

CPW response to consultation: Service level guarantees: incentivising performance

Dear Mike

This is Carphone Warehouse's (CPW) response to Ofcom's recent consultation on service level guarantees.

Overall, we see the proposals as a significant and very useful step forward in delivering better outcomes for UK consumers particularly improved quality. Openreach has shown over the last two years (and BT beforehand) that it neither delivered the quality of service CPs/customers wanted nor delivered an equal quality to other CPs as it did itself¹. These proposals will help start to create and increase incentives for these problems to be addressed.

Whilst we think the new regime good, we think that it could be improved in a number of ways to more fully deliver the consumer benefits that Ofcom is rightfully aiming for. We see potential improvement in, for example: the products/services to which the new compensation rules will apply; the type of poor performance that is compensated; and the quantum of the compensation.

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Our response to each of the questions is described below. We have included a short summary at the end which explains which of the improvements we believe need to be addressed in this phase of the work and which should wait.

Question 1: Do you consider that the General Principles set out above are appropriate or are there other principles which should be considered?

We think the principles² Ofcom has outlined are broadly about right. However, there are a number of areas where we think the principles need to be augmented or altered. These are described below. We think it important that these principles are refined ✂.

1. Sufficient incentive on Openreach

Ofcom's primary concern appears to be (rightly in our view) that the existing SLGs do not provide sufficient incentive on Openreach to improve service e.g.

¹ Although equivalence of input applies to many Openreach products the rest of BT (RoBT) does not use some of these products at all (e.g. RoBT self-provide space whilst other CPs use co-mingling) or in different ways (e.g. RoBT do not use MPF to provide consumer line rental services). This means that BT has a high incentive to reduce the quality of these services

² Consultation para 3.3

- “Ofcom considers that Openreach’s contracts for WLR, LLU and Ethernet services do not yet provide sufficient incentives for Openreach to maintain an appropriate level of performance”³
- “the [current] levels of compensation are insufficient to either compensate the CP or incentivise Openreach to provide better service”⁴

We think that this objective (compensation levels should be sufficient to incentivise Openreach to deliver an appropriate level of service) should be explicitly included in the principles.

Without it being included we believe that the principles will not act as a sound basis for any future review. For example, if it were felt that performance levels were below an appropriate level then the only basis that Ofcom would have for increasing levels would be if the compensation level were less than an average CPs loss (which we know is difficult to accurately quantify) ⁵.

2. No compensation until service levels agreements are breached

The first principle reads: “when agreed service levels are not met, make provision for compensation ...”. This implies that compensation should only be paid when certain service levels are not met. This principle is reflected in some of the proposals e.g. no payment on faults unless repair time exceeds SLA. We fundamentally disagree with this principle for several reasons and feel that it will not achieve Ofcom’s objectives⁶.

- Firstly, this allows Openreach to avoid fair and reasonable compensation payments by setting low SLAs (which they have done historically and continue to do)
- Secondly, this is inconsistent with Ofcom’s objective for Openreach’s performance to improve since there will be no (or insufficient) incentive for Openreach to improve service beyond the SLA even if the SLA is increased significantly⁷
- Lastly, it does not reflect the loss to CPs since losses (e.g. cost of customer service) are not limited to when quality falls below an SLA.

³ Consultation para 1.5

⁴ Consultation para 1.8

⁵ In theoretical terms (i.e. economics), the level of compensation that will deliver the ‘optimal’ level of quality and will so maximise consumer welfare (i.e. difference between willingness to pay and cost to serve) will be at the quality level at which the cost of incremental additional quality equals the benefit of incremental additional quality. Therefore, the ‘optimal’ level of compensation will depend on both the benefit of incremental quality (or conversely the loss due to poor quality) as well as the cost of delivering the incremental quality. Obviously, actually quantifying the cost of delivering additional quality is difficult and complex but it is worth having this in ‘the back of one’s mind’ when considering appropriate compensation level. However, what is clear from this relationship is that the appropriate quality level depends on the cost of delivering better quality and, just as the cost of better quality is included in the principles, so should the incentive/cost of better quality also be included

⁶ This approach implies that either Openreach delivers perfect quality (which is welfare harming) or (more likely) deliver sub-perfect quality and thus will always pay compensation. This is correct but it should be seen in light of an environment where some failure is inevitable and is perfectly right for CPs/customers to be compensated for this.

