



# Automatic Compensation

Protecting consumers from quality  
of service problems

Consultation

Publication date:

24 March 2017

Closing Date for Responses:

5 June 2017

# About this document

In this consultation we set out proposals to introduce automatic compensation for residential consumers of landline and/or broadband services who suffer quality of service problems in relation to delayed repairs, delayed provisions and missed appointments. We also set out proposals for small and medium sized businesses to ensure that they receive better information on the quality of service (including compensation payments) they should get from their landline and broadband provider.

We first set out our intention to consider the introduction of automatic compensation in our Strategic Review of Digital Communications. In that review we indicated the need for the communications sector to deliver significantly better quality of service, and we identified automatic compensation as one of a number of areas which could help deliver this.

We invite all interested parties to respond to this consultation by **5 June 2017**.

# Contents

Section		Page
1	Executive summary	1
2	Introduction	5
3	Scope and framework for assessment	15
4	The case for automatic compensation in residential landline and broadband services	23
5	Delayed repair of loss of service	35
6	Unscheduled delays in provisioning	46
7	Missed appointments	53
8	Making automatic compensation simple for consumers and practical to implement	60
9	Impacts of a regulatory approach for residential landline and broadband services	75
10	Provisional conclusions on residential landline and broadband services	85
11	Small and medium sized enterprises	97
12	Delayed repair of mobile loss of service	113
13	Legal powers and consultation on legal instrument	118

## Annex

1	Responding to this consultation
2	Ofcom's consultation principles
3	Consultation questions
4	Estimates of harm from quality of service problems
5	Market features and quality of service in relation to residential landline and broadband services
6	Estimates of quality of service incidents
7	Pass-through
8	Scope for quality of service improvements
9	Estimates of mobile loss of service
10	Jigsaw research
11	Cartesian report
12	Equality Impact Assessment
13	Industry proposal

- 14 Notification of proposed new general condition and  
modifications to the General Conditions under section 48A(3) of  
the Act
- 15 Glossary

## Section 1

# Executive summary

## Automatic compensation would help protect consumers' interests

- 1.1 In this consultation, we are proposing that telecoms providers should be required to introduce a system of automatic compensation for specific quality of service problems. If consumers suffer any of these problems, they would receive a set sum of compensation per day from their provider without having to go through a prolonged and difficult claims process. Our proposals could lead to up to 2.6m more compensation payments to consumers and up to £185m of additional compensation payments each year.
- 1.2 Telecoms services are thought of by consumers as an increasingly essential part of their home and business life. The disruption and inconvenience caused when they fail can feel on a par with a power cut or loss of water supply.<sup>1</sup> Water and energy consumers already receive compensation when services are lost or appointments missed. Given the growing importance of telecoms services and the reliance consumers place on them, it is important that they should be able to obtain redress quickly and easily when they suffer problems with their service.
- 1.3 We first proposed automatic compensation in our Digital Communications Review where we also outlined the other measures we are taking to implement a step change in quality of service, including introducing better information for consumers and more demanding requirements on BT Group's access network division (Openreach).<sup>2</sup> Consistent with our strategic position, we are now setting out our proposals for automatic compensation to ensure that where these service problems occur, consumers receive financial redress without claiming. In turn, providers will have greater incentives to improve quality of service to avoid these payments.

## Consumers are currently experiencing harm and not receiving redress

- 1.4 Although our research suggests that most consumers are generally satisfied with their telecoms services, we have also found that a significant number of them experience problems each year: for example, over 5 million consumers lose their landline or broadband service; nearly 250,000 engineer appointments are missed and over 1 million landline and broadband installations are delayed.<sup>3</sup> Sometimes these problems are prolonged, repeated, and last for many weeks or even months.
- 1.5 When such problems occur, consumers can suffer. For example:
  - they are unable to keep in touch with people or use the internet;

---

<sup>1</sup> 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/78370/jigsaw_quality_of_service_in_telecoms.pdf); indicative findings based on the views and experiences of around 160 UK consumers, half of them residential consumers and half of them SME consumers.

<sup>2</sup> Ofcom, *Initial conclusions from the Strategic Review of Digital Communications*, February 2016: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0016/50416/dcr-statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0016/50416/dcr-statement.pdf)

<sup>3</sup> Ofcom calculations based on provider responses to August 2016 fixed s135 request, Annex 2 question 3. See Annex 6 for more detail.

- they spend time trying to get in touch with their provider to sort out the problem;
  - they face additional costs from having to use other services;
  - they may have taken a wasted day off work to wait at home for an engineer; and
  - they may also suffer stress and anxiety.
- 1.6 Sometimes consumers get compensation from their provider when problems occur. But we have found that only a minority of landline and broadband consumers suffering problems receive compensation.<sup>4</sup> Even if compensation is awarded, the amount given is typically not commensurate with the harm experienced. The evidence also suggests that consumers do not know when they can claim compensation, and they find the process for doing so unclear and time-consuming.
- 1.7 We are therefore concerned that consumers are not being treated fairly and the market is not currently providing them with the level of service (including compensation) that they reasonably expect and should receive.

## **We are consulting on rules that will help secure appropriate redress when things go wrong**

- 1.8 We have identified those service quality problems that are most important to consumers and that lend themselves to being defined and measured and therefore suited to a scheme where providers pay automatically when they occur. We have also sought to ensure that it would be easy for consumers to understand when automatic compensation will be paid.
- 1.9 We propose that automatic compensation should be paid for the following failures:
- Delayed repair following loss of service - when a landline and/or broadband service fails to be repaired quickly.
  - Delayed provisions - when a provider promises to start a service on a particular day but fails to do so.
  - Missed appointments - when an engineer is supposed to come on a particular day but does not turn up.
- 1.10 The specific events for which compensation would be payable, and amounts, are shown in Figure 1 below:

**Figure 1: Proposals for automatic compensation**

	When is compensation available	Level of compensation
<b>Delayed repair following loss of service</b>	A loss of service that is not fully restored after two full working days have elapsed	£10 for each calendar day, after two working days, that the relevant service is not repaired

<sup>4</sup> Around 15% of current instances of loss of service, delayed provisions and missed appointments receive redress (see paragraph A6.26).

<b>Delayed provisions</b>	A delay in the commencement of service beyond the date the provider has committed to	£6 for each calendar day of delay beyond the promised start date
<b>Missed appointments</b>	An appointment is missed, or cancelled with less than 24 hours' notice	£30 per missed appointment

- 1.11 We propose that automatic compensation should apply to all residential products. In practice, this will mean that all residential consumers, and around a third of small and medium sized enterprises (SMEs) - who buy residential services - are likely to benefit.<sup>5</sup> Additionally, we propose that SMEs who buy business products should be provided with greater clarity on the quality of service they are entitled to under their contracts and whether they can claim compensation when problems occur. This proposal reflects that SMEs can negotiate bespoke terms and there are already standard business contracts currently on offer that provide compensation for a number of different issues, which are not available for residential consumers. Our approach should help enable SMEs to take advantage of these and secure compensation for the service problems they encounter.
- 1.12 We have considered whether mobile customers who lose service should also be entitled to automatic compensation. While this is a complex area to assess, we have estimates that indicate a relatively small number of residential and business consumers - less than 1% - are likely to lose their service for more than 24 hours. In contrast, current levels of compensation to mobile consumers are more significant than those to landline and broadband consumers. While we consider that automatic compensation is not an appropriate intervention at this stage, we intend to carry out further work to monitor the degree of loss of mobile service consumers are experiencing.
- 1.13 We recognise that in future, as services and consumer expectations change, there may be additional service quality problems that this scheme could be applied to. We may therefore revisit the scope of the proposed scheme in the future.

## Industry voluntary code of practice

- 1.14 The UK's three largest landline and broadband providers, (BT, Sky and Virgin Media) have jointly put forward a draft proposal to introduce automatic compensation for residential landline and broadband service failures through a voluntary code of practice. We welcome this initiative from them and have carefully considered it within this consultation as an alternative approach. At this stage, we do not think that the industry proposal sufficiently meets our concerns when quality of service falls short, but we welcome the opportunity to continue this dialogue with industry in parallel to this consultation.

## We welcome the views of stakeholders

- 1.15 We seek views from all interested parties on the matters set out in this consultation by **5 June 2017**. We will assess all the available evidence and take into account all

<sup>5</sup>Jigsaw, *The SME experience of communications services: research report*, January 2017, p90: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf)

consultation responses before deciding how to proceed. Alongside this consultation, we will continue dialogue with industry on their voluntary proposal.

1.16 We expect to publish a policy statement around the end of 2017.



## Section 2

# Introduction

## We identified concerns with quality of service in our Digital Communications Review

- 2.1 In our Strategic Review of Digital Communications (DCR), quality of service in telecoms was the issue that respondents raised most often. In our initial conclusions document, we said a step change in quality of service was needed.<sup>6</sup> We outlined a programme of measures we intended to take to achieve this: setting tougher minimum standards for the main wholesale provider, Openreach; publishing service quality performance data on providers so consumers could make more informed purchasing decisions; and looking to introduce automatic compensation for consumers and small businesses when things went wrong.
- 2.2 We proposed that consumers should receive automatic compensation where their retail provider does not deliver certain service quality standards. Automatic compensation would ensure that consumers who experience the inconvenience of service quality problems do not have to encounter further hassle in order to receive compensation. It would also act as an incentive for providers to improve the quality of service they deliver.

## Our Call for Inputs elicited a variety of views

- 2.3 In June 2016 we published a Call for Inputs (CFI) in which we discussed quality of service and automatic compensation in more detail, and invited views from stakeholders.<sup>7</sup> In the CFI we set out our initial views on why automatic compensation may be necessary to protect the interests of consumers, and on the quality of service failures that might qualify for automatic compensation. These failures included loss of fixed and mobile service, slow broadband speeds, delays in porting of mobile numbers, missed appointments, and delays in the provision of new services.
- 2.4 We received 34 responses to the CFI from a broad range of stakeholders, including individual consumers and consumer representatives as well as industry, and have published the non-confidential responses on our website.<sup>8</sup> We address specific points raised in the CFI responses in the relevant sections of this consultation, but below we summarise the points that were raised in responses about the broad principle of automatic compensation.
- 2.5 There was recognition that, even though the overwhelming majority of consumers are satisfied with their telecoms services, consumers' expectations about quality of service may not always be met. Some industry stakeholders also acknowledged this. Mobile UK (which represents the UK's mobile operators) agreed that there is

---

<sup>6</sup> 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](https://www.ofcom.org.uk/data/assets/pdf_file/0016/50416/dcr-statement.pdf)

<sup>7</sup> Ofcom, *Automatic compensation call for inputs* [https://www.ofcom.org.uk/data/assets/pdf\\_file/0021/76260/automatic-compensation-call-for-inputs.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0021/76260/automatic-compensation-call-for-inputs.pdf)

<sup>8</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/automatic-compensation>

“demand for the communications sector to deliver better quality of service”<sup>9</sup> while the Internet Services Providers’ Association (ISPA) said that “we note that Ofcom’s research shows that 80% of consumers are happy with their service, yet we understand that on occasion service standards may fall short of expected standards”.<sup>10</sup>

- 2.6 Consumer bodies, including the Communications Consumer Panel and Which? were all strongly supportive of the principle of automatic compensation, and were of the view that the value of compensation should reflect consumer detriment (rather than being set pro-rata relative to the price of the faulty service). But it was highlighted that automatic compensation should not translate into price rises for consumers.<sup>11</sup>
- 2.7 UKCTA, which represents landline and broadband providers other than BT, argued that “communication providers (CPs) operate in a competitive market and are incentivised to compete on all aspects of their service including quality, customer care, fixing issues as they arise and providing appropriate compensation if things go wrong and customers experience harm as a result.” UKCTA went on to argue that “automatic compensation would be a disproportionate remedy as the costs of implementation are significant and the associated processes would reduce the ability of CPs to meet the needs of any customers when things go wrong.”<sup>12</sup>
- 2.8 Many of the providers who use Openreach’s network argued, however, that problems were often caused by Openreach rather than by them. It was argued that we should prioritise new rules on Openreach to ensure that it improved its performance. UKCTA said: “quality of service issues arise at the wholesale level (as Ofcom itself recognises) and do not warrant a retail remedy. Ofcom should instead focus its efforts on the wholesale level to ensure that issues are resolved at source.”<sup>13</sup>
- 2.9 In its response, BT said that it supported our policy goal “to provide recognition and redress to consumers quickly and easily” and agreed that “a more automated compensation scheme is likely to incentivise improvements in service quality”.<sup>14</sup> But it argued that we should withhold from formal regulation and instead establish a set of principles for how providers should voluntarily operate their own automatic compensation schemes. This, it argued, would be quicker and would allow providers to retain flexibility about their compensation schemes.
- 2.10 Mobile providers were mostly opposed to introducing automatic compensation on the basis that in their view the market is competitive on price and quality, and that there is a high risk of unintended consequences in what is a complex area. They argued that introducing automatic compensation would be difficult as it is not possible to identify customers who lose services when an outage occurs. In its response, Three said “there is no easy mechanism by which consumers can be refunded and this is why we currently consider such issues strictly on a case-by-case basis, based on

---

<sup>9</sup> Mobile UK, CFI response, p.1: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/91642/Mobile-UK.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91642/Mobile-UK.pdf)

<sup>10</sup> ISPA (the trade association for the UK’s internet industry), CFI response, p.1: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/53947/ispa.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/53947/ispa.pdf)

<sup>11</sup> Which?, CFI response, p.2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55352/which.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55352/which.pdf); CCP, CFI response, p.4: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/57556/ccp-acod.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/57556/ccp-acod.pdf)

<sup>12</sup> UKCTA, CFI response, p.2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/54661/ukcta.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/54661/ukcta.pdf). N.B. UKCTA’s submission to the CFI “does not necessarily fully represent the views of SSE on a proposed way forward”. SSE submitted a separate response.

<sup>13</sup> UKCTA, CFI response, p.4: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/54661/ukcta.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/54661/ukcta.pdf).

