



Vodafone's Response

22 July 2016

Response to Ofcom Call for Inputs:
'Automatic Compensation' June 2016

Section 1: Introduction

1.1 The preliminary findings of Ofcom's Strategic Review of Digital Communications highlight the need for the telecommunications sector to deliver a step change in the quality of service provided to consumers. Vodafone shares this ambition and is supportive of Ofcom's policy initiative to consider potential forms of remedy. We therefore welcome this Call for Inputs and look forward to engaging with Ofcom to consider what role automatic compensation can play to improve the customer experience for the industry as a whole.

1.2 In framing our response we urge Ofcom to take the technical make-up of the telecommunications market as the starting point for considering when automatic compensation could be considered a proportionate response to safeguarding the consumer experience. Key to this is Ofcom understanding both the 'wholesaler – retailer' and 'retailer – end-user' relationships. If any asymmetry in compensation rules were to exist between these two, it could result in the retailer being unfairly treated for service issues over which they have no reasonable control. This is already a pre-existing problem (as evidenced in annex 1) which we hope automatic compensation can rectify.

1.3 In our submission below, we highlight the importance of four key considerations that must be taken account of to ensure any automatic compensation remedy will be proportionate and effective; these being:

- a) Identifying customers impacted
- b) Identifying if customers are detrimented by the impact
- c) Identifying if the detriment warrants compensation



d) Identifying the adequate level of compensation¹

1.4 In considering these four factors, we believe that there would be considerable harm to key sections of the market if a blunt and unguided automatic compensation regime was introduced across mobile and fixed broadband sectors, with the harm falling disproportionately upon competitive providers who challenge the incumbent and those who operate mobile networks in more rural parts of the United Kingdom. If an unguided regime were to be introduced it may well be counter productive and fail to justify the cost of its introduction; thereby harming consumers in the long term through the introduction of new commercial barriers to entry that result in less competition and less investment. This would disincentivise communication providers who serve rural consumers, where geography and terrain prevent more resilient networks being used to provide service. Instead, we propose that any automatic compensation scheme should be a targeted one, focused on cases which are clearly identifiable to specific users and where responsibility /root cause of the issue is easily identified. These factors point to introducing an automatic compensation scheme that is focused upon addressing issues such as a wholesaler's missed appointments/breached Service Level Guarantees when provisioning/repairing a retailer's service and for compensating for an MNO's delay in providing PAC codes upon request.

Section 2: Executive Summary

2.1 As the Call for Inputs notes, the factors that will influence Ofcom's prioritisation of service quality issues to be addressed through automatic compensation is led by 'consumer expectation'. This is justified through drawing parallels between customer expectations in utility and telecommunication services. Vodafone urges Ofcom to temper this approach. Unlike utility providers, telecommunication services (particularly mobile), are by no means a fault free service. Multiple factors can influence service and performance; many of which are beyond the service provider's reasonable control. Ofcom should then place greater emphasis on the technological capability and nature of the service in question when prioritising issues to be addressed through automatic compensation.

2.2 Ofcom also utilises a selective basis for warranting automatic compensation, overlooking already significant improvements in available means of redress. Ofcom points to commissioned research to highlight a perceived lack of awareness amongst consumers regarding rights to redress². However, this publication considers outcomes only shortly after the introduction of the Consumer Rights Act 2015, which obliges service providers to ensure that rights of redress receive appropriate prominence, to enable consumers to seek redress when experiencing a faulty service. Furthermore, the introduction of Regulation (EU) 2015/2120 (and relevant BEREC guidance), is likely to oblige service providers to provide further clarity on the nature of the service they are contracting to receive and increased awareness of the route customers

¹and seeking compensation from the wholesale provider where relevant,

² Jigsaw research – Quality of Service in Communications



can take to seek redress. Contrary then to Ofcom's proposal, these factors together result in customers being more aware of their rights of redress than ever before.

