proposed guidance principles focus on the responsibilities of CPs, rather than network providers. We consider that this is broadly appropriate as CPs have the relationship with, and responsibilities to, the end users that enter into contracts with them. However, we also note that the effectiveness of certain resilience solutions will depend on the actions of the network provider and possibly a wholesale partner. For example:
- if a battery back-up solution is provided with the Customer Premises Equipment (CPE), continued power supply at the cabinet and the exchange will need to be supported by the network provider for the solution to work; and
  - a reseller may rely on its wholesale partner to provide products which support the delivery of a protection solution.
- 2.6 Ofcom recognises that there are circumstances where responsibilities may be shared between parties. It also recognises that the ability of a CP or network provider to implement different solutions will vary depending on its relationship to the underlying network and the end customer. We consider that the effectiveness of Ofcom’s principles may be undermined if the nature of the responsibilities of different parties is not made more explicit. We suggest that a further principle would provide clarity by stating “CPs (including resellers) have primary responsibility for compliance with GC3.2(b); network providers and wholesale partners should make reasonable efforts to support CPs (including ensuring network power supply and suitable equipment as appropriate).”
- 2.7 The compliance obligations associated with providing a voice service have evolved over time as technology has developed. As noted above, we consider that Ofcom should conduct a further review following this consultation to ensure consistency between the regulation of the services offered by OTT providers and traditional CPs, where appropriate.

### 3 Comments on the proposed principles

***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***

- 3.1 Principle 1 is appropriate and consistent with Ofcom’s objectives. We support the requirement that the solution should enable access to emergency organisations for a minimum of one hour based on the evidence Ofcom presents about the average length of power cuts.
- 3.2 The suggestion at §3.10 that “CPs should take appropriate steps to identify and address the needs of customers who would benefit from additional protection” beyond one hour is not well founded. Ofcom has not presented

any evidence about the incidence of households with “a history of long duration of power outages” and we anticipate that the number would be very small. We therefore do not consider that it is proportionate for Ofcom to include the general expectation that additional measures should be included in the protection solution to address the needs of a group of customers that has not been clearly defined or evidenced. Instead, we think that the requirement that CPs inform customers about the duration of protection offered by the solution (as described at §3.11) is sufficient for them to be able to assess if it meets their needs.

- 3.3 We agree that CPs should be able to plan their own approach to maintenance of the protection solution. We note that this could include communication with the customer about actions they will need to take to ensure the continued effectiveness of the solution.

***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***

- 3.4 Ofcom’s proposal that CPs should design a solution suitable for customers’ needs is reasonable. We agree that this could include informing customers of any limitations of the solution and any reasonable steps they need to take individually to maximise protection. We support Ofcom’s assessment that it would not be proportionate to require the CP to provide a corded phone if required for the solution to work, but the customer should be made aware that they would need a corded phone in order to benefit from the protection.
- 3.5 We agree that a solution should be provided free of charge to those customers who are dependent on their landline due to disability or accessibility requirements. In our view dependency on a landline is indicated by registration for Priority Fault Repair Service and this should be the primary indicator used to determine if a protection solution is required. As CPs already hold the information about whether customers are registered for Priority Fault Repair under GC C5 (previously GC15), this requirement will be practical to implement building on existing systems and processes.
- 3.6 We consider that customers who meet the following additional criteria listed at §3.33 will already be registered for a Priority Fault Repair service (or eligible to apply at the same time as indicating that they require a protection solution due to dependence on their landline):
- they use a textphone on a fixed line;
  - they are signed up to network controlled calling and/or 123 or 118 barring (or similar);
  - they have been identified as a person within scope of the Chronically Sick and Disabled Persons Act 1970; and/or
  - they identify as having a disability or accessibility requirement that would indicate they are more reliant on their landline.

