

## Comms Council UK Guidance on Uninterrupted Access to Emergency Services for Vulnerable Persons

### About Comms Council UK

Comms Council UK is a membership-led organisation that both represents and supports telecommunications companies that provide services to both business and residential customers in the UK. We keep Britain talking in its various guises by providing or reselling voice services over data networks (VoIP) as well as other “over the top” applications including instant messaging and video.

The membership is a mixture of network operators, service providers, resellers, suppliers and consultants involved in a sector that is diversifying rapidly.

Comms Council UK (formerly known as ITSPA) represents its members at a policy level, builds coalitions to collaborate on industry initiatives and provides a platform to help members prepare for change, learn about new trends and develop new business relationships.

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### Background

In 2018, the Office of Communications (“Ofcom”) issued guidance on the interpretation of the obligation on providers for uninterrupted access to the emergency services, in the event of a power cut and specifically in context of vulnerable persons<sup>1</sup>.

Some customers may self-identify, and it becomes a question of validating their entitlement. Others will have to be proactively identified in order to secure compliance with this obligation.

The Power Cut Statement is not definitive; it does not dictate a rigid set of qualifying criteria, merely sets down a series of principles that have to be met. This means that each and every customer needs to be assessed for their vulnerability and then their need for a remedy based on their own individual circumstances.

This Guidance seeks to provide an outline of a process to catch the majority of persons in scope of the regulation, but its non-exhaustive.

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<sup>1</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/123118/guidance-emergency-access-power-cut.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/123118/guidance-emergency-access-power-cut.pdf) [accessed 6<sup>th</sup> November 2018] (the “Power Cut Statement”)

Additionally, the obligations apply equally to businesses and domestic consumers. However, Ofcom have noted that a sense of proportionality is required in relation to businesses<sup>2</sup>. In practice, this means that vulnerable sole traders and home workers are likely to be in scope, or an office in a not-spot with a vulnerable person, however, traditional business premises are unlikely to be in scope with the onus on the employer to provide appropriate resilience.

There is no specific statutory definition of vulnerable. Indeed, each regulatory body or government department with an interest in the subject has a subtly different approach to the matter.

The Ofcom website<sup>3</sup> has this to say about consumer vulnerability (summarised)

Some consumers of communications are, due to their circumstances, vulnerable to financial detriment (e.g. mis-selling), isolation from family and friends, and/or inability to participate in wider society.

Vulnerable customers and groups include *"those who are disabled, elderly, on low incomes or living in rural areas, as well as [...] any others whose circumstances appear to put them in need of special protection."*

Another trade association's definition<sup>4</sup> is;

*"people who find it difficult to make an informed decision about the choices offered to them – choices such as changing a utility supplier or making a charitable donation. This may be those who have a diagnosed condition like dementia; those who have an undiagnosed or temporary mental health condition such as severe anxiety; those with learning difficulties or literacy issues; or those who have problems understanding the language"*

It should also be noted that vulnerability is not a static state and can change over time.

Taking into consideration the above, Ofcom's prior consultation on services for disabled people<sup>5</sup>, and a number of other references, Comms Council UK has adopted the following definition;

***A vulnerable customer is one whose circumstances make them more vulnerable to financial detriment or social isolation than a typical customer. These circumstances could include old age, physical or mental disability, low income, geographical location, language problems, bereavement, or any other circumstance or condition which causes impairment.***

However, once defined, there are two further steps.

1. Identifying vulnerable prospects and customers.
2. Assessing whether their vulnerability makes them more dependent on their landline for access to the emergency services than they would otherwise be.

We take these in turn.

## Identifying Vulnerable Prospects and Customers

Key words and phrases when interacting with customers may be used to help recognise those with needs and vulnerability. Below is a non-exhaustive list of key words that Ofcom identified<sup>6</sup>.

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<sup>2</sup> Power Cut Statement §3.43-3.45

<sup>3</sup> <https://www.ofcom.org.uk/about-ofcom/what-is-ofcom/consumer-vulnerability> [accessed 6<sup>th</sup> November 2018]

<sup>4</sup> [https://dma.org.uk/uploads/call-centres-vulnerable-consumers\\_final\\_53d7c237289c1.pdf](https://dma.org.uk/uploads/call-centres-vulnerable-consumers_final_53d7c237289c1.pdf) [accessed 6<sup>th</sup> November 2018] page 3.

