Virgin Media's response to Automatic Compensation – Protecting consumers from quality of service problems – March 2017

21 June 2017

Non-confidential Response

Introduction

Virgin Media is focused on delivering the best possible service to its 5.4m broadband subscribers and 4.8m fixed voice subscribers across the UK and Ireland.[1] This includes ensuring that when things go wrong we rectify the situation in a fair, appropriate and expedient manner. Ofcom notes that the overwhelming majority of consumers are satisfied with their communication services[2], and that this is one of the most competitive markets. The risk for providers in 'getting it wrong' is high: customers will chose to move to another provider; the losing provider gains a reputation for poor service and this makes acquiring new customers more difficult.

This dynamic, brought about by the highly competitive market and the propensity of consumers to switch, means that providers are already incentivised to ensure the consumer gets a fair deal overall, including timely repair of faults and accurate installation lead times.

Ofcom is now proposing to place additional requirements on providers in order to ensure that, in its view, this 'fair deal' is achieved through regulation.

Virgin Media and Ofcom share the same intent to ensure that customers are treated fairly. However, we consider that Ofcom has defined its 'fair deal' in a way that places too much weight on compensation levels and has, by seeking to introduce intrusive and prescriptive regulation, proposed a scheme that is disproportionate to the consumer harm identified.

We agree that there needs to be a more transparent and consistent approach to compensation, and indeed, Ofcom has already sought to provide increased transparency in relation to quality of service generally through its inaugural Comparing Service Quality report.[3] The impact of this on consumer awareness has not been measured, and cannot be expected to feed through into behaviour for a while. Ofcom's existing initiatives may lead to a larger proportion of customers switching in response to service quality issues. Furthermore, customers may begin to place a greater weight on service quality when making their purchase decisions. Both of these effects would address Ofcom's concerns without the need for mandating the level and mechanism for paying compensation.

We set out in this response an industry led solution that we believe meets Ofcom's policy objectives. In making this proposal we have taken account of Ofcom's comments on industry's previous proposal. In light of Ofcom's duties under the Communications Act to act with a bias against formal intervention and the need for regulation to be proportionate, we consider that with the industry's proposals, formal regulation would be inappropriate and unwarranted.

In this response, we therefore aim to set out constructively both our concerns with the proposed analysis, including the assessment of consumer harm and the merits of adopting an Industry-led scheme.

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[1] http://www.libertyglobal.com/pdf/fixed-income/Virgin-Media-Fixed-Income-Q1-2017-CCFS-Report-FINAL.pdf
[2] Consultation: Paragraph 2.5 "the overwhelming majority of consumers are satisfied with their telecoms services": Paragraph 2.20 nine in ten telecoms consumers are 'very satisfied' or 'satisfied'.
[3] https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/quality-of-service/report

This response deals with each section of Ofcom's consultation document, and although specific questions are not dealt with individually, we consider that grouping our comments against the sections in which Ofcom's analysis and reasoning is set out provides the best way of responding to all of the issues. Accordingly, this response is set out in sections following the same order as Ofcom's consultation as follows:

Section 3 : the proposed scope of Automatic compensation;

Section 4: the underlying case for the identified quality of service issues;

Section 5 : Ofcom's approach to loss of service;

Section 6 : Ofcom's approach to delayed provisioning;

Section 7 : Ofcom's approach to missed appointments;

Section 8 : Implementation issues;

Section 9 : Ofcom's impact analysis on the residential market;

Section 10 : on Ofcom's provisional conclusions;

Section 11 : on Ofcom's approach to SMEs;

Section 12 : on Ofcom's approach to mobiles;

Conclusion;

Annex 1 : Ofcom's evidence base for consumer harm estimates;

Annex 2 : **[✂]**; and

Annex 3 : Proposed improvements to VICOP.

Section 3: Ofcom Scope

Virgin Media agrees with Ofcom that there are certain performance metrics that it is not appropriate to include within an automatic compensation scheme, including broadband speeds, billing, complaints handling, porting, data breaches and mobile issues. We consider that, as Ofcom sets out in Section 3 of the consultation, these are areas that are covered by other provisions and/or not amenable to a clear and straightforward automated compensation scheme.

Ofcom has proposed to apply automatic compensation in three areas:

- Total loss of service;
- Missed appointments; and
- Delayed provisioning / install.

Virgin Media's current automatic Loss of Service Credit Scheme[4] already covers loss of service, and therefore this is an area where compensation can be paid to customers in an automated manner.

Although we do not have a similar scheme for missed appointments, we consider that it can be established, on an objective basis, whether an appointment is met or not[5]. In that sense, Virgin Media considers that this is a metric that can form part of a scheme.

In relation to delayed installs and provisioning, we accept that provided that delays can be objectively measured between providers, this is a metric that can form part of a compensation scheme.[6]

However, we consider that the latter is the most problematic element of the three proposals put forward by Ofcom. Virgin Media is currently investing in significant network expansion under Project Lightning, which aims to pass an additional 4m premises. In this sense we are unique, certainly amongst major Communications Providers (CPs), in seeking to provision customers on entirely new network connections. **[✂]**. Therefore, whilst the delay from an install date may be measurable, those CPs building networks may require a degree of flexibility in relation to new build areas. It would be counterproductive to create a compensation system aimed at delivering consumer benefit if it 'penalises' network build.

We provide further detail in relation to each of the areas identified by Ofcom in our response at Sections 6 and 10 below, including setting out our concerns with Ofcom's proposed approach in each area.

We consider that the majority of concerns can be addressed by creating a compensation system based around an industry Voluntary Code of Practice rather than implementation through formal regulation.

Overall, however, we agree with Ofcom's proposed scope of elements that could be subject to automatic compensation.

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[4] http://store.virginmedia.com/the-legal-stuff/terms-and-conditions-for-fibre-optic-services/loss-of-credit-guidelines.html

[5] Although credits are not automatically applied, we do have a number of automatic informational triggers to ensure that customers are kept fully informed of their appointment, including the opportunity to rearrange.

[6] **[✂]**.

Section 4: The case for Automatic Compensation

Ofcom's view that the telecom market may not be "operating effectively"[7], is misconceived or at the very least overstated. Ofcom suggests that informational problems may hide or disguise providers' quality of service, and that a lack of accessibility to information hinders choice. In fact, most consumers rank quality of service considerably below other criteria such as price and broadband speed when making purchasing decisions. The market is operating effectively; but consumers afford less weight to quality of service than other factors when making a purchasing decision. Despite this, Virgin Media prominently displays features of service quality and consumer satisfaction awards on the landing page of our sales webpage.

Figure 1: http://www.virginmedia.com/shop.html

Ofcom stresses that consumers with low engagement may be less likely to shop around or switch. This may be true in that some customer segments will always be more engaged than others. However, if the CPs respond to the requirements of engaged consumers (and providing enough consumers for each CP are so engaged), the incentive to minimise network level issues such as faults and installs (which are common across different propositions) will already exist, providing benefits across the base and not just to the engaged.[8]

Ofcom sets out the following concerns that are said to show failures in the market.

Lack of Information / Information Asymmetries

Ofcom suggests that there is a lack of information on quality of service issues in marketing material. The marketing of propositions reflects customers' need for information that is pertinent to their decision to purchase. As stated above, quality of service does not feature as highly as other factors on this list; however, Virgin Media promotes certain quality of service features and draws customers' attention to inclusive repairs and maintenance in its marketing and other related collateral. There is also information available on our website that details our Loss of Service Credit policy.

Additionally, Ofcom states that to the extent that these information asymmetries exist, it intends to publish further information on quality of service. In fact this has already commenced with the inaugural publication of the annual Comparing Service Quality report in April. This, therefore, is an issue that is being addressed separately from any regulation requiring automatic compensation, and

[7] Consultation Paragraph 3.34

[8] For example, Vodafone's billing system issues and TalkTalk's data breach were identified by each CP and market analysts to have had a material and sustained impact on subscriber additions and churn.

is likely to result in a significantly different level of information awareness in January 2019, when Automatic Compensation provisions are proposed to enter into force[9].

