

Automatic Compensation

Protecting consumers from service quality problems

STATEMENT:

Publication Date: 10 November 2017

About this document

In this Statement, we set out our conclusion that there is a need for an automatic compensation scheme to protect residential consumers who suffer from certain service quality failures with their landline and/or broadband services. It should apply where they experience delayed repairs following loss of service, delayed installations and missed appointments.

We also set out our decision about the way the scheme should be implemented in order to meet this need.

Finally, we conclude on the introduction of a new General Condition on transparency and information requirements to help small and medium sized businesses customers (SMEs). This will ensure that when choosing services (and later if they experience service quality failures), SMEs have better information, in a clear and accessible format, about what level of service quality to expect.

Our decision is part of a programme of measures to deliver significantly better service quality, which we said we would introduce in our Strategic Review of Digital Communications last year.

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1. Summary

Consumers to receive automatic compensation payments when things go wrong

- 1.1 Communication services are an essential part of peoples' lives. Our research shows most consumers are generally satisfied with the services they receive, but a significant number of them still experience problems. For example, over five million consumers lose their landline or broadband service each year; nearly 250,000 engineer appointments are missed, and over one million landline and broadband installations are delayed.
- 1.2 Consumers suffer due to poor service quality, but they do not currently receive adequate compensation. In a well-functioning market, consumers are treated fairly and retail providers have incentives to provide good levels of service quality, including compensation if things go wrong. Currently, however, landline and broadband customers only receive compensation in around 15% of cases where there are problems. Even for those who do receive it, the average levels are small. For example, we estimate people typically receive £3.69 per day for loss of service and £2.39 per day for delayed installation.
- 1.3 Our objectives involve making sure the market operates in the way it should. As we first signalled in our Strategic Review of Digital Communications, the importance of communications services means improved consumer protection is required. Our further review has established a clear need for an automatic compensation scheme where consumers do not receive the service quality they reasonably expect. Parliament has made our powers in this area clearer in the Digital Economy Act 2017, supporting automatic compensation in the communications sector to bring it in line with compensation schemes in the utility sectors.
- 1.4 We formally consulted in March 2017 on proposals to introduce an automatic compensation scheme. We now conclude that landline and broadband customers should be protected by such a scheme. There is a case for Ofcom to intervene to introduce it, given consumers suffer from service quality failures for which they do not receive adequate redress. As a result of features of the market, consumers are unlikely to be protected by competition alone.

The industry scheme





- 1.5 Our March consultation included a proposal put forward by BT, Sky and Virgin Media to introduce automatic compensation. While we welcomed this voluntary initiative, we did not consider it sufficient to compensate consumers when service quality falls short.
- 1.6 Industry improved its proposals in response to our consultation. As a result of further dialogue, BT, Virgin Media, Sky, TalkTalk and Zen Internet have now put forward an updated industry scheme.
- 1.7 We have assessed the industry scheme against our conclusions on the necessary features of a fair and effective automatic compensation scheme, our regulatory principles and our policy

objectives. The industry scheme meets our objectives and the requirements of a fair and effective automatic compensation scheme. In particular:

- consumers will receive automatic compensation for the service quality events we have identified - loss of service (£8 per day), delayed provisioning (£5 per day) and missed appointments (£25 per incident); and
- these compensation payments will create incentives on providers to improve the service quality they deliver.

1.8 The industry scheme therefore addresses the need for Ofcom to take formal regulatory action. It can also be implemented more quickly. As a result, we have decided not to impose regulation for the time being but to accept the industry scheme.

1.9 From early 2019, nine in ten landline and broadband customers will be covered by the scheme and will benefit from up to £126m more per year in automated compensation payments, compared to £16m they receive today. Over time, this may increase further if other providers join up.

Problem	A landline or broadband customer would be entitled to compensation if...	Amount of compensation
Delayed repair following loss of service	Their service has stopped working and it is not fully fixed after two full working days.	 £8 for each calendar day that the service is not repaired
Missed appointments	An engineer does not turn up for a scheduled appointment, or it is cancelled with less than 24 hours' notice.	  £25 per missed appointment
Delays with the start of a new service	Their provider promises to start a new service on a particular date, but fails to do so.	 £5 for each calendar day of delay, including the missed start date

Monitoring automatic compensation

1.10 Our decision on automatic compensation today depends on the industry scheme being implemented on time and operated effectively. The scheme has a 15-month implementation period from the date of this statement.

1.11 Since we have identified a need for improved consumer protection in this area and established a basis for us to secure it, we will monitor the development and implementation of the industry scheme, and review it after it has been in place for 12 months.

1.12 If we find the industry scheme is not meeting our objectives, and in particular not delivering a fair and effective automatic compensation scheme, we will consider formal regulatory action.

Small and medium sized enterprises will benefit from better information on service quality levels

1.13 In this document, we also set out our decision to introduce a new general condition imposing transparency and information requirements on providers in relation to services they offer to

small and medium sized business (SME) customers. When choosing services (and later if they experience service quality failures), SMEs need specific information, in a clear and accessible format, about what service quality to expect.

- 1.14 SMEs already have access to specialist landline and broadband services, including products and contracts that offer guarantees about service levels and compensation. Some providers differentiate or market their offers based on those features. However, the information SMEs receive can vary significantly and a large number of SMEs are unaware of the service levels or available compensation specified in their contracts.
- 1.15 We have therefore decided to protect SME's interests by requiring providers to give SMEs information about the service levels they offer and the compensation they pay where those levels are not met. The new general condition will take effect in six months' time. We will monitor the impact of these measures. If we find that they have not been successful, we may revisit the need for an automatic compensation scheme to protect SMEs.

2. Introduction and background

Introduction

- 2.1 In March 2017, we consulted on proposals to introduce automatic compensation for consumers who suffer service quality problems, specifically delayed repairs following loss of service, delayed provisions and missed appointments.¹ Where consumers experience these problems, we proposed they would receive a set amount of compensation from their provider without having to go through a prolonged and difficult claims process.
- 2.2 We also proposed that small and medium sized enterprises (SMEs) who buy business products should be provided with greater transparency on the service quality they are entitled to under their contracts, including whether they can claim compensation when problems occur.²
- 2.3 Having carefully considered the responses to our consultation and in light of other developments since we published it, we are now setting out our decision on the introduction of an automatic compensation scheme for residential landline and broadband services and transparency requirements for SMEs who purchase business products.
- 2.4 This section sets out the background to our automatic compensation consultation and our provisional view that intervention was needed. We briefly re-cap our proposals to introduce automatic compensation in landline and broadband, but not mobile, services alongside our proposals to introduce transparency requirements for SMEs. We also set out the legal framework in which our proposals were framed and our decisions in this document are made, and finally our regulatory policy objectives which we have sought to achieve.

Background to our automatic compensation consultation

- 2.5 One of the key findings in our Strategic Review of Digital Communications (DCR) was that communications customers receive poor service quality and we identified that a step change in service quality was required. We proposed the introduction of an automatic compensation scheme alongside other measures to improve that quality. These included introducing better information for consumers to help compare providers and stricter minimum standard requirements on BT Group's access network division (Openreach).³
- 2.6 In June 2016, we published a Call for Inputs seeking stakeholder views on the rationale for an automatic compensation scheme and its potential scope, prior to our formal consultation.⁴ We published our consultation document in March 2017, where we considered the case for such a scheme in more detail. We set out two policy objectives:

¹ Ofcom, *Automatic Compensation: Protecting consumers from quality of service problems*, March 2017, https://www.ofcom.org.uk/data/assets/pdf_file/0030/98706/automatic-compensation-consultation.pdf

² SMEs are businesses with 249 or fewer employees.

³ Ofcom, *Initial conclusions from the Strategic Review of Digital Communications*, February 2016, p. 7, https://www.ofcom.org.uk/data/assets/pdf_file/0016/50416/dcr-statement.pdf

⁴ Ofcom, *Automatic compensation: Call for inputs*, June 2016, https://www.ofcom.org.uk/data/assets/pdf_file/0021/76260/automatic-compensation-call-for-inputs.pdf

- to ensure that consumers are able to receive adequate compensation when their provider does not deliver service quality in line with consumers' reasonable expectations, and that they receive this as automatically as possible; and
- to ensure that providers have greater incentives to improve the service quality they deliver.

March 2017 consultation proposals – residential landline and broadband services

The need for intervention

- 2.7 One of our principal duties is to further the interests of consumers. In performing this duty, we must have regard to their interests in respect of service quality (amongst other things).
- 2.8 Our consultation document set out our provisional view that intervention was justified to require providers to pay automatic compensation for certain service quality failures in relation to residential landline and broadband products. That view was premised, as explained more fully in section 3, on:
- communications services being increasingly essential to consumers and businesses and reasonable expectations of the services they receive;
 - consumers suffering significant harm from failures in service quality for which they are inadequately compensated; and
 - owing to certain features, a competitive market alone is unlikely to provide the service quality, or compensation for service failures, consumers should receive.
- 2.9 Accordingly, we provisionally concluded that intervention was necessary to meet our policy objectives.

Our consultation proposals

- 2.10 We proposed that automatic compensation for landline and broadband services was the most appropriate and proportionate form of intervention for consumers. Our provisional view was that such a scheme would have a number of advantages, including removing much of the ambiguity around a consumer's entitlement to compensation, simplifying the process for its payment and setting compensation at a level that is more likely to provide adequate redress for the harm suffered. We also considered that an automatic compensation scheme would incentivise providers to improve service quality, where failure to do so would result in the need to pay compensation.
- 2.11 We identified three service quality problems that are important to consumers and which we proposed could be clearly defined and measured and would therefore be suited to a scheme where providers pay compensation automatically when they occur. Our proposals for the specific failures which would generate such compensation and the amounts payable are set out below.

Figure 1: Proposed service quality failures

Failure	When is compensation available	Level of compensation
Delayed repair following loss of service	A loss of landline and/or broadband service that is not fully restored after two full working days have elapsed	An initial £10 if the service remains unrestored at this point and then £10 for each further full calendar day that the relevant service is not repaired
Delayed provisions	A delay in the commencement of a landline and/or broadband service beyond the date the provider has committed to	£6 for missing the date and a further £6 for each full calendar day of delay beyond the promised start date
Missed appointments	An engineer appointment to repair or install a landline and/or broadband service is missed, or cancelled with less than 24 hours' notice	£30 per missed appointment

2.12 We proposed that automatic compensation should apply to all residential products but recognised that around a third of SMEs would also be likely to benefit, as they purchased residential products.⁵

Industry voluntary proposal

2.13 We noted in our consultation document that the UK's three largest landline and broadband providers (BT, Sky and Virgin Media) had jointly put forward a draft proposal to introduce automatic compensation for residential landline and broadband service failures through a voluntary code of practice. We published this proposal alongside our consultation.

2.14 While we welcomed this initiative, we did not think that the industry proposal sufficiently met our concerns when service quality falls short. Since then, BT, Sky and Virgin Media, together with TalkTalk and Zen internet, have submitted a revised voluntary scheme. This is discussed in more detail in Section 6.

2.15 The consultation responses and our conclusions for residential landline and broadband services are set out in Sections 3 to 7.

⁵ Jigsaw, *The SME experience of communications services: research report*, January 2017, p. 90, https://www.ofcom.org.uk/data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf

Our proposal for SMEs

- 2.16 We also examined whether automatic compensation should apply to SMEs who buy business products. We provisionally concluded that, as SMEs can negotiate bespoke terms with their provider and many standard business contracts already provide compensation for a number of service failures, automatic compensation would not be the most proportionate and therefore appropriate form of intervention to meet our policy objectives.
- 2.17 However, we set out that SMEs appeared to lack information on service quality enabling them to choose appropriate products. We therefore proposed to introduce a General Condition imposing greater transparency requirements on providers offering services to SMEs. Those requirements related to the service quality that SMEs are entitled to under their business contracts, including whether they can claim compensation when problems occur. Our preliminary view was that this increased transparency would help SMEs to take advantage of the protections already available to them.
- 2.18 The consultation responses and our conclusions in relation to greater transparency for SMEs is set out in Section 8.

Our view on automatic compensation for mobile loss of service

- 2.19 In addition, we considered whether automatic compensation should be paid to mobile consumers who experience delayed repair for loss of service. From the information made available to us, we assessed that the number of consumers likely to lose their mobile service for more than 24 hours is low.⁶ Furthermore, compensation payments to mobile consumers are currently greater than those to broadband and landline consumers.⁷ Taking into account our findings, there was insufficient evidence to suggest that consumers are currently receiving inadequate redress for the harm caused when they lose mobile service. We therefore did not consider that requiring mobile providers to pay automatic compensation for delayed repair of mobile loss of service was justified.
- 2.20 In response to our consultation, BT, Sky, Virgin Media, Nine Group, Sparta Telecom and Zen Internet agreed with our proposal not to introduce automatic compensation for mobile loss of service. Money Saving Expert agreed in principle, but said it would welcome plans to secure better mobile network performance and for providers to collect accurate data on mobile outages. We did not receive any other substantial comments.
- 2.21 For the reasons set out above and in our consultation, we do not consider it appropriate to introduce automatic compensation for mobile loss of service and consequently do not consider this issue further in this statement. Nevertheless, as we explained in our consultation, we intend to carry out further work to better our understanding of the

⁶ [§<] to S.135 request dated 16 December 2016 indicated that the vast majority (c.87%) of mast outages are fixed within 24 hours.

⁷ Based on industry data from two MNOs, we calculated that mobile providers make approximately between 647,000 and 764,000 compensation payments per year, paying on average £12 compensation per incident for loss of mobile service.

performance of mobile networks. Improving mobile coverage is one of Ofcom's key priorities but this requires long term investment by operators. We are currently exploring wider options for improving mobile coverage.⁸ We also intend to collect more granular information on mobile service outages to help us with our future policy making in this area.

Legal framework

- 2.22 We set our policy objectives and made our proposals in light of the applicable legal framework. We make the decisions set out in this statement taking similar account of that framework.
- 2.23 In particular, Ofcom regulates the communications sector under, and in accordance with, the framework established by the Communications Act 2003 (the Act) and the European common regulatory framework (the Framework).⁹ The Framework comprises a number of Directives, provisions of which are referred to below.

Ofcom's general duties

- 2.24 Section 3(1) of the Act states that it is Ofcom's principal duty, in carrying out its functions: (a) to further the interests of citizens in relation to communication matters; and (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.¹⁰
- 2.25 In performing its duties under section 3(1) of the Act, Ofcom is required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, as well as any other principles appearing to Ofcom to represent best regulatory practice (section 3(3) of the Act). As set out in a statement on our website, those principles include:
- operating with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required;
 - ensuring that our interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
 - always seeking the least intrusive regulatory mechanisms to achieve our policy objectives; and

⁸ We are currently taking forward a number of options for improving mobile coverage, including new mobile licence conditions and the use of coverage obligations within the award of the 700MHz spectrum band, and making regulations that will allow consumers to legally use mobile "repeaters" (which improve in-building coverage). In addition, we will increase the capacity of mobile networks by ensuring sufficient spectrum is available by awarding the 2.3GHz and 3.4GHz spectrum bands released by Government, and preparing to make spectrum available for future 5G services.

⁹ The Act implements provisions of the Framework. The Framework comprises five Directives and sets a number of policy objectives to be achieved by Member States and their National Regulatory Authorities ("NRAs").

¹⁰ Consumer is defined in section 405(5) of the Act and includes people acting in their personal capacity or for the purposes of, or in connection with, a business.

- intervening where there is a specific statutory duty to work towards a public policy goal which markets alone cannot achieve.¹¹
- 2.26 Section 3(4), meanwhile, says Ofcom must have regard, in performing its duties, to a number of matters including the desirability of promoting competition in relevant markets; the desirability of promoting and facilitating the development and use of effective forms of self-regulation; the desirability of encouraging investment and innovation in relevant markets; the needs of persons with disabilities, of the elderly and of those on low incomes; the opinions of consumers in relevant markets and of members of the public generally; and the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in section 3(1) is reasonably practicable.¹²
- 2.27 In addition, section 3(5) of the Act requires that, when performing its duty to further the interests of consumers, Ofcom must have regard, in particular, to the interests of those consumers in respect of choice, price, service quality and value for money.
- 2.28 Alongside these provisions, section 6(1) of the Act refers to Ofcom keeping the carrying out of its functions under review with a view to securing that regulation does not involve the imposition of unnecessary burdens. Section 6(2) refers to Ofcom having regard, when carrying out its functions under section 6, to the extent to which the matters it must further or secure under section 3 are already furthered or secured, or are likely to be so, by effective self-regulation.

Duties for the purpose of fulfilling EU obligations

- 2.29 As set out in Section 4 of the Act, when exercising certain functions¹³ Ofcom must also act in accordance with the six European Community requirements described there. The requirements of Section 4 of the Act are read in the light of Article 8 of the Framework Directive¹⁴ which sets out the policy objectives of the Framework.
- 2.30 Article 8, in turn, says national regulatory authorities shall ensure that, when they carry out the regulatory tasks set out in the Framework, they take all reasonable and proportionate measures aimed at achieving specific objectives.¹⁵ Those objectives include (i) the promotion of competition in the provision of electronic communications services¹⁶ by ensuring that users derive maximum benefit in terms of choice, price and quality and there is no distortion or restriction of competition in the electronic communications sector,¹⁷ and (ii) the promotion of the interests of EU citizens by ensuring a high level of protection for consumers in their dealings with suppliers and promoting the provision of clear information (in particular,

¹¹ Ofcom's regulatory principles can be found at: <http://www.ofcom.org.uk/about/what-isofcom/statutory-duties-and-regulatory-principles/>

¹² As they appear to Ofcom to be relevant in the circumstances.

¹³ Including those we propose to exercise in this document.

¹⁴ Directive 2002/21/EC of the European Parliament and of the Council (as amended by Directive 2009/140/EC), 7 March 2002. Available at: <http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex:32002L0021>

¹⁵ Set out in paragraphs 2, 3 and 4 of Article 8.

¹⁶ As well as electronic communications networks and associated facilities and services.

¹⁷ Article 8(2)(a) and (b) of the Framework Directive.

requiring transparency of tariffs and conditions for using publicly available electronic communications services).¹⁸

Powers and duties in relation to general conditions

- 2.31 Alongside the Framework Directive, the Authorisation Directive provides for national regulatory authorities to set conditions of general authorisation for communications providers.¹⁹ Under Article 6 and paragraph 8 of the Annex these include conditions containing “... consumer protection rules specific to the electronic communications sector, including conditions in conformity with Directive 2002/22/EC (“Universal Service Directive”).”²⁰ The over-arching principle is that such conditions shall be non-discriminatory, proportionate and transparent.²¹
- 2.32 These provisions are implemented into national law by the Act. Section 45 of the Act says that Ofcom may set general conditions which contain provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64.
- 2.33 Under Section 51(1)(a), the general conditions Ofcom may make include conditions making such provisions as Ofcom consider appropriate for the purpose of protecting the interests of end-users of public electronic services. Section 51(2) sets out a non-exhaustive list of the specific types of general conditions that Ofcom may set in pursuit of this purpose. The Digital Economy Act 2017 amended section 51(2) of the Act by inserting a new paragraph (da), which makes express Ofcom’s power to set conditions which require a CP to pay compensation to an end-user on failing to meet a specified standard or obligation.²²
- 2.34 Section 47(2) governs the circumstances in which Ofcom can set or modify a general condition. It states that a condition can be made or modified where doing so is objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates; not such as to discriminate unduly against particular persons or against a particular description of persons; proportionate to what the condition or modification is intended to achieve, and transparent in relation to what it is intended to achieve.²³

Our regulatory policy objectives

- 2.35 Communications services are becoming more essential to consumers. Our research has found, for instance, that nine in ten adults report going online every day, and three-quarters (75%) of internet users say that it is ‘important’ to their daily lives.²⁴ Consumers have told us that they

¹⁸ Article 8(4)(b) and (d) of the Framework Directive

¹⁹ Directive 2002/20/EC of the European Parliament and of the Council (as amended by Directive 2009/140/EC), paragraph 8 of Annex A. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02002L0020-20091219>

²⁰ And therefore not limited to.

²¹ Article 6(1) of the Authorisation Directive.

²² <https://www.legislation.gov.uk/ukpga/2017/30/section/3>

²³ Section 47(3) of the Act says that this does not apply to the setting of a General Condition. Ofcom is however likely to take this into account as part of its assessment of whether any General Condition is proportionate or not.

²⁴ Ofcom, *Communications Market Report 2016*, p.5, p.31,

https://www.ofcom.org.uk/data/assets/pdf_file/0020/26273/uk_context.pdf

increasingly think of communications services as being similar to a utility.²⁵ They are also regarded as essential by SMEs: at least 60% of SME landline and internet users consider these services “absolutely vital”.²⁶ Over time consumers’ and businesses’ reliance on communications may continue to increase as more and more services are provided online.

- 2.36 It is important, in our judgment, that consumers’ interests have a level of protection in respect of service quality commensurate with the importance of the services and their reliance upon them. Given our powers and duties to ensure consumers are protected, that is an important regulatory policy aim. With that in mind, it is appropriate for us to consider the expectations consumers have of communications services, whether those expectations are reasonable, whether they are being met, the harm consumers experience where they are not, and the redress they receive.
- 2.37 In our judgment, it is a sound inference that consumers contract on the basis that they will generally receive a reasonable level of ongoing, if not fault-free, service. Our research indicates that the key requirement for consumers in relation to the performance of their communications services is that they work as expected and that if problems occur, they want them to be resolved as quickly and efficiently as possible.²⁷
- 2.38 So, where consumers have reasonable expectations of their services, but only a minority of them currently get compensation where they are not met, and the amounts they receive are insufficient relative to the harm they suffer, we would be concerned that they are not being treated fairly. The market, together with the current level of regulation, would not be providing them with the level of service (including compensation) that they reasonably expect and it is fair they should receive.²⁸ In that case, given the particular importance of the services to consumers, further regulatory intervention would be justified, particularly if it is not clear that providers have incentives that would bring about change in this respect.
- 2.39 Accordingly, we have two regulatory policy objectives to secure a fairer outcome for consumers:
- to ensure that they are able to receive adequate compensation when their provider does not deliver service quality standards in line with their reasonable expectations, and that they receive this as automatically as possible; and
 - to ensure that providers have greater incentives to improve the service quality they deliver.
- 2.40 Parliament considers compensation to be a legitimate regulatory tool for protecting consumers’ interests. It has enacted legislation giving other utility regulators the power to

²⁵ Jigsaw Research, *Quality of service in telecoms*, February 2016, p.2,

https://www.ofcom.org.uk/data/assets/pdf_file/0025/78370/jigsaw_quality_of_service_in_telecoms.pdf

²⁶ Jigsaw, *SME experience of communications services*, January 2017, p. 28,

https://www.ofcom.org.uk/data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf

²⁷ Jigsaw Research, *Quality of service in telecoms*, February 2016, p.17-18,

https://www.ofcom.org.uk/data/assets/pdf_file/0025/78370/jigsaw_quality_of_service_in_telecoms.pdf

²⁸ We discuss consumers’ reasonable expectations in relation to our specific service quality failures in sections 5-7 below.

require compensation to be paid to consumers for poor service quality. Secondary legislation has been in place for many years in the energy and water sectors to achieve this.

- 2.41 Ofcom has general consumer protection powers and, as set out above, the Digital Economy Act 2017 makes express Ofcom's power to set conditions which require a CP to pay compensation to an end-user on failing to meet a specified standard or obligation. This has clearly signalled Parliament's support for automatic compensation in the communications sector to bring it into line with the compensation schemes that seek to protect consumers in other utility sectors.

This document

- 2.42 The remainder of this document is structured as follows:

- Section 3 sets out the case for intervention.
- Section 4 presents our estimates of consumer harm.
- Section 5 sets out our analysis and conclusions on the service quality events suitable for automatic compensation and the design of such a scheme.
- Section 6 describes the industry automatic compensation scheme.
- Section 7 sets out our decision on automatic compensation.
- Section 8 sets out our decision to introduce a General Condition to ensure that the interests of small and medium sized business (SMEs) are protected.

- 2.43 In addition, Annex 1 includes the industry automatic compensation scheme and Annex 2 contains the new General Condition on providers of landline and broadband services and products to SMEs.