<sup>14</sup> BT Group, CFI response, p.2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0010/50104/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0010/50104/bt.pdf)

usage.”<sup>15</sup> EE, consistent with BT’s overall position, was supportive of the principle of providing redress to consumers more quickly and easily, but argued that automatic compensation risked being inaccurate as it was difficult to identify customers who tried, but failed, to access a mobile network. It argued that compensating consumers on a reactive basis may be preferable.<sup>16</sup>

## Our regulatory policy objectives

- 2.11 Consumers have some protections in relation to quality of service. These arise, for example, in contract law – both in the express terms of their contracts with their providers and in any terms implied into the contract by law. Some providers’ terms and conditions set out the compensation that may be payable to consumers affected by quality of service problems.
- 2.12 Ofcom’s General Conditions of Entitlement also contain consumer protection rules. These include General Conditions 9.2(d) and (k), which say that consumers are entitled to contracts with their provider which specify in a clear, comprehensive and easily accessible form, amongst other things:
- “(d) details of the minimum service quality levels offered, namely the time for initial connection and any other quality of service parameters as directed by Ofcom; .....
- (k) any applicable compensation and/or refund arrangements which will apply if contracted quality service levels are not met;....”
- 2.13 They also include General Condition 10 which requires that providers publish their standard terms and conditions, including those relating to any compensation and/or refund policy, with specific details of any compensation and/or refund schemes offered.
- 2.14 These conditions are made by Ofcom, taking account of its duties to further the interests of citizens and consumers (as set out further below), under powers contained in the Communications Act 2003 (the “Act”). Those include the broad power to make such conditions as we consider appropriate for protecting the interests of end-users of public electronic communications services.
- 2.15 The Act implements provisions of the European common regulatory framework for electronic communications services (the “Framework”). The Framework sets a number of policy objectives to be achieved by Member States and their National Regulatory Authorities (“NRAs”). Those objectives include that NRAs must (i) promote competition in the provision of electronic communications services by ensuring that users derive maximum benefit in terms of choice, price and quality; and (ii) promote the interests of the citizens of the European Union by, amongst other things, ensuring a high level of protection for consumers in their dealings with suppliers and by promoting the provision of clear information (in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services) (again see further below).

---

<sup>15</sup> Three, CFI response, paragraph 30:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/54396/three.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/54396/three.pdf)

<sup>16</sup> EE’s response was given as part of the CFI response by BT. BT Group CFI response, paragraph

14: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0010/50104/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0010/50104/bt.pdf)

- 2.16 Those legal provisions reflect the special importance of telecoms services to consumers. That importance is also reflected in the use consumers make of those services and the reliance they place on them.
- 2.17 Telecoms 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.<sup>17</sup> Consumers have told us that they increasingly think of telecoms services as being similar to a utility.<sup>18</sup> Telecoms services are also regarded as essential by small and medium sized enterprises (SMEs): at least 60% of SME landline and internet users consider these services "absolutely vital".<sup>19</sup>
- 2.18 It is also plausible that over time consumers' and businesses' reliance on telecoms connectivity may continue to increase as more and more services are provided online.
- 2.19 It is similarly important, in our judgment, that consumers' interests have a level of protection in respect of quality of service commensurate with the importance of the services and their reliance upon them. That is an important regulatory policy aim. With that in mind, it is appropriate for us to consider the expectations consumers have of telecoms services, whether those expectations are reasonable, whether they are being met, the harm consumers experience where they are not and the redress they receive.
- 2.20 Our starting point is that satisfaction with fixed and mobile services is generally high: around nine in ten telecoms consumers are 'very satisfied' or 'fairly satisfied' with their overall service. Some consumers, however, do encounter problems. Among broadband customers, for instance, the three most common reasons for dissatisfaction were speed of internet connection (35%), disruption of service (34%) and poor quality of service (33%).<sup>20</sup> While most SMEs also express satisfaction with their telecoms services, their satisfaction with their broadband is lower than for their landline services.<sup>21</sup>
- 2.21 It is a fair 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 telecoms services is that they work as expected and that if problems occur, they want them to be resolved as quickly and efficiently as possible.<sup>22</sup> If consumers have

---

<sup>17</sup> Ofcom, *Communications Market Report 2016*, p.5, p.31:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/26273/uk\\_context.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/26273/uk_context.pdf)

<sup>18</sup> 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/78370/jigsaw_quality_of_service_in_telecoms.pdf)

<sup>19</sup> 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf)

<sup>20</sup> Ofcom, *The Consumer Experience Report 2015 Research Annex*, p.68:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/38543/annex.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/38543/annex.pdf)

<sup>21</sup> Jigsaw, *SME experience of communications services*, January 2017, p. 33.

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf)

<sup>22</sup> 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/78370/jigsaw_quality_of_service_in_telecoms.pdf)

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 should receive.<sup>23</sup> In that case, given the particular importance of the services to consumers, further regulatory intervention may be justified, particularly if it is not clear that providers have incentives that would bring about change in this respect.

2.22 Therefore, we have two regulatory policy objectives:

- to ensure that consumers are able to receive adequate compensation when their provider does not deliver service quality standards 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.

2.23 Parliament considers compensation to be a legitimate regulatory tool for protecting consumers' interests. It has enacted legislation giving other utility regulators the power to require compensation to be paid to consumers for poor quality of service. Secondary legislation has been in place for many years in the energy and water sectors to achieve this.

2.24 Ofcom has general consumer protection powers (flowing from the Framework) which would enable us to implement a compensation scheme for quality of service problems. However, Government has introduced legislation in the Digital Economy Bill to make explicit Ofcom's power in this area.<sup>24</sup> By doing so, it has signalled its 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.

2.25 In addition, this approach has been adopted by communications National Regulatory Authorities in some other EU Member States, albeit most regimes are based on pro-rata compensation in the form of service refunds.<sup>25</sup>

## Legal framework

2.26 Ofcom regulates the communications sector under, and in accordance with, the framework established by the Act and the Framework. The Framework comprises a number of Directives, provisions of which are referred to below.

---

<sup>23</sup> We discuss consumers' reasonable expectations in relation to our specific service quality failures in sections 5-7 below.

<sup>24</sup> The Framework comprises a number of Directives, as described in this section. The Digital Economy Bill as introduced and as subsequently amended is available at: <http://services.parliament.uk/bills/2016-17/digitaleconomy/documents.html>

<sup>25</sup> See Annex 4 for further details



## Ofcom's general duties

- 2.27 Section 3(1) of the Act states that it shall be the principal duty of Ofcom, 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.<sup>26</sup>
- 2.28 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).<sup>27</sup>
- 2.29 Section 3(4), meanwhile, says Ofcom must have regard, in performing its duties, to a number of matters<sup>28</sup> 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.
- 2.30 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, quality of service and value for money.

## Duties for the purpose of fulfilling EU obligations

- 2.31 As set out in Section 4 of the Act, when exercising certain functions<sup>29</sup> Ofcom must 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 Directive<sup>30</sup> which sets out the policy objectives of the Framework. It 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<sup>31</sup>. Those objectives include (i) the promotion of competition in the provision of electronic communications services<sup>32</sup> 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,<sup>33</sup> 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

---

<sup>26</sup> 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.

<sup>27</sup> Ofcom's regulatory principles can be found at: <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>

<sup>28</sup> As they appear to Ofcom to be relevant in the circumstances.

<sup>29</sup> Including those we propose to exercise in this document.

<sup>30</sup> 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/legal-content/EN/TXT/?uri=celex:32002L0021>

<sup>31</sup> Set out in paragraphs 2, 3 and 4 of Article 8.

<sup>32</sup> As well as electronic communications networks and associated facilities and services.

<sup>33</sup> Article 8(2)(a) and (b) of the Framework Directive.

information (in particular, requiring transparency of tariffs and conditions for using publicly available electronic communications services).<sup>34</sup>

## **Powers and duties in relation to general conditions**

- 2.32 Alongside the Framework Directive, the Authorisation Directive<sup>35</sup> provides for national regulatory authorities to set conditions of general authorisation for communications providers. Under Article 6 and paragraph 8 of the Annex these include conditions containing “... consumer protection rules specific to the electronic communications sector, including<sup>36</sup> conditions in conformity with Directive 2002/22/EC (“Universal Service Directive”).” The over-arching principle is that such conditions shall be non-discriminatory, proportionate and transparent.<sup>37</sup>
- 2.33 These provisions are implemented into national law by the Act. In particular, 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. 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 (“PECS”). Section 51(2) sets out a non-exhaustive list of the specific types of general conditions that Ofcom may set in pursuance of this purpose. The Digital Economy Bill, introduced in the House of Commons on 5 July 2016, seeks to amend section 51(2) of the Act by inserting a new paragraph (da) to that sub-section, which would make 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.<sup>38</sup>
- 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;<sup>39</sup> 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.
- 2.35 We consider further in section 13 how the proposals set out in this document accord with our powers and duties.

## **Impact Assessment**

- 2.36 The analysis presented in this document constitutes an impact assessment as defined in Section 7 of the Act. Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in Section 7

---

<sup>34</sup> Article 8(4)(b) and (d) of the Framework Directive.

<sup>35</sup> 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/PDF/?uri=CELEX:32002L0020&from=EN>

<sup>36</sup> And therefore not limited to.

<sup>37</sup> Article 6(1) of the Authorisation Directive.

<sup>38</sup> Digital Economy Bill, as introduced 5 July 2016:

<https://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0045/17045.pdf>

<sup>39</sup> 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.

of the Act, which means that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out impact assessments in relation to the great majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see the guidelines *Better policy-making: Ofcom's approach to impact assessment*, which are on Ofcom's website.<sup>40</sup>

- 2.37 Ofcom is also required to assess the potential impact of all its functions, policies, projects and practices on the equality of individuals to whom those policies will apply. An equality impact assessment ("EIA") assists Ofcom in making sure that it is meeting its principal duty of furthering the interests of citizens and consumers regardless of their background or identity. Annex 12 sets out our EIA for the issues raised in this consultation.

## This document

- 2.38 In the rest of this document we set out the case for regulatory intervention to introduce automatic compensation, and our proposals. In reaching these proposals, we have used a variety of information alongside the CFI responses. We held discussions on automatic compensation with various stakeholders.<sup>41</sup> We requested further information (see Annexes 6 and 8) from the largest landline and broadband providers<sup>42</sup> including on the frequency of quality of service problems, their compensation payouts and policies, and on the level of missed appointments<sup>43</sup> ('August 2016 fixed s.135 request' and 'December 2016 fixed s.135 request'). We also requested information from landline and broadband providers focusing on business consumers<sup>44</sup> ('September 2016 SME fixed s.135 request' and 'January 2017 SME fixed s.135 request') and from mobile providers<sup>45</sup> ('August 2016 mobile s.135 request' and 'December 2016 mobile s.135 request'). In addition, we commissioned, and have published, consumer research exploring their experiences and expectations of service quality issues and compensation.<sup>46</sup>

- 2.39 The document is set out as follows:

- Section 3 describes the approach we have used to assess whether intervention is likely to be needed to protect the interests of consumers.
- Section 4 assesses the case for automatic compensation for residential landline and broadband services.

---

<sup>40</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better\\_Policy\\_Making.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf)

<sup>41</sup> BT Consumer, Citizens Advice, Communications Consumer Panel, EE, Ofgem, Ombudsman Service, Sky, SSE, Telefonica UK, Three, Vodafone, Which

<sup>42</sup> 15 August 2016: BT, EE, KCOM, Plusnet, Post Office, TalkTalk, Virgin Media. 18 August 2016: Sky

<sup>43</sup> 13 December: BT, EE, KCOM, Plusnet, Post Office, Sky, TalkTalk, Virgin Media; 13 January 2017: BT, Daisy, KCOM, O2, Plusnet, Rainbow, Spitfire, TalkTalk, Three, Utility Warehouse, Verastar, Virgin Media, Vodafone, XLN, Zen; 18 January 2017: EE

<sup>44</sup> 13 September 2016: Daisy, Rainbow, Unicom, Utility Warehouse, XLN

<sup>45</sup> 15 August 2016: O2, EE, Tesco, Three, Virgin Media, Vodafone. 16 December 2016: EE, O2, Three, Vodafone

<sup>46</sup> Jigsaw, *Automatic Compensation*, March 2017, see Annex 10.

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)



- Section 5 sets out our proposals for automatic compensation when consumers suffer delayed repairs after a loss of service.
- Section 6 sets out our proposals for automatic compensation when consumers suffer delayed provisioning.
- Section 7 sets out our proposals for automatic compensation when consumers suffer a missed appointment.
- Section 8 sets out our proposal to make the automatic compensation scheme simple for consumers and practical to implement.
- Section 9 assesses the impact of our proposals for residential landline and broadband services.
- Section 10 sets out provisional conclusions on residential landline and broadband services.
- Section 11 sets out our proposals for small and medium businesses.
- Section 12 assesses whether automatic compensation is needed to protect mobile consumers.
- Section 13 sets out how we have used our legal powers and describes the legal instrument we propose to use.

2.40 We also attach with this document the following Annexes:

- Annex 1: Responding to this consultation
- Annex 2: Ofcom's consultation principles
- Annex 3: Consultation questions
- Annex 4: Estimates of harm from quality of service problems
- Annex 5: Market features and quality of service in relation to residential landline and broadband services
- Annex 6: Estimates of quality of service incidents
- Annex 7: Pass-through
- Annex 8: Scope for quality of service improvements
- Annex 9: Estimates of mobile loss of service
- Annex 10: Jigsaw Research: Automatic Compensation
- Annex 11: Cartesian: Automatic Compensation
- Annex 12: Equality Impact Assessment

- Annex 13: Industry proposal
- Annex 14: Notification of proposed new general condition and modifications to the General Conditions under section 48A(3) of the Act
- Annex 15: Glossary

## Section 3

# Scope and framework for assessment

## Introduction

- 3.1 In this section we set out how we have determined the scope of our work following the CFI. It also sets out how we have assessed whether intervention may be required in relation to the specific areas identified for further work in order to protect the interests of consumers.