Behavioural Bias

Ofcom suggests that consumers may undervalue quality of service information at the point of purchase / decision to purchase. Reference is made to the FCA citing behavioural bias as a reason for selection of an inappropriate financial product. In fact, the FCA example appears to relate to barriers in understanding and comparing financial products. The communications market is highly competitive with readily comparable services and products. Additionally, there are a number of comparison sites available to consumers to compare packages from different providers as well as information provided by Ofcom on various relevant metrics. Virgin Media considers that the issue identified by the FCA in relation to financial services should not be regarded as directly applicable to this market.

Switching Barriers

Ofcom says that only a minority of consumers switch after a poor quality of service experience. It is said that to the extent that this is a result of barriers to switching (perceived or actual), it may limit the financial impact of poor quality of service on providers, and limit the consumer's ability to purchase a product with a suitable quality of service. However, it is possible that a common, consistent and automatic approach to compensation across CPs would further reduce the incentive to switch. As a consequence, CPs are likely to have a *reduced* incentive to use service quality as a differentiating factor.

Switching is an issue of importance for Ofcom. To the extent that switching is addressed in regulation elsewhere, it is inappropriate for Ofcom to cite this as a reason to introduce regulation on automatic compensation. Ofcom notes that some reforms to the switching process have recently been made, and other proposals remain under review. Therefore, the switching landscape is likely to be considerably different in 2019 than it was at the time this consultation was drafted, and any perceived shortcomings in the ability to switch should not be relied upon as a reason to impose a compensation regime.

Difficulties claiming compensation

Ofcom identifies a "lack of concrete and meaningful commitments to service levels and redress in most providers' policies"[10]. Citing Virgin Media in Figure 3, Ofcom states that the only claim made is "We provide compensation on an individual customer case basis, where customers have been disadvantaged by Virgin Media's actions".

This is incorrect. Virgin Media has a clear Loss of Service Credit Policy (and confirmed the same to Ofcom in response to information requests). This policy is easily accessible on our website[11] and clearly sets out that where a customer experiences a loss of service due to a fault, Virgin Media will

[9] Ofcom proposes a year's implementation period 12 months after any final statement which is being proposed for the end of this year, although this timetable is not accepted as appropriate by Virgin Media.
[10] Consultation Paragraph 4.28
[11] http://store.virginmedia.com/the-legal-stuff/terms-and-conditions-for-fibre-optic-services/loss-of-credit-guidelines.html

apply a pro-rated credit for loss of service from the day the fault is reported until the day it is resolved. The process informs the customer that whilst there is a need to report a fault, the application of pro-rated compensation will occur automatically. We consider this policy to be both “concrete” and “meaningful”.

The automatic nature of the policy is also not recognised by Ofcom in the discussion of the requirement on consumers to actively seek and claim compensation, which Ofcom considers to be a deterrent.

Ofcom’s Conclusion

Ofcom’s concludes that <u>in combination</u> these features may result in the provision of service quality that is out of line with consumer expectations and this justifies the proposed regulatory intervention as being necessary to protect consumers’ interests. For the reasons set out above, Virgin Media considers that some of the concerns raised by Ofcom are absent and others are overstated. Therefore, the basis of the proposed intervention is called into question.

Ofcom concludes that only by regulating the provision of automatic compensation would it achieve its policy objectives and address the concerns outlined above, rejecting any alternative options such as increased informational requirements or the adoption of an industry led scheme. Virgin Media has two concerns: firstly that Ofcom has over-estimated the magnitude of the problem; and secondly that prescriptive regulation is unnecessary to achieve the stated objectives.

Ofcom accepts that an alternative and less intrusive way forward would be for industry to propose a Voluntary Code that achieved the overall policy objectives. Virgin Media agrees and this and is what we, along with Sky and BT presented to Ofcom prior to the consultation. We still consider that this represents the best outcome for all stakeholders, meeting Ofcom’s objectives whilst minimising what would be a considerable burden on industry. It is of note that whilst the consumer groups were unanimously in favour of automatic compensation as a principle, Which? was clear that any regulation should not result in an increase in the cost of the service to the customer.[12] It is vital that Ofcom ensures that the cost to industry is minimised to reduce the risk that part of that cost will be reflected in consumer pricing.

[12] Consultation Paragraph 2.6: summary of Which? response

Section 5: Delayed repair

Ofcom sets out that the average consumer harm that results from a loss of service is £10 per day.

A relatively small group of customers will be affected by a loss of service requiring compensation under Ofcom's proposals. Ofcom states that 24% of consumers are affected by a loss of service in a two-year period. Of those, 77% did not have to wait more than three calendar days for resolution. Therefore, a little over 5% of customers would be due a payment over a two-year period.

Ofcom also explains that loss of a service can have negative effects, although it can be managed through a workaround (such as using cellular networks for calls / data). 35% of people were able to employ a workaround, and only 20% of those incurred additional cost.[13]

Therefore over a quarter of customers affected by a loss of service will have an alternative to their lost service, which does not incur any extra cost.

Taking into account the 5% of customers due a payment, if a quarter of those would be able to mitigate the loss at no additional cost, then the "target audience" for compensation would stand at <u>less than 4%</u> of all customers in a two-year period.

Based on this data, Ofcom should consider the proportionality of its proposal, especially when industry supplied data shows that 18% of losses of service incidents *already* result in a compensation payment[14]. Ofcom suggests that this is a "low instance" of payment which is said to be representative of opaque internal policies. Actually, using Ofcom's data, compensation is being paid to over 4% of consumers (18% of 24%); a higher number than the "target audience" described above.

Ofcom suggests that current payment levels from industry average £3.69 per day. Ofcom is proposing that £10 per day compensation is required in order to redress the assessed level of harm. Virgin Media considers that this level of compensation is too high, both to best achieve Ofcom's policy objectives and when objectively assessed against the level of consumer harm. Virgin Media considers that Ofcom has overstated the level of consumer harm, and we set out our views in Section 9, below.

Voluntary Industry Code of Practice

Virgin Media has worked with BT and Sky (and other CPs) to present a Voluntary Code of Practice to Ofcom. This Code covers the same basic elements as Ofcom's proposed regulation, but differs in relation to the amount of compensation to be awarded.

A crucial difference, an essential element of any agreed Code between providers, is that any values must represent minimum levels of compensation, with any signatory to the Code being free to set an alternative value (in pursuit of service quality competition) for the actual level of compensation offered. It would be inappropriate for all providers to agree the "right" level of compensation in this context.

[13] Consultation Paragraph 5.13
[14] Consultation Paragraph 5.18

A minimum or compensation floor will still deliver a guaranteed and clear level of compensation for a relevant event in the same way as the proposed regulation, but we consider that it has a number of advantages.

- It allows the highly competitive market to work to ensure that CPs can differentiate by offering enhanced levels of compensation. This could vary between a CP's packages, addressing one of Ofcom's concerns that customers are able to choose products and services that meet their needs.
- It will minimise the burden on CPs whilst meeting the policy objectives identified by Ofcom. Given the relatively small pool of customers that are being targeted by the proposal, it is essential that the burden of any system of compensation is proportionate in relation to its intended effect.
- It operates independently of consumers' right to complain. Ofcom's consultation sets out a number of areas that led to customer dissatisfaction with CP processes, some of which were directly linked to the loss of service, others only indirectly linked (for example when a number of calls to customer services were made after a loss of service, rather than one). The regulated customer complaints processes required under Ofcom General Condition 14 already provide for resolution of issues that cause customers to express dissatisfaction. Customers have the right to take any deadlocked case to ADR, where compensation can be awarded by the independent arbitrator, irrespective of any payment made or offered by the CP. Therefore, a customer who was dissatisfied with a minimum payment would be entitled to seek additional compensation through the GC14 complaint handling process of their provider.

Virgin Media notes that the draft Voluntary Code and Ofcom's proposals are the same in relation to when the rule applies (total loss of service of landline and/or broadband), and the point at which payment is automated (on notification from the customer of a fault).

We also agree in the draft Voluntary Code that the payment of compensation should commence from the end of the 2nd working day.

Section 6: Delayed Provisioning

Ofcom confirms that the target population of consumers who experience significant install delays is exceptionally small. In only 3% of cases were there delays of 10+ calendar days. Given that Ofcom identifies a total of 1,277,000 install delays between the largest fixed line providers[15], this equates to fewer than 40,000 customers in total across all of these CPs annually.

