

**Ofcom Consultation**  
**Automatic Compensation**

**Response from Centre for Effective Dispute Resolution (CEDR)**

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

**(a) scope, including possible eligibility;**

We agree that residential consumers should be included in Ofcom's consideration of automatic compensation. While many business customers have bespoke contracts with communication providers (CPs), many small business customers may not. It therefore makes sense to consider small business customers as also being eligible for automatic compensation.

We agree that automatic compensation would not be suitable in all situations. It could only be easily awarded where a problem is capable of being objectively identified. For example, where a customer's service is cut off or where an engineer's appointment is not honoured due to the engineer's failure to turn up at the customer's property. There are many situations which could give rise to a dispute which cannot be objectively ascertained at the time, for example where a customer alleges that the written responses that the CP provided were not sufficiently clear or comprehensive.

We are in agreement that automatic compensation should not be awarded where the cause of the problem lies with the customer.

**(b) form and process of compensation;**

We know from first-hand experience at CISAS that a financial payment and a credit or voucher are two very different things. Consumers always value a financial payment made to them directly, which they are free to spend on anything they wish, much more highly than a payment in kind such as a credit or a voucher, which are often restricted to a purchase with that same

trader. On the other hand, there may be delays in CPs sending financial payments to customers, which usually take significantly longer than to apply a credit to an account, which can often be done electronically in a matter of minutes.

**(c) level of and basis for compensation; and**

We agree that the level of and basis for compensation should not be tied to the contractual cost of the service to consumer. The adverse impact on a consumer with a lower-value contract is no less than a consumer with a higher-value contract simply because of the lower cost to them.

It would be more useful for automatic compensation to be linked to the nature of the problem itself and the length of time that the problem has been ongoing.

CEDR operates a dispute resolution scheme for the water industry known as the Water Redress Scheme (WATRS). In the water industry, Ofwat has set automatic payments to be made where particular problems arise (eg. where an appointment is not kept, water supply is cut off). Where some problems are ongoing, further automatic payments must be made (eg. where water supply has been cut off and not reconnected, an additional payment must be made for each 24-hour period that the supply remains off). This is a more effective means of compensating consumers for longer-lasting problems rather than a one-off payment that does not take into account the impact on the individual consumer. Further details of the automatic payments in the water industry can be found at [http://www.ofwat.gov.uk/wp-content/uploads/2015/10/gud\\_pro\\_gss08.pdf](http://www.ofwat.gov.uk/wp-content/uploads/2015/10/gud_pro_gss08.pdf)

**(d) possible costs and risks of introducing automatic compensation?**

The concept of automatic compensation has a clear regulatory motive, but the practicalities of selecting how much compensation is appropriate for each type of problem and to recognise the length of time that a problem has been ongoing will be very challenging. The figures will have to be revisited and potentially revised frequently to ensure that they are striking the right balance. There will need to be a mechanism for setting the appropriate

compensation levels, and for regular adjustments to be made in the light of inflation and pricing regime changes.

As mentioned above, depending on the form in which compensation should be paid, significant delay may take place if CPs are expected to make direct financial payments to customers rather than applying credits to a customer's account, for example.

There is also the potential risk of giving CPs the indication that the amount of automatic compensation specified in a given circumstance is the maximum extent of their liability to pay compensation to customers. It may well be that a CP should reasonably give more than the automatic payment requires in a particular circumstance, but CPs may be given to understand that the regulator does not expect any further payment to be made beyond the amount prescribed.

**Question 2: Are there any additional considerations?**

**Please explain the reasons for your answer and your views on their relative importance, providing any supporting evidence where available.**

As mentioned above, the automatic compensation payments required of water undertakers by Ofcom sets out a clear matrix of compensation for specific circumstances which may be useful as guidance. However, it is clear that the adverse impact on customers will be very different in relation to water/sewerage services and telecommunications services.

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

Regarding network issues leading to delays or loss of service, we agree that these issues can largely be objectively determined and that therefore automatic compensation could be quickly triggered if they occur.

Regarding network issues leading to a degradation in service, we agree that automatic compensation is not likely to assist consumers in obtaining a

service that functions to their satisfaction. An automatic right to exit the contract, however, may be disproportionate. It can often be the case that a service temporarily falls below an expected level and then regains its previous quality. To allow a customer to exit the contract without penalty at this point could be seen to be strengthening the customer's position beyond a reasonable level. It would be more appropriate in such cases to award an automatic refund or payment to compensate them for the temporary 'dip' in quality. It may only be appropriate to give an automatic right to exit if service has been consistently degraded for a certain period of time, for example one month.

Regarding mobile networks, it is agreed that it is very difficult to objectively identify service degradation issues, as such issues may be caused by the customer's own actions or other demands on a given network's capacity. If compensation is to be awarded, it could be that this is tied to the amount of times a customer has raised an issue of slow speeds, dropped calls or poor coverage. If the customer has raised the issue several times during the life of their contract, compensation could be triggered at that point.

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

**Please explain the reasons for your answers, and provide any supporting evidence where available.**

As stated in the response to the previous question, automatic compensation could be easily given for network issues leading to delays or loss of service, as these matters can be easily determined with objectivity.

When it comes to the quality of service, rather than simply whether a service was 'on' or 'off', the question of whether automatic compensation is appropriate is more complex. Having an automatic regime in place whereby customers are awarded money before a full investigation has been carried out may lead to customers being incorrectly compensated.

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

It would be prudent to permit exceptions where a problem has occurred because of circumstances beyond a CP's control, such as unforeseen events or exceptional weather conditions.

Dispute resolution should be considered as part of this project, as there will inevitably be disputes arising from any automatic compensation payments. It is foreseeable that consumers will dispute the amount of money they have been paid by a CP or who may claim further amounts. These matters will be able to be dealt with through the existing ADR processes. As mentioned above, CEDR has experience of adjudicating in sectors where automatic compensation already exists.

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

**Please explain the reasons for your answers, and provide any supporting evidence where available.**

It will be important for retailers and suppliers to ensure that their commercial agreements cater to any automatic compensation regime that is introduced. We are in agreement that Ofcom should consider this matter.