⁷ It is conceivable that if the SLA was set at exactly the ‘optimal’ quality level (where the cost of incremental quality equalled the benefit of incremental quality) then not paying compensation until the SLA was breached would still achieve the optimal quality level. However, in the absence of a competitive market place or perfect information on benefits and costs of changes in quality it is impossible to identify the ‘optimal’ quality level and so set the SLA at this point. Therefore, in these situations where it is unlikely that the SLA will be set at the optimal quality level, it is not appropriate to limit compensation to where the SLA is breached.

Therefore, we strongly believe that this principle should be modified⁸.

There is an alternative approach that could address some of these issues (the first two but not the last one relating to CP losses). This would be to set the SLA at the appropriate level. However, in the absence of either perfect information or a competitive market for these products we think it would be very difficult for Ofcom to determine what an appropriate quality level and SLA should be.

3. Clarity and incentivising compliance

We see clarity and incentivising compliance as a critical principle to ensure that the overall objectives are met. In particular, these will help ensure that compensation costs are properly 'internalised' so that the business acts on them and reduce BT's ability to circumvent the rules. For CPs, predictability is important since it reduces unnecessary risk. We see a number of ways in which clarity and compliance can be delivered

- the ability for an independent party to audit BT on its compliance to the SLG regime. One option for that independent body could be the EAB/EAO in cahoots with an external party.
- Detailed reporting of SLG payments so, for instance, SLG payments should detail *inter alia* which line they relate to, the dates and the reason for the SLG. This would allow us to validate the payment and provide CPs with evidence in the case of a dispute

5. Proactive payment

Ofcom outline a number of reasons why proactive payments are favoured. We agree with Ofcom's conclusion though we believe there are other reasons that support this position. These are described below

- Lack of proactive payments increases costs since Openreach are able to make the calculations at lower cost than CPs can. Requiring CPs to assess the claim would in effect add unnecessary cost
- Non-proactive payments would tend to distort competition since it would disfavour smaller players who could not justify the larger fixed cost of claiming
- It would reduce transparency and predictability which increases risk for CPs and would tend to reduce the incentive on Openreach to improve performance

6. Clear process for implementation

We believe it is likely that Openreach will 'drag its feet' to delay implementation of these proposals into contract. To avoid this we suggest a number of steps are followed:

⁸ We do recognise that there are though situations where it is appropriate for compensation not to be paid unless a certain service level is breached. For instance, on MPF migration, a transfer in less than 10 days is not beneficial since the advice of transfer process will not have been completed. To reflect this, the principles should be reworded to distinguish clearly between these different situations – those where no compensation is payable if a service level is met and those where compensation is payable whether or not the service level is met.

- Openreach should be required to negotiate the contract implementation with industry
- Openreach should produce a draft contract(s) within 2 weeks from date of Ofcom direction.
- Openreach should then give operators a week to comment
- Openreach should provide detailed reasons why any comments have not been taken onboard
- Openreach should produce a final draft within a month (or realistically maybe 6 weeks).
- Ofcom should participate in the negotiations with observer status.

These steps and the obligation for Openreach to follow them should be prescribed by the Statement.

Question 2: Do you consider that the proposed changes to the SLAs and SLGs for WLR services are appropriate?

Overall, we see a number of potential improvements to Ofcom's proposals.