## Scope of our assessment

### Call for Inputs

- 3.2 In our CFI we set out some initial views on which quality of service issues were likely to be of particular concern to consumers. We indicated that there were a range of different factors which should be taken into account in deciding which quality of service issues should be included within the scope of our work.
- 3.3 We said we would prioritise those service quality issues that are most important to consumers and that the time a provider takes to resolve the problem is likely to be important to consumers. We also said that the service quality issue should lend itself to being objectively defined or measured, and should not be caused by the consumer. Instances of poor quality of service would not be areas of focus if there are other ways which would better address harm, for example where resolving a service issue may require long term network investments. In that case, we said, consumers may be better off with a different service.<sup>47</sup>
- 3.4 Based on complaints data and consumer research, we identified several landline and broadband fixed service quality issues, including problems with provisioning, missed appointments, porting, and broadband speeds. In relation to mobile quality of service we identified coverage, degradation and loss of service as issues that matter to consumers.
- 3.5 In the responses we received to the CFI, there was broad support from industry, consumer groups and individuals that we had identified the right issues as far as landline and broadband services were concerned.
- 3.6 Several stakeholders, including Citizens Advice, the Communications Consumer Panel (CCP), [3<] and Vodafone agreed that delays in the start of a new landline and broadband service and missed engineer appointments are suitable for automatic compensation.<sup>48</sup>

---

<sup>47</sup> Ofcom, *Automatic Compensation Call for Inputs*, June 2016, paragraphs 2.9 and 2.10: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/76260/automatic-compensation-call-for-inputs.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/76260/automatic-compensation-call-for-inputs.pdf)

<sup>48</sup> Citizens Advice, CFI response, p.2 - 3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/98020/CitizensAdvice.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/98020/CitizensAdvice.pdf); CCP, CFI response, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/57556/ccp-acod.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/57556/ccp-acod.pdf); [3<]

- 3.7 A significant number of respondents stated that loss of service is an issue appropriate for automatic compensation,<sup>49</sup> while BT, Vodafone and the trade union Prospect stated redress should be paid where there is delayed repair.<sup>50</sup> One respondent highlighted their own consumer research which found the greatest source of customer dissatisfaction are broadband faults which often “present as intermittent interruptions”.<sup>51</sup>
- 3.8 Most respondents that commented on slow broadband speeds agreed with our assessment that the issue is not suited to automatic compensation. However, Which? identified “degradation of fixed services (broadband and telephony)” as appropriate to consider for automatic compensation given it affects a significant number of consumers.<sup>52</sup>
- 3.9 Regarding delayed repair of mobile loss of service, EE was supportive of a more automated compensation regime but argued for a principles-based approach where providers have flexibility to choose when and how much compensation to award.<sup>53</sup> Three and Vodafone argued that automatic compensation is not a suitable mechanism to provide redress for mobile outages and that the current system is working well (i.e. where customer service agents have discretion to make compensation or goodwill payments to customers where they consider it appropriate).<sup>54</sup> Of the consumer groups, Which? and Ombudsman Services were supportive of automatic compensation in principle, but highlighted the practical difficulties of identifying which consumers have been affected.<sup>55</sup>
- 3.10 Most respondents that commented on porting issues agreed that these should not be included within the scope of our assessment as there are already existing rules in place. However, Magrathea Telecom stated may it be reasonable to offer automatic compensation where delays in number porting occurs<sup>56</sup> Vodafone also supported

---

<sup>49</sup> Advisory Committee for Northern Ireland (ACNI), CFI response, p.2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/55032/acni.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/55032/acni.pdf); BT Group, CFI response, paragraph 35: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0010/50104/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0010/50104/bt.pdf); Nine Group, CFI response, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/63616/nine\\_group.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/63616/nine_group.pdf); Which?, CFI response, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55352/which.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55352/which.pdf); CCP, CFI response, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/57556/ccp-acod.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/57556/ccp-acod.pdf) Centre for Effective Dispute Resolution (CEDR), CFI response, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/55704/cedr.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/55704/cedr.pdf); Ombudsman Services, CFI response, p.8: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/98019/Ombudsman-Services.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/98019/Ombudsman-Services.pdf)

<sup>50</sup> BT Group, CFI response, paragraph 10: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0010/50104/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0010/50104/bt.pdf); Vodafone, CFI response, paragraph 1.4: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0029/58682/vodafone.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0029/58682/vodafone.pdf); Prospect, CFI response, p.6: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/59187/prospect.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/59187/prospect.pdf)

<sup>51</sup> [3<]

<sup>52</sup> Which?, CFI response, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55352/which.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55352/which.pdf)

<sup>53</sup> BT Group, CFI response, p. 2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0010/50104/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0010/50104/bt.pdf)

<sup>54</sup> Three, CFI response: paragraph. 32:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/54396/three.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/54396/three.pdf); Vodafone, CFI response: p. 6: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0029/58682/vodafone.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0029/58682/vodafone.pdf)

<sup>55</sup> Which?, CFI response: p. 3:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55352/which.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55352/which.pdf); Ombudsman Services, CFI response: p. 8: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/98019/Ombudsman-Services.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/98019/Ombudsman-Services.pdf)

<sup>56</sup> Magrathea, CFI response, p. 2:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/62647/magrathea.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/62647/magrathea.pdf)

automatic compensation being mandatory for delayed PAC<sup>57</sup> provisioning and porting requests.<sup>58</sup>

- 3.11 Consumer bodies, including Which?, added that, as well as the problems we highlighted, other quality of service issues such as billing errors and delays in switching and complaints handling, or personal data breaches should also be subject to automatic compensation.<sup>59</sup>

## Assessment on scope

- 3.12 In considering CFI responses and our criteria, we have assessed the case for intervention with regard to landline and broadband services where there is outright loss of service,<sup>60</sup> delays in the provisioning of services,<sup>61</sup> or missed appointments. Our view is that these types of service quality issues lend themselves to automatic compensation because they can be objectively defined and reliably measured i.e. it is clear that the service that should be delivered has not been provided.
- 3.13 Regarding loss of a landline and/or broadband service, we have further considered whether consumers are harmed, and therefore should be compensated, as soon as the service is lost, or whether compensation should be given only if the loss of service is not repaired within a reasonable timeframe. We have considered consumer expectations around delayed repairs, whether consumers expect a network to be problem free, and whether it is realistic to expect that loss of service will never occur. While we consider that over time, and as technology progresses, networks are likely to improve, and that providers should have incentives to progressively improve network quality, we also consider that for the time being addressing delayed repairs of loss of service rather than any incident of loss of service is likely to be more appropriate. In section 5 we set out how we consider what a reasonable timeframe for repair of loss of service might be.
- 3.14 Following the same approach, we have also considered outright loss of service for mobile consumers and again considered that focussing on delayed repair was appropriate.
- 3.15 Issues we have decided not to consider further in this consultation include: fixed broadband speeds, billing, delays in complaints handling, porting, personal data breaches and mobile coverage and service degradation.
- 3.16 Regarding fixed broadband speeds, we stand by our initial assessment that automatic compensation is unlikely to be an appropriate remedy to help improve the

---

<sup>57</sup> Porting authorisation code

<sup>58</sup> Vodafone, CFI response, p. 8:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0029/58682/vodafone.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0029/58682/vodafone.pdf)

<sup>59</sup> Which?, CFI response, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55352/which.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55352/which.pdf); CCP, CFI response, p.3: <http://www.communicationsconsumerpanel.org.uk/downloads/ccp-acod---ofcom-automatic-compensation-july-2016.pdf>

<sup>60</sup> Delays in the repair of faults which cause service quality problems other than loss of service may have a significant impact on those directly affected but we consider are not suitable for automatic compensation. This is because the issue may not lend itself to being objectively defined e.g. there may be ambiguity in a consumer's entitlement to compensation if the service is not totally lost or the cause of the fault is difficult to identify.

<sup>61</sup> We consider that delays in switching fall within our delayed provisioning assessment.

speed of a consumer's access line or actual throughput speed.<sup>62</sup> We therefore do not propose to assess the case for intervention with regard to service degradation involving broadband speeds at this point. However, we have considered whether intervention could help encourage providers to give consumers accurate information regarding the speed their line is capable of at the point of sale.<sup>63</sup> We have other work ongoing to review the voluntary code of practice on broadband speeds, which is considering how to improve broadband speed information at the point of sale and consumers' route to redress when speed expectations are not met. We therefore do not consider that it is appropriate to consider broadband speeds information within the scope of this consultation while this work on the code is ongoing. However, we may revisit this in the future.

- 3.17 We recognise billing errors are important to consumers as they are a key driver of contacts to our Consumer Contact Team and from consumers to providers.<sup>64</sup> However, billing errors are likely to cover a wide range of issues that may not be capable of being objectively defined or measured, or suitably remedied by a fixed compensation rule. In addition, there are existing rules in place that require consumer bills to be accurate and requirements for certain providers' billing systems to be approved.<sup>65</sup>
- 3.18 Similarly, it is not clear that delays with complaints handling would be an area capable of being objectively defined and measured and may be better suited to being assessed on a case-by-case basis rather than addressed by a specific rule and compensation. Again, there are existing rules on complaints which require providers to have a fair and effective complaints handling procedure, that complies with prescribed minimum standards, including that they facilitate appropriate access to Alternative Dispute Resolution.<sup>66</sup>
- 3.19 There is also already a rule for number porting, which sets out a requirement for providers to port numbers within one working day and requires providers to compensate end users for delays.<sup>67</sup>

---

<sup>62</sup> Improving the speed of an access line will often require long-term network upgrades and therefore other forms of automatic redress may be more helpful to consumers, such as an automatic right to exit. With actual throughput speeds that are slower than expected, it may be less clear that the causes of such issues are identifiable and within the control of the provider and not the consumer or a result of other factors e.g. type of wireless router and its location within customer premises or the consumer device or the application used to access content

<sup>63</sup> We noted in the CFI that 'whether the consumer information provided matches the consumer's access line speed in practice could satisfy our suitability considerations (in terms of being identifiable, measurable and resolvable)', Paragraph 3.11:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0021/76260/automatic-compensation-call-for-inputs.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0021/76260/automatic-compensation-call-for-inputs.pdf).

<sup>64</sup> Ofcom, Telecoms and Pay TV Complaints Q3 (July to September) 2016, Paragraph 1.7, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0018/96021/Telecoms-and-Pay-TV-Complaints-Q3-2016.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0018/96021/Telecoms-and-Pay-TV-Complaints-Q3-2016.pdf), Saville Rossiter-Base, *Quality of Customer Service Report*, Figure 4:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0018/83025/quality\\_of\\_customer\\_service\\_report\\_2015.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0018/83025/quality_of_customer_service_report_2015.pdf).

<sup>65</sup> General Condition 11, <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-authorisation-regime>.

<sup>66</sup> We note General Condition 14 already requires providers to ensure the fair and timely resolution of complaints and to have clearly established timeframes and a clear and reasonable escalation process for dealing with complaints.

<sup>67</sup> General Condition 18, <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-authorisation-regime>

- 3.20 In relation to each of these existing rules, if we have reason to suspect that providers are not in compliance, we are able to take enforcement action as appropriate, and can require the provider to offer redress (such as refunds and if appropriate compensation).<sup>68</sup>
- 3.21 Regarding personal data breaches, data protection legislation sets out the requirements for providers to maintain information security. If an individual suffers damage because a company (including a communications provider) breaches the law, a consumer is entitled to claim compensation (albeit through the courts).<sup>69</sup>
- 3.22 We have also considered mobile coverage issues and service degradation and have not included them within the scope of our work:
- **Coverage:** Improving mobile coverage is one of our priorities. However, doing so requires long term investments by operators. Therefore, we do not consider providing short term compensation is the best form of regulatory intervention. We are exploring other options for extending mobile coverage, for example by placing new coverage obligations on operators who win spectrum licences. We also release mobile coverage information in our consumer app, helping consumers make informed choices about the best mobile provider for them.<sup>70</sup>
  - **Service degradation:** Consumers may experience degradation for a number of reasons, such as network capacity and coverage, issues with their handset and the number of other mobile users in the area. These issues will vary, may require long term network investments to resolve and are unlikely to be capable of being objectively defined and measured.
- 3.23 In this consultation, we have therefore assessed in more detail the following quality of service problems:
- Delayed repair following loss of service for landline and broadband services;
  - Delayed provision for landline and broadband services;
  - Missed appointments for landline and broadband services; and
  - Delayed repair following loss of service for mobile services.
- 3.24 In section 11 we have also assessed whether intervention in relation to the above issues may be justified to protect small and medium sized businesses (SMEs).
- 3.25 We recognise that going forward, as services and consumer expectations change, there may be additional service quality problems that this scheme could be applied to. We will therefore, keep this under review and may revisit the scope of the scheme in the future.

---

<sup>68</sup> Vodafone fined £4.6 million for failing customers, 26 October 2016, <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/vodafone-fined-4.6-million>; EE fined £2.7m for overcharging customers, 18 January 2017, <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/ee-fined-2.7m-for-overcharging-customers>

<sup>69</sup> <https://ico.org.uk/for-the-public/compensation/>

<sup>70</sup> Ofcom's broadband and mobile checker app is available here: <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/advice/ofcom-checker>



## Assessing the case for intervention

- 3.26 In considering the case for automatic compensation for fixed residential landline and broadband consumers (section 4), SME landline and broadband consumers (section 11) and mobile consumers (section 12), we apply the same assessment framework. We describe this assessment framework in the rest of this section.
- 3.27 As described in the previous section, our policy objectives are:
- to ensure that consumers are able to receive adequate compensation when their provider does not deliver service quality standards 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.
- 3.28 Regulatory intervention to secure these objectives would only be appropriate if they are: (a) not being secured currently and (b) unlikely to be secured in future without further intervention. The form of intervention must also be necessary to secure them. Therefore, in considering whether we should regulate to secure those objectives, we consider the following three questions:
- What is the current consumer experience in terms of quality of service and redress?
  - Are there features of the market that lead to less favourable outcomes for consumers?
  - What, if any, intervention would be an appropriate and proportionate means of achieving them?<sup>71</sup>

## Consumer experience of quality of service and redress

- 3.29 Our first step is to assess consumer expectations and experience of quality of service, and the extent to which consumers are being given redress for the harm they suffer as a result of any quality of service failures.
- 3.30 We consider the current extent of quality of service problems in the market and consider the degree of consumer harm that is likely to occur as a result of these problems.
- 3.31 We then consider the extent to which consumers currently receive adequate redress for the harm experienced. This is informed by considering how many consumers are currently receiving compensation for quality of service problems, and the amounts of compensation received. We also consider the extent to which consumers have simple and easy access to compensation arrangements now.