We agree that a delay to the start of new services can be problematic for consumers, especially if they have switched from a different provider and cancelled their services from the anticipated day of commencement of the new services, or where they cannot realise savings in taking a new package at an introductory discount as a result of switching. However, it is vital that any remedy proposed by Ofcom is proportionate.

[15] Consultation paragraph 6.14

We agree with Ofcom that it would be inappropriate to set a specific time period within which services must be provided.[16] As described above, Virgin Media is currently undertaking significant network expansion and therefore providing many "new provide" installs for customers in these expansion areas. **[✂]**. This makes provision of a confirmed install date difficult. Therefore to impose a maximum install time (after which compensation becomes due) would unduly and unfairly penalise CPs investing in new network infrastructure.

Setting the value of the payment at £6 reflects a number of errors in Ofcom's customer impact assessment which we consider makes the proposed regulated rate too high and therefore disproportionate when compared with Ofcom's evidence of consumer harm. Virgin Media believes the £4/day minimum payment proposed in the draft Voluntary Code is appropriate.

Section 7: Missed Appointments

3% of all appointments are missed on an annual basis,[17] so the magnitude of the consumer harm is relatively small. Ofcom's Comparing Service Quality report also confirms that CPs performance varies: Openreach missed between 2-6% appointments in 2016, compared to **[✂]** in the case of Virgin Media.[18]

Ofcom proposes that compensation is introduced where a customer appointment for repair or install is missed. Compensation is not payable where 24 hours' notice of a change to the appointment timing is provided or where a customer consents to a change of time on the same day, with less than 24 hours' notice. Virgin Media considers that it is important to be able to rearrange appointment slots (with appropriate notice) without incurring a penalty; this simply reflects the reality of scheduling truck rolls and dealing with unforeseen events.

[16] Consultation paragraph 6.20
[17] Consultation paragraph 7.2
[18] https://www.ofcom.org.uk/__data/assets/pdf_file/0022/100768/comparing-service-quality-overview.pdf

Section 8: Implementation

Virgin Media agrees with Ofcom's intention for any scheme to be easy for consumers to understand and practical to implement.

We do have some reservations about overloading the customer with information on compensation each time they book an engineer appointment. Information provided to the customer is only useful if it is not "lost in the small print", whether literally or verbally if an appointment is booked over the telephone. It is, therefore, better for more discretion to be given to the provider with the option for Ofcom to intervene if there is a failure to communicate. The Industry Code would allow such discretion but require CPs to fulfil the underlying policy objectives set out by Ofcom.

Virgin Media agrees that the most effective way to pay compensation is via a bill credit, and that a degree of discretion for the use of non-monetary compensation in some cases is appropriate.

We also agree that the credit should be applied within 30 days.

Payment Cap

We consider that a payment cap should be an important part of any approach to the setting of compensation levels. Payment caps are already included as part of Ofcom's existing regulatory remedies in other markets (in part to ensure that these remedies meet the requirement of proportionality).

Without a payment cap, consumers would be entitled to compensation greater than the cost of their contract. Ofcom recognises the "long tail" of customers for both loss of service instances and delayed appointments. It also notes that longer delays tend not to be under the control of the provider, but result from third party issues such as wayleaves / construction permits. These types of issue may easily result in an install date that cannot be met for unforeseen circumstances, and the customer could be entitled to receive daily compensation for an unlimited period.[19] The payment of high levels of compensation to a few individuals has the potential to increase significantly the burden to providers. A higher burden makes it increasingly likely that more cost will be passed through to customers, something that the consumer bodies see as being unacceptable. Indeed, it would be counterintuitive for a consumer protection proposal to result in higher consumer prices due to the need to compensate 'edge' cases.

Virgin Media understands that it is important to strike a balance between redressing consumer harm and creating open-ended obligations on providers. We consider that such 'edge' cases should be considered out of scope for automatic compensation beyond a certain point, relying on current complaint handling processes that include the right to take unresolved matters to Alternative Dispute Resolution ("ADR").

There are various ways in which a cap could be imposed; a time limited cap or a value-limited cap are two of the more obvious approaches.

[19] Although if rectification of a fault was rendered impossible by access to land (without permission) being an unlawful act, then this would fall within the exemptions proposed by Ofcom.

Virgin Media considers that a key requirement for a cap to work is to ensure that the consumer can take action to resolve the issue by switching provider or service. In the event of either a long-term fault or a long-term installation delay, the obvious course of conduct for the consumer is to seek to take alternative service from another provider. The compensation provided by the "at fault" provider should be sufficient to enable to customer to:

a. Come to the decision that leaving is their best option as a short-term solution is not likely to be available;
b. Enable the customer to take that decision without being detrimental to their immediate position; and
c. Provide reasonable time to effect a move to a new provider.

For a cap to work therefore, a CP must inform the customer that this is a long-term issue, and that automatic payments will continue for a specified period or for a specific amount, with that period / amount being sufficient for the customer to rearrange supply.

We therefore consider that the following approach would satisfy all of the criteria above and provide certainty to industry in the event of a long and enduring issue that generates a liability to pay automatic compensation.

Virgin Media considers that compensation could be limited to 30 days beyond formal notice (the Notice) being given to the customer that automatic compensation payments will cease from a specified date.

It is important that the Notice should not be served as a means to avoid or minimise payment of compensation. It would be inappropriate if a provider always served a Notice on the occurrence of any trigger event. Therefore, we propose that the Notice must not be served before 30 days since automatic compensation payments started.

The Notice must also:

set out the date on which compensation will cease;

set out that no EDF/ETC will be charged in the event of cancellation within the 30 day period; and

set out that the customer can still raise any issue through the complaints process and seek additional compensation via that route. The Notice should also include a clear reference to ADR being part of the complaints process.

In this way the customer will be given a month to decide their next steps from the point that the provider decides that the loss of service / delayed install is a long-term issue, with a minimum of two month's compensation payable. This does not cap the compensation if the matter can be resolved and the provider decides not to serve a notice. In the event that the notice is served, the customer is given a reasonable period to seek alternate services, which will be likely to be the quickest way for them to restore the service to their home. This would be a better resolution for the consumer than continuing to require compensation payments to be made, which would not address the underlying loss of service. It would also help to protect providers from customers who seek to 'game the system' by continuing to require compensation payments in the knowledge that the issue is not going to be resolved quickly, although they may be able to seek an alternative service for lower cost (e.g., mobile voice and/or data).

Exceptions

Virgin Media agrees that appropriate exceptions need to be built into any compensation scheme, including the four identified at paragraph 8.32 of the consultation. We note that the third bullet covers situations where it would be unlawful to rectify the issue that is generating the problem. We consider that this is a required and highly relevant exemption as longer term problems often persist due to access issues when we are prevented by law from accessing property / premises without the necessary permission.

Force Majeure

Ofcom argues that it is irrelevant whether the customer loses service in a force majeure situation, as they still experience a loss of service; compensation should still be payable irrespective of whether there is no fault on the part of the provider. Virgin Media considers that there is an unfairness in this regard, in that one "innocent party" has to foot the bill.

Certain force majeure events can affect significant numbers of customers, for example wide area flooding due to adverse weather. This may give rise to significant and unexpected liability to providers.

There is often some compromise in this area in other compensation regimes (notably including Openreach quality of service obligations), allowing the provider to identify force majeure event in specific circumstances (with appropriate protections built in to prevent abuse). Examples of these include those that do not eliminate the need to pay compensation, but simply put back the start of the compensation payment to acknowledge that restoration of service will take longer in an extreme situation.

Overall, Virgin Media considers that Ofcom has not sufficiently considered the need to allow for exceptions to the general rule that the retail provider must always pay.

Section 9: Impacts

Virgin Media has a number of concerns about the evidence used by Ofcom to generate its compensation values. Below and in the supporting annex, we discuss the range of sources Ofcom has considered as part of its analysis. In particular, we consider the data sources that Ofcom has given the greatest weight to in arriving at its proposals. We propose refinements to this analysis and present the corresponding changes to Ofcom's estimates of harm that result from each event.

Ofcom uses a range of sources for estimating harm, broadly grouped into two categories:

- Real-world practice (current industry policies, other UK sectors and international comparisons); and
- Survey responses ('reasonable' estimates, willingness to pay and component-based[20]).

