



BT's response to Ofcom's Call for Inputs

Automatic Compensation

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BT welcomes comments on the content of this document, which can be addressed via e-mail to Dee Cheek, Head of Consumer Communications Regulation, at deirdre.cheek@bt.com

1 Executive Summary

1. This response represents the views of BT Group, including BT Consumer, Business and Public Sector, Plusnet and EE.
2. We recognise that for BT to be truly consumer-focused, and to meet the needs and expectations of our customers, we need to offer them effective redress when things go wrong. We want to offer our consumer customers a compensation framework that is transparent and easy to understand; that makes resolution the first priority; that is automatic and timely so as to minimise customers' effort and inconvenience; and that gives customers a form of redress that is appropriate and of value to them.
3. In principle we are therefore supportive of Ofcom's aims to provide recognition and redress to consumers quickly and easily. We also agree that a more automated compensation scheme is likely to incentivise improvements in service quality.
4. Any compensation regime should reflect what matters to consumers. However Ofcom should not be prescriptive and impose a set of specific rules and requirements on communications providers (CPs). Instead, Ofcom should adopt a set of principles as a "base line" – such as a requirement that consumers should automatically be offered compensation for delayed provision or repair of their fixed voice and/or broadband service – and leave CPs with the flexibility to decide at which point the consumer becomes eligible, what the best form of compensation is, and the mechanism and process for providing it.
5. This will encourage CPs to compete on service, allowing greater differentiation, including differentiation on automatic compensation paid when the offered service levels are not met. This will provide consumers with choice as well as protection, and contribute to improving quality relative to the service level purchased.
6. We propose that the principles should be set out in an industry-wide Code of Practice, which industry and Ofcom would agree and which CPs would sign up to. If industry discussions were to begin in the near future, this is likely to be a quicker route to achieving Ofcom's aims than the imposition of more formal regulation.
7. Our views on Ofcom's questions are given in Section 2 below, but in particular we would like to highlight that the scope of any regulated scheme or Code of Practice should be residential consumers only, or those customers who choose to take services aimed at residential consumers (which might include some small businesses). If the scope were to be defined on the basis of the size of the customer (eg up to ten employees), this would result in a disproportionate outcome as it would, by default, capture larger business customers for whom regulatory protection is not proportionate or justified. Business customers necessarily have a different perspective on risk, as they are obliged to ensure their business is protected, so as to guarantee business continuity. A "one size fits all" approach is not appropriate.
8. The question of whether retail CPs receive commercially-negotiated redress payments from their suppliers when things go wrong does not need to be considered by Ofcom in the context of a consultation on consumer compensation. The relationship between a retailer and its wholesale suppliers, and the commercial arrangements between them, whether the latter are regulated or not, is an entirely separate matter to the relationship between the retailer and its end customers. Openreach is by no means the only wholesale supplier to retail CPs, and it would be massively complex if Ofcom were to attempt to ensure a correlation between the amounts of compensation that may or may not be received by retail CPs through commercial negotiation with suppliers, and the terms on which those retail CPs choose to offer compensation to their end customers.
9. Additionally, with many reseller arrangements in the market, there is often no direct link between a wholesaler and the retail CP serving the end customer, and there are often several "layers" of commercially-negotiated terms. Ofcom should focus on the principles needed to ensure that

consumers receive adequate redress for service failures at a retail level, and leave businesses to negotiate their own separate commercial redress arrangements as required. Attempting to correlate wholesale and retail payments could also remove the consumer benefits created by differentiation and competition at a retail level.

2 Answers to Ofcom's questions

Question 1: What are your views on our initial thinking regarding the factors potentially relevant in determining:

- (a) scope, including possible eligibility;
- (b) form and process of compensation;
- (c) level of and basis for compensation; and
- (d) possible costs and risks of introducing automatic compensation?