- 3.7 With regard to telecare (the remaining criteria listed at §3.33), we note that Ofcom previously concluded in 2014 when considering the scope of GC15 that it would not be proportionate to extend eligibility to cover all users of telecare systems.<sup>1</sup> We consider Ofcom's reasoning set out at §§4.51-4.61 of that document still stands and it is not proportionate to require CPs to provide protection solutions for all telecare users. As noted in the previous statement, the needs of telecare users who are dependent on their landline due to disability will be addressed as they will already be eligible for Priority Fault Repair. We note that Ofcom has not presented any evidence that would justify a deviation from the previous conclusions in its 2014 Statement on the scope of GC15. GC15 requirements for CPs specific services (as set out at §3.32) should be considered a reasonable proxy for identifying customers with disability and/or accessibility requirements that indicate they are reliant on their landline and we would expect this would include telecare users, where appropriate.
- 3.8 The only additional customers that should be eligible for a protection solution are those with limited or no mobile signal from any network. As we do not have our own mobile network, we would be likely to rely on the Ofcom mobile coverage checker, and possibly an on-site check at installation, to implement this element of the guidance. It will also be important to ensure that customers understand that national roaming rules for contacting the emergency services mean that they will be able to call 999 and 112 so long as they have coverage from a single operator.
- 3.9 We do not agree that customers who do not own a mobile should be included in the group of customers considered eligible for a protection solution free-of-charge. This group of customers has the option of buying a mobile to address the risk that they need to contact the emergency services in the event of a power cut. We note that Ofcom estimates that "approximately 2 million adults live in a home with a landline and no mobile phone" (§3.35). It is not proportionate and is overly intrusive for Ofcom to require CPs to provide this group of customers with a protection solution. We note that the protection solution is likely to be less effective at addressing the risk that the customer cannot contact the emergency services in the event of a power cut than a basic low-cost mobile with pay-as-you-go SIM. A mobile would provide longer battery life and enable to customer to make any calls, not just to the emergency services. We also note that customers can make calls to the emergency services from a mobile without an active SIM.

---

<sup>1</sup> *Access to Electronic Communications Services for Disabled Users*, Ofcom statement and consultation, 2 December 2013.

***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***

- 3.10 The proposed guidance on identifying at risk customers and engaging in effective communications allows CPs to design their own processes to meet the compliance obligations. When designing the sales journey and other processes we will need to have regard to how we raise understanding and awareness while at the same time not over complicating and extending the time required for customers to complete the process. It is important that the requirements are not unduly onerous in order to ensure we effectively serve our customers' needs. Similar considerations will apply when determining the means and frequency with which we inform our customers of the risks and options available.
- 3.11 We question whether it is proportionate to require CPs to enable customers to request the solution if they do not meet the eligibility criteria. By nature these customers will not be dependent on their landline and will have access to other means of contacting the emergency services. While we understand that it may be desirable for a protection solution to be available to all, Ofcom has not presented any clear justification for why it is necessary to meet its policy objectives.

***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 protection solution available***

- 3.12 We agree that customers' circumstances may change in a way that means they need a protection solution when they had not previously. For example, they may move from a home where voice is provided over copper using the PSTN to a home where voice is delivered over broadband. In these circumstances, it will be important to ensure that similar checks to those carried out during the new customer sign-up process are performed to establish if the customer requires a protection solution.
- 3.13 We consider that the assessment criteria for Principle 4 should align with those applicable under Principle 3. Relevant changes in circumstances should be restricted to those that have the potential to affect the customer's level of dependence on their landline. To aid clarity and transparency, we consider that it would be appropriate to make the principle more explicit in this regard by replacing "in some other way" with "in a way that may affect their level of dependence on their landline."
- 3.14 We understand Ofcom's expectation that CPs should take actions to ensure customers are aware of the risks relating to contacting the emergency services during a power cut and the protection solutions available. We agree that rather than Ofcom being prescriptive about the approach, CPs should

have the flexibility to determine the appropriate way to achieve this objective within the context of their own operations.