Real-world practice

Ofcom recognises that cross-sectoral and cross-country comparisons have drawbacks. Virgin Media would go further than this; they provide little or very limited value as a source of comparison. Whilst they may provide some, limited, context to Ofcom's proposals, we see no merit in comparing nominal compensation values, for example.

In the event of an outage, the relative importance and substitutability of communications services as compared to water or gas/electricity differ drastically. For example, Ofcom's survey shows that on average, respondents suggested their household 'would be able to cope' without a fixed phone line[21] for 653 days. We would suggest that a lack of access to heating and drinking water or working sewage services generates consumer harm of a different order or magnitude. If any conclusions were to be drawn cross-sector comparison, it should be that penalties that CPs might face when they do not meet expectations (or equivalently, the recompense consumers receive when affected) should be materially lower than other sectors in the UK.

The circumstances of other jurisdictions are likely to offer limited evidence to inform Ofcom's decision making. Ofcom notes that other jurisdictions tend to mandate lower compensation payments than Ofcom is proposing: typically a pro-rated refund. Whilst we still place limited weight on evidence from other jurisdictions, we note the broader context of the market overall: UK consumers are currently achieving (without regulatory intervention) compensation payments comparable to other mandated schemes elsewhere. At the same time, the UK is amongst the most competitive communications markets globally, providing value for money, high broadband speeds and good consumer outcomes across a broad range of international/EU ranking metrics.

Survey responses

In the remainder of this section we briefly discuss each form of harm identified by Ofcom in turn and propose revised inputs to Ofcom's proposals. These revised approaches are either based on information published by Ofcom or, where the quality and robustness of Ofcom's evidence is (in our

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[20] Estimates built-up from factors that may create consumer harm, such as time spent or costs incurred.

[21] 'd1_land_2', excluding '#NULL!' responses.

view) weak, we provide a simple alternative approach. In the annex to this response we provide further detail on our review of Ofcom's evidence.

Loss of service

Ofcom suggests that survey responses on 'reasonable' compensation payments and its own estimates derived from component-based analysis indicate that a daily compensation of £10 is appropriate for loss of service. Ofcom recognises that these values are significantly higher than respondents confirm they would be willing to pay to avoid this harm and they are also higher than what CPs currently offer. In A4.59, Ofcom notes that it tends to place greater weight on survey responses about what compensation respondents think would be reasonable. In the annex we discuss the shortcomings of these data sources in further detail.

Having reviewed the underlying evidence, it appears that £10/day overstates a fair value for the underlying harm. If we revise the outputs of the survey data and consider other data sources (such as willingness to pay data) we get a revised value of no more than £6/day.

Delayed provisioning

Following a review of survey data on the harm resulting from delayed provisioning, Ofcom proposes to use an estimated value of harm resulting from loss of service, adjusted by a factor to reflect the incidence of install delay. Whilst we reiterate our general concerns about how much reliance can be placed on Ofcom's survey data, responses indicate that the incidence of delay are rare and any harm is largely immaterial. We therefore expect that the methodology used overstates the harm experienced.

Despite this concern, maintaining consistency with Ofcom's approach, we have identified a set of factors that we believe more accurately reflect the harm from provisioning delays. We estimate that the value of harm from delayed provisioning falls within the range of £0.75-3.28/day.

Missed appointments

We have concerns about the underlying data used to estimate the harm resulting from missed appointments. Many respondents appear to have misunderstood the question and as a consequence many of the responses are illogical and not credible. Instead of relying on Ofcom's data, we present a simple heuristic estimate that supports a value of £20/missed appointment for the broader industry.

As we note in the annex, we believe that this revised value overestimates the harm that Virgin Media 'causes' because we endeavour to minimise the impact on customers when appointments are missed. Having designed and invested in our operational processes to minimise this harm, we will be expected to pay compensation at levels that assume that we have not taken these steps. Setting payments that are above this level would undermine competition based on service quality. Instead it would only incentivise operators to minimise the incidence of events and not the harm created by these events.

Section 10: Provisional Conclusions

Virgin Media welcomes Ofcom's positive comments about the industry draft Voluntary Code of Practice. Ofcom acknowledges that it was not able to undertake a full review of the proposals or consider the impact of the proposed levels of compensation prior to publication of the consultation. We welcome the opportunity to continue to discuss the draft Code with Ofcom and consider that a revised proposal, in conjunction with our comments on Ofcom's consumer impact assessment would fully meet Ofcom's objectives and therefore be the appropriate means under which automatic compensation should be introduced.

To introduce formal regulation when a less intrusive alternative way of achieving the stated regulatory aim is available would be disproportionate. The revisions to the draft Voluntary Code of Practice are detailed in the separate submission to Ofcom made as a joint submission by the Code authors (BT, Sky and Virgin Media).

Ofcom identifies three shortcomings of the Code which result in it being rejected in favour of a regulated approach:

Levels of compensation

The revised Code has higher levels of compensation than the initial Code as set out at Annex 13 of the consultation, however these are still lower than the levels that Ofcom proposes to set. This is necessary as the levels proposed in the Code should be minimum levels. A minimum will have two effects: firstly it will guarantee a reasonable payment to consumers; secondly it will allow for greater differentiation within the market. Differentiation would not only stimulate competition between providers, but also allow different packages to be launched by providers, where different service levels can attract higher levels of compensation, for example.

For the reasons stated above, we consider that that actual consumer harm assessment undertaken by Ofcom does not support the levels of compensation proposed by Ofcom.

Taken together, the levels of compensation in the revised Code are set at an appropriate level. They are closer to or estimate of harm and they permit differentiation between providers.

Number of Consumers covered

An industry Code will gain momentum when backed by Ofcom, and it is inappropriate to judge the number of participants from its initial authors. Since the consultation, further discussions have indicated interest from a number of other CPs.

Additionally, as Ofcom notes, informed consumers may prefer the reassurance of a CP signed up to the Code rather than an unaffiliated provider. This would be a binary metric that would not require a comparison of multiple quality of service parameters, and as such it would be relatively easy to communicate to consumers. This may make quality of service more of a relevant factor in a decision to switch than it is today.

To the extent that Ofcom is concerned about the lack of consumer protection for unaffiliated providers, it could consider imposing "backstop" regulation requiring providers to implement appropriate compensation schemes. The Industry Code would be one way of discharging such an obligation, but if a provider failed to put in place any measures, they could be held to be in breach of the obligation. This is a similar approach that Ofcom has taken in the past in relation to number portability, where providers are required to offer compensation for porting delays, but the form of that compensation is left to the provider.

Timing of compensation

Ofcom is concerned that the Industry Code had a longer period before a trigger event than the Ofcom approach. The Code has been amended to align with Ofcom's proposals, so this aspect should no longer be a point of difference.

Overall, we consider that the Code now fully meets the policy objectives set out by Ofcom and allows for healthy differentiation between providers and propositions. Given Ofcom's requirement, derived from duties contained within section 3 of the Communications Act 2003, to regulate with a bias against intervention, the Code is the appropriate mechanism for a compensation scheme to be introduced.

Implementation Period

Ofcom assesses that industry will need time, following any final decision, to implement any proposed changes. It should be noted that the time to change systems will be similar for Virgin Media whether the changes result from regulation or the Code, given that the Code is modelled on the regulatory scheme proposed by Ofcom.

We consider that Ofcom has underestimated the period required to undertake substantial changes to internal systems / processes; agent retraining; updating consumer facing information (in hard copy and on website). We estimate that the proposed 12-month implementation period is unrealistically short, and a 22-24 month period would be required at minimum. Such a period also reflects similar periods allowed for other recent regulation such as reform of the non-geographic numbering, where 18 months was allowed for arguably more focused and less extensive changes. We set out more detail on our concerns on timing at Annex 2 which contains input from the teams involved with project implementation.

Section 11: SMEs

Virgin Media agrees with Ofcom that it would be inappropriate to regulate compensation payments for SMEs.

The needs of SMEs differ from the residential market. Virgin Media has recently introduced its VOOM Fibre proposition. All VOOM Fibre variants have the same download speed of "up to 350Mb/s" irrespective of the package purchased. Instead, we differentiate on other bases, including quality of service SLAs; 48hr, 24hr and 12hr fault response times. This offer reflects our view of how the market for SMEs is evolving as customers put increasing focus on quality of service.

