

[Redacted]

22 November 2019

By email only to: [Redacted]

**Telefonica UK response on the Consultation on Treating vulnerable customers fairly: A proposed guide for phone, broadband and pay-TV providers.**

Dear [Redacted],

Please find enclosed Telefonica UK Limited's ("**TUK**") response to Ofcom's consultation on the proposed guide in relation to treating customers fairly ("**the guide**").

TUK welcomes the opportunity to provide a response on the guide, which provides a clearer indication of Ofcom's expectations of providers in complying with General Condition C5: Measures to meet the needs of vulnerable customers and end-users with disabilities.

TUK wishes to highlight, that there appears to be a tension between Ofcom's proposals and providers' responsibilities under data protection legislation and this does not appear to have been fully addressed by Ofcom in the guide and associated best practice points, this is expanded upon below. It would be helpful if Ofcom can confirm whether the Information Commissioners' Office (ICO) have specifically been engaged on the guide, in particular Section 5.

As a general comment; further, practical guidance and information would be welcomed on what providers can do when customers refuse to provide consent, or an indication of Ofcom's expectations in adhering to the requirements in this scenario.

TUK is committed to supporting vulnerable customers and remains available to provide further clarification and support, on both the attached response and any ongoing work by Ofcom regarding vulnerable customers.

Yours sincerely,

[Redacted]



**Annex 1**

Section / paragraph	Requirement	Comment
Section 4: Identifying vulnerable consumers:		
4.7	It is important that providers take steps to improve how they identify vulnerable consumers. While these steps might not result in all such consumers being identified, we would expect to see substantial improvements in the numbers who are. If not, we will consider further interventions to bring about improvements.	TUK notes that Ofcom has not qualified what it means by "substantial improvements in the numbers". In particular, where customers may be vulnerable but have not provided consent for the information to be recorded and would therefore, not be reportable. TUK asks Ofcom to clarify how they would be looking to measure this requirement particularly in light of the expectation that they expect to see "substantial improvements".
4.10	We expect providers to offer a range of communication channels to customers. These should include telephone, post, email, webchat, video call and text. Providers should also ensure customers can carry out important account activities such as sales, billing or complaints using these channels. As noted above, providers are also required to provide text relay services and bills in large print or Braille.	TUK requests clarification on this point, the phrasing of the requirement appears to suggest that <i>all</i> the options should be provided, in addition to others, whereas it would seem proportionate that a selection of the options listed would be appropriate (and any additional services that providers may offer).
4.14	<p>We also encourage providers to do what they can to avoid vulnerable consumers having to explain their personal circumstances each time they contact them, which could be frustrating and/or distressing.</p> <p>a) Customer service advisors should make clear and detailed notes on their internal systems.</p> <p>b) Any recorded information on a customer's personal circumstances should be made available to customer service advisors when they speak to that consumer.</p> <p>c) Vulnerable customers should not need to repeat themselves when they are put through to another person or department. This can be achieved by customer service advisors discreetly passing on relevant information.</p>	<p>TUK has concerns in respect of part a) of the requirements. Firstly, it should be made clear that the information should only be recorded with the knowledge and consent of the customer; secondly, it would not be necessary that <i>all</i> staff have access to the comprehensive information captured on the systems; for example, it may be more relevant to ensure that any adjustments are easily accessible for all staff but the reasons behind requiring the adjustments less so.</p> <p>We would welcome more guidance from Ofcom in terms of how we can comply with our data protection obligations whilst ensuring that we meet the requirements set out in this paragraph in situations, for instance,</p>

