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Dear Emma

**Automatic compensation: call for inputs**

SSE welcomes Ofcom's call for inputs on the above topic and believes that a well designed framework for delivering compensation payments automatically from those communications providers who have failed to deliver an adequate level of service to consumers could serve as a useful component in Ofcom's strategy to deliver a step change in quality of service by the communications industry. The whole point of a standards framework is to change the behaviour of those causing the issues that are the subject of the standards and that cause quality issues for end customers such that they no longer cause the issues. This result will only be obtained if:

- the standards are targeted on the activities of the companies causing the issues;
- the amount of payments made under the standards by these companies is monitored along with any steps they are taking to improve their performance; and
- further regulatory action is taken if the combination of standards payments made and other action taken by these companies is assessed as not delivering the desired step change in behaviour.

In other words, the standards framework is only a means towards the goal of improving the behaviour of those companies that are causing issues for end customers. It is therefore vital, if standards are to be used, that they are targeted on these companies and that it is their performance that is measured and monitored to ensure that the standards are leading to improvements.

SSE's main area of operation is in the energy industry in the UK, so we have experience of the operation of statutory guaranteed standards in this industry and also in the water industry in England and Wales; we refer to these other areas in the rest of our response.

SSE, in common with many other companies, is a retail-only provider of services in the communications market. We rely on a mixture of regulated and unregulated wholesale products from other communications providers (CPs) in order to provide our retail communications services of fixed line telephony and broadband to domestic customers.

The majority of the complaints we receive from these customers relate to network and engineering issues outwith our control and so we would welcome changes in the behaviour of wholesale CPs such as Openreach that would reduce the instances of these issues affecting our customers. Like end customers, we would far prefer that wholesale services are provided at an adequate level than to receive compensation because they have not been. Dealing with customers who have experienced quality issues costs us far more than any likely levels of compensation. It is therefore imperative that the proposed compensation framework for the communications market provides strong incentives to those CPs causing quality issues to improve their performance.

We respond to the specific consultation questions in Appendix 1 to this letter and set out our main points on this topic below.

#### Communications services are an essential part of modern life

We wholeheartedly agree with Ofcom that electronic communications services have become an essential support for modern life; and that the effect of service failures on consumers in this area is on a par with failures in energy and water supplies, given the steady increase in applications for which a broadband link in particular is indispensable. Examples include home banking, travel booking, medical monitoring and remote home-working. SSE has long argued that the delivery of electronic services to the retail 'mass market' of consumers and small businesses should be subject to a similar framework of regulatory oversight and monitoring that occurs for these customer groups in the provision of other utility services.

Just as for the energy and water utilities, consumers expect the underlying communications network capability underpinning the communications services they purchase to work and operate reliably. In the other utilities, a statutory framework of guaranteed standards has been in place for over two decades. The framework continues to evolve and we discuss some details of this in Appendix 2 to this letter. SSE believes that a similar approach for standards and compensation in communications services would be appropriate and have the benefit of being already familiar to consumers. We note that recently published government material on the forthcoming Digital Economy Bill suggests that the arrangements in energy for customer compensation are being regarded as a starting point for how they should operate in the communications sector.

#### The incentive properties of a standards compensation framework

Retail CPs do not want to be in the position of frequently providing compensation to their customers for faults and issues with the service they have received. As noted above, the intention of introducing automatic compensation should be that the combination of financial and reputational incentives on the CPs causing the issues will lead to changed behaviours and improved service levels from the CPs concerned so that issues affecting customers will reduce to insignificant levels.

In order for the financial and reputational incentives to work properly, it is essential that the framework of automatic compensation is designed such that payments clearly originate from the CP causing the issue. Just as complaint monitoring for CPs should ensure that only complaints over matters within a CP's control are allocated against them, so the reporting and monitoring of 'standards payments' should unambiguously show which CP has originated the payment, irrespective of the route by which the payment is made to the affected customer.