---

<sup>71</sup> Any regulatory intervention would need to be justified in light of the relevant statutory framework. We outline the relevant legal framework in section 2.



## Market features resulting in less favourable consumer outcomes

- 3.32 Where we provisionally consider that consumers are not receiving adequate redress for the harm experienced, we go on to consider whether there are market features that mean providers are not delivering levels of quality of service in line with consumer expectations and therefore whether consumers' interests may not be adequately protected.
- 3.33 In doing this we consider whether, without intervention, providers would have sufficient incentive to provide consumers with of quality of service more in line with consumers' reasonable expectations.
- 3.34 If telecoms markets were operating effectively, consumers would be able to choose effectively between a wide range of offers from providers and find the most appropriate service for them. Services with better quality of service (network reliability, levels of customer care etc.) and redress commitments would likely be more expensive since they would likely involve greater costs for providers. If consumers acted rationally and had full knowledge of the likelihood (and severity) of service provision failures, then they would choose a more expensive and higher quality service if they valued it. Conversely, consumers who placed less value on quality would purchase products that offered lower quality at lower prices. To do this, consumers would need to be able to:
- access information about the various offers available in the market;
  - assess offers in a well-reasoned and rational way; and
  - act on this information by purchasing the service that offers the best value to them.<sup>72</sup>
- 3.35 If this were the case, we would expect providers to respond to consumer demands and deliver appropriate quality of service levels and redress commitments. If providers did not respond in such a way, they would be at risk of losing customers to their competitors. In such a scenario, with fully rational consumers who have full knowledge of all options, and profit maximising competitive firms, the market would deliver efficient service quality levels.<sup>73</sup>
- 3.36 In their responses to the CFI, some respondents put forward the argument that a competitive market alone is sufficient to ensure that consumers' interests are protected in relation to quality of service, and that intervention is not therefore required.<sup>74</sup>
- 3.37 However, there may be factors which undermine the effective operation of the market. For example, there may be informational problems that hinder consumers' ability to access information about available offers or there may be behavioural

---

<sup>72</sup> This follows the framework outlined in Office of Fair Trading, *What does Behavioural Economics mean for Competition Policy?*, March 2010 p.10-13:  
[http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared\\_offt/economic\\_research/oft1224.pdf](http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared_offt/economic_research/oft1224.pdf)

<sup>73</sup> This would not necessarily imply zero network failures or quality of service problems.

<sup>74</sup> UKCTA, CFI response, p.2: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/54661/ukcta.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/54661/ukcta.pdf)  
Mobile UK, CFI response, p.4: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/91642/Mobile-UK.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/91642/Mobile-UK.pdf) [3<]

biases which prevent consumers from being able to act in a way which allows them to choose the most appropriate service for them.<sup>75</sup> Such factors may particularly affect consumers who have lower engagement in communications markets, such as older consumers. Our research shows that over 65s are less likely than younger consumers to “to shop around, negotiate with existing providers or switch, and are therefore less likely to benefit from choice”.<sup>76</sup>

- 3.38 In considering the case for regulatory intervention on quality of service we have, therefore, considered the extent to which there are features in the market which undermine the efficient provision of quality of service or consumer redress when quality of service falls short.

## Options for intervention if needed to protect consumers

- 3.39 Where we provisionally conclude that intervention is necessary to protect consumers’ interests, we consider what form of intervention is likely to be most appropriate and proportionate. In deciding this, we take into account the specific market conditions relevant to the consumers in question.

- 3.40 We evaluate three different options:

- No intervention;
- Greater transparency about existing compensation arrangements; and
- Introduction of automatic compensation.

*Question 1: Do you agree with our framework for assessment?*

---

<sup>75</sup> Biases in behaviour which mean that consumers act in a way that leads to suboptimal outcomes.

<sup>76</sup> Ofcom, *Access and Inclusion in 2016*, March 2017, p. 9.

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/98508/access-inclusion-report-2016.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/98508/access-inclusion-report-2016.pdf)

## Section 4

# The case for automatic compensation in residential landline and broadband services

## Introduction

- 4.1 This section considers whether intervention is appropriate and proportionate to achieve our policy objectives for residential landline and broadband consumers. We set out a separate assessment for SME landline and broadband consumers in section 11 and for mobile consumers in section 12.

## Consumers experience harm for which they do not receive adequate redress

- 4.2 We asked the largest landline and broadband providers for information on quality of service failures covering loss of service,<sup>77</sup> provisioning,<sup>78</sup> and missed appointments.<sup>79</sup> This information is set out in detail in sections 5, 6 and 7 (see Annex 6 for more details of the information requested). In summary, it appears that a significant minority of landline and broadband consumers suffer quality of service problems each year (see Figure 2), even though at any one point in time those affected may only represent a small proportion of the overall number of consumers (over 25m).<sup>80</sup>

**Figure 2: Estimated incidence of quality of service problems (annualised and rounded figures for period Q3 2014 – Q2 2016)<sup>81</sup>**

	Incidents per year
Loss of service of landline and/or broadband <sup>82</sup>	5.7m
Delayed provisioning of landline and/or broadband	1.3m
Missed appointments	0.2m

Source: Ofcom analysis of data from August 2016 fixed s.135 request and December 2016 fixed s.135 request. See Annex 6 for details of these estimates.

<sup>77</sup> Where the customer is unable to either make outgoing calls or to receive incoming calls; or unable to access the internet and the loss of service requires repair.

<sup>78</sup> Including all provision orders, migrations, transfers and working line takeovers.

<sup>79</sup> The number of loss of service incidents that we consider experienced a delayed repair is covered in detail in section 5. (August 2016 fixed s.135 request)

<sup>80</sup> There were 33.2m fixed lines and 24.7m fixed broadband connections in 2016; see Ofcom, *Communications Market Report 2016*, p.139:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/26648/uk\\_telecoms.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/26648/uk_telecoms.pdf)

<sup>81</sup> Incidents may include situations where individual consumers are affected by the same problem more than once.

<sup>82</sup> That is any loss of service requiring repair.

## When problems occur consumers are likely to suffer harm

4.3 Given how essential communications services have become, consumers who encounter poor quality of service are likely to experience harm. This view is supported by our consumer research. For example, when we asked consumers who experienced a loss of their landline and/or broadband service we found 42% said it had a negative impact on their day-to-day activities, while 30% of those who had experienced a loss of service said it had caused anxiety and stress (66% of broadband consumers overall told us that their household would struggle to function without it while another 23% said they could only function without it for a limited time).<sup>83</sup> We discuss the specific harm resulting from each of delayed repair for loss of service, delayed provisioning and missed appointments further in sections 5, 6 and 7 below and Annex 4 sets out our approach to quantifying harm. The different categories of harm we identify are:

- **Denied use of a communications service.** When consumers enter a contract with their provider for landline and/or broadband services they generally expect to receive those services throughout the period of their contracts and they are generally entitled to do so. If they experience a loss of service (or a delayed provision where they have no alternative communications service available) they are therefore harmed by their inability to use a service in the way they had expected. In effect, they may purchase a service that they do not actually receive. A delay in the provision or restoration of the service will prolong this harm.
- **Wasted or impaired time.** Consumers often require visits from an engineer to install or repair a service. This involves a consumer being at home to grant access for the engineer. If this appointment is missed or rearranged at short notice, then the consumer is likely to have wasted time (or face impaired leisure time) waiting during this appointment window.
- **Disruption in a consumer's activity schedule.** When consumers experience disruption to their communications services they may need to rearrange their activities in a way which disrupts important daily activities. For example, some consumers may work from home and if they lose service will be unable to do this at their preferred time.
- **Time and effort spent to rectify the failure.** When consumers experience quality of service failures they typically spend time and effort rectifying the situation. These attempts to resolve the problem may involve two separate actions: first, an attempt to fix the problem themselves (e.g. resetting and testing devices); and, second, reporting the issue to their provider and following-up on the provider's response. In both instances this time and effort is a harm because in the normal course of events they would not undertake these activities.
- **Stress and anxiety.** Consumers are likely to experience annoyance, frustration, or anxiety when the communication service they expect to receive does not meet the expected standards, particularly when it significantly disrupts important or time critical activities. These feelings may arise simply because the service has failed or because of their engagement with their provider in trying to rectify the problem.

---

<sup>83</sup> Jigsaw, *Automatic Compensation*, March 2017, For more detail see Annex 10 pp. 16, 38 [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

- 4.4 Consumer harm is discussed in more detail in Annex 4, where we set out our approach to estimating a monetary value for the consumer harm experienced.

### **Currently consumers do not receive adequate redress for the harm experienced**

- 4.5 If consumers who experience harm were, at present, receiving compensation that was commensurate with the degree of harm that they suffer, then the market would already be delivering adequate redress for consumers. The evidence we have available, however, suggests that this is not the case for residential landline and broadband consumers.

### **Only a minority of consumers experiencing harm receive compensation**

- 4.6 Our consideration of the compensation policies published by the UK's largest four landline and broadband providers revealed that the payment of compensation is typically reactive (i.e. it requires the consumer to request it) – see Figure 3 later in this section. However, our consumer research also reveals that the majority of consumers do not ask for compensation in the event of poor quality of service (this is discussed further in sections 5, 6 and 7). As a result, we are concerned that a significant majority of consumers who experience poor quality of service are not receiving any redress for the harm they experience.
- 4.7 This concern is reinforced by our analysis of the actual incidence of compensation payments. As discussed in sections 5, 6 and 7 when we asked providers whether they had given compensation or made a goodwill payment to their customers who had experienced quality of service problems we found that only a minority of consumers who suffer problems currently get redress.

### **Existing compensation payments may be lower than the degree of harm experienced**

- 4.8 Even if consumers suffering quality of service problems claim compensation and eventually receive it, the amount they get from their provider may not be commensurate with the degree of harm they experience.
- 4.9 We considered the compensation policies published by the UK's largest four landline and broadband providers (see Figure 3 below). Where consumers experience a loss of service we found that BT and TalkTalk state that compensation will generally be provided on a pro rata basis,<sup>84</sup> while Sky and Virgin Media do not state the amount of compensation that would be available. Where compensation is given as a pro rata of the monthly package price it is likely that the amount of harm suffered will be greater than the amount of compensation, given the categories of harm set out above (we set out our estimate of harm in Annex 4). This view is also supported by our qualitative consumer research which found that some consumers described pro rata compensation as “derisory, particularly if they have had to put in significant effort to receive it”.<sup>85</sup>

---

<sup>84</sup> Payment is calculated on the number of calendar days the customer is without service. For example, with a BT Infinity package that costs £39.99 a month, pro rata compensation for loss of service would be £1.31 per day.

<sup>85</sup> Jigsaw, *Quality of service in telecoms*, p.6:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0025/78370/jigsaw\\_quality\\_of\\_service\\_in\\_telecoms.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0025/78370/jigsaw_quality_of_service_in_telecoms.pdf)

- 4.10 It is possible that compensation payments in practice are higher than pro rata amounts – providers may find, in practice, that they need to offer more than just the pro rata amount to satisfy disgruntled customers who contact them to complain. We asked providers for information on how much compensation they pay out for particular quality of service problems. We set this out in more detail in sections 5, 6, and 7 and in Annex 6.
- 4.11 We found that in the minority of cases where providers pay compensation to consumers suffering problems, the amount paid on average is indeed higher than the pro rata amount. Nevertheless, as set out in sections 5, 6 and 7 and in Annex 4, the amount of compensation/goodwill currently paid on average may still be below our estimate of consumer harm for certain quality of service problems. On that basis, on average, compensation is unlikely to be commensurate with the degree of harm.

### **Provisional conclusion**

- 4.12 The evidence discussed above suggests that, for a variety of reasons, most consumers who suffer harm today are not currently being compensated for it. Furthermore, even if they do receive compensation, they do not typically appear to receive levels of redress that reflect the harm they suffer.

### **Market features may result in unfavourable consumer outcomes**

- 4.13 In their response to our CFI, some respondents told us that the retail market was competitive and, as such, quality of service was being addressed adequately by the market itself.<sup>86</sup> They suggested that a competitive market alone would be sufficient to ensure consumers' interests were protected. However, as described below, absent any intervention, we consider that there are features in the provision of these services that suggest a competitive market alone is unlikely to meet the reasonable expectations of consumers.

### **A competitive market is only likely to protect consumer interests under certain conditions**

- 4.14 As discussed in section 3, if telecoms markets were operating fully effectively, then we would expect competition to deliver better levels of quality of service, along with appropriate redress for quality failures, and well informed consumers would purchase the service that best meets their needs. This would result in the market delivering quality of service levels in line with consumer demand.
- 4.15 For residential landline and broadband consumers, we are concerned that there may be features that prevent the market from operating effectively in relation to levels of quality of service. Specifically, we consider that there may be distinct, but interacting, problems in the way consumers relate to the market. In combination, these result in weak signals from consumers regarding quality of service, reducing the financial impact on providers of service quality failings (for example by losing customers). Overall, this undermines the financial incentive for providers to deliver service quality in line with consumer's reasonable expectations. We summarise our findings below and illustrate some of these features in more detail in Annex 5.