3. The case for intervention in residential landline and broadband services

Introduction

- 3.1 This section sets out our provisional view from the consultation that it is appropriate to intervene for service quality failures in residential landline and broadband services. We summarise stakeholders' responses and then set out our view, following careful consideration of these responses, that there continues to be a case for intervention in the areas proposed.

Our proposed case for intervention

- 3.2 We set out in our consultation our rationale for our proposals for automatic compensation in residential landline and broadband services, which, in summary, was that:
- a significant minority experience harm from service quality failures – where the service fails to meet their reasonable expectations – for which they do not receive adequate redress; and
 - market features may result in unfavourable consumer outcomes.
- 3.3 We provisionally concluded that intervention was likely to be necessary to protect consumers' interests.

We found that consumers experience harm for which they do not receive adequate redress

- 3.4 We found that a significant minority of landline and broadband consumers suffer service quality problems each year; for example, over the last two years, 24% of consumers experienced a loss of their landline or broadband service.²⁹ We considered that, in a number of respects, the problems consumers suffer mean the services they receive fall short of their reasonable expectations. Given how essential communications services have become, these consumers are likely to experience harm as a result, a view which was supported by our consumer research.³⁰
- 3.5 We also found that the evidence available suggested consumers are not receiving compensation commensurate with the degree of harm suffered. We found that only around 15% of consumers experiencing harm actually receive compensation and, even where they do, the payments are lower than our estimates of the degree of harm experienced. Combined, this suggests that consumers experience harm for which they do not receive adequate redress.

²⁹ Ofcom, *Automatic Compensation: Protecting consumers from quality of service problems*, March 2017, p. 35, paragraph 5.2 https://www.ofcom.org.uk/data/assets/pdf_file/0030/98706/automatic-compensation-consultation.pdf

³⁰ We set out the types of harm consumers were likely to suffer in our consultation, paragraph 4.3.

We identified market features which, in combination, may result in unfavourable consumer outcomes

3.6 We noted that a competitive market is likely to protect consumers' interests only under certain conditions. We posited that a number of market features may, in combination, result in weak signals from consumers to providers regarding service quality. These market features were:

- information asymmetries between consumers and providers on quality commitments and compensation policies; and
- behavioural biases on the part of consumers.

3.7 We also said that (perceived or actual) barriers to switching may prevent consumers from switching in response to experiencing service quality issues. We further considered that consumers may face difficulties in claiming compensation as result of the nature of providers' current compensation policies and practices, which may contribute to the low incidence of payouts to consumers.

3.8 We considered that these reduce the financial impact on providers of service quality failings, and so reduce their incentives to offer an optimal service quality and compensation for any shortcomings.

Our provisional conclusion was that intervention in residential landline and fixed broadband was therefore necessary

3.9 We provisionally concluded that intervention was therefore necessary to protect consumer interests. Intervention would ensure that our policy objectives are met, specifically:

- consumers receive adequate compensation when their provider does not deliver service quality standards in line with consumers' reasonable expectations; and
- providers have greater incentives to improve the service quality they deliver.

Consultation responses on our case for intervention

3.10 Most responses supported the principle of consumers receiving adequate redress when service quality failures arise, and that more could be done to protect customers from poor service quality. Each of the consumer groups that responded to our consultation agreed with our rationale and proposal for automatic compensation.

3.11 Larger providers generally appeared to accept that the current situation does not provide an appropriate outcome for consumers. They proposed voluntary changes to the status quo (see later sections). That said, some of them disagreed with some of the reasoning we used to justify our proposal, particularly in terms of incentivising improvements in service quality.

3.12 Many providers, including most smaller ones, accepted the principle of consumers receiving adequate redress only on the condition that this was replicated at the wholesale level. A number of smaller providers raised concerns that the imposition of automatic compensation without appropriate redress at the wholesale level would have a disproportionate impact

upon them, which could have a detrimental impact on competition. We consider this issue in more detail in section 5.

- 3.13 A small minority of providers disagreed with our proposal. Post Office believed the assumption that compulsion of automatic compensation would improve standards was unproven and had potentially negative unforeseen consequences.³¹ It believed instead that a tailored, case-by-case response was more appropriate. Entanet International Ltd (Entanet) also disagreed, suggesting that switching would be a sufficient deterrent to ensure the correct levels of service quality and that automatic compensation would penalise smaller providers and make them less competitive.³² [3<] believed that the costs of automating compensation would crowd out other investments to improve its customer proposition. It also believed that those implementation costs could be particularly burdensome for smaller providers, which could lead them to raise prices or exit the market, reducing competition.³³
- 3.14 Notwithstanding the general agreement on the principle of automatic compensation, providers also raised a number of issues relating to specific parts of our case for intervention, which we consider further below.

Our updated case for intervention for residential landline and fixed broadband services

- 3.15 We have considered the views of respondents to our consultation in detail. Having done so, our judgment is that the status quo is delivering poor outcomes for consumers and that there is a case for intervention. There are six principal reasons:
- the importance of fixed communications services to consumers;
 - the numbers of service failures for which consumers do not receive appropriate redress;
 - fairness – it is a fairer outcome that consumers receive compensation effectively where their reasonable expectations on service quality are not met;
 - market failures and consumer biases, which in combination have led to market outcomes which are not in consumers' best interests;
 - greater compensation will enhance incentives on providers to offer the level of service quality commensurate with consumer preferences; and
 - there will be time and process savings from making it easier to claim compensation.

³¹ Post Office consultation response, p. 1-2, https://www.ofcom.org.uk/data/assets/pdf_file/0018/103671/Post-Office-Ltd.pdf. It noted that in some remote areas some providers may not provide coverage, or may pull out from servicing problematic areas, as the complexities involved in providing coverage in these areas mean that the risk of having to pay automatic compensation would be too great. We consider these points in section 5.

³² Entanet consultation response, p. 1-2, https://www.ofcom.org.uk/data/assets/pdf_file/0018/103662/Entanet-International-Ltd.pdf.

³³ [3<]

The importance of fixed communications services to consumers

- 3.16 Evidence shows that communications services are very important to consumers; for example, 75% of internet users say that the service is important to their daily lives.³⁴ This value is reflected in the legal and regulatory framework described in section 2 above. As noted there, the framework sets the general objective of ensuring consumers have a high level of protection in their dealings with providers and it gives Ofcom specific powers and duties to secure that protection, including by way of regulatory conditions which require providers to pay compensation for failing to meet specified service standards.
- 3.17 Given this importance, and the reliance consumers place on communications services, it is, in our judgment, legitimate for us to ensure their interests have a commensurate level of protection. This has formed the basis of our regulatory policy objectives set out in section 2 above. Our further judgment is that they do not currently have that protection. Accordingly, it is appropriate and fair to put in place a scheme to protect consumers in relation to communications services which is akin to those operating for utilities.

There are frequent service failures for which consumers do not receive appropriate redress

- 3.18 Consumers experience around 7.2 million service quality failures in their fixed communication services each year (as shown in Figure 2 below). When these occur, affected consumers are harmed through factors such as the loss of use of their service.
- 3.19 Currently, however, customers are only provided compensation in around 15% of service quality failures. Even for those who do receive compensation, the average levels are small. Critically, we have assessed the level of harm that consumers suffer (which we set out more fully in section 4), and have found that these compensation levels are insufficient to redress the harm that consumers have suffered. Figure 2 below outlines the current situation.

³⁴ See Consultation paragraph 2.17, p.8.

Figure 2: Current incidence of service quality failures and compensation levels

	Estimated number of incidents ³⁵	Proportion who receive compensation	Average compensation among those receiving compensation (£ per day/incident)
Loss of service ³⁶	5.7m	18% ³⁷	£3.69
Delayed provisioning	1.3m	33% ³⁸	£2.39
Missed appointments	0.2m	14% ³⁹	£24.28
Total	7.2m	15% ⁴⁰	-

Improved access to compensation is fairer for consumers than the status quo

3.20 As set out in our consultation, our research indicates that a key requirement for consumers in relation to the performance of their communications services is that they work as expected and, if problems occur, they are resolved quickly and efficiently.⁴¹ On that basis, it is plausible to assume that they enter into contracts with the reasonable expectation of receiving the service they are paying for at a certain standard: that they will at least receive a reasonable level of ongoing, if not fault-free, service.

3.21 In Ofcom's judgment, consumers are entitled to expect that level of service. Based on the evidence set out in our consultation, and summarised in section 5 below, consumers' reasonable expectations include that losses of service should not be subject to delayed repair, services should be provisioned on the dates agreed and engineers' appointments should take place as scheduled.

3.22 When these expectations are not met and consumers face delayed repairs, unscheduled delays in provisioning or missed appointments, they suffer harm. These failures are outside their control. In those circumstances, it is fair that consumers should be given a degree of protection (which, the evidence above indicates, they do not currently receive).

³⁵ Incidents may include situations where individual consumers are affected by the same problem more than once. Source: Ofcom analysis of data from August 2016 fixed s.135 request and December 2016 fixed s.135 request. See Annex 6 of our Consultation for details of these estimates.

³⁶ That is any loss of service requiring repair.

³⁷ Based on industry data, see paragraph 5.10 of this Statement. Our consultation also noted that our consumer research found that only 8% of consumers who suffered from a loss of landline or broadband service received any form of compensation for that loss. See Consultation paragraph 5.18, p.39.

³⁸ 13% of consumers that were subject to delays received monetary compensation, and a further 20% received non-monetary compensation. Based on industry data. See paragraph 5.55 of this Statement.

³⁹ Based on industry data. See paragraph 5.74 of this Statement.

⁴⁰ See Consultation paragraph A6.26, p.A42.

⁴¹ See, for example, Consultation paragraph 2.21, p.8 and the evidence referred to there.

- 3.23 Greater compensation, which is received automatically and without the need to negotiate for it, would reduce the harm that arises to consumers facing service quality issues. Those who were previously deterred from claiming compensation by the time and hassle associated with having proactively to ask for it (which may have been disproportionately difficult for vulnerable consumers) would receive it. This would be a fairer outcome.
- 3.24 In addition, we anticipate that fewer consumers will suffer service quality problems, and so will benefit from the incentives provided by the scheme to improve service quality (which we explain in 3.34 below).
- 3.25 As we noted in the consultation, while automatic compensation could be funded by providers themselves, it could also result in increases in consumer bills.⁴² This could be considered a financial redistribution between different groups of consumers. Our regulatory judgment is that any such financial redistribution would be fairer than the status quo. It would produce more standardised outcomes between consumers and ensure that, when they suffer harm from service quality failures, consumers receive redress. To this end, we also believe that automatic compensation should apply to all consumers, regardless of geographic location.

There are market failures and consumer biases which, in combination, have led to market outcomes which are not in consumers' best interests

- 3.26 A number of providers submitted that vigorous competition was working well in delivering good service quality outcomes to consumers. Further, some submitted that competition between providers is sufficient to drive optimal service quality, and Ofcom had no reliable evidence that service quality was not an important element of this competition.⁴³ Some also

⁴² We note that some providers, including [3], Virgin Media (p.21 of its consultation response, https://www.ofcom.org.uk/data/assets/pdf_file/0020/103682/Virgin-Media.pdf) and Evolving Networks Ltd (p.4 of its consultation response, https://www.ofcom.org.uk/data/assets/pdf_file/0019/103663/Evolving-Networks-Limited.pdf), argued that automatic compensation may lead to prices increasing, with Virgin Media (p.22 of its consultation response) further adding that survey evidence, and consumer group responses, suggest that consumers would not desire this trade-off. MoneySavingExpert (p.1 and 6 of its consultation response, https://www.ofcom.org.uk/data/assets/pdf_file/0024/103668/Money-Saving-Expert.pdf) raised concerns that a high level of pass-through to consumer bills would undermine the intentions of the proposals and severely limit the incentive on providers to improve their service, and the Communications Consumer Panel and ACOD (p. 2 of its consultation response, https://www.ofcom.org.uk/data/assets/pdf_file/0017/103661/Communications-Consumer-Panel-and-ACOD.pdf) noted that automatic compensation should not lead to increased consumer bills. We believe that, due to the complexity of competition at the retail level, it is difficult to predict in advance the precise level of pass-through to consumers that may occur, and it is therefore unclear how retail prices may change in response to the introduction of automatic compensation. Nevertheless, we note that in our consultation we assessed several different levels of pass-through and considered that in any case the impact of the policy was proportionate to meeting our policy objective of ensuring that those suffering a service quality failure received redress, and that this would be a fairer outcome than the status quo (see Consultation paragraphs 10.39 – 10.40, p.93).

⁴³ Sky, p.18, paragraph 6.16, of its consultation response https://www.ofcom.org.uk/data/assets/pdf_file/0022/103675/Sky.pdf highlighted that Ofcom's focus on a perceived lack of importance of service quality in advertising material was flawed and misguided, and did not reflect Sky's focus on service quality. However, Virgin Media (p.5 of its consultation response https://www.ofcom.org.uk/data/assets/pdf_file/0020/103682/Virgin-Media.pdf) suggested that this could be as a result of consumers not valuing service quality as highly as other product characteristics.

said that consumers value the ability to choose a potentially lower service quality or lower compensation offering when things go wrong in exchange for a commensurately lower price.

3.27 We agree that there is competition at the retail level between providers in the provision of residential landline and fixed broadband services. However, our judgment is that this competition alone is unlikely to deliver both the levels of compensation and service quality that are in consumers' best interests, as a result of the market features present and established aspects of consumer behaviour.

3.28 The specific market features are:

- **Information asymmetries:** While we received some evidence that providers include service quality generally in their marketing material, most do not communicate specific information on fault rates and compensation practices to consumers with any degree of prominence. Given this lack of information, consumers are unlikely to take these factors into account in their choice of supplier, which weakens the constraint on poor service quality.
- **Product complexity:** The complex nature of communications products and the difficulty in understanding how likely it is that problems will occur could exacerbate consumers' focus on simpler product characteristics, such as price.⁴⁴
- **Present-bias in consumer behaviour:** Academic studies have shown that consumers can systematically favour short-term gains over long-term ones.⁴⁵ This could lead them to think they prefer lower prices now than compensation in the event of a future service quality failure, whereas their future self would prefer the reverse.
- **Over-confidence bias:** Overconfidence could lead consumers to underestimate the likelihood of problems occurring, or to underestimate the harm they would suffer if problems did occur, even if they had the correct information. This could lead them to accept lower compensation rates and/or greater risk of service quality failures than they would if they were able to predict the level of faults correctly.
- **Certainty bias:** Consumers may place greater value on product characteristics which are certain (i.e. the current price of the product) than those which are uncertain (i.e. whether they will experience a service quality incident).

⁴⁴ We disagree with Virgin Media (p.6 of its consultation response)

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/103682/Virgin-Media.pdf, which argued that communications products are relatively easy to understand and compare. Our Digital Communications Review noted that that communications 'products can be more diverse and complex, with more options for consumers, than many other networked services (e.g. energy, water)'. Ofcom, Initial conclusions from the Strategic Review of Digital Communications, February 2016 paragraph 7.33, p.84, https://www.ofcom.org.uk/_data/assets/pdf_file/0016/50416/dcr-statement.pdf.

⁴⁵ UK Office of Fair Trading, *What does behavioural economics mean for competition policy?*, Spring 2010, p. 2-20

http://webarchive.nationalarchives.gov.uk/20140402182927/http://www.oft.gov.uk/shared_of/economic_research/oft1224.pdf

- 3.29 As Sky noted, providers may have weak incentives to deliver compensation and to make its payment a prominent part of their marketing. Firms have little desire to draw consumers' attention to the risk of something going wrong, and prefer to focus on prevention (although Sky believed these behavioural factors were limited to the specific issue of compensation rather than service quality generally).⁴⁶
- 3.30 Our assessment, based on the importance they put on the availability of these services, as reported in our research, is that consumers do place a high weight on service quality generally.⁴⁷ However, as we said in our consultation, the features described above, in combination, cause consumers to place lesser emphasis on both service quality and compensation policies *at the point of purchase*. Providers may respond to these signals by putting too much focus on price and insufficient focus on service quality by, amongst other things, not offering the appropriate level of compensation when things go wrong.
- 3.31 We also judge that, for the reasons outlined above, consumers do not actively trade-off reduced service quality with reduced price. As such, we disagree with a number of stakeholders, such as Entanet,⁴⁸ Phone Co-Op,⁴⁹ Virgin Media⁵⁰ and Vodafone,⁵¹ which have argued that differentiation between providers' offerings, in terms of different levels of service quality and care levels at different prices, was a valuable source of consumer choice which would be threatened by the proposals.
- 3.32 This also means that the constraint imposed on provider behaviour by switching is limited, as consumers will not tend to compare providers on the basis of service quality and compensation policies. This constraint would be further weakened if there exist perceived or actual barriers to switching.⁵²

⁴⁶ Sky consultation response, p.15, paragraphs 5.7-5.8, https://www.ofcom.org.uk/data/assets/pdf_file/0022/103675/Sky.pdf.

⁴⁷ We outlined the findings from our consumer research in paragraph 4.3, p.24 of our Consultation. We therefore disagree with Virgin Media, which argued that consumers do not value service quality as highly as other product characteristics (see Virgin Media consultation response p.5, https://www.ofcom.org.uk/data/assets/pdf_file/0020/103682/Virgin-Media.pdf and Vodafone, which considered that informed consumers may prefer a lower price service with longer repair times (Vodafone consultation response, p.15, paragraph 62, https://www.ofcom.org.uk/data/assets/pdf_file/0021/103683/Vodafone.pdf).

⁴⁸ Entanet consultation response, p.1, https://www.ofcom.org.uk/data/assets/pdf_file/0018/103662/Entanet-International-Ltd.pdf

⁴⁹ Phone Co-Op (consultation response p.1, https://www.ofcom.org.uk/data/assets/pdf_file/0026/103679/The-Phone-Co-op.pdf) notes that many smaller providers tend to focus on service quality as their unique selling point. However, we do not believe consumers actively trade-off service quality in the metrics outlined (in terms of service quality failures and compensation levels) with price.

⁵⁰ Virgin Media consultation response p.6, https://www.ofcom.org.uk/data/assets/pdf_file/0020/103682/Virgin-Media.pdf.

⁵¹ See Vodafone consultation response, p.16, paragraphs 71-73 https://www.ofcom.org.uk/data/assets/pdf_file/0021/103683/Vodafone.pdf

⁵² We note that Virgin Media (p. 6 of its consultation response https://www.ofcom.org.uk/data/assets/pdf_file/0020/103682/Virgin-Media.pdf) argued that it was inappropriate to invoke switching barriers to justify automatic compensation, as these could be addressed elsewhere. However, we believe that such barriers to switching could further weaken the constraint that switching places on service quality and compensation policies which already exists as a result of the combination of factors outlined in 3.28 above.

3.33 The combination of factors outlined above leads to the suboptimal outcomes we currently observe in the market, so addressing any one of those factors in isolation would not be sufficient to address our concerns. Accordingly, while we intend to publish further information in our upcoming report on service quality, and consider this to be an important step to allowing consumers to assess providers on the basis of quality, this by itself would not be sufficient to address the existing harm in the market.⁵³ ⁵⁴ Rather, in Ofcom's judgment, a scheme for the payment of automatic compensation is necessary.

Greater compensation will enhance incentives on providers to offer the level of service quality commensurate with consumer preferences

3.34 Since, as set out above, only a minority of consumers who suffer a loss of service, delayed provisioning or a missed appointment currently receive compensation, this limits the financial consequences to providers from service quality failures. Providers do not, therefore, have the right incentives to reduce these failures. Compensation that more closely reflects the harm suffered by consumers would align these incentives, which should lead to a reduction in the number of service quality failures.⁵⁵

Time and process savings from making it easier to claim compensation

3.35 Making it easier to claim compensation is likely to benefit both consumers and providers. The evidence referred to in our consultation suggests consumers currently find processes for claiming compensation to be unclear and time-consuming.⁵⁶ A simple process will save the time, hassle and search costs for consumers through offering a clearer, unambiguous and easier route for them to receive appropriate compensation. In addition, a simpler, automated, process is likely to yield some operating cost savings for providers.

Conclusion on the case for intervention

3.36 Taking account of all these points, our judgment is that there is a case for regulatory intervention to protect consumers' interests. They face service quality failures for which they do not receive adequate redress, and market competition alone is not sufficient to address these concerns, due to a number of features we have identified. A fairer outcome for

⁵³ Our forthcoming publication on comparing service quality will be available at: <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/quality-of-service>

⁵⁴ We therefore disagree with Post Office (p.4 of its consultation response, https://www.ofcom.org.uk/_data/assets/pdf_file/0018/103671/Post-Office-Ltd.pdf), Virgin Media (p. 5, 6 and 7 of its consultation response, https://www.ofcom.org.uk/_data/assets/pdf_file/0020/103682/Virgin-Media.pdf) and Vodafone (p.15 of its consultation response, https://www.ofcom.org.uk/_data/assets/pdf_file/0021/103683/Vodafone.pdf) which argue that information and transparency remedies alone may be sufficient.

⁵⁵ We have further judged that automatic compensation will lead to fairer consumer outcomes, compared to other investments which may more generally increase quality of service without providing redress when service quality failures occur. We also consider that the implementation costs would be relatively small (our Consultation, paragraph 9.22, p.79 estimated these at £4.0m per year across a ten-year period across the whole industry), such that any impact on other investment incentives would be limited.

⁵⁶ See for example Figure 4, p.31 in our Consultation.

consumers would be to improve access to compensation which would also enhance incentives on providers to improve service quality.

- 3.37 In light of that conclusion, we now consider the level of harm that consumers face when suffering different types of service quality failures, before considering (in section 5) the specific design of the intervention required to address that harm.

4. Estimates of consumer harm

- 4.1 This section sets out how we estimated consumer harm from poor service quality to arrive at our consultation estimates. We summarise stakeholders' responses and then set out our updated assessment.

Our proposals

- 4.2 In our consultation, we estimated the average level of harm that consumers suffer from different types of service quality failure. Our estimate was informed by three separate types of survey evidence:
- Reasonable compensation—We asked consumers who had experienced service quality problems what level of compensation would have been enough to compensate them for that problem.
 - Willingness to Pay (WTP)—We asked all respondents to imagine they had experienced a specific service quality problem and then to report how much they would be willing to pay for faster repair or provisioning.
 - Component based—We used survey responses to estimate individual components of harm (such as time spent to restore the service) and combined them to create a final estimate. We undertook two different versions of this approach.
- 4.3 Our estimate was also informed by benchmarks. We examined current compensation levels and benchmarks from the water, gas and electricity sectors and international communication sectors.
- 4.4 Figure 3 below shows the range of values each survey based approach yielded and the range of values of different benchmarks. The ranges from the survey based estimates correspond to the uncertainty inherent in surveys with limited size samples,⁵⁷ whereas the range from the benchmarks represents the different sources we used.

⁵⁷ They represent 95% confidence intervals.

Figure 3: Summary of evidence used in harm estimation

	Loss of service	Provisioning	Missed appointments
	£ per day	£ per day	£ per incident
Survey based evidence			
Reasonable compensation	5.55 - 15.31 ⁵⁸	n/a	47.25 - 56.75 ⁵⁹
Willingness to Pay	4.45 - 5.00 ⁶⁰	1.11 - 1.73 ⁶¹	n/a
Component based	2.40 - 27.63 ⁶²	n/a	23.95–38.86 ⁶³
Benchmarks⁶⁴			
UK utilities	10.00- 70.00	n/a	20.00 – 30.00
International	1.24 – 18.86	n/a	n/a

4.5 In the consultation, we acknowledged that the evidence could support a range of values for an estimate of harm.⁶⁵ We arrived at a provisional judgment for an appropriate level of compensation by an assessment of the evidence in the round.

4.6 For loss of service, we assessed the evidence as follows:⁶⁶

- we observed that £10 per day was the central estimate from the ‘reasonable compensation’ approach;
- this was higher than the WTP estimates, but we placed lower weight on that evidence due to those respondents not necessarily having actually experienced a loss of service;
- £10 per day was consistent with the component based approach and the benchmarks; and
- we provisionally concluded that £10 per day was a reasonable point estimate.

4.7 For delayed provisioning, we assessed the evidence as follows:⁶⁷

- we noted that we had limited direct evidence;
- we considered that the most significant harm would occur when the delay led to a loss of service;

⁵⁸ Consultation, Figure A4.2.