Scope and eligibility

10. BT agrees that it is important that any compensation regime reflects what matters to consumers. Our research¹ with residential customers, and analysis of residential customer complaints, indicates that service quality issues such as speed of provision, speed of repair, length of time to get an appointment and engineers missing appointments are the key issues that matter, in the fixed voice and broadband environment.
11. The issues for, and feedback from, users of our business products are heavily focused on the reliability of their connections and the business continuity options they have adopted. A business must assess the multitude of risks to its business and will take steps to control them as it sees fit. BT offers business customers a range of options to better protect or rapidly recover from outages – such as higher availability products for better protection and mobile dongles for rapid recovery.
12. For mobile, based on EE customer surveys, the important issues are network coverage, reliability and speed. The relative importance of each issue varies between different customers and depends on how they use the network.
13. Coverage is an important factor impacting on where mobile customers can use their service. Mobile networks make clear through their coverage checkers where they offer service, and typically do not advertise speeds. Customers should therefore not be entitled to compensation where a network does not offer coverage.
14. The type of coverage (2G, 3G, 4G, LTE Advanced) also impacts the types of services and speeds available to customers. The devices used by customers may also limit the services available or impact on the speed they can receive. These factors will need to be taken into account when determining whether a customer is entitled to compensation, and will add complexity and cost to systems and processes.
15. Where service is available through other technologies (for example Wifi calling or Femto cells), customers should not be eligible for compensation.
16. The scope of any regulated compensation scheme should be limited to services only, with devices excluded, as there are existing legal provisions that deal with device-related issues.
17. We agree that, to the extent that any regulatory intervention is needed, it should be focused on residential consumers and those buying products and services aimed at residential consumers. Larger businesses and some SMEs buy products and services which are aimed at their specific needs and which take into account the levels of responsiveness needed by these customers. Typically they have higher levels of maintenance cover and faster response times. Service

¹ BT's research was carried out by a third party (Basis) between November 2015 and January 2015, with output received February-March 2015. There was a mix of qualitative research (focus groups) and quantitative research (online and telephone interviews with customers of BT and to CPs who had complained in the previous 6 months)

levels and compensation arrangements for larger customers tend to be negotiated and defined in tailored contracts.

18. For the sake of clarity, proportionality and feasibility of implementation, we urge Ofcom to define the scope of any new compensation obligations in relation to the nature of the products and services concerned – i.e. those designed for, and aimed at, the residential market. As Ofcom has pointed out, some small businesses choose to buy these products and services, and these small business customers are those for whom the protections of a domestic compensation scheme are likely to be justified and proportionate. If, however, Ofcom were to impose new obligations in relation to any contracts with businesses up to ten employees, this would be a disproportionate step because it would inadvertently capture many larger businesses who do not need this protection, since BT and other CPs do not segment their business customer base by number of employees.
19. Whilst BT believes that the scope of regulation should not include business customers taking business products, it is important to note that should business customers be included in any scheme, their needs are different to those of residential customers. They are likely to focus more on the impact of any service problem on the business, rather than inconvenience. Any claim for loss of earnings, business downtime or time spent would require substantiation and individual review. A code of practice approach, with a minimum threshold, would allow business CPs to differentiate through business-related options, which could include alternative service remedies, business continuity options, or enhanced support (such as redirecting calls to call centres, temporary office accommodation, etc).
20. It is extremely important that the nature of the events that qualify for compensation can be objectively defined and measured, in order that entitlement is clear and redress arrangements can be quick and simple. For example, total loss of service can be objectively measured, whereas slow or variable broadband speed is more subjective and can be caused by a number of factors outside of the CP's control. Whilst it is extremely important for CPs to work with customers to identify the root cause(s) of such problems and to identify a solution or an alternative where possible, automatic compensation would be difficult to administer in these circumstances. Through the Broadband Speeds Code of Practice, to which BT is a signatory, customers already have a right to exit their contract at any point without penalty where broadband speed is significantly below the Minimum Guaranteed Access Line Speed (MGALS) predicted at the start of the contract and no solution can be found; and this is a more appropriate form of redress. Otherwise CPs could find themselves with an open-ended commitment to pay compensation, which would not be in the overall consumer interest in the longer term, as it would divert funds which could otherwise be used for network investment.
21. We agree with Ofcom's comment that in mobile networks, speed deterioration and dropped calls are less likely to be suitable for automatic compensation because of the complexity of the issue and the fact that the cause will potentially be outside the provider's network.
22. Ofcom states that consumers should not receive compensation where the cause of the issue lies with the consumer. We agree with this, but note that remote diagnosis of where the fault lies is not always straightforward or objectively measurable without investigation at the customer's premises. We discuss this further at paragraphs 35 and 36 below.