#### Compensation payments need to originate from the party at fault

We are therefore opposed to Ofcom's proposal that retail CPs should pay the 'automatic compensation' and then seek to "commercially negotiate" with their upstream wholesale CPs to obtain their own compensation for the payments they have been required to make to customers, as discussed at paragraph 4.4 of the consultation. It is totally unacceptable to design a compensation system for network and wholesale issues that does not directly entail network and wholesale CPs having to pay out the principal compensation amounts. This would undermine the incentive properties of the compensation system and lead to a distortion of retail competition in the market: it is unrealistic to expect retail-only CPs to negotiate successfully with large upstream wholesalers holding Significant Market Power such as Openreach. While large retail CPs might have more success, smaller ones would not and could suffer significant financial harm as a result of the framework that Ofcom has initially proposed. Ofcom's own wording in this paragraph seems to accept that compensation paid by retail CPs under this method may only be "partially paid for by the party responsible for the service issue".

Instead, and in common with how standards and compensation frameworks have been designed for the other utility services mentioned, the statutory or regulatory instrument that gives effect to the compensation requirements should put an unambiguous requirement on network and wholesale CPs whose failure causes a consumer to suffer a specified type of detriment to provide that consumer's retail CP with the specified compensation payment for onward transmission to the consumer. Appendix 2 discusses how this is done in other utility frameworks. Clearly, where the retail CP is at fault, then they would be the party to provide the consumer with compensation but, in our experience and as borne out by the service quality issues described in section 3 of the document, the majority of issues that concern customers relate to network activities.

The same considerations apply to monitoring of which CPs are paying out compensation. The information of interest is the compensation volumes originating from the CPs at fault, not which retailer is delivering the compensation to customers on their behalf. As the Openreach network is the only one required by regulation to provide access to other CPs, it follows that many CPs will be using the Openreach access network and we would expect Openreach to be a significant source of compensation payments feeding down wholesale supply chains to end customers. We consider that, consistent with Ofcom's emphasis in the Strategic Review and the consultation document on driving Openreach service quality improvements, Ofcom will want to monitor the levels and trend of compensation payments made by Openreach and other network CPs and also to publicise these. This further underlines the necessity for the primary information about compensation volumes to be provided for market monitoring purposes by the network CPs themselves.

#### Industry Development of the Standards framework

As with the recent development of harmonised switching processes for the mass market of retail communications customers, we advocate that the detailed discussion and development of standards takes place with facilitated input from the relevant CPs who will be subject to them in the form of an implementation group. This could tackle definitions, industry processes and monitoring requirements relevant to getting the best out of a standards framework, bearing in mind the objective of significantly reducing quality issues that affect consumers. There may be merit in considering the use of a pilot project for the proposed standards, to minimise risks of any unintended consequences and allow confidence to be gained on the operation of a reduced scope of standards initially.

I hope that this response is helpful to Ofcom's consideration of next steps towards development of an equitable, targeted and effective standards framework to support quality in the provision of retail communications services to consumers – and we would be happy to discuss any point further.

Yours sincerely

Aileen Boyd  
Regulation Manager

Response to consultation questions

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

*(a) scope, including possible eligibility;*

**SSE agrees that the scope of customers eligible for compensation for service quality issues should include domestic consumers and smaller businesses.**

*(b) form and process of compensation;*

**We agree that the form of compensation should be financial – for example, a payment or bill credit. Customers will be accustomed to this from other utility service quality compensation schemes.**

It is worth considering what is actually intended by ‘automatic’ compensation. In the other utilities, it means that payments are generally made without the customer having to claim, unless it is not feasible for the relevant provider to be aware that a particular customer might have been affected; in which case, they react to a claim from a customer. We are unable to comment on the extent to which communications network providers will be able to see from their own network monitoring systems whether a service quality issue has occurred for a particular customer but it is certain that retail-only CPs will not be able to make judgements on this. Thus, we consider that ‘automatic’ payments may not actually be feasible if the standards are framed such that a customer has to raise the issue with their retail CP in order to start the compensation process. The retail CP would have to raise the issue with their relevant upstream wholesale CP(s) and get these CPs to verify what payment is required and then make the payment to the retail CP, who would then pass it on to the consumer.

If Ofcom envisages that customers will have to contact their retail CP to start the process for compensation payments, we suggest that the term ‘guaranteed’ is substituted for ‘automatic’ in relation to the framework for compensation payments. Consistent with the points in our covering letter about payments needing to originate from the CP causing the service quality issue, we would have grave concerns about any proposal whereby the retail CP would be obliged to make a payment ‘automatically’ to a customer complaining of a network service quality issue and then take on the burden of investigation with upstream CPs who had no obligation to make a compensation payment. This would impose a significant financial risk on retail CPs, undermine the incentive properties of a compensation scheme and be at odds with how standards compensation schemes have been implemented for other essential services in today’s society.