⁵⁹ Consultation, Figure A4.2.

⁶⁰ Consultation, Figure A4.3.

⁶¹ Consultation, Figure A4.4.

⁶² Consultation, Figure A4.5

⁶³ Consultation, A4.6.

⁶⁴ Consultation, Figure A4.7

⁶⁵ Consultation, A4.4.

⁶⁶ Consultation, Figure A4.59-A4.63.

⁶⁷ Consultation, A4.66-A4.73.

- we therefore made an estimate of harm by using the proportion of delayed provisions leading to a loss of service (66%) in combination with our estimate of loss of service harm (£10 per day) to reach an estimate of £6.60 per day;
- we reflected that other comparators were lower than this value and, while we placed lower weight on them, we reflected their lower value by using an estimate of £6.00 per day; and
- we provisionally concluded that £6 per day was a reasonable point estimate.

4.8 For missed appointments, we assessed the evidence as follows:⁶⁸

- we had some concerns about the reliability of the survey evidence given sampling issues;⁶⁹
- we therefore placed more weight on the UK utility benchmarks (£20 per incident from the water sector and £30 per incident from the electricity sector) and noted that the benchmark from the electricity sector had been more recently updated; and
- we provisionally concluded that £30 per incident was a reasonable point estimate.

Consultation responses and our updated assessment

4.9 The majority of stakeholders did not comment on our harm estimates, although several of the largest providers gave detailed comments on the methodology and results of our harm estimation.⁷⁰ These comments and our response to them are set out below.

Feasibility of estimating harm

4.10 BT and Sky raised concerns about the range of estimates for harm, and noted that valuations varied between consumers.⁷¹ Sky also queried whether there was a reason to prefer figures around the mid-point of ranges. Whilst we acknowledge that estimating consumer harm is inherently difficult, this was reflected in the fact that we undertook multiple approaches to estimating harm as part of our consultation.

Survey methodology and sampling

4.11 Some stakeholders raised issues relating to the survey methodology and sampling approach in the survey questions that we used. These concerns ranged from sampling issues (Sky and BT), to the length of the recall period (Virgin Media), the effect of outliers in the data (BT and Virgin Media) and flaws in the framing of the questions and the use of leading questions (BT and Virgin Media).

⁶⁸ Consultation, A4.63, A4.73 and A4.77.

⁶⁹ Consultation, A4.74.

⁷⁰ BT, Sky and Virgin Media each gave some comments on our harm estimation.

⁷¹ BT consultation response, paragraph 134a, https://www.ofcom.org.uk/_data/assets/pdf_file/0029/103988/BT.pdf and Sky consultation response, Annex 2, 1.3, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103675/Sky.pdf.

4.12 We recognise the challenges in obtaining robust estimates from consumer surveys. Nevertheless, the points raised by stakeholders do not lead us to believe our estimates are unreliable:⁷²

- Sampling issues—We acknowledge that the samples for some questions were small. That was generally a feature of the niche sub-categories we were exploring. However, we have only reported and used data where we have judged the samples were sufficiently large to be statistically meaningful.
- Recall period—We used a recall period of two years to maximise the size of the sample we could obtain. While we welcome Virgin Media’s suggestion of using provider information to identify a more recent sample, we have concerns whether this would have been viable for reasons of data protection. Further, by conducting an independent survey, this allowed us to access a consistent sample across providers, to ask questions to both those who had experienced service quality problems and those who had not, and to ask a broader range of questions.
- Outliers in the data—We acknowledge BT and Virgin Media’s point that there were several outliers left in the data. We recognised this in the consultation and applied cut-offs where we thought appropriate. In general, we would seek to remove outliers where we have concerns about the validity of the data and not simply because of skewed distributions. We consider that we have applied appropriate cut-offs in our consultation analysis.
- Framing and leading questions – We acknowledge that the framing of the questions and the asking of leading questions can lead to biases in survey results. However, to the extent that framing occurred in our survey, we have carefully assessed that this was objective and consistent with aiding consumers to answer the questions.

Consumer mitigation strategies

4.13 BT and Sky said that Ofcom had failed to take into account the possibility that consumers may be able to mitigate loss of service incidents; potentially through substitution to other services.⁷³ We disagree with them. The ‘reasonable compensation’ and willingness to pay approaches both implicitly take into account any mitigation that consumers believe they may be able to do, since this would affect their valuation. Further, the second of the two component-based approaches explicitly takes into account mitigation by accounting for the direct financial cost that consumers might have spent on alternative communication services.

⁷² Virgin Media identified a mislabelling in the survey script where a question asked to residential customers was inaccurately labelled as having been asked to business customers (Virgin Media consultation response, p. 22, https://www.ofcom.org.uk/_data/assets/pdf_file/0020/103682/Virgin-Media.pdf). This was a typographical error and did not affect who the question was actually asked to. These questions were correctly asked to residential consumers. This is apparent from the rest of the script and the preceding and following questions which are all targeted at consumers.

⁷³ BT consultation response, p. 26, paragraph 141, https://www.ofcom.org.uk/_data/assets/pdf_file/0029/103988/BT.pdf and Sky consultation response, Annex 2, 1.17, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103675/Sky.pdf.

Weighting of different pieces of evidence

4.14 Several respondents said we should have given different weight in our assessment to some of the evidence we had collected.

- WTP—We do not agree with Virgin Media that more weight should have been placed on the WTP evidence.⁷⁴ Our assessment is that, because the questions were asked to all consumers, regardless of whether they had experienced a problem or not, the responses merit more limited weight than survey questions targeted at a more relevant sample. We also note that Sky said that the WTP questions are hypothetical, because consumers do not have to pay these amounts, and therefore respondents may exaggerate how much they are willing to pay.⁷⁵
- Benchmarks—BT, Sky, Virgin Media and Vodafone said that little weight should be given to comparators from other sectors and/or jurisdictions because of their differences to UK communications. We broadly agree with the specific stakeholder responses about differences between UK communications and other sectors and jurisdictions and acknowledged this in the consultation.⁷⁶

Delayed provisioning

4.15 Sky and Virgin Media expressed some concerns about the estimate of harm from delayed provisioning.⁷⁷ We consider it is appropriate to use data on loss of service to inform the estimates on delayed provisioning. We accept that some instances of delayed provisioning may not lead to a loss of service. This was reflected in our estimate where we only included instances of delayed provisioning where there is such a loss.

Missed appointments

4.16 Virgin Media also expressed some concerns about the estimate of harm from missed appointments.

- Time spent waiting for an engineer — We consider it is appropriate to include time spent waiting for an engineer during the appointment slot. If an appointment is missed, rescheduled and then completed, the entire episode of the missed appointment is wasted time for the consumer and therefore should all be assessed as harm.⁷⁸
- Heuristic estimate — We broadly agree with Virgin Media that the sort of heuristic estimate it suggested in its response is reasonable, and note it is similar to (but

⁷⁴ Virgin Media consultation response, p. 21, https://www.ofcom.org.uk/data/assets/pdf_file/0020/103682/Virgin-Media.pdf.

⁷⁵ Sky consultation response, Annex 2, 1.9, https://www.ofcom.org.uk/data/assets/pdf_file/0022/103675/Sky.pdf.

⁷⁶ Consultation, Annex 4, A4.56.

⁷⁷ Sky consultation response, Annex 2, 1.14, https://www.ofcom.org.uk/data/assets/pdf_file/0022/103675/Sky.pdf
Virgin Media consultation response, p. 26, https://www.ofcom.org.uk/data/assets/pdf_file/0020/103682/Virgin-Media.pdf.

⁷⁸ Virgin Media response, p. 29, https://www.ofcom.org.uk/data/assets/pdf_file/0020/103682/Virgin-Media.pdf.

lower than) the one we provided in the consultation in the bottom row of Figure A4.6.⁷⁹

Conclusion on estimates of consumer harm

4.17 We acknowledge that estimating harm is inherently difficult and that there is a degree of uncertainty. This is reflected in the fact that we have used multiple different sources to estimate harm and that several of these approaches themselves represent a range of values. Overall, having taken account of stakeholder responses on our evidence and approach to estimation, we judge that the evidence and approaches we used in our consultation remain appropriate and that the range of estimates are still a reasonable representation of harm.

⁷⁹ Virgin Media response, p. 30, https://www.ofcom.org.uk/_data/assets/pdf_file/0020/103682/Virgin-Media.pdf.

5. Design of an automatic compensation scheme

Introduction

- 5.1 In this section we set out our final analysis and conclusions on the service quality failures which are suitable for an automatic compensation scheme. These are:
- delayed repair following loss of service - when a provider fails to repair a landline and/or broadband service quickly;
 - delayed provisions - when a provider promises to start a service on a particular day but fails to do so; and
 - missed appointments - when an engineer is supposed to come on a particular day but does not turn up.
- 5.2 We have prioritised these three issues because they are most important to consumers, reflect their reasonable expectations of their communications services and lend themselves to being objectively defined and measured. They are therefore suited to a scheme where providers pay compensation automatically when they occur.
- 5.3 We describe each of these service quality failures in detail below, along with consultation responses and the assessments we have made.
- 5.4 We also set out our conclusions, in light of consultation responses, on the additional features required for the scheme to ensure that automatic compensation is fair and effective: including that it is easy for consumers to understand, practical to implement and provides real and effective protection and redress.

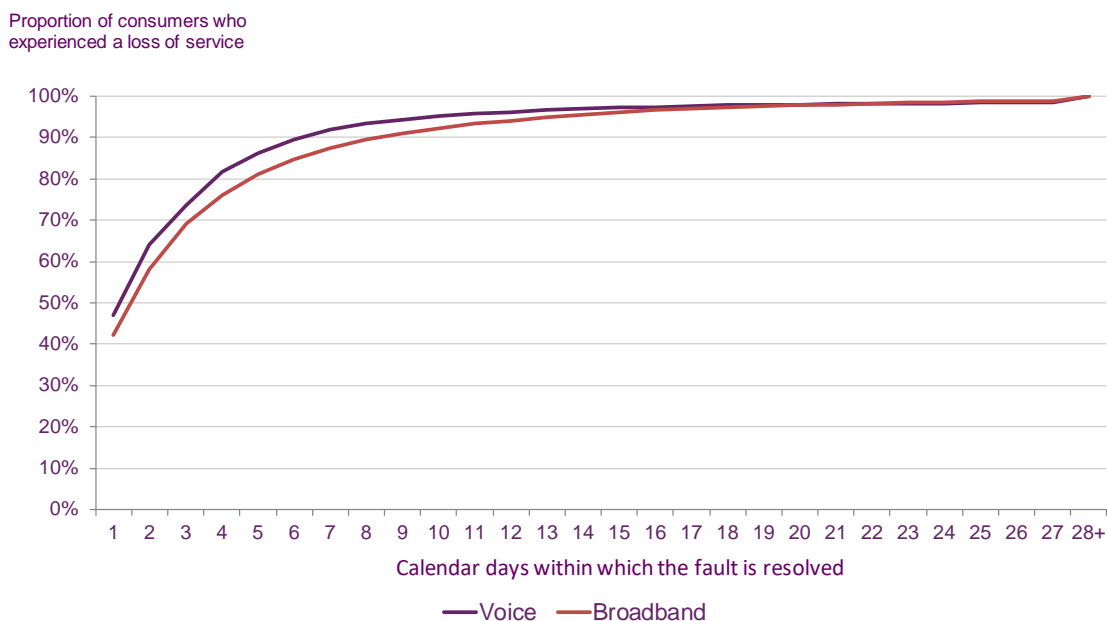
Delayed repair of loss of service

Our consultation proposal

- 5.5 Our consultation highlighted that, of the 5.7 million landline and fixed broadband loss of service incidents recorded by providers, 1.6 million were not restored after three calendar days.⁸⁰ Moreover, restoration times for incidents that are not repaired after three calendar days are spread over a wide period or 'long tail' of time.⁸¹ Figure 4 illustrates the duration of loss of service incidents.

⁸⁰ Average annual loss of service incidence figures have been calculated from quarterly data submitted by providers covering the period Q3 2014 to Q2 2016 in response to August 2016 fixed s135 request. Details of how we have estimated incidence data can be found in Annex 6 of the consultation: Automatic Compensation: Protecting consumers from service quality problems, March 2017, https://www.ofcom.org.uk/data/assets/pdf_file/0030/98706/automatic-compensation-consultation.pdf

⁸¹ Around half a million loss of service incidents were still awaiting repair after one calendar week and even after 20 calendar days, approximately 77,000 landlines and 40,000 fixed broadband services continued to fail.

Figure 4: Duration of incidents of loss of service

Source: Ofcom analysis of operator data

- 5.6 Our consumer research found that, over the last two years, 24% of consumers experienced a loss of their landline or broadband service. In most cases (65%), it took two calendar days for the service to be restored after the provider had been notified of the issue, while a further 4% of respondents were restored on the third calendar day. However, 23% of households experiencing a loss of service had to wait more than three calendar days for the service to be fixed.⁸² The majority of consumers were dissatisfied if they had to wait more than three calendar days for their service to be restored but the majority who had their service restored within two calendar days were satisfied with the time taken.⁸³
- 5.7 The harm consumers suffer due to a loss of service, which is prolonged where there are unreasonable delays in repair, includes an inability to contact family, friends or emergency services if their landline service fails, particularly if they rely on it as their main means of communication. A failed broadband connection may prevent the completion of essential day-to-day tasks, such as online transactions (financial and retail), access to services (health, government, community), and the ability for children to complete and submit school work online. Our consumer research found 42% of respondents said the loss had a negative impact on day-to-day activities.⁸⁴

⁸² Jigsaw, Automatic Compensation, March 2017, slide 34, question F5,

https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

⁸³ 79% of respondents whose service took more than three days to be restored were dissatisfied with the time taken to restore. Conversely, 72% of respondents that reported the loss to their provider and whose service was restored within two days were satisfied with the time taken. Jigsaw research, March 2017, slide 36, question F6 and F5,

https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

⁸⁴ Jigsaw, Automatic Compensation, March 2017, slide 41, question F7a,

https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

- 5.8 Loss of service can also have a significant negative impact on work related activities, preventing a consumer from working from home.⁸⁵ Our consumer research indicated that 16% of respondents said loss of service had a negative impact on work-related activities. Some consumers may find an alternative workaround when they experience a loss of service (which may be inferior to the failed service/or more expensive), such as a mobile phone, but they may incur costs for using these services.⁸⁶
- 5.9 In addition, consumers will spend time and effort trying to rectify the loss of service which may reduce the amount of time they would have otherwise spent on leisure or work. Our research found that consumers lost on average (median) an additional 2.4 hours of work or leisure time trying to get the service fixed.⁸⁷
- 5.10 Consumers would receive redress for this harm if they received adequate compensation. However, data collected from providers showed that only approximately one million customers per year on average received some form of compensation (monetary or non-monetary) for a loss of service, which was equivalent to 18% of all loss of service incidents.⁸⁸ Of those that received monetary compensation, the average payment for loss of service is around £13.51 per incident, although the average payment for each individual provider ranges from £3 to nearly £20 per incident. Dividing the average monetary payment, based on industry data by the average duration of a loss of service incident of four calendar days, suggests providers pay on average £3.69 for each day of lost service among those who receive compensation.
- 5.11 Taking these points into account, our provisional assessment was that consumers' reasonable expectations were not being met in terms of the time taken to repair a loss of service. We proposed that providers should compensate consumers where there is an unreasonable delay in the restoration of their service.

Consultation responses and our updated assessment

- 5.12 Most respondents agreed that it is reasonable to include delayed repair following a loss of service within the scope of an automatic compensation scheme, although some sought clarity

⁸⁵Jigsaw, Automatic Compensation, March 2017, slide 41, question F9,

https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

⁸⁶ 35% of respondents found an alternative workaround when they experienced a loss of service. 20% of respondents that had found an alternative workaround said then incurred direct financial costs. Jigsaw research, Automatic Compensation, March 2017, slide 39, question F7a and Q.F7c: https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

⁸⁷ Jigsaw research, Automatic Compensation, March 2017, slide 42, question F8a,

https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

⁸⁸ Average annual loss of service incidence figures have been calculated from quarterly data submitted by providers covering the period Q3 2014 to Q2 2016, in response to August 2016 fixed s135 requests, Annex 2. This figure is based on any form of compensation received. The number of consumers that received monetary compensation for loss of service was lower at 870,374, equivalent to 15% of all loss of service incidents. Details on how we have estimated incidence data can be found in Annex 6 of the consultation: Automatic Compensation: Protecting consumers from service quality problems, March 2017, https://www.ofcom.org.uk/_data/assets/pdf_file/0030/98706/automatic-compensation-consultation.pdf

with specific elements of our proposal.⁸⁹ KCOM, IFNL and Money Saving Expert supported the specific details of our proposals.⁹⁰

5.13 Only three providers disagreed with the payment of automatic compensation for loss of service (these providers disagreed overall with the introduction of an automatic compensation scheme).⁹¹

5.14 Issues where providers sought clarifications include:

- situations where loss of service occurs;
- when the right to compensation would start;
- the point from which payment is automatic;
- whether separate payments are due from different landline and broadband providers; and
- exceptions to the starting point for measuring the time taken to restore service.

5.15 Providers also raised specific questions on two issues we did not consider in the consultation:

- when the clock (i.e. the time period for which compensation is due) can be stopped; and
- repeat faults.

Situations where loss of service occurs

5.16 A number of providers expressed concerns over the proposed definition of total loss of service. BT, for example, said there was the need for a better definition of a broadband loss of service than the one we proposed, covering a comprehensive range of scenarios “that can be explained clearly to consumers as well as readily tested.”⁹²

5.17 In our judgment, an automatic compensation scheme should apply where a customer experiences a total loss of their landline and broadband service. Specifically:

- for landline, where the consumer is unable to make an outgoing call or receive an incoming call or where the service only allows for one-way speech (i.e. only one party in the call can hear the other person or be heard); and
- for broadband, where consumers are unable to access the public internet.

5.18 These types of service quality issues lend themselves to an automatic compensation scheme. They can be objectively defined and reliably measured, and they are obvious examples of

⁸⁹ Virgin Media said in their consultation they already provide an compensation scheme for loss of service, Virgin Media consultation response, p. 4, https://www.ofcom.org.uk/_data/assets/pdf_file/0020/103682/Virgin-Media.pdf

⁹⁰ KCOM consultation response, p.7, https://www.ofcom.org.uk/_data/assets/pdf_file/0030/103989/KCOM.pdf; IFNL consultation response, p. 1, https://www.ofcom.org.uk/_data/assets/pdf_file/0021/103665/Independent-Fibre-Networks-Ltd.pdf; Money Saving Expert consultation response, p.4, https://www.ofcom.org.uk/_data/assets/pdf_file/0024/103668/Money-Saving-Expert.pdf

⁹¹ ... [3<], Entanet consultation response, p.2, https://www.ofcom.org.uk/_data/assets/pdf_file/0018/103662/Entanet-International-Ltd.pdf; Post Office consultation response p.2, https://www.ofcom.org.uk/_data/assets/pdf_file/0018/103671/Post-Office-Ltd.pdf

⁹² BT consultation response, p.7, paragraph 20, https://www.ofcom.org.uk/_data/assets/pdf_file/0029/103988/BT.pdf

services failing to meet consumers' reasonable expectations. It is clear that the service that should be delivered is unavailable.

- 5.19 The Post Office, Sky, TalkTalk and Vodafone suggested changes were necessary to the technical definition of total loss of service at the wholesale level, to enable providers and wholesalers to agree what constitutes such a loss.⁹³ The Phone Co-op and TalkTalk also asked for clarification on whether our proposal applied to a loss of service on the customer side of the network termination point, such as when the router fails.⁹⁴
- 5.20 We have taken careful account of these points. At the wholesale level, we expect industry to agree the technical definitions and standards that correspond to the customer's experience of a total loss of service.⁹⁵ We do not envisage that an automatic compensation scheme would cover loss of service on the customer's side of the network termination point (including router failures).⁹⁶ For example, we would not expect compensation to be paid out for faulty wiring in the home. In terms of replacement faulty routers, we have not received any evidence to suggest consumers suffer from undue delay in receiving these where required. Providers also usually have provision in place to replace faulty routers quickly.

When the right to compensation would start

- 5.21 Some stakeholders supported our proposal to pay compensation if the service is not fully restored by midnight on the second full working day after the working day providers become aware of the loss.⁹⁷
- 5.22 Others (Phone Co-op, Post Office, Sparta Telecom, Vodafone, Zen Internet)⁹⁸ proposed a longer time for repair before automatic compensation is triggered, arguing that extra time should be built-in to allow for diagnostics or actions by third parties (particularly wholesalers)

⁹³ BT consultation response, p.7, paragraph 20, https://www.ofcom.org.uk/data/assets/pdf_file/0029/103988/BT.pdf; Post Office consultation response, p.3, https://www.ofcom.org.uk/data/assets/pdf_file/0018/103671/Post-Office-Ltd.pdf; Sky consultation response p.12, paragraph 3.14, https://www.ofcom.org.uk/data/assets/pdf_file/0022/103675/Sky.pdf; TalkTalk consultation response, p.7, https://www.ofcom.org.uk/data/assets/pdf_file/0025/103678/TalkTalk.pdf; Vodafone consultation response, p7, paragraph 14: https://www.ofcom.org.uk/data/assets/pdf_file/0021/103683/Vodafone.pdf;

⁹⁴ The Phone Co-op consultation response, p.2, https://www.ofcom.org.uk/data/assets/pdf_file/0026/103679/The-Phone-Co-op.pdf; TalkTalk consultation response, p.9, paragraph 5.3, https://www.ofcom.org.uk/data/assets/pdf_file/0025/103678/TalkTalk.pdf

⁹⁵ We expect the definition to be aligned with the total loss of service definition used in Ofcom's 2018 Comparing Service Quality Report.

⁹⁶ See paragraph 5.52: https://www.ofcom.org.uk/data/assets/pdf_file/0030/98706/automatic-compensation-consultation.pdf

⁹⁷ By midnight, we mean 11:59pm.

⁹⁸ The Phone Co-op consultation response, p.2: https://www.ofcom.org.uk/data/assets/pdf_file/0026/103679/The-Phone-Co-op.pdf; Post Office consultation response, p.2: https://www.ofcom.org.uk/data/assets/pdf_file/0018/103671/Post-Office-Ltd.pdf; Sparta Telecom consultation response, p.2: https://www.ofcom.org.uk/data/assets/pdf_file/0023/103676/Sparta-Telecom.pdf; Vodafone consultation response, page 8, paragraph 22: https://www.ofcom.org.uk/data/assets/pdf_file/0021/103683/Vodafone.pdf; Zen Internet consultation response, p.7: https://www.ofcom.org.uk/data/assets/pdf_file/0022/103684/Zen-Internet-Limited.pdf

as this contributes to longer repair times.⁹⁹ Citizens Advice suggested that, if the customer notified their provider on a non-working day, the next working day should count as a 'full working day' for the purposes of triggering a compensation payment. This would mean compensation is triggered earlier than we originally proposed.¹⁰⁰

- 5.23 We have considered stakeholders' responses carefully. We do not agree that additional diagnostic time should be built into the period before automatic compensation is due. One of our policy objectives is to improve service quality, including by giving providers the right incentives. Extending the period would run contrary to this and would not meet consumers' reasonable expectations of repair times of two to three calendar days.
- 5.24 In relation to Citizens Advice's suggestion, our assessment is that our proposal provides appropriate protection for consumers' interests and is a reasonable and practical target for providers to deliver against. We consider that it is appropriate to take into account that providers typically work to repair faults in working days and we have considered the cost implications for industry that a step change in repair times, such as requiring weekend working, could mean. We do not consider this necessary given current average consumer expectations of repair times of two to three calendar days. Further, a repair time that is shorter than the current average repair time of four calendar days should provide an incentive on providers to improve.
- 5.25 Our judgment is that a fair and effective automatic compensation scheme would require providers to pay compensation if the service is not fully restored by midnight on the second full working day, following the working day when they become aware of the loss. That would be consistent with the majority of consumers' reasonable expectations as to the time by which loss of service should be repaired, would be a reasonable, practical target for providers to deliver against, and would sufficiently incentivise providers to improve quality.