---

<sup>86</sup>For example, UKCTA CFI response, paragraph 3:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/54661/ukcta.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/54661/ukcta.pdf)



## Information asymmetries are likely to exist

- 4.16 Information asymmetries mean consumers have less information than the provider about the service they buy at the point of sale or during the term of their contract. For example, their ability to access information about the various offers available (including the quality of service offered) may be limited.
- 4.17 The limited availability of information is most starkly illustrated by the limited offerings for residential consumers focussing on quality of service, despite the fact that consumer research suggests that quality of service issues have a negative impact on consumers. This is illustrated in Annex 5, where we show that quality of service and compensation arrangements get very little prominence in the marketing material of providers.<sup>87</sup> Figure 3 below summarises the compensation policies of the four largest landline and broadband providers. It demonstrates that compensation policies are often located within detailed terms and conditions, and are not commonly promoted as a selling point to win or retain customers.
- 4.18 This suggests that consumers are unlikely to have sufficient information on quality commitments and compensation policies, which may cause them to make uninformed choices: that is, buying a service which does not fully meet their needs and/or experiencing poorer quality than expected.
- 4.19 We intend to publish further information on quality of service, and consider this to be an important step to allowing consumers to assess providers on quality.<sup>88</sup> The first edition of this report will not enable consumers to assess the quality commitments and compensation policies of individual providers, given that in the main these do not currently exist, although over time it is hoped that the report may help create some incentives for providers to differentiate more on this basis.

## Behavioural biases may mean consumers do not take account of quality issues

- 4.20 Behavioural biases on the part of consumers may lead them to underestimate the value of quality of service relative to other product features such as price.<sup>89</sup> Other regulators have acknowledged that behavioural biases may lead consumers to make errors about their own needs. The Financial Conduct Authority (FCA) has suggested that 'barriers to understanding and comparing products can lead to consumers being unable to choose the product or service that suits their needs best'.<sup>90</sup>
- 4.21 We are concerned that similar behavioural biases may be exhibited by residential landline and broadband consumers. For instance, as set out above, when we asked consumers about the importance of their services, 66% of them told us that they

---

<sup>87</sup> If only scant information is available about quality of service or compensation policies, then when consumers experience poor quality of service, they may judge that there is little to gain by switching provider (see Annex 5).

<sup>88</sup> We intend to require publication of quality of service indicators in several telecoms markets.

<sup>89</sup> Behavioural biases are within the field of behavioural economics. UK Office of Fair Trading, *What does behavioural economics mean for competition policy?*, Spring 2010, p. 2-20  
[http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared\\_offt/economic\\_research/oft1224.pdf](http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared_offt/economic_research/oft1224.pdf)

<sup>90</sup> Financial Conduct Authority, *Economics of Effective Regulation – Occasional Paper 13*, March 2016, Appendix 3, p.45: <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-13.pdf>

would ‘struggle to function’ without a working broadband service.<sup>91</sup> Similarly, our estimates of harm suggest that when things go wrong the impact can be significant (with many consumers expecting compensation as a result). However, when choosing a broadband provider, consumers appear to focus on a few indicators such as price (mentioned by 62% of respondents) and headline broadband speed (35% of respondents) and less so on others, such as the likelihood of future service failure or customer support. This is illustrated in Figure A5.5 in Annex 5, which shows that price is the most frequent consideration for consumers when choosing broadband provider, and quality of service issues feature comparatively lower.

- 4.22 This indicates that quality of service is given less attention than we might expect when a consumer signs up to a new provider given the harm they might experience when things go wrong. This difference between the role quality of service plays in consumer decision-making and the harm caused when problems are experienced gives an indication that residential landline and broadband consumers may not always be buying the services that best suit their needs.
- 4.23 Additionally, consumers may use ‘rules of thumb’ in making their purchasing decisions and incorrectly anticipate the risk of services going wrong, miscalculate future use of the service, or overweight immediate considerations (such as short-term price discounts) in making purchasing decisions.

### **Switching barriers**

- 4.24 After experiencing poor quality of service, a consumer might consider switching provider. However, our research found only a minority of consumers who experience a problem switch in response. If this low responsiveness was as a result of barriers to switching (perceived or actual), rather than an informed decision by the consumer, such barriers may be contributing to weakened quality of service incentives for providers.
- 4.25 For example, if consumers have poor information on providers’ quality of service (as discussed above) then they may decide that it is not worth switching. In addition, consumers may find that they are tied into a contract even though they are experiencing problems with their current provider.
- 4.26 There may also be difficulties with the switching process itself. We have made some reforms to the processes for switching services provided over the Openreach network, and have consulted on doing so for switches of landline, broadband and pay TV services across platforms. However, to the extent switching barriers remain (perceived or actual), they may limit the extent to which consumers switch in response to quality of service failures, reducing the financial impact on providers of those service quality failings. They may also limit consumers’ ability to purchase the service that offers the most suitable level of quality of service for them, even where consumers have sufficient information to make that assessment.

### **Difficulties claiming compensation**

- 4.27 If telecoms providers had to pay compensation to the consumers who suffered poor quality of service, providers may have greater incentives to reduce the number of problems consumers experience. This does not appear to be happening at present

---

<sup>91</sup> Jigsaw, Automatic Compensation, March 2017. For more detail see Annex 10, p. 16 [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)



due to a combination of factors, including the behavioural factors discussed above and the time and effort required in making a successful claim.

- 4.28 Furthermore, there appears to be a frequent lack of concrete and meaningful commitments to service levels and redress in most providers' policies. We have examined providers' existing compensation policies in more detail. Providers are required to publish information on their standard terms and conditions, including "any compensation and/or refund policy, including specific details of any compensation and/or refund schemes offered" under current regulation.<sup>92</sup> In Figure 3 we link to the compensation policies provided on the four largest<sup>93</sup> landline and broadband providers' websites and give the relevant extract on how much compensation a consumer who suffers a quality of service problem should expect as redress.

**Figure 3: Compensation policies of the four largest landline and broadband providers**

Provider	Document (and hyperlink)	Extract on loss of service	Extract on delayed provisioning	Extract on missed appointments
BT	<a href="#">Terms and conditions</a>  <a href="#">Customer service guarantee</a>	"If we fail to repair or supply your service on time, you can claim Daily Rate Rental Credit which will be calculated as follows: Quarterly rental x 4 divided by 365 = the daily rental....You can claim actual financial loss in addition to Daily Rate Rental Credit. All claims must be submitted in writing."	"Where we're late delivering or repairing a service, to divert your incoming calls for free to another number of your choice until we've provided or repaired that service. We'll only do this if it's practical and technically possible." <sup>94</sup>	"If we fail to keep an appointment we have made with you, you can claim a one-off fixed rate payment of £10."
Sky	<a href="#">Terms and conditions</a>  <a href="#">Customer complaints code of practice</a>	"We'll do all we can to resolve your complaint as soon as possible. If your complaint is urgent, for example, if you're experiencing a loss of service, we'll prioritise as appropriate and escalate your complaint."	"At Sky we'll do all we can to provide you with the most suitable response for your particular situation and ensure, where possible, that your complaint is resolved to your satisfaction."	

<sup>92</sup> General Condition 10.2(e)

<sup>93</sup> In combination these four providers account for over 90% of landline and broadband customers

<sup>94</sup> [BT terms and conditions \(1<sup>st</sup> February 2017, Clause 14\)](#)

TalkTalk	<u>Terms and conditions</u>  <u>Reassurance and compensation</u>	"The refund is calculated by taking the number of days the relevant service(s) are out of action (starting from the first working day after you told us about the fault) multiplied by the daily cost of the service(s)."	No specific information
Virgin Media	<u>Terms and conditions</u>  <u>Consumer code of practice</u>	"We provide compensation on an individual customer case basis, where customers have been disadvantaged by Virgin Media actions"	

Source: BT, Sky, TalkTalk, Virgin Media websites. Date accessed March 6 2017

- 4.29 We also asked providers for their internal guidance and policies on providing compensation.<sup>95</sup> We found that most providers' compensation/goodwill policies require consumers to contact them specifically to request compensation. This request often has to take place after the problem has been fixed. In such cases, a consumer would have to contact their provider at least twice to get compensation – once to alert them to the problem and then again later, separately, to discuss compensation. Providers' internal policies vary and some showed that customer service agents are able to offer compensation up to a particular ceiling, and that if the agent thought compensation should be any higher, then the case would have to be escalated to a manager for approval.
- 4.30 We are concerned that providers' current compensation policies and practices may be contributing to the low incidence of compensation payouts (and claims for compensation by consumers):
- Where consumers have to make multiple calls to get compensation, they may perceive the process of obtaining it to be unnecessarily time-consuming and difficult, and may therefore not make or complete a claim.
  - If consumers have little or no idea how much compensation they might get, then they are unlikely to be in a position to decide whether it is worthwhile doing so and/or have to incur search costs to find out.
  - Even if consumers know that compensation is provided on a pro rata basis, consumers may not regard it as worthwhile to claim it, even where they have suffered harm. We discuss this further below.
- 4.31 Our research shows that 88% of the landline and broadband consumers who suffered a loss of service/delayed provisioning without receiving compensation did not ask for it.<sup>96</sup> When we asked these consumers why they had not asked for

<sup>95</sup> August fixed s.135 request, Annex 5

<sup>96</sup> Jigsaw, Automatic Compensation, March 2017. H1c/d Did you ask for compensation or was it offered/did you ask for compensation in regard to the loss of service? Base: all that did not receive

compensation, a variety of reasons were given, with the most common being that they did not expect their provider to agree and that the amount of compensation would not have been worth it, as shown in Figure 4 below.

**Figure 4: Reasons for not asking for compensation after loss of service (%)**



Source: Jigsaw. H1e Why did you not ask for compensation? Base: all who did not get or ask for compensation n=454.

- 4.32 The fact that providers' existing compensation policies usually require consumers to make a claim for compensation is likely to limit the consequences of poor quality of service for telecoms providers. Because many consumers appear to be deterred from claiming compensation and because it is not being offered proactively to most consumers, it is likely that the total amount of compensation paid out by providers for poor quality of service will remain small in future relative to the harm caused. In turn, the financial penalty experienced by providers when quality of service failures occur will be limited.

**In combination, these features may result in the provision of service quality that is not in line with consumer expectations**

- 4.33 Our provisional assessment is that these issues of asymmetric information, behavioural biases, switching barriers and difficulties claiming compensation are likely to weaken the signals from consumers to providers regarding the value of quality of service (including adequate compensation). In combination, these weakened signals from consumers regarding quality of service may have led to telecoms providers competing mainly on price and other features, such as headline broadband speed (as discussed further in Annex 5). Reliability, quality of service levels and compensation for quality of service failures, may, in turn, have been downplayed. We are therefore concerned that these features in the provision of

compensation n=514. For more detail see Annex 10, p. 48.  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

residential landline and broadband services mean that consumers are not being given sufficient protection.

## **Intervention is likely to be necessary to protect consumers' interests**

- 4.34 As set out above, we are concerned that the market is not delivering sufficient protection to consumers for failures in quality of service relative to consumers reasonable expectations. While most consumers are satisfied with their service, a significant minority are dissatisfied and their reasonable expectations are not being met. Market features, such as information asymmetries and/or behavioural biases, may contribute to poor service quality.
- 4.35 At the moment (as we describe in detail in sections 5, 6 and 7), a minority of consumers encountering problems receive compensation. These compensation payments or awards are usually only made on an ad hoc basis, for example, when consumers complain; where consumers do receive compensation it appears insufficient to provide redress for harm.
- 4.36 Therefore, our provisional view is that, in order to ensure our policy objectives are met, intervention is likely to be necessary.

## **Options for intervention**

- 4.37 We have considered three different options with the objective of providing greater protection for residential landline and fixed broadband consumers in relation to quality of service. The three options we evaluate below are: (1) No changes to the status quo; (2) Greater transparency about compensation; (3) Introduction of automatic compensation.

### **Option 1: No changes to the status quo**

- 4.38 In accordance with our regulatory principles we have considered whether maintaining the status quo is likely to fulfil our policy objectives.<sup>97</sup> We have set out above why we consider that residential landline and broadband consumers are not being adequately protected from failures in quality of service and therefore we do not consider that our policy objectives to address this will be achieved if the status quo is maintained.

### **Option 2: Greater transparency**

- 4.39 The second option we have considered is enhanced requirements to provide clarity to residential consumers about the circumstances under which they could claim compensation. Some industry responses to our CFI acknowledged that more could be done to encourage and allow consumers to claim compensation when problems occurred. We have considered, therefore, whether an option of requiring providers to publish clearer information about the compensation available to residential landline and broadband consumers would achieve our policy objectives.
- 4.40 Our provisional judgment, however, is that greater transparency alone is unlikely to ensure that residential landline and broadband consumers receive adequate redress. While greater transparency may address aspects of information asymmetry, we are

---

<sup>97</sup> See Ofcom's regulatory principles: <https://www.ofcom.org.uk/about-ofcom/what-is-ofcom>

minded to regard it as unlikely fully to address the problems we have identified and thereby to achieve our objectives.

- 4.41 As set out above, there are limited existing residential packages available which provide concrete commitments on service quality. Where there are policies for compensation they can often be opaque and non-specific (see Figure 3). Therefore, transparency of these existing policies may not improve consumers' understanding of the quality of service standards and compensation arrangements either at the point of sale, or when things go wrong. As such, when combined with the behavioural biases identified, it is not clear that improved transparency of what is currently available will provide sufficient information to improve consumers' ability to assess or act with regard to quality of service. This could be the case when choosing their provider, and also when considering whether/how to seek compensation when a quality of service problem occurs. As a result, it is unlikely that transparency alone will create sufficient incentives for providers to offer the quality of service consumers can reasonably expect.
- 4.42 Greater transparency about existing compensation schemes would also not address the problem of time and effort required in having to make a claim for compensation. Absent measures beyond transparency, some consumers are likely to continue to be deterred from making a claim for compensation for quality of service failures (on account, for example, of the sorts of behavioural biases and difficulties claiming outlined above), and would not therefore receive redress.
- 4.43 Furthermore, providers would still have discretion to determine which customers are given compensation and under what circumstances, as well as allowing them to determine the amount given. Providers could, for instance, continue offering compensation only on a pro rata basis, or provide compensation only to consumers who are at greatest risk of churn, leaving a large proportion of consumers who experience harm un- or under-compensated. This is likely to mean that with transparency measures alone consumers would most likely continue to receive inadequate redress for quality of service failures and providers would not be adequately incentivised to improve service quality.
- 4.44 Hence, for the reasons set out above, we are minded to regard greater transparency about existing compensation/goodwill schemes alone as unlikely to achieve our policy objectives in relation to residential landline and broadband consumers.