1. The quantum suggested is inconsistent with Ofcom's principle that the compensation should reflect a CP's losses. As we highlighted in our response to the information request, the cost/loss to us of a fault averages over \pounds ⁹. Yet the proposal is that compensation is only ~£9 per day and is only payable if repair is completed after the SLA¹⁰. Thus a typical payment per fault event might be £4¹¹, less than \pounds of the cost to us.

2. There is no compensation for faults unless they are not repaired within the SLA. This is clearly inconsistent with Ofcom's objectives/principles that the compensation should incentivise an appropriate level of performance and reflect a CP's losses:

- it does not reflect the loss to CPs since CPs losses (e.g. cost of customer service) do not start at the point the SLA is breached but rather start immediately a fault occurs
- it gives Openreach no (or insufficient) incentive to improve repair times beyond the 40 hour SLA
- it gives Openreach no (or insufficient) incentive to reduce fault rates. Under this arrangement Openreach have no incentive to reduce faults rates on the network except indirectly in that by reducing faults they may be able to reduce the number that are repaired beyond the SLA. We would be interested to understand whether Ofcom believe that reducing fault rates is an aspect of performance that is relevant

Furthermore, it allows Openreach to avoid fair and reasonable compensation payments by setting low SLAs and so creates perverse incentives

⁹ \pounds

¹⁰ SLA is for fix by midnight of the day following the report

¹¹ based on 20% not being fixed within SLA, an average of around 2 days before an post-SLA fault is repaired and the proposed ~£9 per day

3. Although we have no clear evidence we believe that the compensation levels for missed appointments may be too low (at £10 for first appointment missed and £25 for any appointment after that).

- the loss to a CP and/or the loss to the customer is likely to be similar for the first missed appointment as for the second or subsequent missed appointment (and not different as the current levels suggest).
- for the many customers who need to take time off work to be at home for an appointment, £10 (or even £25) would be scant recompense for having wasted a morning sitting around at home
- we find it 'strange' that Openreach charge CPs £85 when the customer misses an appointment though pay a CP only £10 to £25 in the case where an Openreach engineer misses the appointment. Is the time of an OR engineer really worth more than eight times that of a member of the public?

4. The current proposal in respect of SPG downtime is for no proactive payment and no specified compensation levels. This appears wholly inconsistent with Ofcom's principles (e.g. ensuring payments are proactive). Generally, the SPG compensation regime should be similar to that of the EMP platform since the losses incurred by a CP in the case of poor Openreach performance are unlikely to differ depending on which gateway they are using. Openreach have suggested at previous points that it is acceptable to have an inferior SLG for SPG than for EMP since this will incentivise CPs to move from WLR2 (on the SPG) to WLR3 (on EMP). We believe that it is wholly inappropriate to, in effect, degrade WLR2 to create this incentive especially when the WLR3 product is so poor and when such a difference is potentially discriminatory (since BTR is the main user of EMP for WLR).

Question 3: Do you consider that the proposed changes to the SLAs and SLGs for access network facilities are appropriate?

Overall, we welcome the improvements in the regime particularly the introduction of a new SLG category for DOAs rightly reflecting the higher cost/loss we suffer for these events. However, we still see a number of potential improvements to Ofcom's proposals. These are described below.

1. The overall compensation levels remain substantially below the cost/loss we suffer particularly for fault repair and so inconsistent with Ofcom's principle that the compensation should reflect a CP's losses. For example (these are all in the case where we use MPF to provide a broadband/voice service)

- For a delayed provision, the cost/loss we suffer is about ⌘ per event ⌘. Ofcom's proposed compensation is about £15¹² per event
- For a DOA, the cost/loss we suffer is about ⌘ per event ⌘. Ofcom's proposed compensation is about £30¹³ per event
- For a fault, the cost/loss we suffer is about ⌘ per event ⌘. Ofcom's proposed compensation is about £5¹⁴ per event

¹² based on average of around 2 days provisioning delay at the proposed £8 per day late

¹³ based on average of around 2 days before a DOA is restored at the proposed £16 per day

We also note that the compensation for using MPF to provide a voice and broadband service is less than the compensations payable for using WLR plus SMPF to provide a voice and broadband service even though the customer detriment is the same. We believe that the MPF compensation level should be increased to reflect this and ensure non-discrimination between MPF and other access products.