The point from which payment is automatic

- 5.26 In our consultation, we suggested that consumers should ideally be compensated automatically without first having to notify the loss of service to their provider. However, we also said that, while providers may be aware of a network outage that causes loss of service in a particular area, they cannot always accurately identify which individual lines are affected without first being notified by the consumer. To be able to do so would likely require them to make significant investment which may be disproportionate to the expected benefits.
- 5.27 We therefore proposed that a consumer would first need to register a loss of service with the provider, in order for any compensation payment to be automatic. The provider should then monitor whether the loss is restored by midnight on the second working day and if not, pay

⁹⁹ Andrews & Arnold Ltd and ISPA submitted that the time taken to diagnose a fault may also depend on the consumer's co-operation or ability to carry out certain tests. Andrews & Arnold consultation response, page 4, https://www.ofcom.org.uk/_data/assets/pdf_file/0024/103659/Andrews-and-Arnold-Ltd.pdf, ISPA consultation response, page 3, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103666/Internet-Services-Providers-Association-ISPA-UK.pdf

¹⁰⁰ Citizens Advice gave an example: a consumer that reports a service outage on a Sunday evening, would be eligible for a compensation payment if their service was not restored by midnight on Tuesday (rather than Wednesday). See Citizens Advice consultation response, p.10, https://www.ofcom.org.uk/_data/assets/pdf_file/0015/106026/citizens-advice.pdf

the required compensation to the consumer automatically, i.e. without further contact being required from the consumer.

- 5.28 Stakeholders supported our proposal, with two providers making suggestions as to how consumers should report the loss of service. Citizens Advice submitted that the process should be made as easy as possible for consumers. For example, by enabling them to log the issue over the phone, outside call centre opening hours, through automated systems or on a publicly available website. BT, on the other hand, said that it should not be enough for a consumer simply to complain via social media, for example, and that the consumer should be required to obtain an acknowledgement of the fault report and a reference number from the provider.
- 5.29 We have considered these points. We do not necessarily expect providers, as part of an automatic compensation scheme, to introduce new means by which consumers can report losses of service. Nevertheless, it is important consumers can register their loss easily and that there are accessible and prominent ways to do so. We would be concerned if a provider restricts the means of fault reporting or if they are not transparent about the means available.
- 5.30 If consumers experience significant challenges communicating a loss of service to their provider, this is likely to affect their total time without service and result in higher levels of consumer harm. It also affects how much automatic compensation the consumer is entitled to (see paragraphs 5.35-5.41 below for further discussion on measuring repair times).
- 5.31 Our conclusion, therefore, for the reasons set out above, is that for a scheme to be both fair and effective, as well as practicable, the consumer would first need to register the loss of service with their provider. There should be a range of routes to do this, which need to be accessible and prominent. Providers should then monitor whether the service is restored by midnight on the second full working day thereafter. If not, a fair and effective scheme requires the payment of compensation to the consumer automatically.¹⁰¹

Separate payments from different landline and broadband providers

- 5.32 Smaller providers said consumers should not get separate payments from each provider they take a landline and broadband service from, if both services have failed.¹⁰² For example, it should not be the responsibility of a broadband-only supplier to pay compensation if the fault is with the landline service.

¹⁰¹ This payment would continue until the fault is repaired. In the event a consumer decides to cancel his/her contract because of loss of service, automatic compensation will still be payable up to and including the date the consumer cancels the service (irrespective of whether other charges apply such as early cancellation fees).

¹⁰² Andrews & Arnold consultation response, p.2 -3, https://www.ofcom.org.uk/data/assets/pdf_file/0024/103659/Andrews-and-Arnold-Ltd.pdf; The Phone Co-op consultation response, p.2, https://www.ofcom.org.uk/data/assets/pdf_file/0026/103679/The-Phone-Co-op.pdf; Zen Internet consultation response, p.7, https://www.ofcom.org.uk/data/assets/pdf_file/0022/103684/Zen-Internet-Limited.pdf

- 5.33 BT also contended that only a single payment would be needed. The presence of a dial tone would indicate that a loss of a broadband service is due to the broadband provider, while no tone would indicate the fault is with the landline provider.¹⁰³
- 5.34 We agree with these points. In cases where a consumer purchases landline and broadband services separately, a scheme need only require a single compensation payment for the loss of service.¹⁰⁴ The provider responsible, and therefore liable for compensation, should be straightforward to identify. Which provider should be required to pay would depend on where the fault lies:
- Where it is on the landline, indicated by the lack of a dial tone, the landline provider should be liable to pay compensation, regardless of whether the service loss is with the landline and/or the broadband.
 - Where it is not on the landline, indicated by the presence of a dial tone, and there is a loss of broadband service, the broadband provider should be liable to pay.

Exception to the starting point for measuring time taken to restore service

- 5.35 We proposed that the time taken to restore a service would be measured from the point when the consumer first registers the loss with the provider (as opposed to when the loss of service occurs). This is because, as we explain in paragraph 5.26 above, providers cannot always identify individual line failures and that to do so would require significant investment (with costs paid for by industry and/or consumers in the form of higher prices).
- 5.36 However, we proposed an exception to this requirement so that, where the provider becomes aware of a loss of service incident and is able to accurately identify the individual lines that have lost service, this should be the point in time from which the time to repair is measured.
- 5.37 BT, Openreach and Sky disagreed with our proposal. BT said it could create uncertainties in the event of a dispute about whether a provider knew about a loss of service and at what point.¹⁰⁵ BT and Openreach said it would be disproportionate for a customer to receive compensation if they are away from home (and therefore unaffected by the loss of service and suffered no harm until the time they notify their provider). In addition, Sky noted that, as there is variability in the ability of retailers to identify accurately network issues affecting individual lines, this would lead to uncertainty for consumers. It also suggested that the proposals might inhibit investment in “identification of issues at a network level by retailers and so dis-incentivise service quality improvements.”¹⁰⁶

¹⁰³ BT consultation response: p.8, paragraphs 32-34,

https://www.ofcom.org.uk/data/assets/pdf_file/0029/103988/BT.pdf

¹⁰⁴ Our estimates of average harm take into account the average harm experienced when one or both fixed services are lost.

¹⁰⁵ BT gave the example of where a customer notifies their provider of a loss of service and in the process of investigating it becomes clear to the provider that other consumers are also affected. It would not be clear whether the loss of service is measured from the point when the investigation uncovers the loss, or from the point when the first customer notified the provider of the loss. See BT response, p. 8, paragraph 29,

https://www.ofcom.org.uk/data/assets/pdf_file/0029/103988/BT.pdf

¹⁰⁶ Sky consultation response, p.8, paragraph 2.24,

https://www.ofcom.org.uk/data/assets/pdf_file/0022/103675/Sky.pdf

- 5.38 On balance, and taking account of these points, we consider it would not be appropriate to apply the proposed exception to all consumers. The point when the consumer notifies the provider of the loss is more likely to reflect the time the failure has affected them. It will provide a more certain basis, for both consumers and providers, of when compensation is due. We also want to avoid any unintended consequences that could mean providers not investing in better network fault reporting.
- 5.39 We are, nevertheless, concerned about vulnerable consumers who might be less able to report faults promptly. That would mean the starting point for measuring the time taken to restore a service is delayed and they would not receive compensation equal to the harm they experience.
- 5.40 We therefore consider it is reasonable that any scheme should:
- generally measure the time taken to restore service from the point the consumer registers its loss; but
 - at the same time, provide appropriate protection for vulnerable consumers.
- 5.41 On that second point, where a customer is vulnerable and, in particular, defined as eligible for “Priority Fault Repair”,¹⁰⁷ the time provided in any scheme for measuring resolution of such a fault should start from the point the provider first became aware of the issue, even if the customer is unable to report it until later.

Planned and unplanned outages

- 5.42 In our consultation, we proposed that compensation should be paid where the loss of service is the result of a planned network outage lasting two full working days or more, as well as an unplanned one. We posited that this was reasonable given that the same level of harm exists irrespective of why the loss occurred.
- 5.43 We have considered the point further and held discussions with some providers. We now consider that the harm to consumers is likely to be lower when there is a planned network outage. Customers can be notified in advance by their provider and are therefore able to rearrange any planned activities to mitigate the disruption caused by the loss of service. As a result, they will not need to spend time and effort rectifying the failure nor, where the loss is expected and the provider will remedy it automatically, are they likely to experience the same level of stress and anxiety. In any event, providers have stated that few planned outages occur for more than 12 hours.
- 5.44 On that basis, our judgment is that a fair and effective scheme should require providers to pay compensation where the loss of service is the result of an unplanned outage, but not a planned one.

¹⁰⁷ Defined in accordance with Ofcom General Condition 15.

When the clock can be stopped

- 5.45 BT suggested that, where a customer does not agree to the first available appointment to enable the fault to be fixed, the days between the first available appointment and the date the customer does agree to, should not attract compensation.¹⁰⁸
- 5.46 We have considered BT's suggestion. In our consultation we clearly set out that providers should compensate consumers where there is an unreasonable delay in the restoration of their service. Part of the delay in repairing loss of service may be the availability of engineering appointments.
- 5.47 We consider it reasonable that consumers make every effort to agree to an appointment, but we recognise it is not always possible to do so. However, in that circumstance, we also consider it reasonable for the provider to stop the clock for the purpose of calculating the period for which any automatic compensation would be due, until an appointment has been accepted.

Repeat faults

- 5.48 In our consultation we considered automatic compensation should be paid when a consumer experiences a single total loss of service event. However, it has been put to us that, in some cases, following the restoration of their service, consumers may experience a repeat loss. Citizens Advice suggested we consider two new requirements to our proposal to address the harm caused in such cases:¹⁰⁹
- if another loss of service happens within a week after the initial repair, the consumer should be eligible for payments immediately after reporting it, as this is essentially part of the same incident; and
 - if there are more than two total losses of service within a year, the consumer should be allowed to change their provider without having to pay an early termination charge.
- 5.49 Having reflected on these points, we think it would be appropriate to restart the original clock if a loss of service re-occurs within a relatively short time period. This will incentivise providers to fix faults effectively in the first place and quickly if they recur. We have considered the consumer harm that occurs in these circumstances, alongside current industry processes. Our judgment is that it would be reasonable for automatic compensation to continue to accrue where a loss of service recurs within 48 hours of it seeming to be repaired. The amount due should apply to the whole period affected, from the first report of the loss of service to its eventual final resolution.
- 5.50 In relation to multiple losses of service, a requirement to allow early termination goes beyond the scope of our consideration of automatic compensation. In any event, we understand there may be few cases where consumers experience more than two losses within a year caused by

¹⁰⁸ BT consultation response, p.9, paragraph 36, https://www.ofcom.org.uk/data/assets/pdf_file/0029/103988/BT.pdf

¹⁰⁹ Citizens Advice consultation response, p.11, https://www.ofcom.org.uk/data/assets/pdf_file/0015/106026/citizens-advice.pdf

the same fault and therefore we would expect these situations to better be resolved on a case-by-case basis between consumers and their providers.

Conclusion

5.51 Having taken careful account of stakeholders' responses, our judgment is that a fair and effective automatic compensation scheme for loss of service would have the following features:

Figure 5: Automatic compensation for delayed repairs following loss of service

- Consumers should be paid compensation by their provider where they experience a total loss of service and the service(s) are not fully restored by midnight on the second working day after the provider becomes aware of the loss.
- Total loss of service means:
 - For landline, where the consumer is unable to make an outgoing call or receive an incoming call; or where the service only allows for one-way speech (i.e. only one party in the call can hear the other person or be heard).
 - For broadband, where consumers are unable to access the public internet.
- Compensation should only apply to loss of service caused by faults on the network side of the network termination point.
- Where a consumer purchases landline and broadband services separately, the provider responsible for the loss of service (identified by the presence or not of a dial tone) will be liable to pay compensation.
- The compensation payment should be automatic once the customer first registers the loss of service with the provider. The exception to this would be vulnerable consumers and those defined as eligible for "Priority Fault Repair," where the point for measuring time taken to restore should start from when the provider first becomes aware of the issue.
- Providers can stop the clock where a customer does not take-up the first appointment offered.
- Where a total loss of service occurs within 48 hours of the original fault being closed, the time taken to repair should be measured from the point when the consumer first registered the original loss of service with the provider.
- Payment should be made if the loss of service is the result of a network fault (unplanned outage) affecting any network over which the service is provided.

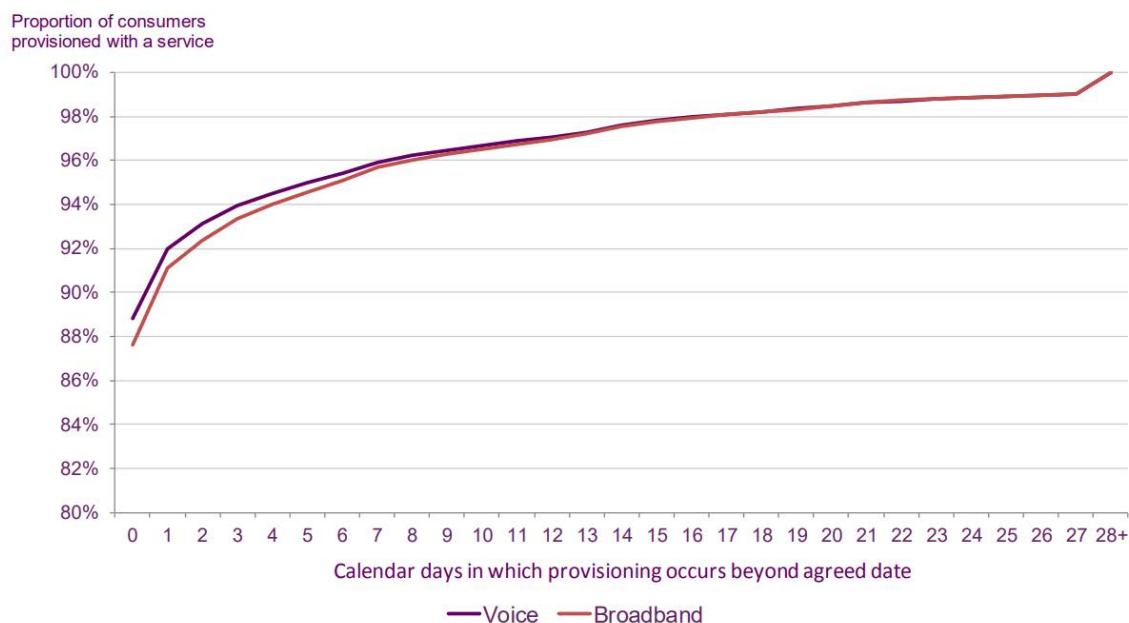
Delayed provisioning

Our consultation proposal

5.52 In our consultation we proposed that consumers should be automatically compensated where there is a delay in provisioning, i.e. a delay in the commencement of a landline and/or broadband service beyond the date the provider has committed to in writing. This included where consumers switch provider or where they upgrade to a different service with the same provider (such as from standard to superfast broadband).

5.53 Data collected from industry highlighted that, of the 10.8m landline and/or broadband provisions annually, 1.3m (12%) were subject to delays.¹¹⁰ Many of these were relatively short. As Figure 6 below highlights, approximately 95% of new provisions took place within five calendar days of the original scheduled date. However, in around 3% of cases, the start date was 10 or more calendar days late and in around 1% of cases the delay was 28 calendar days or more. Our provisional view was that whilst the proportion of consumers left experiencing long, unexpected delays is small, the absolute numbers are still significant, since each year over 100,000 provisions are subject to delays of 28 calendar days or more.

Figure 6: Consumers receiving a provision within 'x' calendar days of the date promised (all providers average)



5.54 The specific reasons for these delays vary. Retail providers who purchase their wholesale inputs from Openreach told us that provisioning dates are often missed because Openreach

¹¹⁰ Average delayed provisioning incidence figures have been calculated from quarterly data submitted by providers covering the period Q3 2014 to Q2 2016 in response to August 2016 fixed s135 request. Details of how we have estimated incidence data can be found in Annex 6 of the consultation: Automatic Compensation: Protecting consumers from service quality problems, March 2017, https://www.ofcom.org.uk/_data/assets/pdf_file/0030/98706/automatic-compensation-consultation.pdf

fails to meet the promised date. Openreach's own statistics indicate that where an engineer visit is required for service installation, over 1% of such installations are more than 31 days late.¹¹¹ But in other cases there may simply be a problem with the retail provider's systems or processes which causes the scheduled start date to be missed, or there may be a fault on the line that prevents provisioning taking place on time.

- 5.55 Data collected from providers suggested that only around 163,000 (13%) consumers received monetary compensation in respect of delays. A further 255,000 (20%) received some form of non-monetary compensation.¹¹² In the consultation we said that, of those consumers receiving compensation for delayed provisioning, the average monetary value was £2.39.¹¹³ However, when we divided the total amount of compensation paid at the moment by the number of people who experienced a provisioning delay we found the figure was £0.30 per day per customer.
- 5.56 Consumers subject to delayed installations suffer harm such as being left without a landline or broadband service for a prolonged period, or suffering a delay in switching to their desired new provider or service (perhaps on a cheaper tariff or with a service that better meets their requirements). Additionally, consumers can experience considerable frustration, anxiety and stress because installation not only takes place much later than originally scheduled, but they may have to try and contact their provider repeatedly to get a new installation date scheduled.
- 5.57 Our research indicated that, in around a third of provisions, delays can lead consumers to suffer a loss of service as they may have cancelled their old service in the expectation that the new one would commence on a particular day.¹¹⁴ For these consumers, the harm associated with delayed installation is likely to be similar to those who experience a loss of service as described above.
- 5.58 Taking account of all these points, our provisional assessment was that consumers' reasonable expectations were not being met in terms of the time taken to provision services. They are entitled to expect provisioning to occur on the date the provider agreed. Where it does not, they suffer harm for which they do not currently receive adequate redress.
- 5.59 We therefore proposed that consumers should be automatically compensated where there is a delay in provisioning beyond the date the provider has committed to in writing.

¹¹¹ Openreach, 2017. Installations where you have to wait longer for an engineering appointment.

https://www.homeandwork.openreach.co.uk/kpi-pages/KPI_overview.aspx?kpi=13c [accessed 25 October 2017].

¹¹² Figures have been calculated from quarterly data submitted by providers covering the period Q3 2014 to Q2 2016 in response to August 2016 fixed s135 request. Details of how we have estimated incidence data can be found in Annex 6 of the consultation: Automatic Compensation: Protecting consumers from service quality problems, March 2017, https://www.ofcom.org.uk/data/assets/pdf_file/0030/98706/automatic-compensation-consultation.pdf

¹¹³ Details on how we have estimated incidence data can be found in Annex 6 of the consultation: Automatic Compensation: Protecting consumers from service quality problems, March 2017, https://www.ofcom.org.uk/data/assets/pdf_file/0030/98706/automatic-compensation-consultation.pdf

¹¹⁴ Jigsaw, Automatic Compensation, March 2017, slide 25, question E8 and slide 35, question F2a: Jigsaw, Automatic Compensation, March 2017, https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

Consultation responses and our updated assessment

- 5.60 Consumer groups and individual consumers agreed that it was appropriate to introduce automatic compensation when there is a delay in provisioning landline and broadband services.¹¹⁵ Most providers also agreed, although those that use the Openreach network qualified their support by arguing that this is a wholesale issue.¹¹⁶ Some providers also made the point that the complexities of delivering services through different technologies, such as fixed wireless, mean it is not always possible to give customers confirmed installation dates.¹¹⁷ Post Office argued that liabilities for automatic compensation may mean some providers could stop serving problematic or remote areas. The complexities involved in provisioning services could mean that the risk of having to pay automatic compensation would be too great. This would result in less competition.¹¹⁸
- 5.61 We acknowledge that retail providers may be dependent on Openreach engineers to install a new service. At the wholesale level, we have separate proposals for regulating the quality of Openreach's services, which include service standards on repair and installation times.¹¹⁹ However, we also consider that some delays in provisioning are due to issues at the retail provider level. We set out in paragraphs 5.92-5.105 below the reasons for our view that automatic compensation should be paid out at the retail level.
- 5.62 We also recognise that it may be more difficult to provision services in remote areas or with alternative technologies. In consequence of this, we do not consider it appropriate to set a specific time period within which services must be provided and instead providers can commit to appropriate dates for service delivery that take into account the differing individual circumstances of consumers and the technologies being used. Given that, any impact of automatic compensation for delayed provisioning on coverage is likely to be very limited and, in any event, we consider it fair that all consumers should be entitled to automatic compensation, regardless of geographic location. Moreover, the time period for a service to be delivered could be an area of differentiation and competition between providers.
- 5.63 Our judgment, having regard to all these points, is that it is reasonable that consumers who have contracted for a new service should have it start by the date the relevant retail provider commits to. If that provider offers and agrees to that date, then consumers are reasonably entitled to expect the provision of their service to commence then. If it does not, they suffer harm for which they should get compensation automatically.

¹¹⁵ Citizens Advice, Which?, The Consumer Communications Panel and Money Saving Expert and 14 individual consumers.

¹¹⁶ BT, TalkTalk, Vodafone, IFNL, Nine Group, SCS, SSE and Zen Internet.

¹¹⁷ TxRx Communications consultation response, p.1,

https://www.ofcom.org.uk/data/assets/pdf_file/0018/103680/TxRx-Communications-Limited.pdf; [38]

¹¹⁸ Post Office consultation response, p. 2-3, https://www.ofcom.org.uk/data/assets/pdf_file/0018/103671/Post-Office-Ltd.pdf

¹¹⁹ Ofcom, *Quality of Service for WLR, MPF, GEA: consultation on proposed quality of service remedies*, https://www.ofcom.org.uk/data/assets/pdf_file/0033/99645/QoS-WLR-MPF-GEA.pdf

Additional points of clarification

- 5.64 Providers asked for clarity in cases where the customer has experienced a delay in provision and subsequently decides to cancel their order. They contended that, when an order has been cancelled before activation, automatic compensation should not be payable.
- 5.65 Consumers reasonably expect their services to begin on the date agreed with the provider. If not, they suffer harm and continue to do so until the provider commences the service or they notify the provider they no longer wish to continue with it (perhaps because of the delay in provisioning). Our judgment is that it is fair, in those circumstances, for automatic compensation to be payable from the date of the delayed provision up to and including the date the consumer cancels the order.¹²⁰
- 5.66 Stakeholders also asked us to clarify our view on the delivery of routers. Citizens Advice submitted that, should a provider fail to supply any device, such as a router, which is necessary to connect to the internet, consumers should be eligible for compensation payments for delayed provisioning.¹²¹
- 5.67 Our view is that, if the provider fails to deliver the router by the activation date and the customer has notified the provider that it has not been received, automatic compensation should be paid. However, if the provider has made every effort to deliver the router, and they are able to prove this, liability to pay automatic compensation may not be appropriate.

Conclusion

- 5.68 Having taken into account all the stakeholder responses to our consultation, our judgment is that a fair and effective automatic compensation scheme for delayed provisioning would have the following features:

¹²⁰ Such payment must be made as a monetary payment to the customer.

¹²¹ Citizens Advice consultation response, p.11, https://www.ofcom.org.uk/data/assets/pdf_file/0015/106026/citizens-advice.pdf

Figure 7: Automatic compensation for delayed provisioning

- Consumers should be compensated by their provider where there is a delay in the commencement of a landline and/or broadband service beyond the date the provider has committed to in writing. The compensation payment should be automatic once the committed date has been missed.
- Unscheduled delays that occur when switching from one provider to another, having a new line or service installed, or upgrading from one service to another with the same provider would lead to automatic compensation being paid.
- Consumers should be paid automatic compensation in instances where they have experienced a delay in provision and subsequently decide to cancel their order. Compensation would be paid from the date of the delayed provision up to and including the date the consumer cancels the order.

Missed Appointments

Our consultation proposal

5.69 In our consultation, we explained just under 50% of fixed broadband and landline faults and provisions require an engineer visit to undertake repairs or to install a service.¹²² In a minority of cases, providers arrange appointments for an engineer visit and then fail to meet them. We recognised that, although only 3% of engineer appointments are missed, this equates to almost 250,000 appointments each year.¹²³ In some cases, these appointments will be arranged and then missed repeatedly. Our consumer research suggested that, of those consumers who had experienced a missed appointment, 29% had experienced multiple missed appointments in the last two years.¹²⁴

5.70 When appointments are missed, consumers can incur significant harm and disruption in addition to any other harms a prolonged loss of service or delayed activation can cause.