We also agree with Ofcom that the market place is more differentiated for business customers (compared to residential), and therefore there is an increased ability of SMEs to shop around and get a product to suit their needs.

Overall, we agree with Ofcom that the key issue for this market is transparency, and that it would be disproportionate to apply a blanket automatic compensation regime for businesses. Indeed, given the wide choice of different product offerings available today, such a "one size fits all" approach (as proposed for consumer services) could have the effect of stifling competition in this market.

Ofcom proposes to introduce a requirement to promote SLAs and SLGs on websites; within the contract; and in a separate notification at the time of contract. Virgin Media does not object to this transparency requirement.

Section 12: Mobile

Virgin Media agrees with Ofcom's provisional conclusion that requiring payment of automatic compensation for mobile is not justified at this time. We agree that mobile loss of service is different in nature to fixed loss of service, given that the customer is often mobile when using service and therefore a single mast outage will affect them whilst they remain within the coverage of that base station.

Conclusion

Ofcom has focused on analysing whether a provider adequately compensates consumers for certain quality of service issues. We agree that customers should be able to get adequate redress for key failures of service provision, and therefore Ofcom is correct to review whether this is happening.

However, in carrying out its analysis, Ofcom has overestimated the scale of the issue through a combination of flaws in its consumer harm analysis and underestimating the competition in the market.

Virgin Media considers Ofcom objectives can be achieved without direct intervention. An Industry Code with participation of CPs covering the vast majority of broadband customers is the best way to secure the policy objectives.

Virgin Media

June, 2017

Annex 1: Ofcom's evidence base for consumer harm estimates

In this annex, analyse Ofcom's evidence of consumers' harm and of the inputs used to generate quantified estimates of the value of harm for each event type.

Survey methodology and data

Below we provide comments on the survey evidence that Ofcom presents.

Telescoping, recall bias and survey approach

Ofcom asks respondents to recall whether or not they experienced a loss of service in the last two years.[22] This is a long period of time and the accuracy of responses is likely to be questionable. Our consumer research teams would typically seek to conduct surveys on customer experiences with a time horizon of the last few months at most, as their experience is that the quality of responses deteriorates significantly after long periods.

Ofcom could have collected more accurate data, over a shorter time period (and presumably at lower cost) if it had asked CPs to provide information on: customers who had experienced loss of service, a missed appointment that was the CP's fault and data on customers who had switched recently (and therefore may have experienced delayed provisioning events).

This approach would have provided a significantly higher hit rate for respondents that had suffered these events and they would have been recent occurrences. It is likely this would have avoided some the data challenges that Ofcom faced:[23] small samples and the high frequency of outlier data.

Closed questions

Whilst the use of 'closed' questions is often required to elicit usable answers, Ofcom's formulations may have biased both the responses to these questions and later questions. For example, Ofcom asked about compensation for delayed installation of two days or four days, and specified the level of compensation. This appears to be needlessly leading the respondent – why not simply ask what compensation/discount would they require for a one-day delay or how much they would pay to expedite by one day?

Similarly, Ofcom asked a number of questions with codified numerical response options, such as the amount of time spent on the phone to rearrange a missed appointment. In this case, the shortest coded response is "under an hour". Given the this category would encompass effectively all calls that customers actually make to CPs, the availability of options for 1-3hrs, 3-4hrs, 5-8hrs and 8+ hours appears odd.

The incidence of these longer durations are exceptionally rare and the undue prominence they are given in the question, when combined with respondents being asked to recall events from the distant past is likely to lead to substantial error.

[22] In some cases, Ofcom asked consumers to recall their experience in the last five years and even ten years.
[23] For example, in relation to 'reasonable' compensation payment questions, Ofcom relied on sub-samples including just 12 and 14 respondents.

Anchoring effect of information

Prior to asking consumers about reasonable compensation payments, Ofcom informed consumers of the average advertised installation fees of £40. Whilst this may have been intended to inform consumers, it may have also (inadvertently) guided consumers to a particular frame of reference i.e. 'think about how much of £40 you would want to get back'. However, it largely appears to have confused consumers as many verbatim responses confirm that they have the expectation that installation is already free (as it may be). As a consequence, the quality of the responses to this question seems to have been impacted.

In addition, we note that given this questioning, and the proposals put forward, Ofcom might have asked respondents for their opinion on charging (or charging more) for installations, or higher rental prices in return for higher compensation payments. Similarly, respondents could have been asked about whether or not they would welcome a move towards a more formal charging structure for appointments, for example charging customers for missed appointments that are their fault. This may have revealed useful willingness to pay information and would also have provided respondents with the context of the 'cost' as well as the 'benefit' of Ofcom's proposals.

Loss of service

Ofcom notes it places most weight on the survey data on what respondents felt would be reasonable. It also notes that this result is comparable to the rounded mid-point of outputs from its component based pricing analysis.

In the context of this choice of weighting, Ofcom places less weight on other evidence such as respondents' direct willingness to pay for avoiding delays/expediting service. We believe more weight should have been placed on this evidence.

Willingness to pay

Although Ofcom places little weight on willingness to pay evidence when determining the quantum of loss of service payments, we believe this evidence is important. The survey responses appear to show a limited sensitivity to repair times and a clear lack of willingness to pay to expedite repairs. 93% of respondents confirmed they would not be willing to pay any of Ofcom's proposed prices to reduce the duration of a loss of service to within one day.

We believe that Ofcom should place greater weight on the willingness to pay analysis than it has done. Ofcom notes that its proposals may result in a pass-through of additional costs into retail prices. As a consequence, consumers would face higher prices to facilitate higher compensation payments and/or higher service quality performance. Data related to willingness to pay provides an important evidence base to inform Ofcom's proposals and should have received greater prominence alongside appropriately defined direct estimation questions. If consumers are to experience higher prices as a consequence of Ofcom's proposals, evidence about their appetite for this should be prominent in Ofcom's analysis.

Customers are likely to pay higher retail prices as a result of Ofcom's proposals. Based on Ofcom's survey responses 93% of respondents indicate this is a trade-off they would not choose to make themselves. This form of survey question is one of the few that equates higher service quality with higher service costs, as opposed to questions asking what levels of compensation would be considered 'reasonable', which on first glance, respondents might consider to be a free lunch.

Reasonable level

Ofcom notes that it is inclined to place the greatest weight on 'reasonable' payment responses. As we have noted elsewhere, we have concerns about the influence that the small data sample and the prevalence of outlier data have on the outputs of this analysis.

Ofcom groups three sets of questions together to derive its mean estimate of the reasonable level of daily compensation for loss of service. Two of the sets of answers have a very low number of observations. The third set of responses is larger and makes up more than 90% of the pooled responses. According to the survey script, this last set of responses asks businesses what their estimate of reasonable compensation would have been. Ofcom's measure will be dominated by this group and as these are specifically related to business customers, it is not appropriate to use this data to set compensation levels for consumers.[24]

Below we group together the two smaller set of responses and then consider the larger set of responses provided by businesses separately.

Small sample-size questions

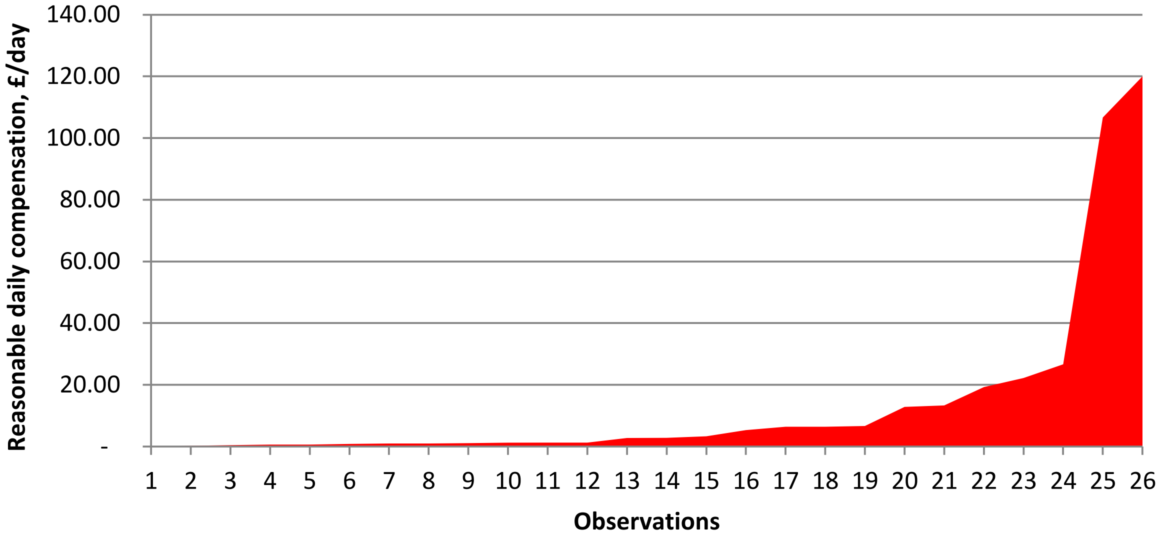
14 respondents who experienced a loss of service and considered the compensation they received to be sufficient were asked what value they received. This is a small number of observations and the responses appear to be highly skewed, as shown in the figure below.