2. There is no compensation for faults unless they are not repaired within the 40 hour SLA. This is clearly inconsistent with Ofcom's principles as described above.

3. For the higher DOA/ELF compensation level to be payable it would require a CP to inform Openreach within 8 days that the MPF/SMPF was delivered a non-operational state. Operationally this is not always possible and we see no benefit to requiring that this information be supplied within 8 days.

4. There are certain access network facilities (ANF) that are not included such as tie-cables and co-mingling. We believe though that these are not as important as SMPF and MPF and thus these other products should be considered in future for revised SLGs.

Question 4: Do you agree that Ofcom's proposed amendment of the structure of the Ethernet compensation payments is consistent with the loss suffered by CPs? Do you agree that Ofcom's proposed level of Ethernet compensation payments is consistent with the loss suffered by CPs?

Question 5: Do you consider that the proposed changes to the SLAs and SLGs for Ethernet services are appropriate?

Question 6: Do you agree that Openreach should be required to justify changes to the Contractual Delivery Date which would delay the provision of the Ethernet services beyond the 57th day?

We have a number of comments in regards to questions 4, 5 and 6.

1. There is no compensation for faults unless they are not repaired within the 5 hour SLA. This is clearly inconsistent with Ofcom's principles as described above.

2. We do not have enough information to assess whether the level of compensation proposed is appropriate (e.g. ~5% of connection charge per day late provisioning or 15% of monthly rental per hour of late repair). However, we would note that the cost of faults is high and the suggested level probably does not meet the actual cost/loss to a CP. Using conservative estimates, for a 2 day outage the cost to us might be ∞ whilst the compensation is £2,700¹⁵.

¹⁴ based on 20% not being fixed within SLA (and the only faults incurring compensation), an average of around 4 days before a post-SLA fault is repaired and the proposed £6.67 per day

¹⁵ Cost to CP ∞. Compensation for the same outage would be £2,700 assuming: 43 hours in excess of SLA (48 hours less 5 hour SLA); £5,000 average BES rental per year; and, compensation 15% of monthly rental

3. Yes, we agree with the proposal that Openreach should be required to justify changes to the Contractual Delivery Date which would delay the provision of the Ethernet services beyond the 57th day.

Question 7: Do you consider that the proposed changes to the SLAs and SLGs for the Equivalence Management Platform are appropriate?

We have a number of comments in regards to question 7.

1. It is unclear whether only outages in excess of the 99.8% SLA result in compensation payments. We would suggest that all outages (excluded planned outages) should result in compensation else there is no incentive for Openreach to improve its performance beyond the arbitrary SLA Openreach have set. This is a similar issue to that of faults that are repaired for within SLA not being compensated for.
2. There should be some limit on the amount of scheduled downtime else Openreach would be able to increase these outages without cost to them. There should also be a minimum set of rules regarding scheduled downtimes e.g. level of advance notification, maximum period, time of day when allowed etc.

Conclusion

Overall, we see the proposals as a very useful step forward in delivering better outcomes for UK consumers.

Whilst we think the new regime good, we think that it could be improved in a number of ways to deliver further consumer benefits. In particular:

1. The principles should be modified to enable them to act as a sound basis for reviewing SLGs in future
2. There should be a clear implementation approach to ensure these changes come into effect quickly
3. SLGs/compensation should be paid in all cases and not only be paid once an SLA is breached to ensure that Openreach has the incentive to improve to an appropriate level
4. The quantum of many of the compensation levels need to be increased to compensate for the costs/losses we experience
5. A compensation approach and structure for the WLR SPG should be specified
6. Other product SLGs should be reviewed. In addition to those within the ANF (such as tie-cables and co-mingling) other Openreach and BTW products should be considered

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