5.71 Our research identified several ways in which consumers are harmed when their appointments are missed.¹²⁵ Firstly, it found that just over a quarter of consumers who had

¹²² 49%. Ofcom calculations based on provider responses to August 2016 fixed s135 request, Annex 2 question 3. See Annex 6 of consultation: https://www.ofcom.org.uk/data/assets/pdf_file/0033/98709/automatic-compensation-consultation-annexes.pdf

¹²³ Approximately 247,673. Ofcom calculations based on provider responses to August 2016 fixed s135 request, Annex 2 question 3, scaled to represent the whole industry. Providers were asked to exclude appointments that were missed because of the actions of the consumer. While most CPs were able to do so, some CPs had difficulty separating this out and therefore some of these missed appointments may also be included in this figure. See Annex 6 for more detail.

https://www.ofcom.org.uk/data/assets/pdf_file/0033/98709/automatic-compensation-consultation-annexes.pdf

¹²⁴ Jigsaw, *Automatic Compensation*, March 2017, slide 53, Question I2b:

https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf. Please note this is taken from a sample size of only 72.

¹²⁵ Owing to sampling limitation, our consumer research for missed appointments is based on a sample size of only 72 people that had said they had had an appointment missed. We nevertheless feel that this provides a useful qualitative indication as to the types of harm consumers face.

experienced a missed appointment had to make arrangements to take time off work to accommodate the engineer visit.¹²⁶ When appointments are missed, or cancelled at the last minute, the time the consumer takes off work for the appointment is an unnecessary cost and can also mean the consumer has to take more time off work for the rearranged appointment.

- 5.72 Furthermore, time spent waiting for an engineer and rearranging the appointment affects more than just those who are unable to work. Having to stay at home can prevent consumers from carrying out a range of activities they would normally undertake. Over half of the consumers surveyed who had had an appointment missed complained that it prevented them from doing other things they wanted to do.¹²⁷
- 5.73 Missed appointments can also often mean that consumers spend time contacting their provider to find out why their appointment has been missed and to rearrange it, adding to the harm consumers face. Our consumer research indicated that 73% of consumers who had an appointment missed then contacted their provider, with just over half of those having to call more than once.¹²⁸
- 5.74 Although consumers would prefer that appointments are kept, the harm caused when they are missed could be mitigated if those affected were receiving adequate redress. Our analysis of industry data suggested that only 14% of consumers affected received compensation for their missed appointment.¹²⁹ Of those consumers receiving compensation, the average monetary value received was £24.28.¹³⁰ However, because only 14% of consumers receive compensation, the total amount paid out by the largest providers across the number of missed appointments is only £3.35.¹³¹
- 5.75 Our provisional judgment was it is reasonable for consumers to expect that appointments will occur on the day offered by, and agreed with, their provider. On the basis of the evidence, our further provisional view was that, when appointments are missed, consumers suffer harm for which they do not currently receive adequate redress.

¹²⁶ 14% took paid leave while the 12% had to take unpaid leave. Jigsaw Research, *Automatic Compensation*, March 2017, slide 54, Question I6, https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf. Note sample size is 72.

¹²⁷ 57%. Jigsaw, *Automatic Compensation*, March 2017, slide 54, Question I6, https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf. Note sample size is 72.

¹²⁸ Jigsaw, *Automatic Compensation*, March 2017, slide 55, Question I7, n=72; 58% of consumers that contacted their provider because of a missed appointment, contacted their provider more than once. Question I9b, n=53: https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

¹²⁹ Ofcom calculations based on provider responses to August 2016 fixed s135 request, Annex 2, question 1 and 3, see Annex 6 of consultation for more detail https://www.ofcom.org.uk/data/assets/pdf_file/0033/98709/automatic-compensation-consultation-annexes.pdf. Our consumer research suggested that only 8% of consumer received compensation for a missed appointment, however as the sample size is only 72 we consider industry data to be more reliable. Jigsaw, *Automatic Compensation*, March 2017, slide 57, Question I12a, https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

¹³⁰ Ofcom calculations based on provider responses to August 2016 fixed s135 request, Annex 2, question 1, see Annex 6 of consultation for more detail (link above).

¹³¹ Ofcom calculations based on provider responses to August 2016, fixed s135 request, Annex 2, questions 1 and 3.

- 5.76 We therefore proposed that consumers should be automatically compensated when an engineer misses a scheduled appointment without giving sufficient notice.

Consultation responses and our updated assessment

- 5.77 The majority of stakeholders who responded to our consultation broadly agreed with the principle of providing compensation where scheduled appointments are missed by engineers. However, some providers raised concerns about how this would work in practice.
- 5.78 One stakeholder [X] disagreed with the concept of compensation for missed appointments and submitted that Openreach engineers regularly prioritise BT Group over other providers, whilst the Post Office disagreed that it should be paid automatically.¹³² It said each case should be assessed on its own merits and the amount of compensation awarded to a consumer based on a table of standard amounts determined by Ofcom.¹³³
- 5.79 We have noted [X] submission.¹³⁴ Openreach is subject to regulatory obligations to provide equivalent services to all retail providers and they may raise complaints and disputes with Ofcom if it breaches those obligations.
- 5.80 In relation to the Post Office's view, we do not consider it would be appropriate to differentiate between the different types of harm a consumer might suffer because of a missed appointment. This would create confusion for consumers as to what they are entitled to, would be liable to inconsistent application by providers and would not therefore be practical to implement.
- 5.81 Our judgment is that, because of the harm consumers suffer when providers set appointments but then fail to meet them, and because very few consumers receive any form of (or any adequate level of) redress for this, compensation should be paid to them uniformly and automatically. This would reflect their reasonable expectations of the services they should receive.

24 hours' notice period

- 5.82 We proposed that, where a provider rearranges an engineer appointment with at least 24 hours' notice, it would not be required to pay compensation. We also said that, if a consumer gives their explicit consent for an engineer to arrive at a different time within the same day, the provider would also not need to pay compensation.
- 5.83 Stakeholders raised additional concerns about the 24 hours' notice period for rearranging appointments. [X] submitted that it is impossible to provide consumers with 24 hours' notice

¹³² [X]

¹³³ Post Office consultation response, p. 3, https://www.ofcom.org.uk/_data/assets/pdf_file/0018/103671/Post-Office-Ltd.pdf

¹³⁴ [X]

because it has a wide geographical spread of customers. It also said the reasons engineer appointments change with less than 24 hours' notice are often outside their control.¹³⁵

- 5.84 Citizens Advice, by contrast, was of the view that, even when an appointment is cancelled with 24 hours' notice, it can still disrupt consumers' lives. It proposed that if an appointment has been rescheduled more than once, even if 24 hours' notice has been given by the provider, it should still have to compensate the consumer.¹³⁶ Money Saving Expert said that 24 hours' notice is too short a period and it is often too late to cancel annual leave or homeworking arrangements a consumer has made to accommodate the appointment.¹³⁷
- 5.85 We acknowledge that providers will need to rearrange appointments on occasion and therefore require flexibility, especially if engineers are running late for an appointment (rather than needing to rearrange it for a different day). However, if only minimal notice is given that an appointment will be missed, consumer harm is, at the limit, the same as if no notice is given. This is because consumers are unlikely to be able to reschedule their planned activities. The longer the notice consumers are given the more likely that they might avoid some of the cost of the appointment being missed. On the other hand, the longer the notice period providers need to give, the more challenging and costly the scheduling of resources becomes for them.
- 5.86 On balance, we consider it is important that consumers are given sufficient notice. In line with the evidence from our research, consumers reasonably expect providers to attend appointments on the date they agree. If that appointment is cancelled or changed with less than 24 hours' notice, the consumer is liable to suffer harm for which they should be automatically compensated.¹³⁸ The exception to this is where it is more convenient for the consumer to reschedule the appointment for another time on the same day and therefore expressly agrees to this.

Multiple compensation payments

- 5.87 Entanet, The Phone Co-op and ISPA UK¹³⁹ also asked us to clarify whether two separate payments would need to be made when there is a delay to repair of a service or to the provisioning of a service if an appointment is missed.
- 5.88 Where an appointment is missed by an engineer without 24 hours' notice being given to the consumer, the retail provider should pay the consumer compensation for that missed

¹³⁵ [3&]

¹³⁶ Citizens Advice consultation response, p. 11, https://www.ofcom.org.uk/data/assets/pdf_file/0015/106026/citizens-advice.pdf

¹³⁷ Money Saving Expert consultation response, p. 5, https://www.ofcom.org.uk/data/assets/pdf_file/0024/103668/Money-Saving-Expert.pdf

¹³⁸ 57% of consumers view 24 hours to be a reasonable amount of notice for an engineer appointment to be cancelled or changed. This is based on 44% consider 24 hours to be reasonable, 13% consider less than 24 hours to be reasonable. Jigsaw, *Automatic Compensation*, March 2017, slide 52, Question 1, https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

¹³⁹ Entanet consultation response, p.3, https://www.ofcom.org.uk/data/assets/pdf_file/0018/103662/Entanet-International-Ltd.pdf, The Phone Co-op consultation response, p. 2, https://www.ofcom.org.uk/data/assets/pdf_file/0026/103679/The-Phone-Co-op.pdf, ISPA UK consultation response, p. 4, https://www.ofcom.org.uk/data/assets/pdf_file/0022/103666/Internet-Services-Providers-Association-ISPA-UK.pdf

appointment. This is in addition to any compensation owed to the consumer as a result of loss of service, or a delay in provisioning, caused by the missed appointment.

Conclusion

5.89 Having taken into account all the stakeholder responses to our consultation, our judgment is that a fair and effective automatic compensation scheme for missed appointments would have the following features:

Figure 8: Automatic compensation for missed appointments

For any repair or provisioning appointment, where an engineer does not attend at the time agreed with the consumer, the provider should automatically pay compensation to the consumer, except where:

- the appointment is rearranged with more than 24 hours' notice given to the consumer; or
- the appointment is rearranged with less than 24 hours' notice but the provider has obtained the consumer's recorded permission to reschedule the appointment for another time on the same day.

Additional considerations for automatic compensation

5.90 In our consultation, we set out the reasons for our provisional view as to why the obligation to pay automatic compensation for the relevant service quality failures should apply to retail providers. We also proposed additional features for the scheme to ensure that automatic compensation is easy for consumers to understand, practical to implement and provides real and effective protection and redress.

5.91 In the following paragraphs, we set out our view at consultation, stakeholders' responses and our final conclusions on each of the following:

- Placing obligations on retail providers
- Force Majeure
- Payment caps
- Method and timing of payment
- Exceptions to automatic compensation
- Complaints and disputes

Placing obligations on retail providers

5.92 We proposed that, in principle, the party responsible for the service quality failure should, in general, bear the cost of compensation paid at the retail level.

5.93 We also set out our provisional view that automatic compensation for service quality failures should be paid to consumers by their retail provider. That should occur irrespective of whether there is a wholesale supplier involved and the underlying issues arise on the

wholesale network. Our rationale was that this would ensure the problem is addressed, and if necessary the consumer is paid compensation, in the easiest and most straightforward manner.

- 5.94 In particular, we considered that putting the requirement to pay automatic compensation on the retail provider would ensure that the party that has the contractual relationship with the consumer to deliver the service provides redress when problems occur. We suggested this would also be more practical as it is the retail provider that the customer would contact when they have a problem with their service and the retail provider holds the necessary customer information.
- 5.95 We recognised that communications services involve a range of different wholesale and retail relationships but noted that, even where retail providers are reliant on wholesalers for inputs, some service quality failures and the speed of fixing them may well be in their control.
- 5.96 We were of the provisional view that the concerns and interests of different wholesale and retail providers would best be dealt with through negotiations and contractual terms between those parties.
- 5.97 We acknowledged that, where the wholesale provider has significant market power (SMP), these negotiations can be more challenging and noted that there is regulation which offers a framework within which they can take place. In particular, Openreach is required to publish Reference Offers which sets out the terms and conditions for each of its regulated wholesale services. The Reference Offers must include, among other things, service level commitments (SLAs) and the amount of compensation for a failure to meet SLA requirements (SLGs).
- 5.98 We explained that any changes to Openreach's commitments which may be necessary to reflect the requirements of an automatic compensation scheme should be the subject of industry negotiations. These negotiations would be facilitated by the Office of the Telecommunications Adjudicator (OTA2) in line with current practice and processes.¹⁴⁰

Consultation responses and our updated assessment

- 5.99 BT and Openreach supported our position that the retailer should be the party responsible for paying compensation to the consumer.¹⁴¹
- 5.100 Several stakeholders (BT, ISPA, Nine Group, Sky and TalkTalk) said that changes to payments at the wholesale level would be required to reflect automatic compensation payments and this could be done through industry negotiations, helped by the OTA2.¹⁴² However, many

¹⁴⁰ The principles for the contract negotiation process, including the role of the OTA2 and the time such negotiations could take place are currently set out in Ofcom's Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30, Volume 1: Statement on the markets, market power determinations and remedies, p. 350, https://www.ofcom.org.uk/data/assets/pdf_file/0032/78863/volume1.pdf

¹⁴¹ BT consultation response, p.16, paragraph 93, https://www.ofcom.org.uk/data/assets/pdf_file/0029/103988/BT.pdf; Openreach consultation response, p.11, paragraph 22, https://www.ofcom.org.uk/data/assets/pdf_file/0017/103670/Openreach.pdf

¹⁴² BT consultation response, p.16, paragraph 97, https://www.ofcom.org.uk/data/assets/pdf_file/0029/103988/BT.pdf; ISPA consultation response, p.2, https://www.ofcom.org.uk/data/assets/pdf_file/0022/103666/Internet-Services-

stakeholders said they want a separate obligation placed specifically on Openreach (Andrews & Arnold, ITSPA, Post Office, SSE, TalkTalk, Verastar, Vodafone) or on all wholesale suppliers (Zen Internet) to ensure wholesale payments (where the wholesaler is at fault) reflect the proposed compensation costs that would be payable by retail providers.^{143 144}

- 5.101 Additionally, Nine Group, SSE, Sky, TalkTalk and Vodafone said that changes at the Openreach level could include improvements to the current reporting requirements and to how payments are made from Openreach to retail providers (either through a formal obligation or part of industry negotiations).¹⁴⁵ TalkTalk also submitted that the current dispute resolution process needs to be changed to ensure any disputes between Openreach and retail providers are quickly and efficiently resolved.¹⁴⁶
- 5.102 We have considered carefully the points made by stakeholders. Our view is that, in principle, the wholesale provider should generally bear the ultimate cost of retail level compensation in circumstances where it is at fault. However, in our judgment, it is appropriate for automatic compensation to be paid by retail providers only.
- 5.103 Imposing the requirement at the retail level reflects the relationship consumers have with their retail providers and the obligation that retail providers have to provide reasonable service quality, which consumers expect and it is fair they should receive. It also takes into account that retailers may have a range of different wholesale relationships, with varying degrees of influence over faults and the speed of fixing them.
- 5.104 We understand that retailers may want to seek to recover the costs of automatic compensation from their wholesale provider/s (where it is at fault) and/or improve reporting requirements and payment terms. To the extent that changes to Openreach's arrangements would be necessary as a result of the introduction of an automatic compensation scheme,

[Providers-Association-ISPA-UK.pdf](#); Nine Group consultation response, p.1, https://www.ofcom.org.uk/_data/assets/pdf_file/0025/103669/Nine-Group.pdf; Sky consultation response, p.10, paragraph 3.3, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103675/Sky.pdf; TalkTalk consultation response, p.8, https://www.ofcom.org.uk/_data/assets/pdf_file/0025/103678/TalkTalk.pdf
¹⁴³ Andrews & Arnold consultation response, p.3: https://www.ofcom.org.uk/_data/assets/pdf_file/0024/103659/Andrews-and-Arnold-Ltd.pdf; ITSPA consultation response, p.2, https://www.ofcom.org.uk/_data/assets/pdf_file/0023/103667/Internet-Telephony-Services-Providers-Association-ITSPA.pdf; Post Office consultation response, p.1, https://www.ofcom.org.uk/_data/assets/pdf_file/0018/103671/Post-Office-Ltd.pdf; SSE consultation response, p.1, https://www.ofcom.org.uk/_data/assets/pdf_file/0024/103677/SSE-Plc.pdf; TalkTalk consultation response, p.4, https://www.ofcom.org.uk/_data/assets/pdf_file/0025/103678/TalkTalk.pdf; Verastar consultation response, p.1, https://www.ofcom.org.uk/_data/assets/pdf_file/0019/103681/Verastar-Ltd.pdf; Vodafone consultation response, p.2, https://www.ofcom.org.uk/_data/assets/pdf_file/0021/103683/Vodafone.pdf
¹⁴⁴ Zen Internet consultation response, p.4, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103684/Zen-Internet-Limited.pdf

¹⁴⁵ For example, Sky and Vodafone stated payments could be more timely and Vodafone proposed wholesale payments for automatic compensation should be paid separately from existing SLG payments for transparency reasons. See Nine Group, p.2, https://www.ofcom.org.uk/_data/assets/pdf_file/0025/103669/Nine-Group.pdf; SSE consultation response, p.2, https://www.ofcom.org.uk/_data/assets/pdf_file/0024/103677/SSE-Plc.pdf; Sky consultation response, p.12, paragraph 3.12, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103675/Sky.pdf; TalkTalk consultation response, p.7, https://www.ofcom.org.uk/_data/assets/pdf_file/0025/103678/TalkTalk.pdf; Vodafone consultation response, p.10, https://www.ofcom.org.uk/_data/assets/pdf_file/0021/103683/Vodafone.pdf
¹⁴⁶ TalkTalk consultation response, p.14, https://www.ofcom.org.uk/_data/assets/pdf_file/0025/103678/TalkTalk.pdf

these should be the subject of industry negotiations, facilitated by the OTA2, in line with current practice.¹⁴⁷ In the event of disagreement, it would be open to providers to refer a dispute to Ofcom.

5.105 On these bases, we do not agree that there should be a formal obligation at the wholesale level as some stakeholders have submitted. We expect Openreach to engage in a positive and timely way with any negotiations that are required as a result of the introduction of an automatic compensation scheme, and we will actively monitor negotiations between Openreach and providers, including the resolution of any disputes that may arise, to ensure that appropriate wholesale arrangements are put in place in a reasonable timeframe.

Force majeure

5.106 We proposed that retail providers should pay automatic compensation where service quality failures arise in connection with force majeure type events (e.g. extreme weather, strikes, and third party acts).¹⁴⁸ Our provisional view was that excluding the payment of compensation for such events would leave a material number of consumers without adequate redress for harm.¹⁴⁹ We considered consumers suffer harm regardless of the cause of the service quality issue, while providers can often take mitigating measures to protect their networks and operations from events. In addition, while providers may not have direct control over a force majeure event, the measures which they can take to protect their networks and operations against these types of events, and the speed with which they respond to a service quality failure - such as a loss of service or delayed installation - may be more within their control.

5.107 We cited costs to industry of not having to make pay-outs for force-majeure type events of up to £[X] per year and posited that this was not large relative to the aggregate additional compensation pay-outs likely to flow from our proposals. Our provisional assessment therefore, was that we should not allow for an exception for force-majeure type events.

Consultation responses and our updated assessment

5.108 The majority of stakeholders did not support our position. Some were concerned that our proposal would disproportionately affect smaller providers and those operating in specific geographic areas with a high concentration of faults. KCOM and IFCNL contended that

¹⁴⁷ Ofcom's March 2017 Wholesale Local Access Consultation proposed not to re-impose the 2008 SLG directions and include certain key elements of those directions in BT's SMP Reference Offer condition. See Ofcom's 'Wholesale Local Access Market Review – Volume 1 Consultation on the proposed market, market power determinations and remedies', March 2017, p.84, https://www.ofcom.org.uk/data/assets/pdf_file/0033/99636/Vol1-Market-review.pdf

¹⁴⁸ We note that Civil emergencies as under the Civil Contingencies Act 2004 are covered as a proposed exception separately below under 'Exceptions to automatic compensation'.

¹⁴⁹ Based on data collected on these type of events (MBORC) on the Openreach network. See paragraph 8.35 of our consultation: Automatic Compensation: Protecting consumers from service quality problems, March 2017, https://www.ofcom.org.uk/data/assets/pdf_file/0030/98706/automatic-compensation-consultation.pdf. MBORC ("matters beyond our reasonable control") is a contractual provision contained in all Openreach contracts which releases Openreach from liability under the relevant product terms and conditions in circumstances where a number of specific criteria apply: <https://www.openreach.co.uk/org/home/mborc.do>. MBORC incidents are not caused by any person or organisation e.g. severe weather conditions cause a loss of service.

communications should be consistent with utilities where force majeure type incidents are exempt from payment of compensation by retail providers.¹⁵⁰

5.109 BT, Money Saving Expert and [3<], however, agreed with our provisional view.¹⁵¹ Nine Group, Sky, Sprint/SCS, SSE and Vodafone submitted that their support for our position was dependent on whether changes were made to Openreach payment arrangements so that they include these events.¹⁵²

5.110 We have taken account of these responses. In our view, consumers suffer harm from force majeure events and allowing an exception for these type of events would mean we would not be addressing our policy objective to protect them from harm. In addition, as we note above, providers may be able to take mitigating measures to protect their networks and operations against the impact of force majeure events and have some control over its extent (at least insofar as it can control the speed with which the service failure is put right).

5.111 On those bases, our judgment is that a fair and effective automatic compensation scheme should provide for retail providers to pay compensation to consumers where the service quality failure occurs as a result of a force majeure event.

5.112 We do not have a view currently on whether the cost of force majeure-type events should ultimately be borne by the wholesale provider or retailers, especially as the issue may be no more under the former's control than the latter's. We note that Ofcom's consultation on Openreach's service quality proposes to keep the existing exception for force majeure events (MBORC) for Openreach service quality standards.¹⁵³ ¹⁵⁴ To the extent that any changes to Openreach's service levels or compensation may be necessary to take account of automatic compensation payments for force majeure events, these would be a matter for industry negotiations at the wholesale level. We consider that the aggregate cost to industry of providing automatic compensation for service problems caused by force majeure-type events is not likely to be disproportionately high.

¹⁵⁰ KCOM consultation response, p.8, paragraph 11.2,

https://www.ofcom.org.uk/data/assets/pdf_file/0030/103989/KCOM.pdf;

IFCNL consultation response, p.2, https://www.ofcom.org.uk/data/assets/pdf_file/0021/103665/Independent-Fibre-Networks-Ltd.pdf

¹⁵¹ BT consultation response, p.37, paragraph 226,

https://www.ofcom.org.uk/data/assets/pdf_file/0029/103988/BT.pdf; Money Saving Expert consultation response, p.5, https://www.ofcom.org.uk/data/assets/pdf_file/0024/103668/Money-Saving-Expert.pdf; [3<]

¹⁵² Nine Group consultation response, p.2, https://www.ofcom.org.uk/data/assets/pdf_file/0025/103669/Nine-Group.pdf; Sky consultation response, p. 12 – 13, paragraphs 3.16-3.18

https://www.ofcom.org.uk/data/assets/pdf_file/0022/103675/Sky.pdf;

Sprint/SCS consultation response, p.4, https://www.ofcom.org.uk/data/assets/pdf_file/0020/103673/SCS.pdf; SSE consultation response, p. 4 -5 https://www.ofcom.org.uk/data/assets/pdf_file/0024/103677/SSE-Plc.pdf; Vodafone

consultation response, p.18, paragraph 91, https://www.ofcom.org.uk/data/assets/pdf_file/0021/103683/Vodafone.pdf

¹⁵³ Ofcom's Quality of Service for WLR, MPF and GEA Consultation on proposed quality of services remedies, March 2017, p.45: https://www.ofcom.org.uk/data/assets/pdf_file/0033/99645/QoS-WLR-MPF-GEA.pdf

¹⁵⁴ See footnote 147 for definition of MBORC (Matters Beyond Our Reasonable Control).

Payment cap

5.113 In our consultation, we considered whether there should be a cap on the compensation paid to consumers. In reaching our provisional view, we took into account the following:

- most faults that are not fixed quickly are generally not in the control of the provider;
- if a provider cannot fix an issue, the consumer may have an incentive to continue receiving compensation payments rather than switching providers; and
- Openreach caps its wholesale payments made to providers.