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

**We believe the precedents from other utility compensation schemes are useful to consider. Here, standard amounts are set out, generally of the order of small multiples of £10 for specific types of service failure – sometimes with caps on the total payable for a**

single, related set of incidents. This should not be seen as a compensatory level for indirect losses that may have been incurred by a customer but should represent a significant enough sum to recognise that inconvenience has been caused. The payments should also be significant enough in aggregate to CPs causing issues that the financial benefits of reducing compensation levels form a material consideration for those CPs when contemplating making some efforts to avoid the relevant failures. As noted in our covering letter, monitoring is a required element in using standards to effect a change in behaviour from those CPs causing quality issues for end customers in order to check that quality issues are indeed being addressed.

Items such as when compensation should be triggered; how quickly compensation should be payable; and time limits for the entitlement to seek compensation are matters which have been directly addressed in the form of the standards in place, on a statutory basis, in the energy and water industries. The precise trigger event(s) for compensation is defined within the description of a particular standard; an additional standard on timing of payment ensures that a further payment become due if payment for the initial standard failure is not made within a prescribed timescale from the initial trigger event; and exemptions from the requirement on the company who caused the failure to make a compensation payment include situations where a claim has been received after a certain time interval.

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

As noted above and in our covering letter, we are greatly concerned that the way in which Ofcom is thinking of introducing 'automatic compensation' will bring great risks for retail-only suppliers. Such suppliers should not be put in the position of having to make compensation payments from their own resources and then seek to recover these amounts from upstream CPs such as Openreach. This is not the way guaranteed standards have been developed to work in other utilities and does not target the requirement for compensation on those CPs causing the issues. If Ofcom does introduce a customer standards compensation framework for retail communications, it could be that all industry compensation frameworks should be reviewed to make sure that methods and amounts of compensation are aligned.

We believe there would be a risk of developing a 'multi-tier' compensation system if Ofcom persists in viewing the principal amount of compensation as originating from the customer's retailer. The many different retailers with varying upstream supply arrangements and negotiating power would result in differing levels of risk to retailers of not recovering the compensation amount from upstream CPs actually causing the service issue. This would distort retail competition and potentially drive small retailers out of business. It would also lead to difficulties in monitoring which CPs are causing the service issues – because only the retailers are originating payments – thus undermining the incentive properties of the whole system.

In relation to the topic of implementation costs, we expect that where quality standards cover network issues and network companies are properly tasked with originating the required compensation payment, the network companies would incur some costs in developing systems to identify affected customers and pass the details of the incidents as well as the payments to the customers' retail providers. The costs are likely to be passed on to retailers via standard network charges and this should be in a non-discriminatory manner. We expect that Openreach, in particular, would have to incur costs to develop some systems in this respect as so many other providers use its network. If this compensation payment infrastructure is put in place by the network companies then there should be little competitive distortion amongst retail CP users of the networks as they will have business as usual mechanisms to contact their customers and the incentive to minimise their own costs in doing so.

We agree with Ofcom that there will be a need to balance the imposition of costs on the industry with the benefit to individual customers of receiving compensation plus the overall incentive benefits of the compensation framework in reducing the impact of service quality issues on consumers. As this is an area where there are risks and the potential for unintended consequences, we suggest that Ofcom considers whether it would be feasible to introduce a pilot project with more limited scope and content initially, with a view to expanding these as experience and confidence is gained.

*Question 2: Are there any additional considerations?*

While SSE has supported and suggested the idea of customer standards in the communications retail markets underpinned by guaranteed compensation arrangements such as exist in other utility industries, we believe that work will be needed in two areas before such a system could be introduced successfully in communications.

The first area is categorisation of the major types of CP. Retail CPs clearly have a different role and capability in affecting the quality of service received by end customers from a CP providing access network, wholesale and/or engineering capability to deliver the underlying wholesale products and services. While vertically integrated CPs may undertake more than one role, each of these is distinct and should be capable of definition in any framework that seeks to deliver a standards compensation regime and monitor the performance of different CPs under it. The same considerations apply to complaint monitoring. In energy, there are statutory definitions of suppliers and 'distributors' (electricity) or 'transporters' (gas). As retail competition is to be introduced into the business water market in England, 'wholesalers' and 'retailers' are similarly being defined. Here, Ofwat is taking steps to divide the previously existing statutory standards of performance which cover both retail and wholesale issues between the two types of

entity<sup>1</sup> and require payments originating from wholesalers at fault to be passed to retailers for onward transmission to the end customers concerned. Similar categorisation of CPs is required in the communications market and will be a familiar concept to UK consumers.