12 respondents that received compensation (and felt it was inadequate) provided an estimate of the level of compensation they felt would be reasonable. This is also a small subset of responses and, again, these responses appear to be highly skewed, as shown in the figure below.

Below we summarise our estimate of the daily harm from these sets of responses. This is calculated by dividing respondents' 'reasonable' estimates of compensation by the duration of the losses of service and scaling up by the average daily time spent by consumers on the internet.[25]

[24] It is likely that these responses would be heavily impacted by respondents' estimates of the impact on their business operations. If instead, this is a typographical error in the survey script (and consumers were asked this question instead) our concerns about skewed responses remain.
[25] Adults' media use and attitudes, 2016 Report, Ofcom, section 4.2, https://www.ofcom.org.uk/__data/assets/pdf_file/0026/80828/2016-adults-media-use-and-attitudes.pdf

Figure 2: Reasonable daily compensation, based on H1g and H1i responses



The skew of these responses is clear. Excluding the two largest outliers generates a daily average level of reasonable compensation of £5.75. Adopting the median (and retaining the outliers) leads to an estimate of £2.80 per day.

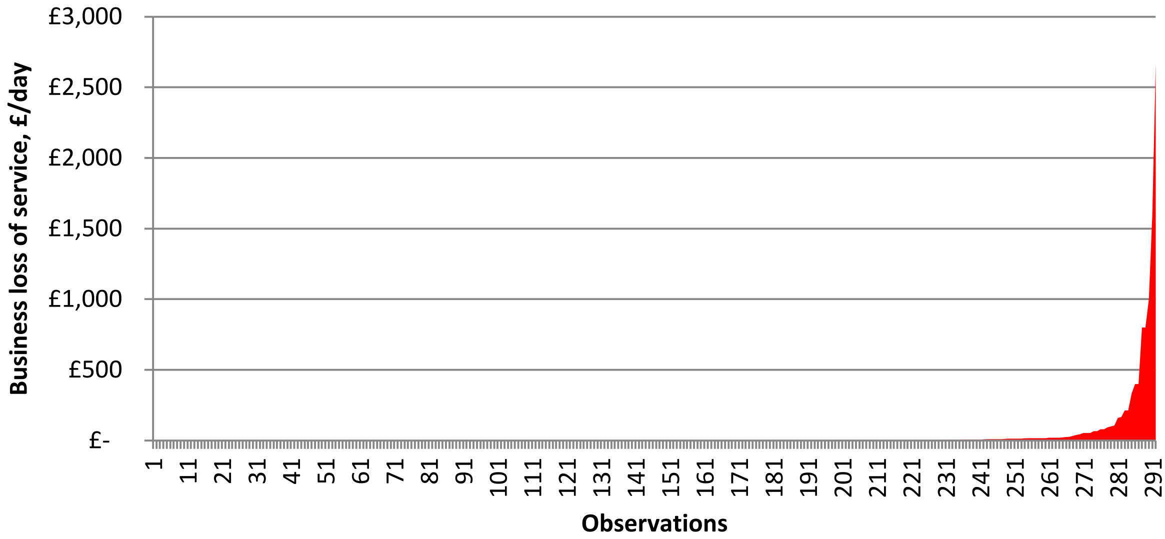
Reasonable estimates from business customers

Ofcom appears to have asked businesses that had experienced a loss of service to estimate what would have been reasonable compensation, given they did not receive, ask for or get offered compensation.

368 respondents answered this question. 19% of respondents answered 'don't know'. 50% confirmed that no compensation was necessary as there was no adverse impact on them. 113 respondents provided an estimated figure.

Below we plot all responses, assigning a value of £0 to those that said no compensation was necessary. We estimate the effective daily value of compensation by scaling responses to an 8 hour working day figure. If a typographical error existed in the script and these responses are from consumers, it would be more appropriate to scale by average daily internet usage, as used in our analysis above.

Figure 3: Effective daily estimates of reasonable LoS compensation (business)



Consistent with Ofcom's other survey evidence, the responses are heavily skewed. The average daily estimate of reasonable compensation for businesses is £34.88 however the median estimate is £0. We do not believe it is reasonable that a handful of businesses customers that estimate reasonable daily compensation of many hundreds or thousands of pounds should drive or even be relevant at all to the estimates of consumer auto-compensation values.

Component based pricing

We note that Ofcom undertakes two alternative specifications of its analysis of component based estimates of harm from loss of service:

- The sum of the price of the service lost and the value of time spent attempting to restore the service (£5.02 per day); and
- The sum of direct financial costs and the value of time spent attempting to restore the service (£19.21 per day).

Taking the price component as given, below we analyse one of these factors - time spent trying to resolve - to assess the quality of the data that has been relied on to support Ofcom's loss of service compensation estimates.

Time spent attempting to restore

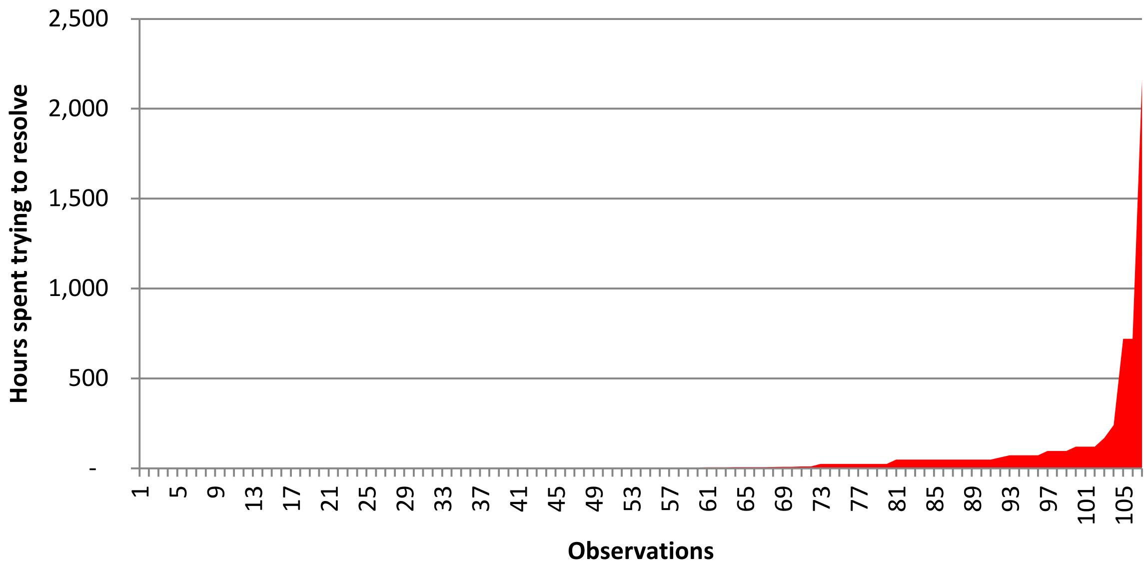
Reviewing the detail of the survey responses, of the 121 respondents that confirmed they "Took time to resolve loss of service e.g. webchat/phone calls", it appears that more than 10% had already confirmed they had not experienced a loss of communications services in the last two years. Of the remaining 107 that were used as part of Ofcom's estimates, almost 10% confirmed that they did not report the loss of service issue to their CP.