5.114 We also took into account:

- consumers who experience long term loss of service or delayed provisioning suffer a considerable amount of cumulative harm; and
- although the percentage of consumers who suffer long term service problems appears small, it still affects thousands of lines per year.¹⁵⁵

5.115 On balance, we did not consider it appropriate to introduce a payment cap because there is a risk that consumers suffering long term service problems would be left without appropriate redress and unprotected. Nevertheless, we explained that we were keen to understand from stakeholders whether we had taken all factors into account and whether we should take a different approach.

Consultation responses and our updated assessment

5.116 The large majority of providers disagreed with our view and said that there should be a payment cap. Their main concern related to the inconsistency between there being a cap at the wholesale level but none at the retail level. Some also contended that there were better solutions for a consumer experiencing long term problems than continuing to pay automatic compensation and that, without a cap, consumers could be entitled to compensation higher in value than the cost of their contract. Providers also raised questions around incentives. We discuss these in turn.

Wholesale and retail level caps

5.117 Providers disagreed with our provisional view and said there needs to be consistency at the retail and wholesale levels: this is currently not the case as Openreach payments to providers are capped after 60 days.

5.118 Vodafone agreed with our view that there should not be a cap, but said it was important that this was mirrored by Openreach.¹⁵⁶

¹⁵⁵ On the Openreach network in 2015/2016 around [3<] of all repair faults took more than 60 working days to resolve, and [3<] of provisions were delayed by more than that.

¹⁵⁶ Vodafone consultation response, p. 18, paragraph 89,
https://www.ofcom.org.uk/_data/assets/pdf_file/0021/103683/Vodafone.pdf

5.119 We are aware of the importance that retail providers place on receiving payments from Openreach when it does not meet its agreed commitments. We are currently consulting on proposals for regulating the quality of Openreach's services. This includes removing the cap at the wholesale level to ensure that, in future, it has increased incentives to fix delayed repairs and installations that go beyond 60 days.¹⁵⁷

Incentives

5.120 Sky and Zen Internet said having no cap would increase the risk that a provider would terminate a contract rather than incur the costs of an unlimited liability.¹⁵⁸ BT and Sky also said the lack of a cap would not incentivise providers to improve service quality because long-term problems are usually a result of force majeure type issues or are specific to individual consumers where those incentives have no bearing.^{159 160}

5.121 We have carefully considered these views. We recognise that providers could terminate a contract with a consumer rather than pay automatic compensation. However, providers are only able to terminate contracts in lawful circumstances, irrespective of whether there is a cap or not. It may also be the case that reputational concerns reduce the willingness of providers to terminate customers' contracts.

5.122 In terms of service quality considerations, in our judgment a payment cap would only be appropriate if we were able to strike a balance between ensuring, on the one hand, that consumer harm is redressed, and that providers have incentives for timely repairs and service provision, while, on the other, avoiding a potentially unlimited liability on providers. We also consider that for those providers on the Openreach network, not imposing a payment cap could in turn potentially further incentivise Openreach to improve its service quality, where it ultimately bears the cost of those payments.

Alternatives to automatic compensation

5.123 Some providers (BT, Sky, Post Office) submitted that there are alternatives to automatic compensation when long term service issues occur.

5.124 BT said that, with a cap in place, a consumer would still be entitled to claim on-going redress under the Consumer Rights Act 2015 after the cap had been applied. It also said consumers affected by long term service failures would likely be individually case-managed by their provider and given appropriate levels of redress or goodwill payments in accordance with the individual circumstances. It contended this was a more balanced and personalised approach that still ensured consumer harm is mitigated and/or redressed. It gave us examples of

¹⁵⁷ https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99645/QoS-WLR-MPF-GEA.pdf

¹⁵⁸ Sky consultation response, p. 12, paragraph 3.10, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103675/Sky.pdf; Zen Internet consultation response, p. 10, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103684/Zen-Internet-Limited.pdf

¹⁵⁹ Sky consultation response, p. 11, paragraph 3.8, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103675/Sky.pdf

¹⁶⁰ BT consultation response, p. 13, paragraph 67, https://www.ofcom.org.uk/_data/assets/pdf_file/0029/103988/BT.pdf

alternative forms of redress it provides, such as free mobiles to vulnerable customers and call diversion for all customers experiencing a loss of service.¹⁶¹

- 5.125 Sky also submitted that its current approach of applying a tailored solution to address a customer's specific issue to their satisfaction is more appropriate.¹⁶² Post Office was of the view that, where long term faults occur, keeping customers fully informed about delays and issues is a key factor in customer satisfaction rather than a demand for compensation amounts.¹⁶³
- 5.126 We have taken careful account of all the stakeholder responses put forward. We note that none of their submissions seek to dispute that, in cases of long term loss of service or delayed provisioning, consumer harm is ongoing rather than a one-off event. That accords with our view that consumers should not be left with the risk of unaddressed harm for service quality failures that persist beyond a certain point.
- 5.127 We recognise that some providers offer alternatives to compensation when consumers experience service quality problems and that keeping them well-informed is crucial. After a certain point, consumers may not consider financial compensation alone to be appropriate redress. They may instead seek alternatives such as the right to exit their contract or other means of addressing the harm (such as provision of a free mobile service).
- 5.128 In our judgment, a balance should be struck between these points. A fair and effective automatic compensation scheme should contain appropriate provision to mitigate the ongoing harm consumers are liable to suffer. It should make provision for their continuing protection, which could mean ongoing payments of automatic compensation, or for a certain duration, and thereafter providing other appropriate means of redress. These could include the provision of suitable alternatives (like a mobile service).

Method and timing of payment

- 5.129 We proposed that compensation payments made to consumers should be both automatic and paid as monetary amounts. They should be paid in the form of a bill credit unless the consumer expressly consents to a different payment method. We also proposed that compensation payments are made within 30 calendar days after an appointment has been missed or, for a loss of service or delayed provisioning, within 30 calendar days of its resolution.

Consultation responses and our updated assessment

- 5.130 Most stakeholders agreed with our proposals. A limited number of concerns were raised (TalkTalk, Vodafone, Nine Group, SCS, FCS and Sky) that payments made by Openreach must

¹⁶¹ BT consultation response, p. 14, paragraph 75, https://www.ofcom.org.uk/_data/assets/pdf_file/0029/103988/BT.pdf

¹⁶² Sky consultation response, p. 11, paragraph 3.9, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103675/Sky.pdf

¹⁶³ Post Office consultation response, p. 4, https://www.ofcom.org.uk/_data/assets/pdf_file/0018/103671/Post-Office-Ltd.pdf

be aligned with any automatic compensation scheme (so that payments are made to the provider by Openreach before the time for payment to the consumer and cash flow problems do not occur).¹⁶⁴

5.131 We understand that Openreach makes compensation payments to retail providers over a three-month period and, from responses received, this may create issues for some retail providers.¹⁶⁵ We consider that this issue would most appropriately be addressed in the context of industry negotiations with Openreach, facilitated by the OTA2, alongside any other necessary Openreach arrangements. As set out above, we intend to monitor this process to ensure appropriate outcomes.

30 day payment

5.132 Smaller providers expressed concerns about the proposed 30-day payment window given that some consumers are not billed monthly. We understand that changing billing systems would be costly for providers. We do not expect them to make changes to the way they bill consumers in order to meet the requirements of a fair and effective compensation scheme. It is, however, in our judgment appropriate that a credit of the amount due should be applied to the consumer's account within the relevant 30-calendar day window, whether or not a bill is rendered at that point. We acknowledge that the speed at which payments are required to be credited may have an impact on providers' implementation costs but, as we would expect the payment to be a bill credit in the vast majority of cases, those costs should be limited. Such a payment window would balance this consideration with the need to provide timely recognition and redress to the consumer.

Form of payment

5.133 Citizens Advice contended that, if payments are made in the form of a bill credit, it could risk discouraging consumers to switch providers.¹⁶⁶ To overcome this, it proposed that any outstanding bill credit should be refunded to consumers when they exit their contract.

5.134 We agree that the form in which automatic compensation is paid should not deter switching, but it is not clear that payment by way of bill credits would have that effect. A bill credit is equivalent to cash in that the running account balance belongs to the customer. If, for any reason, the consumer does not receive any further bills from their provider, any outstanding bill credit should be refunded via an alternative payment method equivalent to a payment of cash. For a scheme to be fair and effective, automatic compensation payments must be real, not notional, and Ofcom would regard any scheme in which they are not as inadequate.

¹⁶⁴ TalkTalk consultation response, p.5, https://www.ofcom.org.uk/data/assets/pdf_file/0025/103678/TalkTalk.pdf; Vodafone consultation response, p. 18, paragraph 87, https://www.ofcom.org.uk/data/assets/pdf_file/0021/103683/Vodafone.pdf; Nine Group consultation response, p. 3, https://www.ofcom.org.uk/data/assets/pdf_file/0025/103669/Nine-Group.pdf; SCS consultation response, p. 4, https://www.ofcom.org.uk/data/assets/pdf_file/0020/103673/SCS.pdf; FCS consultation response, p. 3, https://www.ofcom.org.uk/data/assets/pdf_file/0020/103664/Federation-of-Communication-Services-FCS.pdf; Sky consultation response, p. 12, paragraph 3.12, https://www.ofcom.org.uk/data/assets/pdf_file/0022/103675/Sky.pdf

¹⁶⁵ Openreach consultation response, p. 6, paragraph 13 and p. 18, paragraph 49,

https://www.ofcom.org.uk/data/assets/pdf_file/0017/103670/Openreach.pdf

¹⁶⁶ Citizens Advice consultation response, p. 12, https://www.ofcom.org.uk/data/assets/pdf_file/0015/106026/citizens-advice.pdf

Exceptions to automatic compensation

5.135 We proposed a number of exceptions to the requirement to pay automatic compensation.

These included where:

- A loss of service, a delay in provisioning or a missed appointment is caused by the customer's actions or omissions. In these cases there would be no fault for which the provider should be liable.
- An appointment is offered by a provider to repair a service or install a service which the consumer refuses. In these circumstances, the provider is taking reasonable steps to fix the problem.
- A provider reasonably believes that the customer's notification of a loss of service is frivolous or vexatious. Where a customer's report is obviously groundless, providers need not pay compensation.
- A loss of service event is brought about as a result of a civil emergency. In these extreme circumstances, we do not think it would be appropriate to expect providers to compensate customers for service quality problems.
- A provider could reasonably expect that it would be breaking the law by taking the action required to avoid triggering a liability to pay compensation. Regulatory intervention should not put providers at risk of acting unlawfully.
- Where a consumer has committed an offence under sections 125 and 126 of the Communications Act. In such cases, the consumer will not have experienced a legitimate loss for which redress should be due.

Consultation responses and our updated assessment

5.136 We did not receive any substantial responses, although a few providers suggested additional exceptions. BT suggested we should widen the definition of 'civil emergency' under the Civil Contingencies Act 2004. It also suggested we add to the list of exceptions cases where a provider has good reason to believe the consumer has committed fraud or a criminal offence.¹⁶⁷

5.137 Andrews & Arnold had concerns with the exceptions we proposed. It said we had not taken into consideration a number of issues including when a contract is ceased, a power failure at the customer's premises and where a customer has reached their purchased service quota.¹⁶⁸

5.138 In general, we do not agree that an automatic compensation scheme should include any more than a limited and exhaustive set of exceptions. A key feature of any scheme is that it should operate to protect consumers from harm uniformly and with certainty.

¹⁶⁷ BT consultation response, p. 14-15, paragraph 80b,
https://www.ofcom.org.uk/data/assets/pdf_file/0029/103988/BT.pdf

¹⁶⁸ Andrews & Arnold consultation response, p. 5-6,
https://www.ofcom.org.uk/data/assets/pdf_file/0024/103659/Andrews-and-Arnold-Ltd.pdf

5.139 We have considered the additional exceptions Andrews & Arnold put forward. We do not agree there is a need to address its concerns by way of further specific exceptions. They may be covered by the proposed exceptions in any event or relate to cases in which an entitlement to automatic compensation does not arise in the first place.

5.140 As to BT's suggestion, we agree a consumer should not be entitled to compensation where their claim is fraudulent. A fair and effective automatic compensation scheme may make provision to this effect.

Complaints and disputes

5.141 Consumers may be unhappy with decisions that providers make about their complaints in relation to automatic compensation. We proposed that they should be able to refer their complaints to an alternative dispute resolution (ADR) scheme. The vast majority of respondents agreed with our view.

5.142 Andrews & Arnold and Phone Co-op disagreed. They submitted that giving consumers this ability would put providers in an unfair position. Consumers could threaten to take a complaint to ADR, forcing the provider to choose between paying out automatic compensation (even when they do not agree that the consumer is entitled to it) or paying a fee to the ADR scheme for the complaint to be heard.¹⁶⁹

5.143 Our judgment is in line with the majority of respondents' views. It is important the rights consumers justifiably have under an automatic compensation scheme are real and effective. That includes the ability to enforce those rights, where necessary, both in the event a provider does not agree the consumer is entitled to compensation and where the consumer contests the amount paid. This is an important part of ensuring providers comply with their obligations and that consumers receive the protection they are due. The possibility a minority of consumers may seek to exploit such a right does not overcome the force of that point, as far as consumers generally are concerned.

5.144 The adjudication of ADR complaints and the awards of any compensation as part of that process are for the independent ADR schemes themselves. Even so, where a consumer refers a complaint to ADR, we would generally expect the scheme provider to take account, in disposing of the complaint, of any automatic compensation scheme in place and any payments made under it. The scheme providers have indicated that they would do so.

Conclusion on additional considerations

5.145 Having taken into account all the stakeholder responses to our consultation, our judgment is that a fair and effective automatic compensation scheme should additionally comprise the following features:

¹⁶⁹ Andrews & Arnold consultation response, p. 7, https://www.ofcom.org.uk/_data/assets/pdf_file/0024/103659/Andrews-and-Arnold-Ltd.pdf, Phone Co-op consultation response, p.3, https://www.ofcom.org.uk/_data/assets/pdf_file/0026/103679/The-Phone-Co-op.pdf

Figure 9: Additional considerations for automatic compensation

Implementation	Conclusion
Obligation on the retail providers	Automatic compensation should be paid to consumers by the retail provider.
Force Majeure	Automatic compensation should be paid where service quality failures occur as a result of force majeure events.
Payment cap	A scheme should contain appropriate provision to mitigate the ongoing harm consumers are liable to suffer. This could be achieved by paying ongoing automatic compensation, or for a certain duration and then offering other appropriate means of redress the consumer agrees to.
Method and timing of payment	Compensation payments should be made in the form of bill credit and paid within 30 days of provision or service being restored and within 30 days of a missed appointment.
Exceptions	A scheme should contain only a limited number of exceptions in an exhaustive list.
Complaints and disputes	The scheme should provide that consumers can refer their complaints and disputes about the payment of compensation to an ADR scheme.

Conclusion on the design of an automatic compensation scheme

5.146 It is important that, where there is a case for protecting consumers by way of an automatic compensation scheme, the scheme operates fairly and effectively. Where consumers' reasonable expectations about the performance of their services are not met, a fair and effective scheme must ensure they receive compensation which addresses the harm they suffer. The scheme must provide that protection in a user-friendly and timely way. In our judgment, the decisions Ofcom has made in the respects above would likely secure these aims and meet our policy objectives.

6. Industry automatic compensation scheme

Background

- 6.1 In our consultation, we explained that the UK's three largest landline and broadband providers – BT, Sky and Virgin Media – had jointly put forward a draft proposal that would introduce automatic compensation for residential landline and broadband services through a voluntary code of practice.
- 6.2 We welcomed the offer of a voluntary code and carefully considered it as an alternative approach to our consultation proposals. However, our provisional view was that the code, although it aligned somewhat with our proposals, did not sufficiently meet our policy objectives and raised some concerns. These were:
- a) the code put forward compensation amounts significantly lower than our estimates of harm for each of the three relevant service quality failures. Our assessment was that the lower payments would result in consumers being insufficiently compensated.
 - b) The voluntary proposal only provided compensation to be paid per working day rather than per calendar day. Our provisional view was that consumers suffer harm each day they are without a landline and/or broadband service and should be compensated per calendar day.
 - c) Not enough providers had signed up to the code. At the time we published our consultation only BT, Sky and Virgin Media had signed up. We were concerned that this would leave more than one in five landline and broadband consumers with no entitlement to automatic compensation.
 - d) Under the voluntary proposal consumers would only have the right to compensation for a delay in repair after midnight on the third working day – not on the second as we proposed. Our market research suggests that three working days is not in line with consumers' reasonable expectations about the service they should receive. We were also concerned that a liability to make payments only after three working days would not incentivise providers to carry out repairs faster than their current average repair times.
- 6.3 However, we also said we would welcome the opportunity to continue dialogue with BT, Sky and Virgin Media on the voluntary proposal in parallel to the consultation.
- 6.4 The majority of providers responding to the consultation contended that the voluntary proposal would better meet Ofcom's policy objectives. BT and Virgin Media argued, for example, that a voluntary code would be more effective and proportionate in meeting those objectives.¹⁷⁰ TalkTalk also indicated its support for the scheme in principle, but expressed

¹⁷⁰ BT consultation response, p. 4, paragraph 6, https://www.ofcom.org.uk/_data/assets/pdf_file/0029/103988/BT.pdf, Virgin Media consultation response, p. 16, https://www.ofcom.org.uk/_data/assets/pdf_file/0020/103682/Virgin-Media.pdf

concern that Openreach would not have sufficiently strong incentives to make the necessary improvements in the event that the automatic compensation scheme was set out in a voluntary code rather than formal regulation.¹⁷¹

- 6.5 Consumer organisations and individual consumers, however, said that automatic compensation should be introduced through formal regulation. Citizens Advice disagreed with an industry scheme on the basis it would not be sufficient in ensuring all consumers received adequate compensation.¹⁷² Similarly, Money Saving Expert argued that the voluntary scheme put forward in the consultation gave consumers insufficient protection.¹⁷³ Which? also said that automatic compensation should be introduced via regulation, although its main concern was that automatic compensation should be introduced as quickly as possible.¹⁷⁴

Revised voluntary proposal in response to the consultation

- 6.6 Within their responses to the consultation, BT, Sky and Virgin Media put forward an updated voluntary proposal which partially addressed some of our concerns. Key changes in it included:
- increased compensation for a delayed repair following a complete loss of service from £3 per working day to £7 per calendar day; and
 - an increase in the amount of compensation following a delay in provisioning from £3 per working day to £4 per calendar day.
- 6.7 The amount of compensation that would be paid following a missed appointment remained the same, however, at £20. No additional providers had signed up to the voluntary proposal at the time consultation responses were submitted.

The industry automatic compensation scheme ('Industry Scheme')

- 6.8 Over the consultation period, we have continued dialogue with BT, Sky and Virgin Media on the potential for a voluntary scheme. TalkTalk and Zen Internet also joined the discussions.
- 6.9 These providers have submitted a final voluntary proposal in the form of the Industry Scheme, which they have committed will be up and running in early 2019. The market coverage of these providers would mean up to 90% of consumers would be covered by the Industry Scheme and would receive automatic compensation from that time.

Key features of the Industry Scheme

- 6.10 The Industry Scheme recognises that it is important that any compensation regime reflects what matters to consumers and prioritises those service quality issues that will make the most difference to them. Those issues are the same as we have judged should be included in an

¹⁷¹ TalkTalk consultation response, p. 11, https://www.ofcom.org.uk/_data/assets/pdf_file/0025/103678/TalkTalk.pdf

¹⁷² Citizens Advice consultation response, p. 7, https://www.ofcom.org.uk/_data/assets/pdf_file/0015/106026/citizens-advice.pdf

¹⁷³ Money Saving Expert, p. 7, https://www.ofcom.org.uk/_data/assets/pdf_file/0024/103668/Money-Saving-Expert.pdf

¹⁷⁴ Which? consultation response, p. 1, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103990/Which.pdf

automatic compensation scheme: timely provision of service; timely fault repair and keeping appointments. The Scheme commits providers to providing automatic compensation if they fail to meet minimum standards for landline and broadband services in these three areas.

- 6.11 The Scheme also sets out the minimum amounts of compensation consumers would receive, and also other important features including payment caps, how and when compensation would be paid, and any exclusions that apply. We consider these below.

Service quality events subject to automatic compensation

- 6.12 The Scheme sets out the circumstances in which automatic compensation would be paid:

- a) **For loss of service**, a provider would pay automatic compensation to a customer if a customer reports a total loss of service in relation to their landline or broadband service and, following an engineer visit or remote testing and diagnosis, a total loss of service is identified. Compensation would be paid if the fault is not resolved by midnight two working days after the fault is reported by a customer, unless the customer has requested a later date for repair. For example, if a fault is reported on a Monday, compensation will become payable if the fault has not been fixed by 11.59pm on Wednesday. Automatic compensation would not be payable in respect of any planned network service outage which is notified to the customer in advance.

The Scheme sets out that the start time for measuring the period for resolution of an issue shall be the time the issue is reported. If such report is made outside of the usual working hours for reporting faults, then the start time shall be 9am on the first working day following the report. However, the Scheme also provides for an exception in relation to customers eligible for “Priority Fault Repair” in accordance with Ofcom General Condition 15 (and any replacement condition), whereby the time for measuring resolution of such a fault shall start from the time the provider first became aware of the issue, even if the customer is unable to report it until later.

In addition, the Scheme intends to provide that for repeat faults (i.e. those relating to the same underlying fault that occurs within 48 hours of resolution of the initial fault) then automatic compensation will apply as if the first fault had continued without resolution.¹⁷⁵

- b) For **delayed provisioning**, a provider would pay automatic compensation to a customer if it does not activate a customer’s landline or broadband service by 11.59pm on the date initially confirmed in writing to that customer. Automatic compensation is also payable if the provider fails to deliver the broadband router by the activation date and the customer has notified the provider that it has not been received (although automatic compensation would not apply if the provider can demonstrate proof of postage, or provide equivalent evidence of dispatch).

¹⁷⁵ While providers would like to make this commitment, they want to negotiate the wholesale arrangement with Openreach before making a full commitment in this regard.

- c) For **missed appointments**, a provider would pay automatic compensation if:
- a customer requires an engineer appointment for the provision or repair of a landline or broadband service;
 - the provider confirms an engineer appointment slot to the customer (which may be via electronic means); and
 - the engineer does not attend within the confirmed appointment slot provided by the provider.

Compensation is not payable if the provider gives notice of a change or cancellation of the appointment at least 24 hours' in advance or if the customer otherwise agrees to a change in the appointment time slot for the same day, agreement to which must be recorded.

Compensation levels

6.13 The compensation levels provided under the Industry Scheme have been increased and are now significantly higher than those providers first offered. Under the Scheme, consumers would get the following compensation:

Figure 10: Compensation levels

Service quality issue	Compensation amount
Loss of service	An initial £8 (where consumers lose their landline/broadband service and it is not resolved by midnight two working days after the fault is reported), then £8 per subsequent calendar day that the relevant service is not repaired.
Delayed provisioning	An initial £5 (if the provider does not install a landline/broadband on the agreed date), then £5 per each calendar day of delay until first available date.
Missed Appointment	£25 (where an engineer does not attend an appointment agreed with the consumer and at least 24 hours' notice is not given).

6.14 In the Scheme, providers have described these sums as minimum amounts. Some may decide to pay higher levels of compensation.

Payment cap

6.15 The Industry Scheme sets out that payment of automatic compensation for loss of service and delayed provisioning may be limited to 60 calendar days. This would comprise an initial period of 30 days, after which a provider may serve a notice to the customer informing them that

automatic compensation payments will cease after a further 30 days (so, in these cases, compensation may be limited to 60 days in total).

- 6.16 After that period, if the consumer has not chosen to exit their contract, the Scheme commits providers to use reasonable endeavours to mitigate the harm by providing the consumer with a suitable alternative such as a mobile service. If a provider is not able to deliver a suitable alternative using reasonable endeavours, the consumer would continue to be entitled to automatic compensation.