2.3 Vodafone agrees that compensation results in recognition and redress, but questions whether this would be 'improved' by automatic compensation. Ofcom points to low awareness of means of redress, but gives little attention to 'scope' of redress. As stated at 1.3 and 3.3, automatic compensation is only relevant to where detrimented customers can be identified and the root cause is due to the retailer or wholesale partner. If automatic compensation is then applied broadly across the telecoms industry, each incident that may have impacted customers would need to be analysed to (where possible), identify customers impacted, assess detriment and ascertain if the issue is the fault of the wholesaler or retailer, define appropriate compensation and then allocate accordingly. This resource intensive process is markedly different to the current process, whereby agents, (rather than analyse every query) assess customer's concerns and ultimately take 'a view' on whether the issue may have been caused by a factor that would warrant compensation. Such a change in approach could then lead to an outcome that reduces the level of compensation provided overall, in comparison to current levels.

2.4 Ofcom's Call for Inputs also assumes that compensation is only ever provided following the customer making the complaint. This assumption is unfounded;— proactive compensation can occur when the four factors detailed at 1.3 are identified.

2.5 The difficulty is that these four factors are rarely identifiable in the majority of incidents that may impact consumers, as evidenced at 3.7. However, certain scenarios, such as a delay in the provision of a PAC code, do lend themselves to this criteria, hence why Vodafone already takes the action to automatically compensate in this scenario.

2.6 Further, Ofcom assumes that automating compensation will ensure consumers are compensated quickly and easily where they are entitled to payment. This assumes establishing entitlement and responsibility is clear cut. Yet as stated above, neither are as the analysis required to establish where compensation is due can often take multiple days to gather and digest.

2.7 Ofcom also assumes that automatic compensation would further incentivise service providers to improve service quality. On the contrary, it is also plausible that if the cost of implementing the regime is high, service providers may have to sacrifice service quality in order to invest in compliance measures. Further, excessive cost of implementation/identifying root cause of each fault would lead to price rises to ultimately fund the costs of compliance. Whereas leaving quality of service to market forces in a competitive mobile environment both permits innovation to improve services and drives down prices.

2.8 However, automatic compensation does still have a vital role to play. Many of the difficulties highlighted above are not as prevalent within the 'wholesaler – retailer' relationship. Here the root cause of the customer impacting issue is often easily identified, such as missed appointments. Further, the harm is more acute, given the issue impacts a retailer serving multiple customers and who will face multiple costs, financial and



reputational, from any delays to provisioning service. This is then the area where automated compensation is best placed to address harm; particularly where there are concerns that the wholesaler is failing to meet its current Service Level Guarantees, as evidenced in Ofcom's current investigation into Openreach activity³.

Section 3: Factors Relevant to Considering Automated Compensation

3.1 Ofcom's Call for Inputs describes the factors that will influence Ofcom's prioritisation of service quality issues to be addressed through automatic compensation. The most prevalent of these is 'consumer expectation'. Vodafone urges Ofcom to temper this approach and place greater emphasis on the technological capability and nature of the service in question.

3.2 As detailed in Vodafone's consumer terms and conditions⁴ and coverage checker; mobile telephony is, by its very nature, not a fault free service. Rather, the service is often impacted by factors including, but not limited to, geographic location, service demand, available spectrum, end-user software, end-user activity and nearby building composition. All of these factors are also variable and may impact the service received by the end-user during the life-cycle of their agreement.

3.3 These factors can be broadly placed into 4 (non-mutually exclusive) groups, these being:

- a) End-user fault (change of circumstances, device, device, software or home/work location etc.);
- b) Service Provider fault;
- c) Wholesaler fault; and
- d) Externality beyond service provider's control.

3.4 Whilst these factors are not clear cut, broadly speaking, only b) and c) warrant compensation to the end user. However, in such scenarios end-user expectation may well be that, regardless of cause of service degradation in this manner, they deem their service provider to be responsible. With that in mind, Ofcom should not be principally led by consumer expectation when prioritising service quality issues to be addressed. Instead, they must give equal weight to technical complexity of the services the end-user is purchasing and how relevant they are to automatic compensation.

3.5 Vodafone fully supports compensation being based upon the service quality issue being objectively defined and measured. Ofcom is right to point to the absence of this principle leading to consumer confusion and process ambiguity. In particular, this principle has underpinned the success of Ofcom's Broadband Speed Code of Practice; which has established clear thresholds for when consumers can pursue the right to leave in regards to speed thresholds. As Ofcom notes, resolving some issues may require long term network investment, yet the customer may be better served with another provider. The Code thereby creates an objective structure within which an end-user can avoid being tied into a service that cannot meet their contractually defined speeds. The Code is also particularly successful as it provides room for service providers to conduct diagnostics prior to providing the right to terminate – prompting a conversation with

³ http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01170/

⁴ <http://www.vodafone.co.uk/cs/groups/configfiles/documents/document/vfcon072758.pdf>



the customer that ensures that compensation is not provided to a customer where the cause of the issue lies with the customer rather than the service provider, thereby restricting the possibility of fraudulent claims. Further, where a customer does not receive the access line speeds stipulated, there is clear grounds for the retailer seeking compensation through the wholesale provider⁵.