<sup>5</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0015/81132/guidance.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0015/81132/guidance.pdf) [accessed 6<sup>th</sup> November 2018]

<sup>6</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0015/81132/guidance.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0015/81132/guidance.pdf) [accessed 6<sup>th</sup> November 2018]

accessible	dexterity	autism	paralysed
accessibility	mobility	dyslexia	large format bill(s)
disability	physical disability	mental health	through-connection
disabilities	visual impairment	wheelchair	long term hospital stay
disabled	visually impaired	third party bill	hospital
blind	sight loss	third party	carer
blindness	SignVideo	bill management	care worker
deafness	Sign Video	priority repair	care assistant
hearing	NGTS	priority repair service	manage account
hearing loss	Next Generation Text service/relay	text emergency services	managing your account
hearing aid	textphone(s)	free directory enquiries	General Condition (of Entitlement) C5
impairment	text relay	blue badge	
hearing impairment	video relay	disablement	
hearing impaired	screen reader	impaired	
hearing loop	sign language	impediment	
braille	British Sign Language	learning difficulty	
large print	BSL	learning disability	

There is also some help from the recent Guidance for communications providers in the Power Cut Statement;

*Customers can be identified [...] because, for example:*

- *they have more of a propensity to contact emergency organisations [...];*
- *they are registered (or indicate a need for) some of the measures set out in General Condition C5 such as:*
  - *Priority Fault Repair Service;*
  - *bills and contracts in alternative formats such as large print and Braille;*
  - *third party bill management;*
  - *free directory enquiries;*
- *they have a telecare system (or similar);*
- *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; [...]*

The precise mechanism for identifying a vulnerable prospect or customer will be dependent on the brand image and means of contact for each individual provider, however, listening for certain keywords as listed above, or searching for the characteristics shown herein, will likely provide a majority of persons deemed to be “vulnerable”.

**Identifying Reliance on a Landline**

Once a person has been identified as vulnerable, the second step is to identify whether they have a greater reliance on their landline – specifically a landline that doesn’t have power provided by the local exchange and/or with network terminating equipment that can run independently of mains electricity.

Again, the Power Cut Statement provides some guidance on the matter;

- *[..] increases the risk that they would rely on their landline in a power cut; they identify as having a disability or accessibility requirement that would indicate they are more reliant on their landline;*
- *they have disability or accessibility requirements that mean they are more reliant on their landline; and/or*
- *they do not have an alternative method of calling emergency organisations*
- *they do not own a mobile; or*
- *they own a mobile but have limited or no mobile signal in their homes (on any network) and Voice over WiFi does not connect to the emergency services.*

This part of the process is about identifying that they are more, or exclusively, reliant on the landline for access to the emergency services.

For example, a vulnerable individual that has a mobile with acceptable signal will not be in scope of these requirements. A vulnerable individual in a mobile not-spot, would be in scope.

## **Process**

This is non exhaustive, because the entitlement is engineered to be contingent on individual circumstances, however, meeting one of these criteria will class them as vulnerable;

## **Determinative**

1. They have more of a propensity to contact emergency organisations than the average person;
2. They are registered (or indicate a need for) some of the measures set out in GC C5;
3. They have a telecare system (or similar);
4. They use a textphone on a fixed line;
5. They have been identified as a person within scope of the Chronically Sick and Disabled Persons Act 1970;

## **Indicative**

1. They are signed up to network-controlled calling and/or 123 or 118 barring (or similar);

Specifically, this last point is taken as being indicative because the protection is there to “*support customers who may have short-term memory loss, learning difficulties, dementia or an Obsessive Compulsive Disorder*”<sup>7</sup>. However, it is an anti-fraud or mis-use mechanism for the general public too. Identifying this in isolation should be a trigger for more extensive investigation of the users’ needs, but is not automatically determinative of vulnerability.

Then the second stage is relatively simple and only required if they are identified as vulnerable;

## **Qualification**

1. Is the landline their only means of contacting the emergency organisations?
2. Would that access be unavailable in the event of a power cut?

Both questions must be a yes in order to qualify for the remedy. Note that as BT makes changes to the PSTN, or as the end user upgrades services or changes suppliers for part of their infrastructure, this may change, and the end user must be informed to engage with their voice supplier if any of the equipment or service changes, prior to it changing.

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<sup>7</sup> Power Cut Statement FN55

## Design of the Remedy

Comms Council UK considers that the majority of vulnerable persons that qualify for this remedy will take a bundled package from a major vertically integrated provider, such as TalkTalk or Sky.

While Ofcom recognised that an end user which takes voice and data from different suppliers presents a challenge<sup>8</sup>, it did not provide definitive guidance on how over-the-top voice providers can discharge their obligations in this regard.

There are two mechanisms which we believe satisfy the guidance in the Power Cut Statement;

1. Provide a cheap mobile phone. In theory, the phone should still access the emergency services without a SIM card in it, avoiding the issue of expired SIM-only subscriptions. The end user must be advised to keep it charged and powered on at all times. Communications Providers can do test calls to 999/112 under BT's established procedure.
2. Provide independent power (e.g. a battery) for the elements under the control of the voice provider – i.e. the handset and inform the end user of their data providers' obligation to do the same.

It is also important to note that the Ofcom document is just guidance; it has no specific force itself in regulation and merely outlines Ofcom's expectations in relation to how the 'uninterrupted access to the emergency services' obligation is discharged. Guidance from Ofcom has weight in enforcement proceedings; however, it is not binding. To paraphrase the case law, "Guidance puts a provider on notice that the starting point of an investigation is the guidance"<sup>9</sup>.

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<sup>8</sup> §3.32-3.38 of the Power Cut Statement

<sup>9</sup> §122 & 132 *British Telecommunications plc v Office of Communications* [2016] CAT 22