Form and process

23. BT's consumer research shows that financial payment is the most popular form of compensation. A pre-paid card, capable of being used in any retail outlet that accepts credit or debit card payments may be a practical solution. However, CPs should be able to choose the form of compensation that best meets the needs of their particular customers – for example different considerations apply for mobile pre-pay customers. Bill credits may be preferred by some customers and should be available as an option, particularly since they are likely to be the quickest and most cost-effective solution for CPs to implement.

24. For business customers, card payments would not generally suit their needs and direct bill credits would be preferable. However in some situations, business customers would prefer a free upgrade of their service, or a similar alternative, as a means of compensation.
25. In some circumstances, residential customers may also prefer non-financial compensation, such as additional allowances, services or bundles for free or at a reduced charge for a period of time. These options also researched well with consumers. Again, Ofcom should allow the flexibility for CPs to differentiate and vary their compensation practices so as to meet the needs and preferences of their customers.
26. This means that, whilst the process to be followed for obtaining compensation should be as quick and easy as possible, there will sometimes need to be a proactive choice and action taken by the consumer in order to put their claim into effect.

Level of and basis for compensation

27. As discussed in Section 1, BT's view is that Ofcom should set some principles (such as that consumers should automatically be offered compensation for delayed provision or repair of their fixed voice and/or broadband service, and that the level of compensation should recognise the adverse impact on consumers), but that the actual basis and level (including the option of non-financial forms of compensation) should be left to individual CPs. This would enable CPs to differentiate and use their compensation policies as a further feature on which to position themselves in the market, and for consumers to get the full benefits of competition. If Ofcom were to impose more rigid regulatory rules in this respect, CPs would tend to just stick to those rules and offer nothing further.
28. Similarly, in relation to how long a problem should endure before compensation is triggered, how quickly it should be paid and what time limits (if any) should apply to entitlements, Ofcom should just set some base level principles but leave the market to determine the details.

Possible costs and risks

29. We agree that it is important for Ofcom's intervention to be proportionate, and to take into account implementation costs as well as the potential for an overall impact on consumer prices. As explained above, we do not believe that Ofcom should set a particular level of compensation but should leave CPs to decide what is appropriate, carrying out their own cost-benefit analysis, so that consumers can benefit from competition and CPs can decide what they can afford. Implementation costs are likely to vary widely from one CP to another, depending on size and the extent of any systems already in place, and it is likely to be disproportionate and more costly overall for Ofcom to impose a "one size fits all" approach.
30. Similarly CPs should be able to decide exactly which scenarios attract compensation, subject to certain principles. This would also overcome the problem identified by Ofcom that a particular aspect of service quality may be a key differentiating factor for one or more providers and thus it could lead to a distortion of competition if Ofcom is too prescriptive.
31. A principles-based approach would also mitigate the risk of providers "playing it safe" in a situation where a prescriptive compensation scheme is put in place. Such a scheme could lead to providers becoming more cautious in introducing new services and features, and could stifle innovation.

Question 2: Are there any additional considerations?

32. It is worth noting that CPs could potentially be more open to fraud if compensation is to be paid automatically. There could also be circumstances where CPs inadvertently pay more than is necessary as a result of customer behaviour. For example a customer might log a broadband fault and then go on holiday, so that they do not plug in a new hub. It would look to the CP as though there had been a two week failure when, had the customer behaved differently, the problem would have been solved the next day. Any new automated compensation scheme needs to be capable of taking such scenarios into account, and contact with the customer is likely to be necessary before any payment or other form of redress is given.
33. An additional consideration is the extent to which Ofcom's actions in relation to automatic compensation should be linked to its work on other service quality-related DCR actions. We appreciate that there is a close linkage between the service issues leading to compensation, and the publication of measures to enable easier comparison of CPs' quality of service, and both should help drive service improvements. However there does not necessarily have to be a direct correlation between the two. For example, our research shows that some of the measures that consumers are most interested in, when it comes to comparing CPs' service performance, relate to how easy the CP is to deal with (e.g. whether calls are answered in the UK, ability to use online channels, time taken to connect to a customer service agent). These are not issues appropriate for compensation.
34. Transparency of CPs' compensation policies should be a key consideration. In order to ensure that the full benefits in terms of driving service improvement are seen, CPs should be required to publish their compensation policies and commitments prominently and clearly, rather than having them buried in terms and conditions.