3.6 However, the benefits of the Code are not replicable across all services. Whilst the Code establishes a 'minimum guaranteed speed' which must be provided for fixed broadband, such a provision for mobile services is far more complex. Firstly, the service provided is far more variable due to the factors detailed at 3.2. The multiple variables in the service delivery often result in it being difficult to establish if the issue is the fault of the service provider and thus if relevant to compensation. Rather than analyse each incident, customer care agents often have to 'take a view' when processing compensation claims.

3.7 Further, the code is objective in that the means of rectification is to leave without penalty. This is not so easily replicated in mobile services where services may be impacted for short periods of time and are variable by nature. In these scenarios, Ofcom is right to point out that customers can be impacted in multiple ways, some more severely than others. However, it is identifying these impacts that is at best difficult and at worst impossible without having the end-user initiate the discussion. The following offers three examples of where this would be the case:

1. **Outage on a Communication Provider's Data Services Core Network (fixed and mobile).** A services core network is built with resiliency (both geographical and in the same location). If an outage occurs all customers connected to this part of the network will be disconnected and lose service temporarily (often for minutes, rather than hours or days) as the network will automatically connect them to the resilient platform. The majority of customers will not realise they were impacted to the non-real time nature of most data services (unless they were utilising real time data services at that moment). We can identify those that were connected to the core network element at the time of the outage but that does not mean their service was impacted. To assess that, we would need the customer to contact us.
2. **Mast outages (mobile).** If a mast goes out of service we cannot identify the customers connected to it as it is no longer communicating with the rest of the network. We estimate customers impacted by mast outages from their billing address and previous traffic behaviour, yet we cannot confirm if they were in the area at the time of the outage. The address data is then only an estimate that we use should the customer then contact us. Also, as the network is built with overlapping coverage, for most mast outages (exception are very rural masts of course) the customers will often not "feel" the impact on the service.
3. **End user dependency (fixed and mobile).** Degradation in quality of service is often subjective (especially on mobile data speeds) and different customers will have different experiences dependent upon their choice of content, software and service. As these update and change, the customer experience may change to be less preferable to that prior. Compensation is not then appropriate to these customers, yet significant resource is required to diagnose that this is the case.

⁵ http://stakeholders.ofcom.org.uk/binaries/telecoms/cop/Broadband_Speeds_Code_June_2015.pdf



Therefore, an automatic compensation regime would require diagnostics for each potentially customer impacting incident, to establish root cause and thus if there is a requirement to auto-compensate – assuming impacted CTNs can be identified.

3.8 To quantify this requirement, we can look to drop call rates. According to Ofcom's 'Smartphone Cities 2016' publication, the average Mobile Network Operator has a 98% call success rate. Or alternatively, 2% of attempted calls fail to connect. Given estimated volumes, this results in 1.2 million (per MNO) calls a day that could hypothetically warrant compensation under an automated regime. In order to analyse these incidents, Vodafone estimates that an extra 3000 FTE would be required, at a cost of c£90 million OPEX. Such levels of investment would inevitably result in price rises and the removal of any incentive to provide compensation above where Vodafone are obliged to do so under the new regime, in order to mitigate the operational cost of compliance.

3.9 Further, to suggest that compensation should also encapsulate compensation for inconvenience is markedly subjective and contracts Ofcom's commitment to an 'objective' process. In such a scenario, each end user would be incentivised to maximise the dependencies upon their impacted service – which would require swathes of information to objectively verify such matters as liability, burden of proof and foreseeability. This complexity has guided multiple industries, (most notably train travel), to compensating only incurred cost. Should Ofcom look to go beyond this, it would need to justify how such a regime could be objective and not overly burdensome upon service providers.

3.10 In addition, if we accept the 'compensation for inconvenience' principle, then it becomes difficult to draw a line as to what warrants compensation. For example, would a mobile provider be expected to compensate an end-user who drops a call from an estate agent concerning the sale of a house?