The second area concerns authoritative definition and measurement of the aspects of quality covered by standards, where these entail engineering aspects of the service to customers. For example, for any standards on broadband speed or mobile network coverage, there needs to be a single authoritative source on what these measurable quantities should be to meet the standard as well as what they actually were on a particular occasion where a customer complained about poor service in relation to these standards. For mobile coverage, coverage maps might define where different qualities of service might be expected; and for broadband, reliable line checker information available for customers and retail CPs alike could provide measurements that can be relied upon to compare to any standards definition.

It is clear that retail CPs cannot provide these authoritative tools for checking quality and that they must originate from wholesale CPs. In our view, in order to develop workable, plain English definitions of standards that are meaningful to customers as well as measurable and monitor-able, it will be necessary for relevant CPs to have a forum to discuss and design the standards along with all aspects of how they will work and, potentially, develop over time as technology and products develop in this fast-moving market. For example, some industry processes may not provide the best experience for end customers and may thereby be contributing to quality issues for consumers in some cases. This type of root cause cannot be unilaterally amended by any single CP and should instead be capable of amendment via the industry acting collectively in a change-controlled and governed manner. As with the recent industry project on fixed line switching, there may therefore be merit in establishing an industry implementation working group arrangement to address these issues of design, implementation and development. In our view, this should be supplemented by ongoing market governance – such as exists in the energy market.

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

We note that most of the topics that Ofcom mentions in section 3 on service quality are network or wholesale issues. This matches our experience of the topics that phone and broadband customers raise with us. We take issue with the comment in paragraph 3.8. that all of the issues mentioned up to that point are “within the control of the provider” if this is meant to apply to the retail CP serving a customer. If the ‘provider’ is meant to

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<sup>1</sup> See documents at the link: <http://www.ofwat.gov.uk/publication/customer-protection-retail-market-proposal-secretary-state-welsh-ministers-regulations-connection-standards-performance-supply-water-provision/>

refer to the network provider – usually Openreach – then we could agree with the statement but this potential confusion illustrates the need to clarify different roles in the supply chain with respect to the proposed framework for compensation to end customers, as discussed in response to question 2.

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

**Yes. We expect that Ofcom would conduct some research about what events customers would like to see included in a compensation framework but also be mindful of what type of issue lends itself to being readily improved and also defined sufficiently clearly to be captured in a formal framework. We agree that compensation is not appropriate for some types of issues that end customers experience with broadband speeds, given the current technologies available.**

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

**Yes. General and specific exemptions from the need to make standard failure payments are built into the compensation frameworks in energy and water (see the links provided in Appendix 2). Similarly, both these frameworks allow for the relevant regulator to make determinations in the event of disputes on whether a standards payment is due in a particular case or not. In developing dispute resolution mechanisms for standards payments in communications, we agree that the existing dispute resolution bodies might have a role to play but the scope of their role would have to be extended to cover network/wholesale CPs who can cause service quality problems for end consumers.**

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

**Yes. We strongly advocate that Ofcom reconsider its proposal in paragraph 4.4 that the retail CP be required to pay compensation when the fault lies upstream. While there are a number of CPs who are integrated network/wholesale and retail CPs, there are actually many hundreds of retail-only CPs like SSE using the wholesale products available, such as ‘Wholesale line rental’, on the Openreach access networks to deliver their retail services. It would be unfair to these retailers to make them responsible for compensation payments with little realistic prospect of ‘negotiating’ redress from upstream suppliers. Instead, Ofcom ought to establish principles for the compensation scheme which include the requirement for any CP who has caused the breach of a prescribed quality standard to make the principal compensation payment for the benefit of the end customer concerned: the ‘polluter pays’ principle. Then the details of the framework, how information and payments are to be passed on to end customers and how it is to be monitored can be developed with industry – possibly through the auspices of the OTA – and as discussed in our response to question 2.**

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

**Evidence from other industry implementations of  
Guaranteed standards frameworks**

Energy Industry

Electricity standards of performance have until recently been provided for in Statutory Instruments (SIs) separately from gas standards of performance. In both, the standards for retail suppliers were contained in the same SI as the standards for the local infrastructure providers – the electricity distribution network operators and the gas transporters. However, as the standards actually applying to retail suppliers were very similar they have recently been combined into a single SI:

The Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015 SI 2015/1544 available at this link:

<http://www.legislation.gov.uk/ukxi/2015/1544/contents/made>

It is notable that these regulations make explicit provision for the retail energy suppliers to pass on payments that have been made to them by gas or electricity network companies due to their failures under the standards framework.

