

ACNI response to Ofcom consultation on Automatic Compensation 22 July 2016

Context

This response to the Automatic Compensation consultation is submitted by the Advisory Committee for Northern Ireland. The Committee provides independent advice to Ofcom in relation to the interests of consumers and citizens in Northern Ireland.

Northern Ireland has a dispersed population with a high percentage of rural premises, 98% of businesses are SME (mainly, microbusinesses with fewer than 10 employees).

Our digital context is well known to Ofcom as a result of the CMR and other related research data. While there has been considerable investment in broadband, followed by a catch-up in provision and use of digital services, a sizeable percentage of premises do not have access to superfast broadband. 6% of premises still cannot get 2Mbit/s and 14% cannot receive speeds of 10Mbit/s. There is also a limited number of communication providers operating, particularly in rural areas.

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?

We welcome the attempt to balance the efforts required to seek compensation and redress. Current mechanisms are only relevant to the very determined and very angry consumers.

The consultation document refers to 'automatic compensation when quality is not in line with reasonable expectations at point of service.' While this is an apparently sensible definition, the devil will be in the detail of what is 'reasonable' and what 'expectations' are. It will be important to define and manage these 'expectations' carefully.

The items outlined as concerns for consumers seem appropriate. These are indeed the issues that traditionally consumers have had to raise a complaint about in order seek/obtain compensation. However, it is important to recognize that avoidance of the problems – i.e. consistently good service is much more important than compensation for when it goes wrong. That should be the ambition of all providers and it is unfortunate that Ofcom has to consider this measure as a means to improving quality of service.

There needs to be greater clarity about who to complain to, and what are reasonable reasons for complaining. While the reasons for complaining seem reasonable, they are often only so to those who have a high degree of literacy, numeracy or digital knowhow. The ADR mechanisms in existence take little or no account of degradation of service. The ADR machinery will need to be overhauled concomitantly.

Consumers have little or no understanding of how to make complaints and the various stages of 'escalation', recourse to ADR etc. Nor should they need to. So all of this needs to be simplified and support provided for vulnerable consumers. It is also imperative that SMEs are included as well as residential consumers. SMEs often have no specially qualified IT staff yet their business depends on their being able to use digital communications. Larger companies with bespoke systems should be free to negotiate their own SLAs.

The principles espoused are the complaints must be **identifiable, measurable and resolvable**. While this is laudable, how will average consumers and users be able to pinpoint what the problems are? Can the consumer prove poor service quality e.g. actual connection, quality of coverage, loss of connection or signal etc for their end of a mobile call rather than that of the recipient of the call? Where does the burden of proof lie in these cases? If not clear the automatic compensation becomes meaningless and frustrating and the scheme would lose credibility.

While some problems do not lend themselves easily to automatic compensation and exit from contract would seem more reasonable, it should be born in mind that in Northern Ireland, there are at times few, if any, other options of supply. Exit from contract means no service at all! Ofcom must consider what redress looks like in these circumstances.

There is little in the consultation document about level of compensation. Innovation and imagination should form the basis of compensation, not necessarily a cash payment. Pre-paid cards are suggested in the document as a means of payment. This is only of benefit when the contract is maintained. They are often limited by multiple restrictions and pre-conditions. We suggest caution in their use.

It would seem reasonable for the consumer to raise the concern/complaint. But the provider should have a limited period for addressing it post-reporting (for example, two hours before the automatic compensation kicks in). Where promises are not kept by the provider and the consumer is further inconvenienced by having to make multiple follow up calls and appointments there should be escalating levels of compensation.

Para 2.2 in the consultation would suggest that complaints could be treated differently depending on technologies. This would be unfortunate. Loss of service, reduced quality of service etc is a disadvantage to the consumer regardless of technology and should be treated similarly. A consistent approach is needed. However this also highlights the need to manage expectations carefully when selling different technologies and the limitations of any particular technology should be made clear to all purchasers.

Question 2: Are there any additional considerations?

Ofcom research with residential consumers and smaller SMEs indicated that they felt compensation should be automatic for serious service quality issues e.g. significant outages. That compensation needs to take account of loss of business as well as just loss of service.

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

Yes. And it is important to note that loss of service is important to all aspects of life: work, family, education, health, etc. It is equivalent to loss of water, electricity etc and serious levels of compensation should be required. Outages cause outrage for very good reasons and should be minimized and taken very seriously by providers.

Para 3:18 suggests that congestion etc may be the cause of service degradation for mobile devices. This is true, but providers should not be making this excuse. They know who they sell to, when and what. They should ensure adequate provision of service before they sell to others.

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

Yes - additionally, there also needs to be some caution in terms of how automatic compensation is managed and communicated to the consumer.

Automatic compensation can lead to further confusion as highlighted by recent consumer experience in the banking sector in Northern Ireland. In this case the payment of automatic compensation lead to some consumers thinking that another mistake had been made [1]. This perception and concern about a further mistake highlights the need for clear and well promoted communication; in order that the consumer knows the circumstances in which automatic compensation will occur and know what to expect including timing and amounts.

The need for clarity of information is also well highlighted when examining the Northern Ireland Electricity's Standards of Service 2015 (NIE). These clearly lay out - in the relevant Factsheet - when

and in what circumstances consumers are entitled to a payment - if NIE fails to meet any of the standards they outline. For example, NIE pay £25 - as automatic compensation - if NIE Networks fail to replace a main fuse that is not working, within 3 hours on a working day or four hours on other day - once this is reported by the customer.

We would therefore encourage Ofcom to require communications providers to provide customer/consumer information that is clear, easy to understand, accessible (factsheets and leaflets, websites etc.) and leaves no confusion around whether the consumer is entitled to automatic compensation or not.[2]

It will be important to make provision for vexatious complainants. Perhaps a reformed ADR scheme is the place for that. Proportionality will be difficult to discern, and it will be important to ensure that the cost of any scheme is not prohibitive such that all services increase in price disproportionately. For the consumer often having problems taken seriously and dealt with is more important than a payment. Arguing over quantum of compensation can be time consuming and therefore expensive for providers and consumers. Perhaps payment should be optional in some cases.

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

Both industrial strikes and severe weather conditions are considered to be possible exceptions to automatic compensation. Certainly severe weather would seem to qualify as an exception. However strikes are a result of poor management and poor industrial relations. Consumers should not be expected to carry the burden for that when they have paid for a service. Compensation should be provided. As regards other exceptions we would want to see more detail of what is being considered.

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

Too often the consumer is left as 'piggy in the middle' between retail providers who blame the wholesale providers. This is a utility purchased by contract, but it is not measurable or visible in the same way as water or electricity. It is entirely unfair and unreasonable to expect consumers to resolve any of these interface problems or be the victim of them. So there must be clarity that it is the retailer who provides automatic compensation without any excuse.

Ends

ACNI, July 2016

References:

[1] Consumer Council for NI, Payment Pending report, 2012 about the Ulster Bank IT glitch. Some customers could not access funds in their accounts for a number of weeks (19th June to 18th July 2012), so had to visit a branch to withdraw cash. Some of these people were given automatic compensation; but did not realise why they had been given it and thought it was another mistake (Page 27 -

www.consumerCouncil.org.uk/filestore/documents/Ulster_Bank_Report.pdf<http://www.consumerCouncil.org.uk/filestore/documents/Ulster_Bank_Report.pdf>

[2]www.consumerCouncil.org.uk/filestore/documents/Electricity_Individual_GSS_Factsheet_Final

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