3.11 Instead, a simple process of reimbursement aligned to pro-rated payment would be clear, measurable and more easily implemented. To this end, bill credit lends itself to being the easiest form of compensation, particularly for customers on contracts where a monthly bill can be amended to reflect the compensation payment. This negates the need for a separate notification and minimizes undue cost and complexity upon the industry. However, such an approach must be considered and allowed for through the metering and billing accreditation process, otherwise such a process may have unforeseen consequences in other areas of regulated activity.

3.12 Ofcom propose that, 'a more automated process should result in more direct incentives for providers to improve service quality they deliver or to adjust their marketing or contractual documentation to better reflect the actual service quality provided'. Ofcom's claim is based upon the assumption that frequency of compensation per issue will increase post implementation of automatic compensation. This is unfounded and assumes that establishing that an issue is down to failure to provide service with reasonable care and skill is simple. This is far from the case. In fact, establishing root cause of issues often takes multiple days and significant resource. Therefore, a balance must be struck by service providers when assessing potential end-user impact against cost of identifying root cause (thereby establishing if compensation is necessary).

3.13 Instead of taking this option, it is not surprising that all MNOs currently enable agent discretion to ultimately allocate compensation. As the burden to establish root cause is often excessive, agents will review customer experience and provision credit where it is 'possible' that the service issue was initiated by failure to provide the service without reasonable care and skill. This undoubtedly produces scenarios where compensation is allocated where it would not be if root cause had been established. When these factors are considered together, the opposite of Ofcom's assumption is true; as service providers are forced to identify



when automatic compensation is relevant, the significant investment required will result in providers only providing compensation when they are required to do so, which may then lead to a less generous compensation process.

3.14 This scenario also undermines Ofcom's proposal that an 'automatic compensation' regime may deliver a saving as less agent time will be dedicated to handling individual complaints. This is unlikely on two counts; firstly, for the reasons discussed; measures would need to be taken to establish which incidents warranted compensation and which did not, and then identifying impacted customers (where possible). Secondly, customers would still contact service providers directly following degraded service; some may not be aware of automatic compensation, some would question why they have not received compensation when they felt they were due compensation and some as they would question the level of compensation they may have received. Consequently, agents would still be expected to discuss and ultimately address customer concerns regarding compensation, on top of an expensive, automated process.

3.15 Inevitably, if such a regime were introduced, prices would have to rise to capture the increased regulatory burden upon the industry.

Section 4: Service Quality Issues

4.1 Whilst the issues listed above do limit the potential benefits of an automated compensation regime, many of these issues are specific to the relationship between service provider and end-user and are due to the complexity of identifying cause and nature of the impact on the customer. However, these issues are not as complex when reviewing the relationship between wholesaler and service provider. Within this relationship, fault is more readily identified and the lack of clarity around the impact upon the end user is less relevant.

Fixed Services

4.2 Failures in the provisioning of services, through engineer visits or wholesale provisioning delays, are clearly identifiable in regards to fault for the issue. Ofcom is correct in highlighting that delayed provision of services can result in significant harm, leaving a customer without service for sustained periods of time. In regards to engineer visits, these can have both a negative impact on both the end-user and service provider, both of which are forced to manage the inconvenience and rearrange provisioning.

4.3 However, in these scenarios it is vital to distinguish between service provider and end-user impact. Whilst a missed engineer visit may not cause consumer harm (a member of the household may have already been in the relevant property/was not required to be in), the service provider is forced to manage the delay to the billing platform; including impact on billing cycle, resourcing ongoing customer management while provisioning is rearranged,, delayed commercial benefit and brand impact due to perceived poor customer experience.

4.4 Further, during the contract, service quality issues may appear, the most likely of which being failure to deliver advertised speeds. However, Ofcom is right to suggest that in this scenario, the voluntary broadband speed addresses this. As discussed at 3.5, the Code establishes clear rules of procedure for establishing what the contractually minimum 'guaranteed' speed is and how to manage speeds falling below this threshold. The clarity then provided to the consumer enables them to be aware of their rights and how to use them should they fail to receive the correct service. This clarity offers the customer genuine reassurance and it is for this reason that Vodafone has committed to joining the Code of Practice.