*Distributed payments*

*7.—(1) When a supplier receives a distributed payment for onward transmission to the supplier’s customer, the supplier must relay the distributed payment to that customer within 10 working days of receipt of the distributed payment.*

*(2) In this regulation—*

*“customer” means any person who is supplied or requires to be supplied with gas conveyed through pipes or with electricity at premises which that person owns or occupies; and*

*“distributed payment” means a payment to be made by—*

*(a) a gas transporter to a customer—*

*(i) in fulfilment of an obligation imposed on it by regulations made under section 33AA(1) of the Gas Act; or*

*(ii) following a determination by the Authority under section 33AB of the Gas Act; or*

*(b) an electricity distributor to a customer—*

*(i) in fulfilment of an obligation imposed on it by regulations made under section 39A(2) of the Electricity Act; or*

*(ii) following a determination by the Authority under section 39B of the Electricity Act.*

The main set of standards affecting electricity network providers are

The Electricity (Standards of Performance) Regulations 2010 SI 2010/698 available at

<http://www.legislation.gov.uk/ukxi/2010/698/contents/made>

These make provision, within regulation 21, for distributors to make payment directly to customers or via their supplier in the form of a further standard which requires a further payment to be made if the principal payment is not made within a specified time.

*(5) Where this paragraph applies and the distributor fails to make the payment to the customer or the customer's electricity supplier for onward transmission to the customer of the sum to which he is entitled, in either case as soon as is reasonably practicable in relation to regulation 7 and within the prescribed period from the applicable date in relation to any other regulation, the distributor shall, except in any of the circumstances described in paragraph (7), pay the prescribed sum to the customer.*

#### Water Industry

Standards of performance in the water industry are set out in the Statutory Instrument The Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 SI 2008/594 available at:

<http://www.legislation.gov.uk/uksi/2008/594/contents/made>

As part of the preparations for the opening of the non household retail market from April 2017, Ofwat has consulted on the extension of scope of the standards to include the new licenced retailers and the division of the standards between those applicable to wholesalers and those applicable to retailers. The latest document on this topic makes proposals to the Secretary of State and Welsh Ministers that the standards be amended and is available at:

<http://www.ofwat.gov.uk/publication/customer-protection-retail-market-proposal-secretary-state-welsh-ministers-regulations-connection-standards-performance-supply-water-provision/>

Within the document, section 2.3 discusses Ofwat's proposal that the standards should be allocated to either wholesalers and retailers and that, while the standards payment is finally provided to the customer by their retailer, the obligation to provide that payment will lie with the wholesaler for the relevant standards. The following extracts provide a flavour of the detailed thinking:

*We propose that each of the current guaranteed standards of performance should be allocated to either wholesale or retail in the regulations. Where it is not possible to allocate a guaranteed standard exclusively to either wholesale or retail, we propose that the particular standard is allocated to both wholesale and retail, acknowledging the role that both wholesalers and retailers will have.*

*We expect that the retailer will always be responsible for making the payment to, and managing direct communications with, the customer about the GSS incident in all instances where a GSS breach has occurred. The proposed allocation of the*

*obligations is to clarify where the liability lies for identifying the incident and funding any payments owed.*

*where the breach is the fault of the wholesaler, the wholesaler will be required to make this payment to the retailer who should then pass on this payment, in full, to the customer(s) affected in line with the timescales included within the current GSS Regulations; where the breach is the fault of the retailer, the retailer is responsible for the payment to the customer(s) affected in line with the timescales included within the current GSS Regulations and where possible on a proactive basis*

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: Automatic Compensation: call for inputs

To (Ofcom contact): Emma Chadwick

Name of respondent: Aileen Boyd

Representing (self or organisation/s): SSE plc

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input checked="" type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

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Name Aileen Boyd

Signed (if hard copy)