Question 3: Do you agree with our initial views on the service quality issues that could matter most to consumers?

35. For fixed networks, BT agrees that issues such as delays in providing a new service, temporary loss of service, difficulties or delays in obtaining an installation or repair appointment, or missed engineer appointments, are all of importance to consumers. They are also issues which are relatively straightforward to identify and measure.
36. However it is not always the case that where a customer has lost broadband service, it is easy to ascertain the nature of the problem through remote testing and customer dialogue. There is a degree of reliance on consumers to be able to assist in diagnostics from a technical perspective (is the ADSL filter plugged in correctly? Is the hub setup correctly?). It is sometimes also difficult to be sure that the results from our remote testing are 100% correct; there will be a degree of error, though we are working hard to remove this wherever possible. For example if the line is testing fine through our smart diagnostics but we can see no broadband traffic over the connection and can see no connection to the hub, it could be that there is a broadband issue or it could be that the customer hasn't plugged the hub in correctly. Paying compensation automatically in these circumstances would be problematic.
37. It should also be noted that not all CPs have smart diagnostic capabilities built into their broadband hubs, and therefore remote diagnostics may be more feasible for some CPs than others.
38. As Ofcom mentions, delays or failures in porting a number between CPs' fixed networks can have a significant impact on those directly affected; but there is already a requirement for providers to port numbers within one business day and to compensate consumers where things go wrong. For the reasons explained above, we do not believe that Ofcom should specify a particular amount of compensation that should be payable in these circumstances, as the appropriate amount will vary according to the individual scenario and CPs should be left to determine what is appropriate, based on the impact on the consumer. It should also be noted

that it is not always immediately clear whether a failed number port is due to the donor or the recipient CP, and therefore any requirement for compensation to be automatic is unlikely to be appropriate, at least until the issue has been investigated and the root cause of the problem found.

39. The relationship between donor and recipient CPs is also a potential cause of complications. The CP responsible for any delay should be responsible for compensation payments to consumers; but there may be several parties in the chain. For example, if BT was importing a number for onward routing to an IP Exchange CP who was gaining the customer, the position would not be simple. It is possible that porting could be disrupted due to a technical issue (e.g. transit routing) that is unrelated to the porting process.
40. On mobile networks, the same issue arises in relation to number port, and again we do not believe that it would be appropriate for compensation to be automatic.
41. We agree that loss of service on mobile networks due to larger scale SIM authentication problems, mast defects or other major outages are likely to have a negative impact on consumers. However, identification of affected consumers is not easy. Depending on the site, customers may still be able to get service from another site. Customers living in the vicinity of a site with an outage may be impacted if they are in the area at the time. If they are not, for instance because they work in a different area or they are away, they may not be impacted at all, or only partially. Automatically compensating customers in the vicinity, based on postcode, risks being inaccurate. It is not possible to identify customers who tried but failed to use services in the area of a site with an outage, because we cannot "find" these customers on our network. However customers could be compensated on a reactive basis, as EE currently does.
42. We agree that mobile service degradation due to dropped calls or slow data connections are an important issue for consumers; but that these are not issues which are suitable to be considered for automatic compensation. See our response to Question 4 below.

Question 4: Do you agree that some of the above issues may be more suitable for automatic compensation than others?