4.5 Furthermore, the current VCOP is likely to be strengthened to align to the new Net Neutrality requirements.

4.6 Given the current strengths of the Code and its scope for expansion, it is Vodafone's view that automatic compensation is not an appropriate remedy for slow access line speeds. As for actual throughput speeds, assessment of impact requires a dialogue between end-user and service provider, thus this lends itself to existing compensation arrangements. Instead, an automatic compensation regime is best suited to managing the wholesale to service provider relationship, in order to address the consumer harm generated by missed appointments and provisioning delays.

Mobile Services

4.7 Ofcom is right in pointing to the harmful impact of delayed PAC provisioning and porting requests. It is for this reason that Vodafone already compensate delayed PAC provisioning requests. Given the clear consumer harm that is present where such compensation does not occur, Vodafone supports this process becoming mandatory across the industry.

4.8 As for loss of service, establishing cause and impact is often extremely complex, as discussed at 3.7. However, Ofcom pre-suppose that the service provider's exclusively relies upon end-users approaching the service provider for compensation. This is not the case. As detailed in Vodafone's correspondence with Ofcom Incident Management Team, Vodafone regularly compensate customers where the customer is detrimented due to Vodafone's failure to provide the service with reasonable care and skill. However, where the impacted customer telephone number (CTN) cannot be identified, the service provider is reliant upon the customer contacting them. This is also true of fixed networks, where the service may be detrimented yet the user may be unaffected as they were not using the service at the time.

4.9 A better means to address the dependency upon consumer experience may be to expand the consumer's right of return at the beginning of the initial commitment period. Following Vodafone's own analysis, the most common point of consumer churn is in the first 28 days, in part due to a new service and software being assessed against static consumer expectations. To address this short term disparity, rather than pursue compensation as a means of rectification, end users may be better served by an extended 'no quibble' right to return, which gives the customer the comfort of time to explore how to best utilise their new service. This is why Vodafone has already implemented a 30 day 'network guarantee' for all consumer sales channels.

4.10 With these factors in mind, automatic compensation can offer improvements to the current regime, particularly for wholesale and porting issues, but would be unsuitable to replacing the agent discretion regime currently in place, for the reasons articulated at 3.12.

Section 5: Wider Considerations

5.1 Ofcom is right in acknowledging that under an automatic compensation regime, customers would still seek compensation when service providers deemed that they were not entitled to it. In this manner, a dispute resolution mechanism will face significant demand, particularly in the early days of any new regime that automates the provision of compensation to end-users,

5.2 As for retailers that purchase services from wholesalers, Ofcom must not leave retailers to commercially negotiate service levels with providers with significant market power (SMP). In this matter, Ofcom must



prioritise a review of Openreach's SLA and SLG regime in line with, and not simply 'following' the introduction of automated compensation. To only consider this in retrospect would be likely to result in significant short term detriment to retailers, who would be in the position of covering significant costs of meeting the new regime, yet not being adequately compensated by an updated wholesale regime.

5.3 Further, if Ofcom believes consumer payment should be automatic and of a certain value, it needs to ensure that the value imposed is backed off by appropriate Openreach SLG payments, where relevant. However, in doing so, Ofcom must acknowledge that Openreach will look to pass through the increase in SLGs back in to consumer charges, incorporating them into the overall setting of Openreach's product charges.

5.4 Such detriment is only exacerbated if Ofcom allow systematic abuse of SLG avoidance, as has previously been evidenced through Vodafone's successful dispute in 2016⁶. Whilst governance around Openreach's SLGs has been tightened in the wake of this investigation, concerns remain around Openreach's use of MBORC, a process by which isolated weather conditions can seemingly give a wholesale provider carte blanche across large swathes of the country, thereby enabling a 'get out' on making SLG payments. If this process is not also reviewed as part of the consideration of automatic compensation, retailers could be left to paying out compensation to customers even when the customer detriment is entirely beyond their reasonable control. In such scenarios, the retailer would not only carry the financial cost of compensation and the detriment to their brand, but would then be unable to claim back for the compensation required; thereby increasing the cost of complying with automated compensation regime. To emphasise this point, Annex 1 details case studies that highlight the retailers dependency upon wholesale provider in common 'customer impacting' incidents; particularly where the provider is enabling service in rural, hard to reach areas.

⁶ http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01165/