Other key features of the Industry Scheme

- 6.17 In addition to the key features described above, the Industry Scheme also sets out that:

- Compensation would be paid to consumers in the form of a bill credit. Where a consumer would like to receive compensation in a non-monetary form, a provider would ensure that the consumer is aware of the monetary value of their compensation.
- All payments would be made to consumers within 30 days of a loss of service or a delay in provisioning being resolved by the provider. Where an appointment is missed, compensation would be paid to a consumer within 30 days of the missed appointment.
- Force majeure and/or MBORC type events are included in the Industry Scheme and consumers would be entitled to automatic compensation for service quality failures caused by them.

- 6.18 The Scheme includes the same exclusions we consider should form part of an automatic compensation scheme (as set out in 5.135). In addition, it sets out that a consumer would not be entitled to compensation where they are in breach of the terms of their contract with the provider.

- 6.19 The Industry Scheme commits providers to supply certain information to Ofcom that would assist with our monitoring of its effectiveness, including:

- a) the volume of each service issue for which compensation has been paid;
- b) the total amount of compensation paid by the provider for each of these service issues;
- c) the average duration of loss of service and delayed provisioning events and the average payment of automatic compensation for each;
- d) the volume of notices relating to the payment cap served by the provider;
- e) to the extent the provider offers alternative arrangements in lieu of automatic compensation, the nature of such arrangements (including the numbers of each type of alternative arrangement provided and their average duration); and
- f) the number of cases in which the provider has cancelled a contract or service in respect of which the Scheme applies.

- 6.20 A copy of the Industry Scheme can be found in Annex 1.

7. Implementing Automatic Compensation

Introduction

- 7.1 We set out in section 3 that, in our judgment, there is a case for regulatory intervention in relation to the introduction of an automatic compensation scheme. Consumers face service quality failures for which they do not receive adequate redress, and, owing to certain features of the market, competition alone is not sufficient to address these concerns and deliver fair outcomes.
- 7.2 In section 5, we concluded on the elements an automatic compensation scheme should comprise in order to give consumers the fair and effective protection they require. In the following section, we consider how the case for intervention should be met: by formal regulation or the Industry Scheme described in section 6.
- 7.3 In making our decision about the most effective and proportionate way to deliver an automatic compensation scheme for consumers, we have carefully considered the features of the Industry Scheme, our policy objectives set out in section 2 and Ofcom's regulatory principles. We have decided in light of those to accept the Industry Scheme.

Design of the Industry Scheme

- 7.4 In assessing the Industry Scheme we have considered:
- a) market coverage – the numbers of providers and consumers it would cover;
 - b) compensation levels – the amounts payable to consumers for relevant service quality failures;
 - c) specific features of the scheme – the conditions under which automatic compensation would be paid; and
 - d) implementation timescales – when providers would begin paying automatic compensation under the scheme.

Market coverage

- 7.5 At the time of our consultation, we explained that we were not minded to accept the industry proposal unless other providers also adopted it. Since then, TalkTalk and Zen Internet have become signatories to the Industry Scheme.
- 7.6 With the UK's four largest providers participating, the vast majority of consumers would be protected by the Scheme. We estimate its market coverage has increased to more than 80% of landline customers and almost 90% of broadband customers in the UK.
- 7.7 Increased consumer awareness of the Scheme may also lead to additional providers joining it. Whilst BT is one of the signatories to the Industry Scheme, two of its subsidiaries, Plusnet and EE have also indicated that they will sign up. Others may do as it becomes widely advertised

and promoted. We would also welcome other providers, such as Vodafone, Post Office, SSE and KCOM joining.

Compensation levels

7.8 Compensation levels have increased from those providers first put forward. Figure 11 below sets out the different amounts of compensation offered by providers during the process of consultation. The amounts are significantly higher than first offered and now closely reflect our consultation figures.

Figure 11: Progression in compensation levels

	First voluntary code	Second voluntary code	Industry Scheme
Delayed repair following complete loss of service	£3/4 per working day	£7 per calendar day	£8 per calendar day
Missed appointment	£20 per missed appointment	£20 per missed appointment	£25 per missed appointment
Delayed Provisioning	£3/4 per working day	£4 per calendar day	£5 per calendar day

7.9 As explained in section 4 above, our estimates of the average level of harm consumers suffer from different types of service quality failures are informed by three separate types of survey evidence as well as several benchmarks. We acknowledge that the evidence could support a range of values for an estimate of harm. The compensation figures in the Industry Scheme reflect a reasonable estimate of harm consistent with the evidence we assessed in our consultation. The industry scheme would mean that consumers are paid up to an extra £126m of compensation per year, compared to £16m under the status quo.¹⁷⁶

7.10 The Industry Scheme expressly makes clear that the amounts of compensation payable under it are the minimum amounts consumers would receive (per day and/or per incident) if they experience a loss of service, a delay in provisioning or a missed appointment. It is therefore

¹⁷⁶ We have estimated that the Industry Scheme will lead to an increase in compensation of between £101m - £126m. We calculated this range by applying the levels of automatic compensation in the Industry Scheme, to our estimate of the number of qualifying service quality incidents incurred by providers committed to participating in the Industry Scheme. The range corresponds to some uncertainty in the number of qualifying loss of service incidents since our data on loss of service is recorded as calendar days whereas the period before automatic compensation is due is based on working days. We recognise that the precise aggregate level of compensation may vary if future levels of service quality incidence differ from historic levels. If future incidence levels are lower than they have been in the recent past, then the total aggregate amount of compensation paid out will be lower than our estimate presented here, but consumers will instead benefit from more reliable services.

possible consumers may benefit from higher payments, given the submissions made by industry.

Specific design elements

- 7.11 In our consultation, we proposed specific features of a fair and effective automatic compensation scheme and in section 5 above we set out our conclusions on them. We consider the Industry Scheme reflects these features and meets our requirements as set out in Figure 12 below.

Figure 12: Comparison with key elements of the Industry Scheme

Feature	Ofcom's decision on automatic compensation	Industry Scheme
Qualifying events for automatic compensation	<ul style="list-style-type: none"> • Loss of service: where faults are not repaired by midnight on the second working day after the consumer reports the loss; • Delayed provisioning: where there is a delay in the commencement of a landline and/or broadband service (including upgrades and delays in delivery of the router) beyond the date the provider has committed to in writing; • Missed appointments: where at least 24 hours' notice is not given, or consent is not obtained from the customer to re-arrange the appointment on the same day. 	<ul style="list-style-type: none"> • Meets our requirements
How compensation would be paid	<ul style="list-style-type: none"> • For loss of service, compensation to be paid automatically after the consumer contacts the provider to notify it of the loss of service and a fault is recorded. The exception to this would be for vulnerable consumers, particularly where a consumer is defined as eligible for "Priority Fault Repair" where the point for measuring time taken to restore should start from when the provider first became aware of the issue. • In the case of repeat faults within 48 hours of the original fault being closed, compensation to be paid from the point when the consumer first registered the original loss of service • Providers can stop the clock where a customer does not take-up the first appointment offered. • Payment should be made if the loss of service is the result of a network fault (unplanned outage). • For delayed provisioning, compensation to be paid automatically. This also applies if consumers experience a delay in provision and subsequently decide to cancel their order. • For missed appointments, compensation to be paid automatically. A provider should pay compensation for a missed appointment in addition to any compensation that it pays to a consumer for loss of service or a delay in provisioning as a result of the missed appointment. 	<ul style="list-style-type: none"> • Meets our requirements • The industry scheme does not make exceptions for vulnerable consumers beyond those eligible for Priority Fault Repair. Our expectation is that the scheme should provide appropriate protection for vulnerable consumers. However, we consider that it is acceptable for providers to adopt an individual approach that takes into account vulnerable consumers' specific circumstances.

Feature	Ofcom's decision on automatic compensation	Industry Scheme
Cap on automatic compensation payments	<ul style="list-style-type: none"> Appropriate provision is necessary to mitigate the ongoing harm consumers are liable to suffer. This could be achieved by paying ongoing automatic compensation, or for a certain duration and then offering other appropriate means of redress the consumer agrees to, or by continuing to pay automatic compensation until the issue is resolved. 	<p>Automatic compensation may be limited to 60 calendar days. After that, if the consumer has not chosen to exit their contract, providers will use reasonable endeavours to mitigate the harm by providing a suitable alternative (e.g mobile service). If the provider is not able to deliver a suitable alternative, the entitlement to automatic compensation under the scheme would continue.</p> <ul style="list-style-type: none"> Meets our requirements
Force Majeure/ MBORC	<ul style="list-style-type: none"> Automatic compensation to be paid where service quality failures occur as a result of force majeure events 	<ul style="list-style-type: none"> Meets our requirements
Method and timing of payment	<ul style="list-style-type: none"> Bill credit (unless otherwise agreed by the customer) Within 30 days of missed appointment Within 30 days of loss of service or delayed provision is resolved If a customer receives their landline and broadband services from different providers, the provider responsible for the fault shall be responsible for paying automatic compensation. 	<ul style="list-style-type: none"> Meets our requirements
Exclusions	<ul style="list-style-type: none"> Compensation excludes customer-caused failures Limited exceptions allowed 	<ul style="list-style-type: none"> Meets our requirements
Complaints and disputes	<ul style="list-style-type: none"> Consumers can refer their complaints and disputes to an ADR scheme 	<ul style="list-style-type: none"> Meets our requirements

Implementation timescales

- 7.12 We proposed to allow providers a period of 12 months following our final statement before our proposals would come into force. However, all providers strongly disagreed that an automatic compensation scheme could be delivered in 12 months and said 18-24 months would be more realistic.
- 7.13 Providers on the Openreach network said that Openreach would need to undertake changes to its own process and systems development, with retail providers then updating their own systems as a result. Virgin, meanwhile, considered we had underestimated the period required to undertake substantial changes to internal systems and processes, agent retraining and updating consumer facing information (in hard copy and on websites). It estimated that the proposed 12-month implementation period was unrealistically short and at least 22-24 months would be required.
- 7.14 We have reviewed providers' responses. We have also discussed the specific steps required both with the signatories to the Industry Scheme and with Openreach.
- 7.15 We have gained a better understanding of steps both those providers and Openreach would need to take, as well as the timescales involved. The steps would include changes to systems to log service quality failure events; the establishment of a new compensation rule engine; billing system changes; changes to call centre (CRM) applications; changes to online account facilities and customer facing communications and new data warehouse and reporting requirements.
- 7.16 Consequently, we are now of the view that implementation is likely to take longer than 12 months. However, we do not consider 18-24 months would be appropriate either given our aim to protect consumers as soon as possible.
- 7.17 As set out in section 6, BT, Sky, Virgin Media, TalkTalk and Zen Internet have committed to the implementation of the Industry Scheme in early 2019, 15 months after the date of this statement. This commitment to deliver automatic compensation to consumers in this timeframe is a key advantage of the Industry Scheme.
- 7.18 Positive engagement and cooperation from all stakeholders is required to deliver the Industry Scheme as discussed in section 5. Ofcom will actively monitor the establishment of the scheme to ensure this takes place in time so that consumers are protected from early 2019.

Conclusion

- 7.19 Taking account of all these points, our judgment is that the Industry Scheme meets the requirements for a fair and effective automatic compensation scheme described in section 5. For the reasons that follow, our decision is that we should accept the adoption of that Scheme.

Our policy objectives

7.20 As set out in section 2, we have two policy objectives:

- a) to ensure that consumers are able to receive adequate compensation when their provider does not deliver service quality in line with their reasonable expectations, and that they receive this as automatically as possible; and
- b) to ensure that providers have greater incentives to improve the service quality they deliver.

7.21 We have concluded that there is a case for intervention to ensure an automatic compensation scheme is in place to meet these objectives. We have set out the requirements for such a scheme in order that the objectives are met fairly and effectively.

7.22 As drafted, and provided it is given full effect, the Industry Scheme meets those requirements. On that basis, our judgment is that the Scheme would meet our policy objectives. Consumers would receive compensation for the service quality failures we have identified and this compensation would be automatic. Providers would have incentives to improve their service quality, similar to those they would have under a regulatory solution.

7.23 We recognise that some consumers would not be covered by the Industry Scheme and that providers not signing up to it may not have the same incentives. However, it is possible that once the Scheme is up and running and consumers are aware of it, competition may drive providers to join and/or improve their service quality proposition.

Regulatory principles

7.24 Our assessment of the appropriate regulatory approach is guided by our broader statutory duties in sections 3 and 4 of the Act, especially our principal duty of furthering the interests of citizens and consumers. Ofcom's main concern, in line with that duty, is that the solution adopted should further those interests.

7.25 In considering this, we have taken account of our duty to have regard to (i) the principles under which regulatory activities should, amongst other things, be proportionate and targeted only at cases in which action is needed; and (ii) to any other principles appearing to us to represent the best regulatory practice (section 3(3)). Likewise, our duty to have regard, where it appears to us to be relevant in the circumstances, to the desirability of promoting and facilitating the development and use of effective forms of self-regulation (section 3(4)(c)).

7.26 We have taken similar account of our statement of regulatory principles¹⁷⁷, which includes that we will:

- operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required;
- strive to ensure our interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome; and

¹⁷⁷ Published on our website <https://www.ofcom.org.uk/about-ofcom/what-is-ofcom>

- always seek the least intrusive regulatory mechanisms to achieve our policy objectives.

7.27 We also note that section 6(1) of the Act refers to Ofcom keeping the carrying out of our functions under review with a view to securing that regulation does not involve the imposition of unnecessary burdens. Section 6(2) refers to our having regard, when carrying out our functions under section 6, to the extent to which the matters we must further or secure under section 3 – such as furthering consumers’ interests – are already furthered or secured, or are likely to be so, by effective self-regulation.

7.28 Each of these principles and duties also guides our decision to accept the Industry Scheme.

Our decision on automatic compensation

7.29 Having regard to all the points in this statement, our overall judgment is that consumers’ interests should be protected by an automatic compensation scheme. We have established that there is a case for Ofcom to intervene to introduce such a scheme given consumers suffer harm relating to service quality failures for which they do not receive adequate redress. As a result of features of the market, consumers are unlikely to be protected by competition alone.

7.30 An automatic compensation scheme must be effective, giving consumers protection and redress and providers incentives to improve the service quality they offer. As a result of our proposal to introduce such a scheme by way of formal regulation, providers have put forward an Industry Scheme which addresses our concerns and meets our policy objectives. In particular:

- a) consumers would receive automatic compensation for the service quality events identified which reasonably reflect our estimates of average harm - loss of service (£8 per day), delayed provisioning (£5 per day) and missed appointments (£25 per incident); and
- b) as a result of their potential liabilities for service quality failures, providers would have incentives to improve the service quality they deliver.

7.31 Further, the Industry Scheme would apply to the vast majority of consumers, given that the four largest providers have signed up. Over time this may increase further if other providers join the Scheme. In addition, given that the Industry Scheme would apply to contracts for residential services, this includes the approximately one-third of SMEs that purchase residential products, who would also receive protection and redress under the Scheme.

7.32 The Industry Scheme therefore addresses the need for Ofcom to take formal regulatory action that would otherwise exist. The scheme will deliver a positive outcome for consumers, providing benefits of up to £126m additional compensation per year. We consider this will provide them with a high level of protection against service quality failures.

7.33 On those bases, we have decided we should accept the Industry Scheme.

7.34 In making that decision, we have taken into account our regulatory principles both to operate with a bias against intervention and to seek the least intrusive regulatory mechanism to

achieve our policy objectives. Likewise, our duties under section 3 of the Act to have regard to the principles that regulatory activities should be proportionate and targeted where action is needed, and to the desirability of promoting and facilitating effective self-regulation.

- 7.35 Given our assessment that the Industry Scheme meets our policy objectives and includes the same features of a scheme that we would have put in place on a regulatory basis, it is appropriate for us to accept it. We said in our consultation that if our policy objectives were substantially met by other means, we would have a preference against regulation.

Monitoring and review of the Industry Scheme

- 7.36 Our decision to accept the Industry Scheme depends on it being implemented on time and operated effectively. Since there is a need for enhanced consumer protection in this area, and a basis for us to intervene to secure it absent providers taking sufficient steps themselves, we will monitor the Industry Scheme and conduct a review after a period of 12 months from its implementation. If necessary, we will at this time reconsider the case for regulatory intervention.

- 7.37 In the review, we would likely assess matters including:

- a) the take-up of the scheme by providers and the extent of its coverage of consumers;
- b) whether the payments of automatic compensation under the scheme are addressing the harm consumers suffer from service quality issues;
- c) the effect of the scheme on incidences of loss of service, delayed provisioning and missed appointments;
- d) whether the scheme has enhanced competition between providers in relation to service quality issues (and whether competition has resulted in some paying compensation above the minima required by the scheme);
- e) the numbers of complaints Ofcom and providers receive about relevant service quality issues and the payment of compensation under the scheme, and the numbers and outcomes of disputes about such matters (including matters which are referred to ADR); and
- f) the views of consumers and providers.

- 7.38 We will use our powers under section 135 of the Act as appropriate to require the provision of information about the operation of the scheme. Accordingly, we expect providers to keep appropriate records. The Industry Scheme itself makes clear that, to assist in our review, providers will give the following information to Ofcom:

- the volume of each service issue to which compensation payable under the Scheme applies;
- the total amount of compensation paid by the provider for each service quality failure;
- the average duration of each delayed repair for loss of service and delayed service provision and the average payment of automatic compensation for each such issue;

- the volume of payment cap notices served by the provider and the type of service issue to which they apply;
- to the extent the provider offers alternative arrangements in lieu of automatic compensation, the nature of such arrangements (including the numbers of each type of alternative arrangement provided and their average duration); and
- the number of cases in which the provider has cancelled a contract or services in respect of which the Scheme applies.

7.39 We may also draw on other sources of information gathered during other Ofcom projects. For instance, our Comparing Service Quality Report includes many metrics that will be useful in evaluating the performance of the automatic compensation regime.

8. Small and Medium Enterprises (SMEs)

Introduction

8.1 In this section, we set out our decision to protect the interests of small and medium sized enterprises (SMEs) by way of a general condition imposing transparency requirements on providers in relation to the service levels and compensation they offer. Below, we describe our consultation proposals, stakeholders' views, our consideration of those views and our decision.

Our consultation proposal

- 8.2 In our consultation, we noted the importance of SMEs in the UK business landscape. We also looked at the significant reliance SMEs place on their communications services and the significant harm they are liable to suffer where they encounter service quality problems. When we asked SMEs about the importance of their communications services, 53% said their business would struggle to function without their landline, while 59% said they would struggle without their broadband.¹⁷⁸ Other research suggested at least 60% of SME landline and internet users consider these services "absolutely vital".¹⁷⁹
- 8.3 We set out that around 780,000 landline and broadband SME customers suffered loss of service incidents, provisioning delays and missed appointments each year between 2014 and 2016 – accounting for around 15% of the total number of SMEs.¹⁸⁰ Our consumer research also suggested that SMEs suffer from service quality issues.
- 8.4 We found that the majority of SMEs do not receive compensation when service quality is poor, indicating that they may not be receiving adequate redress for the harm they experience from loss of service, delayed provision and missed appointments. Analysis of operator data on monetary compensation payments showed there were 13,033 compensation pay outs for loss of service, 1,551 for delayed provisioning and 788 for missed appointments.¹⁸¹ These figures correspond to about 2% of loss of service incidents, 1% of delayed provisioning incidents and 8% of missed appointments per year.¹⁸²

¹⁷⁸ Jigsaw, Automatic compensation research, March 2017, slide 72, question D1,

https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

¹⁷⁹ Jigsaw, SME experience of communications services, January 2017, p. 28,

https://www.ofcom.org.uk/data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf

¹⁸⁰ Data from Department for Business, Energy and Industrial Strategy sets out on p.99 of our Consultation indicates that there are 5.5m SMEs in the UK. Because the incident data includes repeat failures, to the extent that some SMEs may experience multiple issues in any one year, the proportion of SMEs affected will be smaller.

¹⁸¹ This covers the period from Q3 2014 to Q2 2016.

¹⁸² Ofcom calculations based on provider responses to January 2017 fixed s135 requests to Rainbow, XLN, BT, KCOM, Plusnet, TalkTalk, Three, Utility Warehouse, Verastar, Zen, EE and Vodafone and Chess. We have scaled up the figures calculated to an industry level using subscriber numbers from our consumer survey.

- 8.5 Our consumer research painted a broadly similar picture. Only 11% of SMEs who suffered a loss of their landline or broadband services said they had received any form of compensation as a result.¹⁸³ And only 4% said they had received compensation for a missed appointment.¹⁸⁴
- 8.6 Our analysis demonstrated that SMEs place significant reliance on their communications services, a substantial proportion experience service quality issues and thus suffer harm, and that many are not receiving redress for that harm. We provisionally concluded that there were strong grounds for concern in relation to service quality and compensation for SMEs and that we should intervene.
- 8.7 Our provisional decision was to require greater transparency from providers, rather than introducing regulation requiring them to pay automatic compensation. We said our position rested significantly on the fact that SMEs appeared to have available to them a range of specialist (standard or bespoke) landline and broadband products to choose from, unlike the residential market where providers do not seem to differentiate or market their offers on the basis of service levels and redress.
- 8.8 While a significant proportion of SMEs may be able to select services better suited to their needs, the evidence led us to the provisional conclusion that a lack of information is likely to limit the ability of many SMEs to make an informed choice. We were of the view that seeking to address that shortfall would, for now, be an appropriate and proportionate intervention. We also said, as discussed in section 7, that the approximately one-third of SMEs that purchase residential products would receive protection and redress under an automatic compensation scheme.

Consultation responses

- 8.9 Stakeholders broadly supported our consultation proposals. A significant number agreed we should introduce greater transparency and information requirements for services offered to SMEs and *not* an automatic compensation scheme.¹⁸⁵ Stakeholders also provided specific responses on the draft General Condition included in the consultation. We address these responses separately in paragraphs 8.47-8.68 below.
- 8.10 Sky and Zen Internet agreed in principle with the idea of greater transparency for SMEs but suggested an alternative approach. They said a new and separate voluntary code for SMEs would be the most appropriate route to address Ofcom's concerns.¹⁸⁶

¹⁸³ Jigsaw, Automatic compensation research, slide 106,

https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

¹⁸⁴ Jigsaw, Automatic compensation, slide 118, question I12a M16,

https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

Note that this is based on a small sample size, results should be taken as indicative only (n=97). We have not reported data on delayed provisioning due to insufficiently large sample sizes (n=20).

¹⁸⁵ BT, Virgin Media, Vodafone, Andrews & Arnold, Sparta, Entanet, Zen Internet, IFNL, Nine Group, [X] and two individual consumers.

¹⁸⁶ Sky consultation response, p. 13, paragraph 4.3,

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103675/Sky.pdf; Zen Internet consultation response, p. 15,

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103684/Zen-Internet-Limited.pdf

- 8.11 The Communication Consumer Panel and two consumers, however, disagreed with our proposals. The Panel argued that smaller businesses (and especially micro businesses) should be included within the scope of automatic compensation in the same way as residential consumers. It also said that there was a need to improve micro businesses' awareness and expectations of providers' complaints and redress schemes.¹⁸⁷
- 8.12 bOnline and Verastar were of the view that transparency requirements alone would not solve the service quality problems that are most often a wholesale issue for Openreach reliant providers. bOnline suggested an alternative of allowing small business customers the right to early termination of contracts at no additional cost. This would allow these customers to obtain broadband services from an alternative provider.¹⁸⁸
- 8.13 A number of respondents (Verastar, ITSPA and [SK]) expressed concern that the application of an automatic compensation scheme to businesses that take residential contracts might distort the market by incentivising small businesses to buy inappropriate residential products.¹⁸⁹
- 8.14 We have considered these views. As to Sky and Zen Internet's submission that the need to protect SMEs could be met by a voluntary code, it has always been open to providers to make their offerings more transparent and they could also have put forward a code in response to the consultation. They have not done that, so in this case we do not consider this is a viable basis to address the concerns we have identified.
- 8.15 With regard to the arguments put forward by bOnline and Verastar, we have separately set out our proposals for regulating Openreach's service quality at the wholesale level. These proposals include service quality standards for repair and installation times (which will be complementary to the transparency measures we have decided to introduce, as set out in this statement).¹⁹⁰ In relation to early termination, it is not clear that such an entitlement would, in most cases, be the most appropriate outcome or the right form of redress for SMEs.
- 8.16 We do not agree with stakeholders that acting as proposed might result in misaligned incentives and encourage SMEs to purchase contracts for residential services. Based on the evidence, we think SMEs will continue to make communication choices based on a range of factors. Our consumer research highlighted that, whilst price is a key factor in SMEs' choice of provider, a considerable proportion place value on reliability, customer service, responsiveness to faults and broadband speed.
- 8.17 We agree with the Communication Consumer Panel that there is a need to improve micro businesses' awareness and expectations of providers' complaints and redress schemes. Our decision to introduce greater transparency measures should help both micro businesses and

¹⁸⁷ The Consumer Communications Panel consultation response, p. 1-2,

https://www.ofcom.org.uk/_data/assets/pdf_file/0017/103661/Communications-Consumer-Panel-and-ACOD.pdf

¹⁸⁸ bOnline consultation response, p. 1-2, https://www.ofcom.org.uk/_data/assets/pdf_file/0016/103660/bOnline-Limited.pdf; Verastar consultation response, p. 1,

https://www.ofcom.org.uk/_data/assets/pdf_file/0019/103681/Verastar-Ltd.pdf

¹⁸⁹ Verastar consultation response, p. 1, https://www.ofcom.org.uk/_data/assets/pdf_file/0019/103681/Verastar-Ltd.pdf; ITSPA consultation response, p. 2, https://www.ofcom.org.uk/_data/assets/pdf_file/0023/103667/Internet-Telephony-Services-Providers-Association-ITSPA.pdf

¹⁹⁰ Ofcom, *Quality of Service for WLR, MPF and GEA: Consultation on proposed quality of services remedies*, https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99645/QoS-WLR-MPF-GEA.pdf

SMEs with the exercise of their rights more generally in this regard. We set out our reasons for not considering an automatic compensation scheme for SMEs appropriate below.