We agree with Ofcom that there appear to be a significant number of outliers in the responses to this question.[26] This is likely due to the ambiguous phrasing of the question.

Ofcom is correct to adjust for these outliers, but simply selecting the median from the responses to account for the skew is not a sufficient adjustment. The survey asks that respondents confirm how much time was spent trying to fix the problem themselves or speaking to their CP. It is clearly not credible that customers actively spent multiple days doing either/both of the activities Ofcom suggested.[27]

As a consequence, we believe it is inappropriate to include any responses that show time spent doing activities measured in days. These answers clearly show the respondents misunderstood the question and so the response is unreliable. Below we plot the responses included by Ofcom to derive its estimates. The outliers are self-evident.

Figure 4: Self-reported time spent trying to resolve (hours)



As a consequence of these anomalies, we have concerns that Ofcom places greater weight on survey responses compared with evidence on willingness to pay for avoiding loss of service. If Ofcom remains comfortable, as an evidence-based policy maker, to use this information as a basis for its proposals[28], we suggest, at a minimum, it excludes responses indicating 'days' of activity and takes the median of remaining responses.[29]

Delayed provisioning

[26] We would note, as an example, it appears one respondent confirmed they did not contact their CP, but for 90 days "spent time trying to fix [the loss of service] yourself (e.g. turning modem on and off)".

[27] It is also not clear whether a "day" in this context is considered a 24 hour period, or say, an 8 hour working day.

[28] In this case, Ofcom appeals to this data to corroborate the validity of the 'reasonable compensation' survey estimates.

[29] We note that this subset of data still appears to be subject to material outliers/misunderstanding of the question.

Ofcom's consultation includes a proposal for an auto-compensation payment of £6 per day for delayed provisioning. Ofcom bases this proposal on a weighted adjustment of its loss of service value.

Ofcom notes that operators, on average, currently pay more than £2 per day in voluntary compensation payments. Ofcom's research indicates that customers' willingness to pay for avoiding this delay is between £1-2 per day.

As we go on to discuss, at the upper bound, a level that is in line with customer expectations (i.e. allocative efficiency) would put this value at no more than £3.28 per day. This is based on using more appropriate metrics from Ofcom's own research and the revised loss of service value discussed previously.

In this section we briefly discuss the high level findings of Ofcom's survey results on delayed provisioning, the incidence of harm and the stated preferences of customers' willingness to pay to avoid such harm. We go on to suggest refinements to Ofcom's analysis to estimate better the incidence of this harm and the value of avoiding it.

Overview of survey responses, loss of service incidence and direct cost

Ofcom's survey results indicate that 92% of respondents said the provisioning timing was in line with the time period provided by the operator, and 87% were satisfied with that timing. 5% of survey respondents indicated they experienced a loss of service when a new service was provisioned.

Of this 5%, 24% of respondents indicated service was lost for 12 hours or fewer (38% lost service for one day or less) and 41% did not know how long their service loss lasted.[30] Consequently, of those that experienced a loss of service, 35% experienced the loss for 1-10 days. Therefore approximately 1.75% of all respondents experienced a loss of service of one day or more due to delayed provisioning.

We note that of those that experienced a loss of service during provisioning, 13% reported it had a "negative impact on day-to-day activities" and 43% actively confirmed it had no impact on their household at all.

25% of customers that experienced a loss of service during provisioning found a work around and of those, two-thirds derived no financial cost from doing so. Only 25% of respondents notified their CP of their loss of service. It therefore seems remarkable that Ofcom's survey results indicate that the average direct cost of workarounds is estimated to be £54, despite the median response to survey of £0. It appears that Ofcom's survey data is heavily skewed by a small number of extreme outliers.

Overall, survey response data indicate very high levels of customer satisfaction with provisioning performance. Where a loss of service occurred, the vast majority were satisfied with the operator's performance in resolving it: 87% did not report a negative impact on day-to-day activities and of those customers that sought a workaround, two thirds incurred no financial cost in doing so. Many

[30] We would note that if 41% of respondents were not aware of the duration of the loss of service when asked for codified responses. This is either likely to indicate a low incidence of harm from the loss of service, or raise concerns about the accuracy of recalling the event.

respondents that did experience a loss of service during provisioning could not remember the details of the event and only a quarter reported it to their CP; this evidence does not indicate that delays in provisioning cause material harm to customers.

Ofcom's own survey results also indicate that this is an uncommon event. Where it occurs, it is resolved satisfactorily in most cases and very few customers report generating any direct financial loss as a result. Although Ofcom uses alternative data to derive its estimates of harm, this survey response data should temper the value of compensation that Ofcom selects.

Willingness to pay

The formulation of Ofcom's survey questions on willingness to pay appears odd. In seeking to understand the marginal willingness to pay for quicker provisioning by one day (as a proxy for avoiding a one-day delay) Ofcom has asked respondents to value expediting the process by two days or four days. Ofcom provides no explanation for why two days and four days were offered in the survey. It seems likely that this could result in exaggerated estimates of harm.

Despite this concern, we note that almost two thirds of respondents would not be willing to pay to expedite service provisioning by two days. Furthermore, when asked how much they would be willing to pay for faster installs 91% of respondents indicated they would not be willing to pay any of the options presented by Ofcom for a four day reduction. Customers gave the main reason as "the price increases were too much to justify the faster installation". Ofcom presented customers with the option of expediting installation by as much as four days at a cost as low as £5 (£1.25 per day) and the overwhelming majority of customers indicated they would not be willing to pay, the main reason being that the price was too high. The logical conclusion to draw from this analysis is that £1.25 is in excess (possibly substantially) of the value customers place on a one-day delay in provisioning.

A review of the verbatim survey responses, "c3a_other" suggests that many respondents did not expect to pay for installation and therefore would not be willing to pay more. Often installation fees are not charged by CPs and therefore, Ofcom's wording is confusing – if they are currently charged nothing (as many survey responses confirm), then they do not recognise Ofcom's suggested £40 and do not expect to have to pay anything in addition.

This is unfortunate, as Ofcom's proposals may lead to CPs introducing installation charges (or raising them if they are currently charged), furthermore CPs may seek to charge when customers are not available for their appointment. Both of these are unlikely to be welcomed by the customer and yet would be a direct result of Ofcom's proposals and so Ofcom should ensure that its proposals are proportionate.

Provisioning harm

In its consultation document, Ofcom notes that it has little direct evidence of the degree of harm resulting from delayed provisioning. Ofcom's evidence suggests little harm exists. Furthermore, when survey respondents were asked about their willingness to pay, most confirmed they would not be willing to pay the values that Ofcom suggested.

As a consequence, Ofcom has adopted an alternative approach and suggests that delayed provisioning harm is likely to be correlated with the loss of service harm derived from alternative analysis. While conceptually this is plausible, the survey response data does not support this correlation. The majority of respondents explicitly indicated that the loss of service due to provisioning had “no impact” on them and the vast majority did not say it had a “negative impact on day to day activities”. In contrast, understandably, respondents indicated that a loss of service event on a current service had an impact in more cases. This is plausible, since the large majority of respondents had an existing service in place at the point of switching.

Ofcom weights the daily harm derived from loss of service by the proportion of customers who did not have an existing service when they sought the provisioning appointment, £6.60 (£10 * 66%). However, Ofcom has two, more suitable, metrics to use from its own analysis.

As noted previously, 43% of respondents positively confirmed the provisioning loss of service “did not affect the household” when they experienced it and therefore 57% did experience some form of impact. Furthermore, only 13% suggested it had a “negative impact on day to day activities”. In our view, this provides a sensible range (13-57%) for the weighting factor that Ofcom might apply to the estimated loss of service value.

We note that Ofcom has not sought to quantify harm effects such as stress or anxiety. Therefore it would be more appropriate to adopt a value closer to the 13% weighting factor, which is a measure of respondents that confirmed specific ‘negative impacts’. This measure closely mimics the types of harm Ofcom has tried to quantify in the loss of service value that this factor is then applied to.

Virgin Media believes the range of £5.75 * 13% or 57% is appropriate and therefore our delayed provisioning harm estimates fall between £0.75-3.28 per day.

Missed appointments

In its consultation document, Ofcom notes that it has reviewed a number of alternative mechanisms to derive an estimate of consumer harm derived from a missed appointment. In doing so, it arrives at an estimate of £30 per missed appointment. Ofcom places the greatest weight on survey evidence on customers who report having experienced a missed appointment.