### **Option 3: Introduction of automatic compensation**

- 4.45 The third option we have considered is the introduction of an automatic compensation scheme for residential consumers. Under such a scheme, consumers would receive a minimum level of compensation and, in so far as practicable, would not have to make a specific claim for compensation when a quality of service problem occurred. Instead, the provider would have systems and processes in place that would automatically identify when compensation was due and make payment to the consumer.
- 4.46 An automatic compensation scheme would have the following advantages:
- **Removing ambiguity over consumers' entitlement to compensation.** Consumers would not face uncertainty about what they might receive and when.
  - **Making it simple for consumers to receive redress, as the payment would be as 'automatic' as possible.** Since receiving compensation would not require

a claim to be made, it would avoid the current situation whereby consumers encounter hurdles in claiming compensation, leading to many not attempting to do so.

- **Compensation set at a level that is more likely to provide adequate redress for harm.** An automatic compensation scheme would specify the minimum amount of compensation that we consider would be meaningful to consumers and reflective of the harm experienced. However, it should also enable providers to be able to differentiate their services on this basis. Providers wishing to offer better quality of service in return for higher prices should be in a position to commit to higher service standards and/or offer greater compensation if things go wrong.
- **Incentivising providers to improve service quality where it would reduce their compensation payouts.** An automatic compensation scheme would create a financial incentive for providers to reduce the number of quality of service incidents for which they are responsible.

4.47 Our provisional judgement is that this option is most likely to achieve our policy objectives. In sections 5 to 8 we set out our proposed design of an automatic compensation scheme to be implemented by way of formal regulation and invite views from stakeholders. Section 10 describes a draft proposal we received from BT, Sky and Virgin Media in early March 2017 to implement automatic compensation for their customers on a voluntary basis, and compares this to our proposed regulatory approach.

4.48 In section 10 we evaluate the benefits and costs of these two approaches, respectively, before reaching a provisional conclusion as to which approach we intend to take to the introduction of automatic compensation.

## Provisional conclusion

4.49 We are minded to regard maintaining the status quo and more detailed transparency requirements alone as unlikely to secure our policy objectives to ensure consumers are able to receive adequate compensation and to incentivise better service quality. We propose that automatic compensation would be the most appropriate solution for residential landline and broadband customers when they suffer poor quality of service.

*Question 2: Do you agree that in landline and broadband markets consumers are insufficiently protected from poor quality of service and that intervention is required?*

*Question 3: Do you agree that it is appropriate for automatic compensation to be introduced for landline and broadband consumers?*

## Section 5

# Delayed repair of loss of service

## Introduction

- 5.1 In this section, we propose the introduction of automatic compensation where there is a delayed repair following loss of a landline and/or fixed broadband service. We set out the current consumer experience and the reasons for our provisional view that automatic compensation is necessary, before describing the details of how we propose automatic compensation should work in this area and our reasons for the key elements of our proposed rule.<sup>98</sup>

## The consumer experience

### A significant minority of consumers experience a loss of service and extended periods of repair each year

- 5.2 Over the last two years, 24% of consumers experienced a loss of their landline or broadband service, according to our consumer research.<sup>99</sup> In most cases (65%), it took two calendar days for the service to be restored after the provider had been notified of the issue,<sup>100</sup> 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.<sup>101</sup> Our research suggests that consumers think it is unreasonable to wait more than three calendar days for a repair.<sup>102</sup>
- 5.3 Industry data collected from providers on the time taken to restore loss of service incidents is broadly consistent with our consumer research.<sup>103</sup> Of the 5.7 million landline and fixed broadband loss of service incidents recorded by providers that occurred on average each year between 2014 and 2016, approximately 62% of

---

<sup>98</sup> Our proposed rule includes a start date for compensation based on working days. When considering what period of repair following a loss of service is appropriate, we have used data which is largely based on calendar days. How we have translated this into working days in our proposal is explained further below

<sup>99</sup> This includes all respondents that stated they lost service, including those where the loss was not reported to the provider, which represents 21% of the total respondents that stated they lost a service. Jigsaw, *Automatic Compensation*, March 2017, slides 30-32, question E9a and F2a: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

<sup>100</sup> 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

<sup>101</sup> The remaining respondents (7%) could not recall or did not know how long it took to restore their service. 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

<sup>102</sup> 79% of respondents whose service took more than three days to be restored were dissatisfied 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

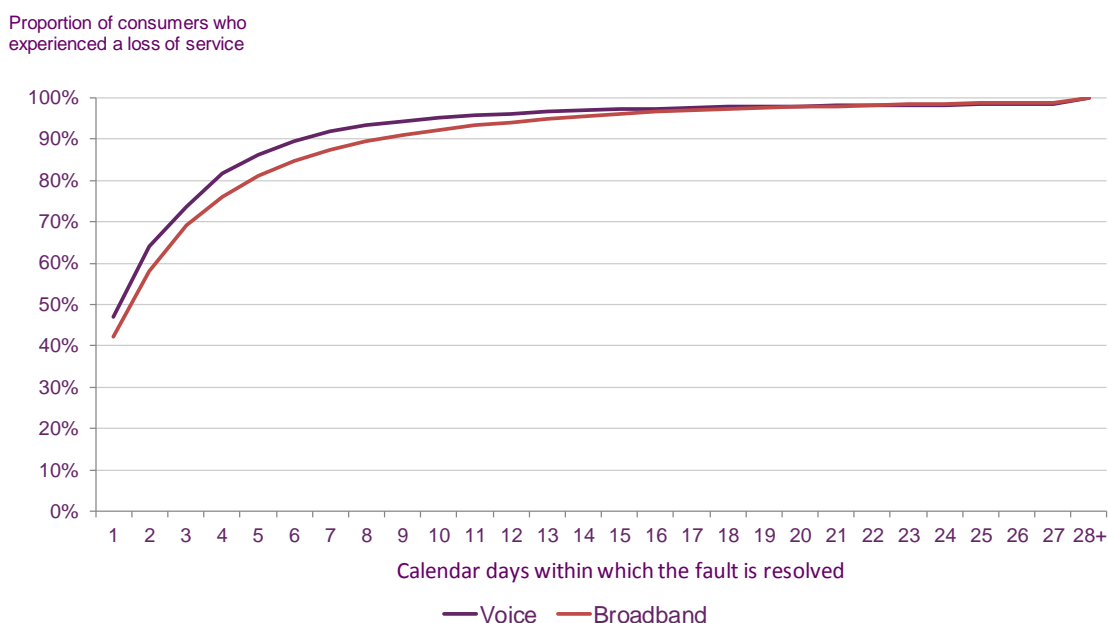
<sup>103</sup> Ofcom analysis of operator data collected by Ofcom in response to August 2016 fixed s135 request, Annex 6.



cases were restored within two calendar days; a further 10% were re-instated on the third calendar day (see Annex 6 on how we have estimated the incidence data).<sup>104</sup>

- 5.4 However, 1.59 million incidents were not restored after three calendar days. This represents approximately 28% of total loss of service incidents where consumer expectations in terms of reasonable repair times are not met and the harm experienced is likely to be significant (we discuss the likely extent of harm in more detail below).
- 5.5 Moreover, restoration times for incidents that are not restored after three calendar days are spread over a wide period or 'long tail' of time as indicated in Figure 5 below. The average repair time across all loss of service incidents is around four calendar days. 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. This data suggests a substantial number of consumers experience lengthy periods of time with no service and as a consequence are likely to experience significant levels of harm.
- 5.6 Our provisional assessment is that consumers' expectations that they should not have to wait more than three calendar days for a lost service to be repaired are reasonable. In making this judgment, we take account, as set out in section 2, of the assumption that consumers contract on the basis that they will generally receive a reasonable level of ongoing, if not fault-free, service; of the evidence of the importance they place on landline and broadband services and the harm they suffer when they lose those services (as to which see further below). Likewise, and again as set out further below, that providers typically aim to fix network faults by the end of the second full working day.

**Figure 5: Duration of incidents of loss of service**



Source: Ofcom analysis of operator data

<sup>104</sup> 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, Annex 6.



## Consumer harm occurs as a result of loss of service which persists when the repair is not completed in a reasonable period

- 5.7 The loss of a landline or broadband service can affect many aspects of the day-to-day workings of a household because consumers rely on these services for a range of important activities. Therefore, a delay in the restoration of the service will prolong this harm (i.e. they are out of service for longer). According to our consumer research, 58% of households claim the loss of their landline or broadband service had an impact on their household.<sup>105</sup>
- 5.8 This is a view reflected in responses to the CFI from consumer groups, who acknowledged that consumers experience harm when there is a loss of service and this should be compensated for.<sup>106</sup>
- 5.9 Complaints made to Ofcom indicate the potential in some instances for the harm to be significant. One complainant reported the following loss of service incident:
- “The consumer lives in a remote location and is quite isolated. On 19/02/16 the broadband service stopped working. She has contacted [redacted] about this. She has been passed about but has been finally told that an engineer will attend on 02/03/16. The consumer stated that her husband is almost housebound and relies on the BB service and rarely leaves the property. She is unhappy with the length of time [redacted] will take to resolve the fault”<sup>107</sup>*
- 5.10 As highlighted by this complaint, the impact of a loss of service can be worse for some consumers if there is a delay in restoration. Our consumer research found the majority of consumers that experienced a loss of service that was restored within two calendar days expressed satisfaction, but a majority of those that had to wait three calendar days or more for their service to be fixed were dissatisfied.<sup>108</sup>
- 5.11 A range of different factors are likely to contribute to the overall harm consumers experience when their fixed line service fails. We discuss the issue of consumer harm from poor quality of service in detail in Annex 4. Our consumer research found 42% of respondents said the loss had a negative impact on day-to-day activities.<sup>109</sup> A consumer may be unable to contact family, friends or emergency services if their landline service fails, particularly if they rely on it as their main means of

---

<sup>105</sup> Jigsaw, *Automatic Compensation*, March 2017, slide 44, question F15:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

<sup>106</sup> ACNI, CFI response, p.2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/55032/acni.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/55032/acni.pdf); CCP, CFI response, p.2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/57556/ccp-acod.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/57556/ccp-acod.pdf); Citizens Advice, CFI response, p.4:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/98020/CitizensAdvice.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/98020/CitizensAdvice.pdf); Which? response to CFI, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55352/which.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55352/which.pdf).

<sup>107</sup> Complaint made to Ofcom, February 2016.

<sup>108</sup> 72% of respondents that reported the loss to their provider and whose service was restored within two days were satisfied with the time taken to restore. Conversely, 79% of respondents whose service took more than three days to be restored were dissatisfied 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

<sup>109</sup> 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

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 their school work online.

- 5.12 Loss of service can also have a significant negative impact on work related activities, stopping a consumer from working from home. This may mean they are unable to complete their work or are forced to work at another time or relocate to somewhere with a working fixed line service. Our consumer research indicated that 16% of respondents said loss of service had a negative impact on work-related activities.<sup>110</sup>
- 5.13 Approximately one-third of respondents to our consumer survey found an alternative workaround when they experienced a loss of service.<sup>111</sup> Some consumers may be able to use an alternative service such as a mobile phone to make phone calls or a dongle to access the internet. However, consumers may incur costs for using these services; costs they would not have otherwise sustained had their fixed service not failed. Our consumer research found that one in five respondents that had found an alternative workaround said they incurred direct financial costs.<sup>112</sup> The alternative may also be inferior to the failed service and/or more expensive. For example, the use of a mobile connection to access the internet is likely to be slower than a fixed broadband connection.
- 5.14 Consumers will spend time and effort trying to rectify the loss of service. This 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.<sup>113</sup>
- 5.15 This lost time may be in addition to anxiety or stress felt by consumers when a service failure occurs.
- 5.16 As outlined further in Annex 4, we have attempted to estimate the daily level of harm that consumers on average suffer when they experience a loss of service. This illustrates the harm from delayed repair, as the delay prolongs the loss of service.
- 5.17 As explained in Annex 4, we estimate the average consumer harm that results from a loss of service to be approximately £10 per day. Accordingly, on average, we would expect a delayed repair of a loss of service to result in harm of approximately that amount.

---

<sup>110</sup> Jigsaw, *Automatic Compensation*, March 2017, slide 41, question F9:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

<sup>111</sup> 35% of respondents found an alternative workaround when they experienced a loss of service. Jigsaw research, *Automatic Compensation*, March 2017, slide 39, question F7a:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

<sup>112</sup> 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

<sup>113</sup> 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

## **Compensation payments are currently given to only a minority of those who experience a loss of service**

- 5.18 Our consumer research suggests that only 8% of consumers that suffered a loss of a landline or broadband service received any form of compensation for that loss.<sup>114</sup> Industry data, showed approximately 998,277 customers on average per year 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.<sup>115</sup>
- 5.19 As noted in section 4 above, the low incidence of pay-outs reflects the internal policies of most providers in relation to the provision of compensation to consumers. Information collected from industry shows that most providers typically only provide compensation in the form of a refund or goodwill payment if the consumer explicitly asks for compensation, makes a complaint or expresses dissatisfaction about the service received.<sup>116</sup> It is then usually at the provider's discretion as to whether they provide some form of redress.