Our updated assessment

- 8.18 None of the consultation responses suggest we are incorrect to think that SMEs suffer a significant number of service quality failures for which they are not compensated. There were no suggestions either that SMEs are well aware of the availability of packages offering service level agreements and guarantees nor that they are making informed choices about the services they buy and securing the appropriate levels of protection.
- 8.19 In our judgment, the current situation is delivering poor outcomes for SMEs and there is a case to intervene by way of a general condition. There are four principal reasons:
- SMEs suffer a number of service quality failures;
 - when service failures occur, SMEs suffer harm;
 - only a minority of SMEs receive compensation; and
 - lack of information is a cause of poor service quality outcomes, despite offers available to SMEs with specified service levels and compensation.

SMEs suffer a number of service quality failures

- 8.20 We continue to draw on the evidence that approximately 780,000 landline and broadband SME customers – around 15% of the total number of SMEs – suffered loss of service incidents, provisioning delays and missed appointments each year between 2014 and 2016.

Figure 13: Estimated service quality issues for SMEs (annualised figures for period Q3 2014 – Q2 2016)

Issue	Incidents
Loss of service (landline and/or broadband)	655,290
Delayed provisioning (landline and/or broadband)	113,618
Missed appointments (landline and/or broadband)	10,287
Total number of incidents	779,195

Source: Ofcom calculations based on provider responses to January 2017 s135 requests to Rainbow, XLN, BT, KCOM, Plusnet, TalkTalk, Utility Warehouse, Verastar, Vodafone and Chess. We have scaled up the figures calculated to an industry level using subscriber numbers from our consumer survey.

- 8.21 Likewise, our consumer research indicated that a significant minority of SMEs experience service quality problems. When we asked whether SMEs had experienced any loss of service or delayed provision involving their landline or broadband:
- 42% said they had experienced loss or delay;

- 39% had experienced loss of service due to a fault over the last two years;
- 5% had experienced provisioning outside of the time-scale agreed by their provider over the past five years;
- 1% had experienced delayed provisioning outside of the time-scale agreed, in circumstances where they did not have an existing service at the premises, over the past five years; and
- 6% experienced loss of service during provisioning or upgrading over the past five years;¹⁹¹ and
- 7% of SMEs with landline or broadband services had at some point experienced a missed appointment.¹⁹²

When service failures occur, SMEs suffer harm

- 8.22 SMEs who encounter loss of service, delayed provisioning or missed appointments are likely to experience harm. As with residential consumers, that harm may take a number of forms.
- 8.23 SMEs are increasingly reliant on communications services. When they experience problems and have no alternative service available, this can adversely affect their business. 53% of SMEs who experienced a loss of their landline and/or broadband service, for example, said it had a negative impact on their day-to-day activities.¹⁹³
- 8.24 SMEs may also need to pay for alternative means of communication. Our survey showed that two thirds of SMEs who had lost service found an alternative workaround, but this was at an average financial cost of £270.¹⁹⁴ SMEs can also experience other financial impacts. For instance, 52% of SMEs who experienced negative impacts as a result of a loss of service for fixed broadband or landline said that it had an impact on sales.¹⁹⁵
- 8.25 SMEs typically need to spend time and effort to rectify service problems when they occur. These attempts may involve actions taken to attempt to fix the problem themselves and also actions taken to report the issue to their provider. In both cases, this time and effort leads to harm because, in the normal course of events, SMEs would not expect to undertake these activities. For example, 85% of SMEs who experienced a negative impact because of losing their landline or broadband service said it wasted manager time.¹⁹⁶

¹⁹¹ Jigsaw, Automatic compensation research, slide 113, question I1a,

https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

¹⁹² Jigsaw, Automatic compensation research, slide 113, question I1a,

https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

¹⁹³ Jigsaw, Automatic compensation research, slide 95, question F7a,

https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

¹⁹⁴ Jigsaw, Automatic compensation, slide 96, question F7c,

https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

¹⁹⁵ Jigsaw, Automatic compensation, slide 101, question F9,

https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

¹⁹⁶ Jigsaw, Automatic compensation, slide 101, question F9,

https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

Only a minority of SMEs receive compensation

- 8.26 Despite the harm suffered by SMEs, we found that the majority do not receive financial compensation when service quality is poor. This indicates that many may not be receiving adequate redress for the harm they experience from loss of service, delayed provision and missed appointments.
- 8.27 In particular, as highlighted above, analysis of operator data on monetary compensation payments to SMEs showed that compensation was paid in only 2% of loss of service incidents, 1% of delayed provisioning incidents and 8% of missed appointments incidents per year.¹⁹⁷ Again, our consumer research was to similar effect, with only 11% of SMEs who suffered a loss of their landline or broadband services receiving any form of compensation and only 4% of those who suffered a missed appointment.¹⁹⁸

Lack of information is a cause of poor service quality outcomes, despite offers available to SMEs with specified service levels and compensation

- 8.28 During our consultation, we asked providers whether they offer service level commitments to their SME customers. Nine providers indicated that they do.¹⁹⁹ The service levels range from repair times of two to three working days to as little as six hours depending on the provider and the package selected by the SME. We also found that eight of these providers paid compensation if the targets were not met.
- 8.29 However, our consumer research indicated that about one-third of SMEs did not know whether they had specified service levels in their contracts and approximately half did not know if their contract contained any compensation arrangements.²⁰⁰
- 8.30 When we asked SMEs who did not receive compensation whether they had asked for it, 89% of those who had experienced a loss of service and 85% of those who had experienced missed appointments said no.^{201 202} This suggests that the lack of information about what is available to SMEs is a contributing factor to low compensation pay outs.

¹⁹⁷ Ofcom calculations based on provider responses to January 2017 s135 requests to Rainbow, XLN, BT, KCOM, Plusnet, TalkTalk, Three, Utility Warehouse, Verastar, Zen, EE and Vodafone and Chess. We have scaled up the figures calculated to an industry level using subscriber numbers from our consumer survey.

¹⁹⁸ Jigsaw, Automatic compensation research, slide 107, question H1a, https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf Jigsaw, Automatic compensation, slide 118, question I12a M16, https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

¹⁹⁹ These are based on provider responses to January 2017 s135 requests.

²⁰⁰ Jigsaw, Automatic compensation research, March 2017, slide 66, questions B8A, B8C, B8D, B11A, B11C and B11D, https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

²⁰¹ Jigsaw, Automatic compensation, slide 107, question H1c/H1d, https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

²⁰² Jigsaw, Automatic compensation, slide 118, question I12bi, https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf

- 8.31 To better understand the issues faced by SMEs, we undertook additional desk research that considered the marketing of the most popular products sold by a range of communication providers.²⁰³
- 8.32 In the material we analysed, we found that information on service levels and compensation often did not feature prominently. In the large majority of cases, it was in the ‘small print’ setting out the terms and conditions of the service. The research also indicated that there is often very little information on this at the point of sale. Where it was available, it was often not straightforward to locate.
- 8.33 We did find some providers that, at the point of sale, give SMEs information about service levels. However, whilst some providers make clear that different service levels could be chosen, others do not. Moreover, not all providers that offer different service level packages make information on compensation levels easily available. Our research suggested that around one-third of landline and broadband SME customers may not have information on whether they could sign up to higher service care levels.

Figure 14: Examples of information on service levels from provider websites

- BT offers customers the option, when signing up to a package online, to choose a higher service level which would result in fault repair within 6 hours. Through its ‘BT Business Broadband Schedule’ it also offers information on compensation levels if these targets are not met. It says that, subject to certain conditions, if a service failure occurs and BT fails to meet the repair times for the service care level chosen, the customer may be due a one-off credit of £25.
- Zen Internet offers customers the option of signing up to its ‘critical care’ package. This includes, subject to terms, 24 hours technical support, throughput speed assurance, 99% uptime guarantee, and £25 service credit if fix times exceed 12 hours.
- Virgin Media, XLN, and Plusnet offer various service level packages and information on proposed compensation if specified repair times are exceeded. Unicom, Daisy Communications and Chess, meanwhile, also provide their business customers with service level packages, though we found no readily available information from them about potential compensation levels if specified repair times are not met.
- Boxx Communications, TalkTalk and Kinex do not appear to provide readily available information on service levels on their websites.

²⁰³ We undertook this research by receiving information on the most popular products from a range of providers in response to s.135 requests. We then researched the websites that we could identify as being linked to these products. We researched the websites of BT, Virgin Media, TalkTalk, Unicom, Plusnet, XLN, Zen Internet and Spitfire Network Services. We identified the products via our August and September 2016 and January 2017 information requests.

- 8.34 Evidence from SMEs is consistent with this picture. While almost two-thirds of them say that there is a good choice of broadband products or services available to them, more than two-thirds of SMEs report difficulty in comparing between providers on network quality and customer service.²⁰⁴
- 8.35 In our judgment, the lack of clear information means a large number of SME are unaware of the specified service levels or the compensation provisions in their contracts. This is likely to limit their ability to make an informed choice on the services they chose to contract for and their ability to obtain the redress that may be available to them.

Conclusion

- 8.36 When service quality issues occur, SMEs suffer harm. However, the majority of them do not receive compensation when service quality is poor. In that respect, SMEs and residential customers are in similar positions.
- 8.37 However, in the case of SMEs, there are providers who offer products and services which include specified service levels and compensation. Some of them differentiate or market their offers, at least in part, based on those features.
- 8.38 In our judgment, the principal issue for SMEs is that the information they receive on the availability of these offers and the guarantees provided can vary significantly from one provider to another. A large number of SMEs are unaware of the specified service levels or the compensation provisions in their contracts.
- 8.39 We have therefore decided that, in the first instance, we need to improve the transparency of information available to SMEs, rather than to impose an automatic compensation scheme. This would be an appropriate and proportionate intervention that would address our concerns with the difficulties SMEs encounter in accessing information on service levels and compensation.
- 8.40 For SMEs to be able to make informed choices and, if they so wish, to secure redress for harm when they experience delayed repair, provisioning delays or missed appointments, they need to have specific information, in a clear, accessible and durable format, about the level of service quality to expect when choosing services (and later if they experience service quality failures).
- 8.41 Better, simpler and more concise information on service quality and available compensation would enable SMEs to purchase services that provide the appropriate service level. It would also empower those who choose appropriate services and who experience service quality problems to claim redress. This in turn will incentivise providers to improve service quality in the long run.

²⁰⁴ Ofcom, SME experience of communications services, January 2017, p. 68, https://www.ofcom.org.uk/data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experienceresearch-2016-Report.pdf [accessed 06 November 2017].

- 8.42 Accordingly, the general condition we have decided to make will require providers to publish information about whether, and if so what, service level agreements apply to the contracts they offer SMEs; and what compensation a SME customer will be due in the event of relevant service quality failures. They will also be required to provide that information to SMEs in a durable form at the time they conclude contracts with them. The new general condition is in Annex 2.
- 8.43 The precise impact of these requirements will, of course, depend on the service levels and compensation provisions SMEs take up or agree with providers. To the extent they lead to SMEs obtaining greater protection and to providers offering improved service quality, the intervention will be beneficial.
- 8.44 Against those benefits, our judgment is that the limited costs would be proportionate. In our consultation, we proposed that these requirements should take effect six months after our final statement. We said that the implementation period would allow providers to make the necessary changes to their websites and introductory materials as part of their ‘business as usual’ updates. As such, we set out our expectation that the implementation costs would be limited.
- 8.45 No stakeholders disagreed with our assessment of the costs and only one objected to the proposed implementation period.²⁰⁵ That being so, we remain of the view that the burden of implementing these requirements will be limited. The changes we are mandating principally require the online publication of standard form information about products offered for sale to SME customers and provision of that information at the time those products are sold. In some cases, providers already make this available. In others, we would expect they can build any changes into the kinds of business as usual updates they make to their offerings and marketing materials, given our decision to allow six months for providers to make the any necessary changes.
- 8.46 We will monitor the impact of our intervention. If the outcomes for SMEs do not improve, and our objectives are not achieved, we will reconsider whether an automatic compensation regime would be appropriate.

Clarifications to the General Condition

- 8.47 Several respondents commented on the drafting of our proposed general condition. Their responses related to:
- a) SMEs that purchase residential products;
 - b) the scope of our proposals;
 - c) the provisions concerning customer advice; and
 - d) the definitions used in the condition.

²⁰⁵ Only BT, at 12 months, contended that a longer period would be required.

- 8.48 We have considered these points, and made some amendments to the condition we have decided to make, as follows.

SMEs that purchase residential products

- 8.49 SCS and FCS sought clarification whether SMEs that purchase a residential product would be covered by our automatic compensation scheme or the proposed transparency and information requirements. Evolving Networks Ltd, [X], SCS, FCS and Sky also questioned how providers would be able to differentiate between residential and business customers when offering new contracts.
- 8.50 We agree it may not be straightforward for providers to identify whether a consumer is a residential consumer or a business. It is important, however, that any automatic compensation scheme, and any transparency requirements, operate simply and effectively.
- 8.51 For that reason, the automatic compensation scheme we proposed would have applied to contracts for residential products, whoever buys them (which would be mainly consumers). The Industry Scheme does the same. The General Condition requiring transparency and information provision, meanwhile, will apply in respect of contracts for services a provider offers to SMEs (whether SMEs alone or amongst others). We have made minor amendments to the conditions in order that this is clear.
- 8.52 Both will, therefore, introduce simple and straightforward regimes as far as providers and customers are concerned. Providers will know which contracts the automatic compensation and transparency regimes apply to. Business customers would be able, subject to a provider's terms and conditions, to make informed selections of the products that best suit their needs.

Scope of proposals

- 8.53 Some respondents questioned other aspects of the scope of the draft general condition.
- 8.54 BT, for example, sought clarification whether the UK sites of multinational companies with headquarters overseas would be within the scope of our proposals. It said that would be disproportionate; this type of consumer would need no extra protection.
- 8.55 We have considered that point. The transparency requirements are aimed at protecting businesses with 249 or fewer employees, wherever they are. That is the group the evidence suggests require the additional protection that would be provided.
- 8.56 Accordingly, the number of individuals working for the legal entity contracting with a provider is relevant to the application of the condition. Whether that entity forms part of a multinational company with overseas headquarters is not.

Customer advice

- 8.57 BT did not agree with Ofcom that it would be appropriate to advise business customers whether products and services offering service level agreements and compensation can be negotiated. It said most micro businesses buy standard products and services that reflect their

needs. Where business customers have specific needs, BT says that it will discuss bespoke requirements with the customer to understand what they need and offer possible solutions.

- 8.58 We acknowledge that micro businesses may buy standard products and services to reflect their needs. The key point, however, is that they have the information they need to make an informed choice about the products that suit those needs. That includes, in cases where a provider is willing to negotiate bespoke terms with the customers, that it says so.

Definitions

- 8.59 BT submitted that the proposed definitions of the services to which the draft condition would apply were not appropriate. It noted that the definition of voice service did not refer to “Publicly Available Telephone Services” (PATS)²⁰⁶ yet refers to legacy services that allow transmission of facsimile. It contended that there are no good reasons for adopting different definitions from those already in the General Conditions.
- 8.60 BT also said the proposed definition of SMEs would not be consistent with the definition of small business customers used throughout the General Conditions. It contended that this would make its application particularly complex in practice.
- 8.61 We have considered these points carefully. The proposed condition was drafted taking account of our review of all the General Conditions (as to which see further below).²⁰⁷ One of the main objectives of that review was to make the conditions simpler and clearer, and we kept that objective in mind while drafting our proposed condition. Each general condition is, however, drafted to achieve particular policy objectives. Accordingly, conditions may refer to specific concepts and issues relevant to achieving those objectives, and the definitions used may vary from one condition to another for good reason.
- 8.62 In the present case, the services covered by the condition are those which are liable to be provided to SMEs. These include the full range of “Fixed Voice or Other Fixed-Line Services” which allow for the transfer of speech communications and other forms of communications (other than broadband services). They are not limited to PATS.
- 8.63 The definition of “SME Customer,” meanwhile, reflects that our policy objective is to protect a specific category of business. That category is distinct from other businesses already protected under existing General Conditions (for instance, the small business customers protected by the general condition relating to complaints handling).
- 8.64 We have, nonetheless, made minor amendments to the formal and definitional provisions of the condition. These do not change its substantive effect,²⁰⁸ but they do make it consistent

²⁰⁶ A service made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan.

²⁰⁷ Ofcom, 2017, Review of the General Conditions of Entitlement. https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions?utm_source=updates&utm_medium=email&utm_campaign=General-Conditions [accessed 06 November 2017]

²⁰⁸ And would not, therefore, in Ofcom’s opinion have a significant impact on any market for services supplied to SMEs.

with the General Conditions that will continue to apply until October 2018 and the revised conditions which Ofcom has decided will be in force from that point.

- 8.65 In particular, and as noted above, at the time we proposed the draft general condition, Ofcom was also conducting an overall review of the General Conditions. We published consultation documents as part of that review in August and December 2016, and made our decisions and published our final statement on 19 September 2017.²⁰⁹ Our decision was to revoke the existing set of General Conditions with effect from 1 October next year and to make a new set of Revised General Conditions in force from that date.
- 8.66 At the time we consulted on the proposed general condition on automatic compensation and transparency and information requirements for SME customers, we anticipated that the proposed set of Revised General Conditions may come into force more quickly. We proposed our draft condition on that basis and to fit with the then proposed revised set of conditions.
- 8.67 As we have decided to make a new condition that will come into force before 1 October 2018 – on 1 June that year – we are making that condition in two forms: (i) as a new General Condition 24 that will be part of the existing set of General Conditions and be in force between 1 June and 1 October 2018; and (ii) general conditions C2.16 to C2.19 which will be added to Condition C2 of the Revised General Conditions and will enter into force on 1 October 2018. This, however, only affects the formal mechanism by which the condition takes effect, not its substance.
- 8.68 As to the minor definitional amendments we have made, these are:
- a) the insertion of the definition of “Access Network” in the new General Condition 24 (see Schedule 1 to the Notification), on the basis this term is used in the definition of “Fibre To The Premises” which is also part of the condition;
 - b) replacement of the definition of “Relevant Broadband Service” with “Broadband Service” (see Schedules 1 and 4 to the Notification), so as to fit with the scheme of general definitions that apply in the Revised General Conditions;
 - c) in the definition of “Loss of service” included in new General Condition 24 (see Schedule 1 to the Notification), “Customer” is replaced with “SME Customer” on the basis that condition applies specifically to that group of Customers;
 - d) the replacement of “Relevant Voice Service” with “Fixed Voice or Other Fixed-Line Service” so that, in line with the scheme of the Revised General Conditions, the defined term more closely describes the services it covers (which have not changed);
 - e) the insertion of the definition of “DSL Broadband Service” into the definitions to be used in the Revised General Conditions (see Schedule 4 to the Notification), to distinguish a relevant sub-set of Broadband Services;

²⁰⁹ Ofcom, 2017, Review of the General Conditions of Entitlement. https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions?utm_source=updates&utm_medium=email&utm_campaign=General-Conditions [accessed 06 November 2017]

- f) the substitution of “DSL Broadband Service” for “Broadband Service” in relevant places in the Definitions section and Condition C7 of the Revised General Conditions, to reflect the scope of the services to which Condition C7 applies; and
- g) consequential modifications to other parts of Condition C2 to reflect the making and application of Conditions C2.16 – C2.19 (see Schedule 3 to the Notification).

Legal tests and statutory duties

8.69 The condition we have decided to make is in accordance with our general statutory powers and duties as well as the powers, duties and requirements relevant to the setting of general conditions.

Ofcom’s general duties

- 8.70 Since it will enable SME customers to make informed choices, and to take steps in relevant cases to seek redress for harm they suffer, as well as incentivising providers to improve service quality, the condition will further the interests of citizens and consumers. That is consistent with our main duty under section 3(1) of the Act.²¹⁰
- 8.71 The condition is likewise consistent with our duty to have regard to the interests of consumers in respect of choice, price, quality of service and value for money under section 3(5) of the Act; and to the desirability of encouraging investment in relevant markets under (section 3(4)(d) of the Act). Insofar as the action we have decided to take has been informed by research into SME customers’ expectations and experiences in relation to quality of service, it is also consistent with our duty to have regard to the opinions of consumers in relevant markets under section 3(4)(k).
- 8.72 Additionally, on the basis that we assess it is unnecessary to impose an automatic compensation scheme to achieve our objectives in relation to SMEs, and that we can do so by lighter-touch transparency requirements, the condition is in line with our obligation to ensure our regulatory activities are proportionate and targeted only at cases in which action is needed (section 3(3) of the Act).

Duties for the purpose of fulfilling EU obligations

- 8.73 In making the new general condition, Ofcom is acting in accordance with the six European Community requirements in section 4 of the Act, read in light of the policy objectives set out in Article 8 of the Framework Directive.
- 8.74 Those objectives include promoting (i) competition in the provision of electronic communications services by ensuring that users derive maximum benefit in terms of choice, price and quality; and (ii) the interests of EU citizens by promoting the provision of clear information. For the reasons set out above, the new condition is consistent with these.

²¹⁰ Consumer is defined in section 405(5) of the Act and includes people acting in their personal capacity or for the purposes of, or in connection, with a business.

Power to set general conditions under section 51(2)

8.75 Ofcom has the power under section 51(1)(a) of the Act to set conditions as we consider appropriate for the purpose of protecting the interests of end-users of PECS. Given our judgment that SMEs do not have sufficient visibility of information about the quality of service they can expect to receive (and any compensation that may be due to them), such that their interests are not sufficiently protected at present, the condition we have decided to make falls within the scope of this power.

Test for setting general conditions

8.76 Our further judgment is that the general condition we have decided to make satisfies the test in section 47(2) of the Act in that it is:

- **objectively justifiable**²¹¹ since it will address the harm suffered by SMEs by enabling them to purchase products that provide the service levels they require and, where they buy appropriate products, to claim redress for quality of service problems;
- **not unduly discriminatory** as it will apply equally to all communications providers providing services to SMEs;
- **proportionate** in that it does no more than necessary to secure our objectives. It places SMEs on a fairer footing, with the benefits of greater transparency and redress in appropriate cases, and gives providers incentives to provide adequate service quality for SMEs, whilst imposing limited regulatory requirements on providers; and
- **transparent** in that our draft general condition was set out in full in our consultation document. Its final version is explained in this statement and set out in Annex 2. The new general condition will increase transparency by setting out specific information requirements for providers serving SMEs.

²¹¹ We note that, in accordance with section 47(3) of the Act, section 47(2)(a) relating to objective justification, does not apply to the setting of a general condition. Nonetheless, we consider the objective justification of our proposals as part of our assessment of their proportionality.