Survey evidence

We agree with Ofcom that it is apparent that many respondents misinterpreted questions relating to missed appointments. However we do not believe these issues are limited to respondents' interpretation of the time they spent waiting for engineers. It is concerning that more than a fifth of respondents that confirmed they had experienced a missed appointment also confirmed that this was more than two years ago. We would expect these estimates of time spent on phone calls or waiting for an engineer to be subject to significant error.

It is not clear why Ofcom's questions did not clarify to respondents that it would not be appropriate to include time spent waiting for an engineer during the appointment slot i.e. if an engineering slot has a three-hour duration and the customer waited a further hour after the slot, the analysis should have elicited a response of one hour; the customer would have been made fully aware of the expected timeslot duration and so it would be reasonable that this period is not considered incremental to the occurrence of the missed appointment.

We agree that responses indicating waiting for engineers for 24 hours or longer are nonsensical in the context of the question Ofcom intended to ask. Indeed, we find it difficult to believe that customers spent multiple hours or 10s of hours on the phone to rearrange an appointment. Having reviewed the data we do not believe it is appropriate to use this data to support Ofcom's appraisal of harm.

Ofcom's overall intended method of analysis is also not clear. The implication of the proposed analysis is that a customer experiencing a delay would incur a loss of leisure time that equates to the full duration of the delay to the appointment. In practice, a customer would receive a revised indication of when the engineer will visit and he or she is then free to spend their time how they wish.

Again, we believe that it would have been more effective for Ofcom to have requested from CPs data on customers who had recently experienced a missed appointment that was not the fault of the customer. Similarly, it is likely that CPs would be able to provide statistics on call durations related to missed appointments. It is not clear why this approach was overlooked; instead, Ofcom has asked customers to recollect, in many cases from more than two years ago, how long a call lasted.

Alternative estimate

Despite not being able to rely on Ofcom's survey response data, the framework for analysis that Ofcom intended to follow is reasonable. Using a set of reasonable assumptions, it is possible to derive more sensible estimates of the durations of time involved associated with missing an appointment.

As an upper bound estimate of the average inconvenience it is reasonable to assume that, in the event of a missed appointment:

- A customer waits up to 30 minutes after the slot ends before either the customer or the operator makes contact to discuss the missed appointment;
- 30 minutes is spent by the customer to make or receive a call to or from the operator to verify the appointment has been missed and to identify a replacement slot; and
- A full three-hour slot is set aside by the customer to account for the additional appointment.

This yields an estimate of £22.04 per missed appointment.

Details of Virgin Media's field engineer operations

As a matter of course, Virgin Media engineers typically place a courtesy call with customers on the day of a provisioning or fault appointment. This occurs prior to the appointment slot. Therefore, it would not be correct, in our case, to say that customers will experience wasted leisure time "part way through the appointment window".

We also note that if the appointment slot will be missed, it can be rearranged as part of a call from the central field service team and therefore no further harm would be generated via the customer having to contact Virgin Media to rearrange.[31]

We believe it would be inappropriate and counter to Ofcom's objectives that, where an operator, such as Virgin Media, seeks to minimise the harm to customers through wasted time and incurs additional costs to do so, will be penalised with inappropriate compensation charges.

[31] Or spend time finding the relevant contact number, navigating the IVR, in a call queue, undertaking DPA or explaining their circumstances etc.

Annex 2: [✂]

[✂]

Annex 3: Proposed improvements to VICOP

Automatic Compensation – Voluntary Industry Code of Practice

Proposed improvements to VICOP

Factor	Ofcom's proposal	Current draft VICOP	Proposed improvement to VICOP
Number of consumers covered	All consumers of landline and broadband services for residential services	BT/Sky/VM	BT/Sky/VM **plus Zen Internet, EE, Plusnet in principle**
Compensation for delayed repair of loss of service	**£10 per calendar day** if the customer experiences a total loss of landline and/or broadband service and their service is not fully restored by midnight on the **second working** day after the provider becomes aware of the loss	**£3 per working day** for loss of service beyond **three working days** after a customer reports a total loss of service and a fault recorded on that line	**£7** per **<u>calendar</u>** day for loss of service beyond **<u>two</u>** working days
Compensation for delayed provisioning	**£6 per calendar day** where there is a delay in the commencement of a landline and/or broadband service beyond the date that the provider has committed to in a written form	**£3 per day for each working** day beyond the date of intended activation	**£4** per **<u>calendar</u>** day. ***Assumed that only payable automatically if customer subsequently activates.***
Compensation for missed appointments	**£30** to be paid by the provider where an appointment is missed (and notice of at least 24 hours has not been given or the consumer expressed consent to changed appointment time)	**£20** for a missed appointment slot (if 24 hours' notice of change is not provided)	**£20** for a missed appointment slot (and notice of at least 24 hours has not been given **<u>or the consumer expressed consent to changed appointment time)</u>**
How compensation will be paid	• Compensation to be paid automatically when appointment is missed and	• Compensation to be paid automatically when appointment is missed	*See consultation response (if applicable).*

	there is a delay in provisioning • Compensation to be paid automatically for delayed repair after customer contacts provider to notify it of the loss of service and a fault is recorded	and there is a delay in provisioning. • Compensation to be paid automatically for delayed repair after customer contacts provider to notify it and a fault is recorded	
Cap on payments	No cap proposed	Providers have ability to impose a cap, although this must be above a minimum level. Precise minimum level is not specified. This cap does not limit customers' other rights of redress (to exit their contract or claim additional compensation).	**As a minimum, CP's to offer:** **Automatic compensation for loss of service and delayed provision limited to 30 days beyond a notice given to the customer that automatic compensation payments will cease.** **CP's notice must not be served before the date 30 days after the 'trigger day' for compensation payments.** **Notice must :** **(i) set out the date on which compensation will cease;** **(ii) set out that no early termination/default charges will be charged in the event of cancellation if a customer cancels during the 30 day period from receipt of the notice (even if service is restored during this period);** **(iii) set out that the customer can still raise the issue through the complaints process and seek**

			additional compensation via that route, including reference to ADR. **This remains without prejudice to any other right a customer has to cancel.**
Form of payment	Bill credit (unless otherwise agreed by the customer)	Bill credit (unless otherwise agreed by the customer).	**No change as the same**
Timing of payment	• Within 30 days of missed appointment • Within 30 days of loss of service or delayed provision is resolved	In a timely manner and no later than the next bill after the issue is resolved	**Change to align with proposed GCs** • Within 30 days of missed appointment • Within 30 days of loss of service or delayed provision is resolved ***Note:*** • ***Whilst credits will appear on customer account within period, it may not be reflected until next bill (which could be much later e.g. if billed quarterly).*** • ***Further discussion needed on impact on timing/payment of compensation if a customer chooses to leave before an issue is resolved.***
Exclusions	• Compensation excludes customer-caused incidents	• Compensation excludes customer-caused incidents	**Change to align with proposed GCs to include exclusions in proposed GC's CX.13 (b) to (d)[32]**

[32] Industry welcome further discussion with Ofcom on the definitions used within the current exceptions.

	• Force Majeure and MBORC type events not excluded	• Force Majeure and MBORC type events not excluded	***Assumed that an issue caused from within the customer's home is excluded.*** ***Compensation not payable for loss of service issues to the extent caused by customer not accepting first available repair date.***
Implementation	Implementation period of 12 months after statement (see below)	As soon as reasonably practicable	*See consultation response.*
Provision of information about compensation to Relevant Customers	• Notification of compensation entitlement on booking for missed appointments • Notification on compensation entitlement on notification of activation date • Notification of compensation entitlement on report of loss of service	Promoted on CP's website	To ensure VICOP's principles as they apply to a CP are appropriately and transparently communicated to customers, CP's would like to work with Ofcom (and, if appropriate, consumer groups) to look to increase transparency of the VICOP by: (i) considering similar transparency principles as outlined in Ofcom's proposed regulation for SMEs; and (ii) establishing a 'kitemark' identifying those CPs who have chosen to participate in the VICOP.
Enforceability	Legally enforceable	Not enforceable	**CP's are willing to include provision of relevant information to Ofcom to assist with monitoring.**