## **Current compensation does not provide adequate redress for harm**

- 5.20 Industry data suggests that the average payment for loss of service is around £13.51 per incident (based on monetary compensation). However, the average payment for each individual provider ranges from £3 to nearly £20 per incident.<sup>117</sup> A further 128,000 consumers received non-monetary compensation.<sup>118</sup>
- 5.21 Dividing the average monetary payment based on industry data, by the average duration of a loss of service incidence of four calendar days, suggests providers pay on average £3.69 for each day of lost service among those who receive compensation.<sup>119</sup> This is significantly lower than our estimate of the average consumer harm that results from a loss of service which, as explained above, we estimate at approximately £10 per day.

---

<sup>114</sup> Jigsaw research, *Automatic Compensation*, March 2017, slide 47, question F8a:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

<sup>115</sup> 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. See Annex 6 on how we have estimated the incidence data.

<sup>116</sup> In [3<] case their stated policy is not to offer payments proactively, [3<] response, dated 26<sup>th</sup> September 2016 to s135 information request dated 15 August 2016, response to Annex 5 question 1b. While [BT's contract terms \(1<sup>st</sup> February 2017, Clause 14\)](#) state they will offer a pro-rata refund 'when you ask us'.

<sup>117</sup> Ofcom analysis of operator data provided in response to August 2016 fixed s135 request, Annex 2. Non-monetary compensation may include service credits, discounts, free products or upgrades and retail store vouchers. Operator information provided in response to August 2016 fixed s135 request, Annex 5, question 1k.

<sup>118</sup> Ofcom analysis of operator data provided in response to August 2016 fixed s135 request, Annex 2.

<sup>119</sup> This is calculated from our analysis of operator data collected in response to August 2016 fixed s135 request, Annex 2. Amount of compensation received per customer (£13.51) divided by the average number of days without service (3.66).

## Provisional conclusion on consumer experience

- 5.22 As set out above, there are a material number of loss of service incidents where the service is not restored within a time period that consumers consider reasonable. Such incidents are liable to result in significant detriment.
- 5.23 Consumers could be protected from this harm if those who experienced unreasonable delays received adequate compensation for their loss of service. However, the evidence detailed above demonstrates the incidence of when compensation is paid out is low in comparison to the number of cases which incur an unreasonably lengthy delay in repair. In addition, the average amount of compensation paid does not appear to be equal to the average harm experienced from a loss of service.
- 5.24 Further, in order to claim compensation, consumers have to spend time contacting their provider, which results in additional time and effort. This may be significant, particularly if claiming compensation is not a straightforward process. Additionally, it may deter consumers from claiming compensation at all.
- 5.25 We therefore provisionally conclude that consumers are not sufficiently protected relative to their expectations on what is a reasonable time for a loss of service repair.
- 5.26 A significant number of responses to our Call for Inputs were supportive of the principle of automatic compensation in the event of a loss of service. This included BT, Nine Group, [3<], consumer groups (CCP, Citizens Advice, ACNI, Ombudsman Services, Which?) and several individuals (private and academic).<sup>120</sup>

## The rule we are proposing

Figure 6: Automatic compensation for delayed repairs

- Consumers should be compensated by their provider where they experience a total loss of a landline and/or fixed broadband service and the service(s) are not fully restored by midnight on the second working day after the provider becomes aware of the loss.
- An initial payment of £10 should be made if the relevant service remains unrestored at this point and then £10 should be paid for each further full calendar day that the service remains unrestored.
- The compensation payment should be automatic once the customer first registers the loss of service with the provider.
- Payment should be made if the loss of service is the result of a network fault (unplanned outage) or planned network outage affecting any network over which the service is provided.

---

<sup>120</sup> See footnote 49. [3<]

## Situations where the proposed rule applies

- 5.27 Our proposal covers total loss of service for both landline and broadband.<sup>121</sup> For landline this will include situations 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 total loss of broadband, this refers to situations when consumers are unable to access the public internet.<sup>122</sup>

## The point from which payment is automatic

- 5.28 As explained in section 4, ideally consumers should be compensated automatically without having to raise the loss of service incidents with their provider in the first place. However, we understand 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 have lost service, without first being notified by the affected consumer.<sup>123</sup> To do so is likely to require significant investment which would likely be disproportionate relative to the expected benefits.
- 5.29 We therefore propose that the consumer will first need to register the loss of service with the retail communications 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 the required compensation to the consumer automatically i.e. no further contact from the consumer would be required to claim compensation. Details on the point at which compensation should be paid, for how long and the form this payment should take are covered in section 8.

## Value of the payment

- 5.30 We propose that the level of compensation for delayed repair should redress the harm consumers suffer.
- 5.31 Some stakeholders have argued that if there is a potential range of values for compensation, the amount should be set at the lower end of the range. However, we consider that – in order to address consumer harm – we need to be confident that the value we select will address the gap between what consumers can reasonably expect and what they obtain today. As a result, our provisional judgment is that compensation at the lower end of any possible range is likely to be insufficient as it will leave some harm experienced in the market unaddressed, and will provide weaker signals for quality of service improvements as a result.
- 5.32 Because consumers experience harm on a daily basis, we propose that compensation should be equal to our estimate of the daily level of harm from the loss of a fixed service (since the delayed repair prolongs the loss of service). This is

---

<sup>121</sup> Within this rule, we do not propose to cover scenarios where the customer may be without a service due to a failed switch-over (migration) between services. This is addressed in section 6 of this document where compensation for delayed provisions that may result in a loss of service are discussed. A fault that results in a loss of service could occur at any point during the lifetime of a contract, including shortly after the provision of a service (an early life fault).

<sup>122</sup> We consider these types of service quality issues lend themselves to automatic compensation because they can be objectively defined and reliably measured i.e. it is clear that the service that should be delivered is unavailable. This is subject to the customer raising the loss of service incident with the provider and assisting in determining whether the loss of service is due to a fault on the network or due to an issue on the customer side of the network termination point.

<sup>123</sup> [3<]

estimated to be £10 per day (further details on how this value is determined can be found in Annex 4). Our provisional view is that compensation set at this level is necessary to achieve our objective of ensuring consumers are provided with adequate redress, and sufficiently protected, if they suffer delayed repairs. Paying compensation at this level would also be consistent with providing efficient signals to providers to improve service quality in relation to the repair of faults, as it reflects the average harm caused by the failure.

- 5.33 We expect the level of harm to occur on an ongoing basis and do not have any evidence to suggest that it will vary over time. In light of this, we propose that once the initial payment of £10 is triggered, £10 is paid for each further full calendar day of delay.
- 5.34 We propose that the customer will receive one single payment of £10, irrespective of whether either or both services (landline and broadband) are lost at the same time and, if only one service is lost, irrespective of which service it is.<sup>124</sup> Our estimate of average harm takes into account the average harm experienced when one or both fixed services are lost; see Annex 4 for further detail. We also think a single payment would be appropriate because it would provide a straight-forward compensation value to consumers, which can be easily communicated in any relevant communication with consumers.<sup>125</sup>
- 5.35 We consider that if the service is restored before the point when compensation is due under our proposed rule, it may still be reasonable for the consumer to contact their retail communications provider to request a refund for the relevant service not received up until the point that the service is restored, but this would not form part of the regulatory requirement in our proposed General Condition.<sup>126</sup>

### **When compensation would be payable**

- 5.36 In this section we set out how we have considered what period of repair following a loss of service is appropriate.
- 5.37 We have started with consumers' expectations about an appropriate repair time and conducted research to understand this. As stated above, our research found that the majority of consumers expressed dissatisfaction if they had to wait more than three calendar days for their service to be fixed but the majority of consumers that had their service restored within two calendar days were satisfied. This indicates that consumers expect a loss of service to be repaired within two to three calendar days. As set out above, given the nature of the services and the way consumers contract for them, as well as their reliance on them and the harm they suffer if they are lost, this does not appear an unreasonable expectation.

---

<sup>124</sup> This applies where the two services lost are supplied by the same provider. Where the customer takes their landline and broadband from two different providers separate payments from each provider will be required, but this will be a small minority of cases. As we reported in our recent review of the market for standalone landline services the number of consumers purchasing their landline and broadband separately is <5%. See paragraph 1.12:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/97806/Consultation-Review-of-the-market-for-standalone-landline-telephone-services.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/97806/Consultation-Review-of-the-market-for-standalone-landline-telephone-services.pdf)

<sup>125</sup> See Annex 4, paragraph A4.10.

<sup>126</sup> We note most communication providers currently issue a refund where the service remains unrestored after the end of the first calendar day that the provider is notified of the loss. The payment is then calculated on the basis of the number of calendar days the customer is without service.



- 5.38 While we have been informed by how quickly consumers expect a loss of service to be restored we have also considered other factors. These include: what is practical for providers to deliver; what may incentivise improvements in repair times; and whether providers will need to change the repair target times they currently work to and the effect this might have on providers' costs (and retail prices if these costs are passed on to consumers).
- 5.39 In terms of providers' current policies, although some providers state longer 'up to' repair times to their customers,<sup>127</sup> they typically work to fix a network fault by no later than the end of the second full working day (not including the day the provider is notified of the loss) or even earlier.<sup>128</sup> These target times are focused on 'working days' but broadly fit with our findings on consumer's expectations of restoration of service within two to three calendar days. For example, where a customer reports a loss of service to their provider on a Monday, we would expect the loss to have been fixed by the end of Wednesday at the latest, based on providers' current target times.
- 5.40 Furthermore, as highlighted above, industry data shows the majority (72%) of instances of loss of service are restored within three calendar days of the provider being notified of the loss. We are therefore of the view that it is practical for providers to fix most instances of loss of service within this time period.
- 5.41 We have considered whether compensation for delayed repair should be paid towards the higher end of consumer expectations e.g. within two calendar days.<sup>129</sup> We have also considered the growth of superfast broadband connections (target repair times for fibre connections on the Openreach network are currently by the end of the next working day<sup>130</sup>) and a likely upward trend in terms of consumers' expectations as reliance on home and mobile connectivity increases (e.g. as more services are provided online), and as further investment in new technologies leads to improved network quality and resilience.
- 5.42 However, we are also aware of the cost implications for industry and the potential knock-on impact on average retail prices (including the potential impact on low cost offers) of delivering faster repair times i.e. within two calendar days, for everyone when compared to the benefits, and given current average consumer expectations.

---

<sup>127</sup> Communication providers' current policies around fault repair times vary from by the end of the next working day to within five working days of receiving notice of the fault from the customer. Some customers may receive faster repair times, but these are usually at a higher cost and are offered on request or as part of a business specific contract.

<sup>128</sup> KCOM aims to clear any problems that is their responsibility by the end of the second full working day. Some customers may be entitled to priority repairs and KCOM does have some service options that provide enhanced repair services. KCOM response, dated 12<sup>th</sup> September 2016, to s135 information request dated 15<sup>th</sup> August 2016, response to question Annex 3, question 3a. [3<] Providers operating on the Openreach network are largely reliant on the target repair times that come with the standard service maintenance levels purchased from Openreach:

<https://www.openreach.co.uk/orpg/home/products/serviceproducts/serviceharmonisation/serviceharmonisation/downloads/servicemaintenancelevelsfactsheet.pdf>

<sup>129</sup> 56% of respondents whose service took two calendar days or more to be restored were dissatisfied with the time taken. Jigsaw, *Automatic Compensation*, March 2017, slide 36, question F6 and F5: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

<sup>130</sup> Openreach GEA-FTTP and GEA-FTTP services use service maintenance levels (SML) 2,3 or 4 (level 2 is the longest repair time at end of next working day). There is currently no FTTC or FTTC variant at SML1 (end of the second full working day). See Openreach's GEA contract with Communication Providers, paragraph 2.11: [https://www.openreach.co.uk/orpg/home/products/super-fastfibreaccess/downloads/150302\\_gea\\_schedule4\\_issue\\_4\\_1.pdf](https://www.openreach.co.uk/orpg/home/products/super-fastfibreaccess/downloads/150302_gea_schedule4_issue_4_1.pdf)

- 5.43 We consider that a repair time that is at least shorter than the current average time to repair of four calendar days should provide an incentive on providers to improve on current repair times for loss of service.
- 5.44 Our provisional view, accordingly, is that a loss of service that takes longer than two to three calendar days to repair should receive compensation. This will meet the expectations of a large proportion of consumers, would be a reasonable/practical target for providers to deliver against; would sufficiently incentivise providers to improve quality above and be beyond the average which they currently provide.
- 5.45 Given that industry works on repair times based on being fulfilled at 'the end of a working day' (as opposed to calendar days), we consider there is a need to reflect this practice in our proposed start date for compensation. This will ensure we minimise the costs and overall impact of our requirement on industry.
- 5.46 Based on the above, therefore, our current thinking is that it would be reasonable to require providers to pay compensation if the service is not fully restored by midnight on the second full working day after they become aware of the loss.
- 5.47 The exact repair time would depend on when the consumer reports the problem (e.g. 9am will mean the target repair time is nearer three days while 5pm will make the target repair time nearer two days). This would meet consumer's expectations of restoration of service within two to three calendar days.<sup>131</sup>
- 5.48 Based on recent industry data, approximately 1.14 million to 2.16 million incidents of loss of service would qualify for compensation payments using our proposed trigger point of midnight on the second full working day (not including the day the provider is notified of the loss).<sup>132</sup> Our provisional assessment is that, in providing compensation for these incidents of loss of service, we would meet our policy objective to provide appropriate redress for harm in line with reasonable consumer expectations.

### **The starting point for measuring time taken to restore**

- 5.49 Ideally, the time taken to restore a service would be measured from the actual point in time when the loss of service occurs. As stated above, we understand most individual line failures that result in the loss of a landline or broadband service cannot currently be accurately identified by a provider's own systems (without first being notified by the affected consumer). Requiring reliable and proactive fault identification on each individual line basis would entail significant investments, cost that would be paid for by industry and/or consumers in the form of higher prices. This is likely to be disproportionate relative to the benefits we are seeking to achieve. We therefore propose that the time taken to restore the service will be measured from when the consumer notifies the provider of the loss of service.
- 5.50 However, we propose to include an exception to this general rule where the provider becomes aware of an incident and is able to accurately identify the individual lines that have lost service without any contact from the affected customer (this may be

---

<sup>131</sup> The use of working days may mean that in certain scenarios the fix is completed after four calendar days (e.g. notified on Thursday, not fixed until Monday. We consider that consumers are likely to take into consideration weekend working when stating their expectations as to what is a reasonable repair time.