	<p>d) A direct contact should be available for consumers who would benefit from this.</p>	<p>where the customer has not provided consent.</p> <p>In respect of part c) this needs to be couched in more robust terms, as currently it does not appear to take into account securely recording sensitive information and again, the requirement to obtain customers' consent to enable advisors to do this.</p>
4.15	<p>Some providers are taking steps to also improve face-to-face interactions with customers. Examples include checking in advance if someone might take longer to answer the door, deploying engineers for relatively minor issues like installing equipment, where this would help the customer, and having dedicated sessions with British Sign Language interpreters in-store or made available digitally.</p>	<p>Has the interpreter community been engaged in this process? TUK's understanding is that generally the service is only available Monday to Friday, and confirm with the interpreter community general availability and any challenges that they believe they may face in providing support, particularly in-store sessions. An acknowledgement of regional availability, or lack thereof, would also be useful for Ofcom to flag/acknowledge.</p>
4.16	<p>We encourage providers to ensure their key written communications, including web chat, bills, terms and conditions, policy documents and contracts, are clear and use plain English.</p>	<p>It would be useful for Ofcom to acknowledge that in some circumstances it may not be possible to use plain English, particularly in contracts or terms and conditions where it may be necessary to use legal terminology. Could Ofcom consider using "where possible" to caveat this requirement.</p>
4.18	<p>A lot of people use the internet to access information. Providers' websites should therefore be easy to understand and navigate, with useful information and access to help, support and services. We also recommend that websites are tested with screen readers to ensure they work correctly for customers with visual impairments.</p>	<p>In addition to the recommendation regarding screen readers; Ofcom may wish to highlight keyboard only compatibility, which providers could also consider when developing their websites.</p>
4.26	<p>We encourage providers to send a reminder of the available help, support and services to existing (or re-contracting) customers on a regular basis, for example, once per year with billing or other customer service communications. We are aware that providers in the energy sector give their customers this sort of reminder alongside their annual account update. One example we have observed in the energy sector states: 'Let us know if you need extra help. If you're elderly, disabled, sick... we can help</p>	<p>The requirement under this paragraph is not entirely clear. Is Ofcom specifically referring to service message types of communications? There may be an issue where providers are dealing with opted out customers. Advertising of additional support and services may be deemed as a marketing message. In line with obligations under PECR and GDPR providers would not be able to</p>

	make your life easier. Sign up here [link] to get help that best suits you'.	contact these customers, has ICO provided any comment on this point?
4.31	So, we encourage providers to build links with these types of organisations and, where possible, have direct telephone or digital routing available for consumers who might need urgent assistance. In less urgent circumstances, providers could promote third-party services over the telephone or send links to useful information.	Whilst TUK doesn't necessarily object to this point, we note that there may be issues relating to terms of customers' consent. Having direct telephone or digital routing, promoting third party services and sending links may require customers' consent and this could become quite challenging and difficult to monitor and manage.
4.33	Vulnerable consumers are sometimes helped by people such as relatives or carers. We encourage providers to be sensible when communicating with these people when required so they can deal with queries or issues on behalf of consumers without unnecessary barriers.	It would be useful if Ofcom can provide examples of what they mean by "sensible", perhaps by illustrating some behaviours that have been observed which would not align to the expectation in this regard. Also, an illustration of what Ofcom would consider to be "unnecessary barriers", to ensure an alignment of approach and expectations. There should also be recognition within the requirement that providers also need to adhere to their data protection obligations.
Section 5: Recording information		
5.7	When recording information about customers, providers will need to comply with relevant data protection legislation, including the General Data Protection Regulation. <sup>23</sup> Providers should take steps to ensure they comply with this legislation and establish an appropriate basis in law before personal data is recorded. <sup>24</sup> Where providers think it would be appropriate to record information about a customer's vulnerability or needs, they should discuss it with them first.	It would be helpful if Ofcom could draw out, in Section 4 of the guide that when recording information it is where providers consider it appropriate to do so, as this is not sufficiently explicit. This requirement could be seen to contradict other requirements in the consultation. Providers are required to take detailed notes about vulnerable customers, to monitor (or profile) where necessary, but then this paragraph suggests that Ofcom have not really considered or demonstrated consideration of the practicalities of actually complying with data protection legislation and having to comply with the Ofcom requirements. Many of the things that Ofcom suggest may not be practically possible without the customer's consent. Has this been considered?

Section 6: Monitoring performance		
6.3	<p>Providers will generally already monitor the service being provided to customers by their employees. However, we expect such monitoring to include assessing the quality of customer service being delivered to vulnerable consumers.</p>	<p>There is an indication that Ofcom expect quality of customer service to be assessed but no examples of what this means for providers and whether Ofcom are seeking specific measures to be assessed, further clarity on this point will enable providers to include relevant measures in their monitoring framework.</p>
6.4	<p>In relation to evaluating frontline staff performance, we encourage providers to consider the following practices, some of which we have observed already being used by various providers.</p> <ul style="list-style-type: none"> <li>• Include measures in their performance measurements relating to the service provided to vulnerable customers. This could be linked to the providers' annual appraisal processes.</li> </ul>	<p>Some examples, or an indication of, the types of measures that Ofcom have in mind would be welcome here, to ensure alignment of expectations.</p>