

ANNEX 1

Treating vulnerable consumers fairly. A proposed guide for phone, broadband and pay-TV providers.

giffgaff comments on the suggested measures set out in sections 3-7

SECTION	OBLIGATION	COMMENT
3.6 – 3.9	Ofcom states that providers must take an “inclusive approach” to both determining whether someone is vulnerable and monitoring vulnerability over time.	Ofcom has provided a very broad and non-exhaustive list of who should be considered vulnerable and there is also an onus on the provider to understand and to be able to identify customers who become vulnerable over time. These obligations and others (for example 4.7 and 5.6) place a duty on providers to have monitoring systems in place on all customers in order to identify vulnerable customers on an on-going basis. This raises GDPR issues in terms of a provider’s ability to monitor (and potentially profile) customers, particularly when often identifying vulnerabilities may involve processing/collecting special category

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		data (for which specific customer consent is required). We would expect from Ofcom a) further guidance on what such monitoring systems and processes should consist of and b) how Ofcom suggests providers should reconcile their GDPR obligations with such monitoring activities.
4.6	Providers are expected to train employees to “listen carefully and be aware of the potential characteristics, behaviours or verbal cues of someone who might be vulnerable”.	No examples are provided by Ofcom of what such “characteristics, behaviours or verbal cues” might look like. We would expect Ofcom to provide a non-exhaustive list to better inform the training provided to our employees.
4.7	Ofcom express the importance of providers taking steps to improve how they identify vulnerable consumers and Ofcom “would expect to see substantial improvements in the numbers who are identified”.	Same comment as 3.6 – 3.9 above.
4.10	Providers are expected to offer a wide range of communication methods and these <u>should</u> include webchat, video calling and text. Further, providers are expected to ensure customers can carry out important account activities using them.	We do not currently offer webchat or video calling. Whilst we would not rule out offering it in the future, we currently do not think it reasonable or proportionate that we would be expected to offer all methods set out in section 4.10.

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4.14(a)	Advisors “should make clear and detailed notes on internal systems” to avoid vulnerable consumers having to explain their personal circumstances each time.	We would expect guidance as to whether consent is required before doing so and how detailed notes can be reconciled with the rules around special category data under GDPR.
4.14(c)	So that vulnerable consumers don’t have to repeat themselves, the Consultation suggests that advisors should “discreetly pass on relevant information”	We would expect guidance as to what might constitute an acceptable practice in this context, and if “discreetly pass[ing] on relevant information” is preferred over making clear and detailed notes on internal systems.
4.14(d)	The Consultation suggests that “a direct contact should be available for consumers who would benefit from this”	We do not believe it sets a useful precedent to restrict a vulnerable consumer to an individual contact and we would find it difficult to offer this service. Shift patterns and annual leave cannot guarantee that a particular advisor will be available at a given time and so this may end up leading to increased frustration for the vulnerable consumer.
4.23	“collaboration with relevant charities on how to promote these services effectively” is suggested.	We agree with the sentiment of this suggestion but would expect some clear examples of what good and successful “collaboration” in this regard might look like and how it might work in practice.
4.26	The Consultation encourages providers to send reminders to customers stating the available help, support and services to existing (or re-contracting) customers on a regular basis.	This obligation may cause issues where the relevant customers have opted out of receiving marketing (as the advertising of additional support and services is likely to be

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		deemed as marketing from a PECR/GDPR perspective). We would ask that this measure is reconsidered in light of the consent issues.
4.30	The Consultation suggests that in some cases it “may be appropriate to refer customers to a third-party organisation such as Citizens Advice, debt charities, mental health charities, the Samaritans.”	We would expect Ofcom to provide an agreed central list of charities and third-party organisations that providers can signpost vulnerable consumers to.
4.31	Where possible, providers are encouraged to build links with “these types of organisations and..have direct telephone or digital routing available.”	This requires the consent of a chosen third party and the individual (which would need to be recorded). We would also require guidance around acceptable third parties and why we might route to one but not another or choose one over another when dealing with a vulnerable consumer.
4.33 and 4.34	Providers are encouraged to be “sensible” when communicating with relatives or carers to allow them to deal with queries on behalf of vulnerable customers. Relatives or carers should “pass appropriate security measures to access a customer’s account”	We would expect more guidance in relation to this measure to ensure that we do not breach our data protection obligations. i.e. what constitutes “sensible” and does “appropriate” security amount to the same security as if it were the vulnerable consumer or should the third party be subject to enhanced security vetting? Would providers be permitted to deal with a third party where they have passed the regular account security questions but we

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		know the individual not to be the account holder?
4.36	Providers are encouraged to offer other third-party services, including the ability for a customer to switch any third-party permissions on and off and set up additional notifications for the person acting on their behalf, such as potential spending or usage alerts.	This measure involves marketing additional third party services to the vulnerable customers, which as highlighted above (see 4.26) poses data protection compliance issues where the relevant customers have opted out of receiving marketing messages from either the provider or third parties. In addition, clarity around the types of “third-party services” envisaged by Ofcom other than the two examples stated in 4.36 would be useful as it appears that additional processes and technical capabilities would need to be built in, in order for us to be able to comply with these obligations. It may be that this measure is disproportionate based on the development work required.
5.4	Providers are expected to record customers’ needs accurately and ensure this information is visible to frontline staff on internal systems.	We would require guidance on whether consent is required from the vulnerable consumer in order for such information to be noted and made visible to all frontline staff. The Consultation states “subject to data protection legislation”. We would expect Ofcom to obtain a clear indication from ICO that what is being suggested does not contravene data protection law.

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5.6	Providers are to update systems when a consumer's circumstances change and they are no longer deemed to be vulnerable.	Same comment as 3.6 – 3.9 above.
5.7	The Consultation states that “where providers think it would be appropriate to record information about a customer’s vulnerability or needs, they should discuss it with them first.”	This measure suggests that consent <i>is</i> needed before any information is recorded but we would expect some clarity here. If indeed consent is required, what is a provider expected to do when it is not given?
7.5	Providers are encouraged to provide training “to all staff members on their policies and procedures for treating customers fairly.”	Are Ofcom suggesting all staff members, or all staff members who are consumer facing? To provide training to the entire workforce (for example, the facilities team who do not deal with consumers) might not be viable or proportionate.
7.12	The Consultation highlights the need for knowledge to be refreshed by retaking training.	No guidance is provided around the frequency, e.g. annually or otherwise.