43. We agree that whilst issues that are objectively identifiable and measurable, such as total loss of service or missed appointments, may be suitable for automatic compensation, issues that are less easy to identify and diagnose, such as slow broadband speeds, are better addressed by alternative forms of redress.
44. The Broadband Speeds Code of Practice already gives customers the right to exit their contract at any point, in the event that they are consistently unable to achieve the MGALS promised at point of sale and their CP has been unable to fix the problem. Thus CPs are already incentivised to ensure that the right information about access line speed is given at point of sale; otherwise CPs will suffer commercial detriment from not being able to recover their costs of sale through early termination charges if the customer exercises their right to exit.
45. It should also be noted that CPs are, to a great extent, reliant on the accuracy of the Openreach line speed checker when giving minimum guaranteed access line speeds at point of sale, so it would not be appropriate for CPs to have to fund the cost of compensation where the line speed checker has not proved to be accurate.
46. In relation to throughput speeds being slower than expected, given the complexities of testing and diagnosis, the dynamic nature of issues and the multiple potential causes (some due to the reliability and location of the customer's router, strength of the wi-fi signal etc), automatic compensation would be inappropriate and difficult to administer fairly in these circumstances. As Ofcom has noted, deterioration of speeds can be intermittent and variable depending on time of day, usage patterns, the consumer's device and the nature of the content being accessed.

47. Similarly on mobile networks, we agree that service degradation from dropped calls or slowing speeds is inappropriate for automatic compensation. Again, such issues can be caused by multiple factors, including the consumer's location, reliability of handset, content provider issues, and density of other usage nearby. Such issues are likely to be intermittent, and not possible to identify and measure objectively.
48. Therefore the only type of mobile network issue that might be suitable for automatic compensation would be major service outages such as mast defects. In these cases, mobile CPs would need customers to identify themselves as having been affected in order for compensation to be applied, as it would not otherwise be possible to identify them accurately.

Question 5: Do you agree that we should consider the need for exceptions and dispute resolution?

49. We do not believe it is necessary for Ofcom to specify whether or not there should be exceptions to CPs' compensation schemes, such as whether "force majeure" events (strikes, severe weather or other matters beyond CPs' reasonable control) should enable payment of compensation to be suspended. As discussed above, the specific rules of any scheme should be left to individual CPs to determine, thus allowing differentiation in the market and bringing the benefits of competition to consumers. Some CPs may wish to include a "force majeure" clause in their terms and conditions, whereas others may decide that consumers should still benefit from compensation in these circumstances.
50. For mobile networks, other exceptional factors, as well as those Ofcom mention, could include limited access to masts, where landowners refuse access to a site, which may delay repairs and prevent issues from being resolved quickly. Changes to the Electronic Communications Code will hopefully mitigate these issues.
51. In relation to dispute resolution, we see no reason why the existing ADR process would not be used. A complaint about payment of compensation is likely to be part of a wider complaint about a CP's failure to provide or repair a service within satisfactory timescales, and in the event that a CP is unable to reach agreement on a satisfactory outcome with a customer, it makes sense that the Ombudsman would review the entire case and make a judgement based on all the circumstances, including on whether or not the customer had received reasonable redress.

Question 6: Do you think Ofcom should consider the relationship between retailers and suppliers and if so, how?

52. We do not think that Ofcom needs to consider the relationship between retailers and their wholesale suppliers in this context. The relationship between a retailer and its wholesale suppliers, and the commercial relationship between them, whether the latter are regulated or not, is an entirely separate matter to the relationship between the retailer and its end customers.
53. As set out by Ofcom, where Openreach has SMP it is required to specify service standards and to pay compensation in the form of Service Level Guarantees (SLGs) where standards are not met. These SLGs are currently negotiated commercially, and this should not change once retailers are required to provide automatic compensation to their customers.
54. Openreach is by no means the only wholesale supplier to retail CPs. As well as BT Wholesale, which supplies wholesale broadband access, there are numerous other companies, such as those providing retail billing systems, call handling systems, or mobile masts, for example, whose performance could impact on the quality of service provided by retail fixed and mobile CPs. It would be massively complex if Ofcom were to attempt to ensure a correlation between the amounts of compensation which may or may not be received by retail CPs through commercial negotiation with suppliers, and the terms on which those retail CPs choose to offer compensation to their end customers. And there would appear to be little to be gained from doing so.

55. Similarly, there is often no direct link between a wholesaler and the retail CP serving the end customer; there are many reseller arrangements in the market, with their own commercially-negotiated terms, which paint a complex picture and which mean that there is no logic in trying to link or correlate the compensation paid to end consumers with the amounts which may or may not be paid further up the supply chain.
56. Ofcom should focus on the principles needed to ensure that consumers receive adequate redress for service failures at a retail level, and leave businesses to negotiate their own separate commercial redress arrangements as required.