<sup>132</sup> This is based on the range between instances lasting longer than 2 calendar days and instances lasting longer than 4 calendar days. Based on aggregated data in response to August 2016 fixed s135 request, Annex 2.



where there is a planned outage or where its own network monitoring detects an incident). In this case, we propose that the time to repair should be measured from when the provider first becomes aware of the incident. We understand this information is currently available to some providers and therefore consider this would be a reasonable approach.<sup>133</sup>

## **Planned and unplanned outages**

- 5.51 Given the same level of harm exists irrespective of why the loss occurred, we consider it appropriate to require compensation to be paid where the loss is the result of a planned outage (this includes network equipment failure) assuming the appropriate time period has elapsed.
- 5.52 We propose to exclude any scenarios where the loss of service is due to a fault or issue on the customer side of the network termination point.<sup>134</sup> This may, for example, be due to faulty wiring in the home for landline or broadband service or where the customer disconnects the external line.

## **We consider our proposed compensation requirement will protect consumers**

- 5.53 We provisionally conclude that consumers are not sufficiently protected for delayed repair following loss of a landline and/or fixed broadband, and that redress for delays beyond a reasonable time period should be provided automatically to all consumers. This would achieve our objective of providing consumers with adequate redress for the harm they suffer. Furthermore, if providers were required to pay compensation when delays occurred beyond a reasonable time period then there would be a financial incentive to avoid those delays, by improving quality of service.
- 5.54 We therefore consider our proposal to require payment of £10 compensation automatically when there is a delay in restoring a loss of a landline and/or broadband service after two full working days will secure appropriate levels of protection for consumers.

*Question 4: Do you agree with our proposal to provide automatic compensation when a loss of service takes more than two full working days to be restored?*

---

<sup>133</sup> We are aware that some providers make available information on planned outages and complete loss of service events to their customer relations teams to cross reference, when customers call.

<sup>134</sup> We consider it is appropriate to exclude these scenarios given there may be ambiguity as to who is to blame for the loss of service.

## Section 6

# Unscheduled delays in provisioning

- 6.1 In this section we propose introducing automatic compensation when unexpected delays in provisioning take place. By provisioning we mean the start of a new service when consumers switch provider or upgrade to a different service with the same provider (such as from standard to superfast broadband), move house and/or have a new line installed. We set out the current consumer experience and why we propose that automatic compensation is necessary in this area before describing the details of how we propose it should work.

## The consumer experience today

### A significant minority of consumers experience delayed provisions each year

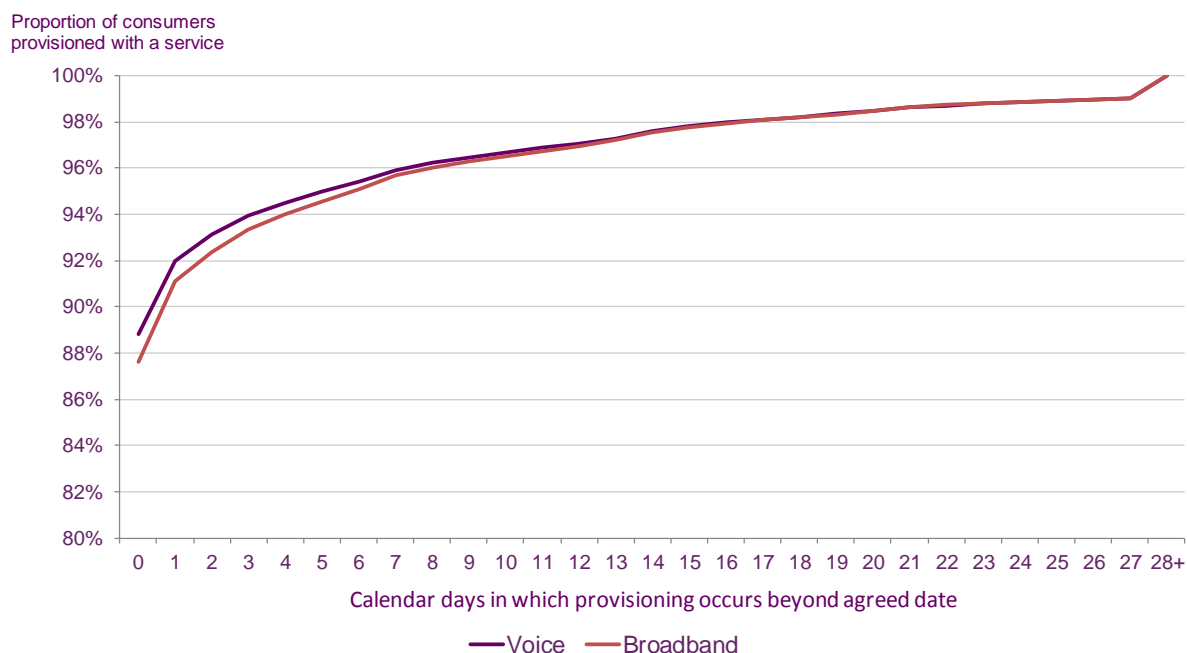
- 6.2 Consumers who have a new service provisioned usually receive a promised date from their provider for the service to be up and running. But a minority of consumers then find that their services do not start on schedule. In some cases, the delay can stretch into weeks and even months.
- 6.3 Based on information received from the largest fixed line providers, we found that the majority of consumers had their new fixed line services activated on time. But many customers suffer some sort of delay: on average each year, around 1.3m landline and/or broadband provisions (12%)<sup>135</sup> are subject to delays.<sup>136</sup>
- 6.4 Many of these delays are relatively short. As shown in Figure 7 below, approximately 95% of new provisions took place within five calendar days of the original scheduled date. But 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 longer. While the proportion of consumers left experiencing long, unexpected delays is small, the absolute numbers are still significant – each year over 100,000 provisions are subject to delays of 28 calendar days or more.

---

<sup>135</sup> There was an average of 10.8m landline and/or broadband provisions annually. Data from Ofcom analysis of provider responses to August 2016 fixed s.135 request

<sup>136</sup> See Annex 6 for more details on how these figures were derived

**Figure 7: Customers receiving a provision within ‘x’ calendar days of the date promised (all providers average)**



Source: Ofcom analysis of provider responses to August 2016 fixed s135 request, Annex 2

- 6.5 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 fails to meet the promised provisioning 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.<sup>137</sup> 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.
- 6.6 In any event, our provisional view is that delayed provisioning is another area in which providers fall short of consumers’ reasonable expectations. Consumers agree dates on which their services should begin with a provider. They may well arrange to cancel services from a previous provider on that date and they may make plans that rely on their ability to use their new service from that date, which they agree to pay for from then on. In that context, and given the importance to consumers of the telecommunications services we are concerned with and the reliance they place on them, it seems to us a reasonable expectation that service provisions should occur on the date agreed with the consumer.

### Consumer harm occurs as a result of delayed provisioning

- 6.7 Consumers subject to delays may be left without a landline or broadband service for a prolonged period, or they can suffer 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, they can experience considerable frustration, anxiety and stress because installation not only takes place much later than originally

<sup>137</sup> [https://www.homeandwork.openreach.co.uk/kpi-pages/KPI\\_overview.aspx?kpi=13c](https://www.homeandwork.openreach.co.uk/kpi-pages/KPI_overview.aspx?kpi=13c)

scheduled, but they may have to try and contact their provider repeatedly to get a new installation date scheduled.

- 6.8 In its response to our CFI, Citizens Advice quoted one instance which illustrates the potential for delayed provisioning and some of the possible consequences:

*“Ilan emailed Citizens Advice after six weeks of waiting for his new broadband service to go live. Initially his broadband provider had promised him that he would be able to use the service from the 12th May onwards. When this didn’t happen he contacted customer service and he was promised that the service would start working from the 20<sup>th</sup> onwards. Again, this didn’t happen, so Ilan called [the] provider and this time he was promised that the service would go live on 25th May. When Ilan called us in June his service still was not working, and he’d been charged nearly £50 for broadband he wasn’t able to use.”*<sup>138</sup>

- 6.9 In around a third of provisions, delays can lead consumers to suffer a loss of service<sup>139</sup>; they may have cancelled their old service in the expectation that the new one would commence on a particular day, but then find that the new service is delayed and they are without any service at all. For these consumers, the harm associated with delayed installation is likely to be similar to those who experience a loss of service, as described in section 5.
- 6.10 A consumer may react to being deprived of the delayed service by using an alternative service instead. For example, if their fixed broadband service does not commence on time, they may use mobile broadband instead. But this may lead them to incur extra financial costs that they otherwise would not have incurred – for example, out of bundle usage charges or larger monthly top-ups than otherwise necessary for their usual mobile usage.
- 6.11 If consumers also have to report the failed installation to their new provider and/ or spend time arranging a new start date, this time and effort also leads to consumer harm.
- 6.12 Our consumer research demonstrates how these types of harm manifest themselves. In one qualitative study consumers told us that, in relation to installation of services, “time-keeping is essential, with the work carried out as scheduled in the original call”.<sup>140</sup> The research found that poor quality of service can have significant consequences for consumers, with specific examples quoted including:
- being left without the service for a period of time because the new installation has not gone to plan and, meanwhile, the old service has been switched off;
  - having to take further time off work;

---

<sup>138</sup>Citizens Advice, CFI response, p. 2:

<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Automatic%20Compensation%20Response%20to%20call%20for%20inputs.pdf>

<sup>139</sup> Jigsaw, Automatic Compensation, March 2017.

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf). Jigsaw, Automatic Compensation, for more details please see Annex 10.

<sup>140</sup> Jigsaw, *Quality of Service in telecoms*, p. 26

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/78370/jigsaw\\_quality\\_of\\_service\\_in\\_telecoms.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/78370/jigsaw_quality_of_service_in_telecoms.pdf)

- having to contact (and re-contact) a provider to reschedule an engineer visit, as a consequence of the engineer not turning up or arriving with the wrong kit or tools;
- having to pay for a re-installation when an initial job is faulty.

6.13 Annex 4 sets out how we have attempted to quantify the average harm for a delayed provision, and estimate this to be approximately £6 per day of delay. This average reflects the harm incurred by consumers who lose service, where the harm is likely to be greater than the £6 above, and those who have only been prevented from using the new service, when the harm may be less than £6.

### **Compensation payments are currently given to only a minority of those who experience delays**

6.14 The harm to consumers we have identified might be mitigated to some extent if consumers subsequently received compensation from providers in recognition of the delays suffered. Some consumers already receive compensation but this happens on an ad hoc basis. As set out in section 4, the fact that consumers usually have to ask for compensation often means that only a minority of consumers who experience harm get any. This was confirmed when we asked providers for details on how many of their customers receive compensation. Of the 1,277,000 landline and broadband provisions annually that were subject to delays from the largest fixed line providers, around 163,000 consumers or 13% received monetary compensation with a further 255,000 (20%) receiving some form of non-monetary compensation.<sup>141</sup> We also found that there was considerable variation between providers as to whether monetary compensation for delays was paid or not; some providers told us that more than 10% of their customers experienced a delay in provisioning but none of these customers were given monetary compensation.

6.15 As discussed in section 4, we asked consumers why they did not ask for compensation from their provider and found that in many cases, consumers did not think it worthwhile claiming compensation, or they said that they did not think their provider would offer it to them. In section 4, we describe the largest landline and broadband providers' compensation policies in more detail, and indicate that that they are not necessarily clear as to whether compensation is available when a delay in provisioning occurs.

### **Current compensation does not provide adequate redress for harm**

6.16 We have also looked at how much compensation the minority of customers who receive compensation for provisioning delays currently receive. We found this figure to be, on average, £2.39. This is less than our estimate of harm from delayed provisioning. Again, it should be noted, that this is an average figure and there is considerable variation around this average. 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, i.e. considerably less than our estimate of consumer harm.

### **Provisional conclusion on consumer experience**

6.17 From the evidence we have available, many consumers are suffering harm when new services do not start on time and are not compensated for this. While some

---

<sup>141</sup> Analysis of August 2016 fixed s135 request

consumers may currently be receiving compensation, they are in the minority, and the amount they receive does not appear to be commensurate to the harm suffered.

- 6.18 We therefore provisionally conclude that consumers are not sufficiently protected for delayed provisions and that redress for unexpected delays should be provided automatically to all consumers. This would achieve our objective of providing consumers with adequate redress for the harm they suffer. Furthermore, if providers were required to pay compensation when delays occurred then there would be a financial incentive to avoid those delays, by improving quality of service.

## The rule we are proposing

**Figure 8: Automatic compensation for delayed provisions**

- Consumers should be compensated where there is a delay in the commencement of a landline and/or broadband service beyond the date the provider has committed to in written form.
- Compensation of £6 would be payable for missing this date and a further £6 would be payable for each subsequent calendar day of delay.
- Compensation payment should be automatic once the committed date has been missed.

## Situations to which the proposed rule applies

- 6.19 As set out above, we consider that harm is experienced not only by consumers left without a service but also by consumers that do not lose service. The situations in which we propose that automatic compensation should be payable therefore include unscheduled delays that happen when:

- Switching from one retail provider to another whether on the same wholesale platform (Openreach or KCOM) or to a different platform (e.g. from Openreach to Virgin Media or vice versa).
- Having a new line or service installed, for example, when moving house or having broadband activated for the first time.
- Upgrading from one service to another with the same provider (e.g. from standard to superfast broadband)

- 6.20 We are not proposing to set a specific time period within which services must be provided. We consider that this is unlikely to be in consumers' interests, as it would not take into account differing individual circumstances of consumers who may wish to have their services commenced on or after a particular date.<sup>142</sup> Also, some consumers, for example in new-build housing, may need a new line to be physically installed prior to the service commencing which is unlikely to be practicable in the

---

<sup>142</sup> Where a consumer is switching provider, the time at which a switch occurs may also be a matter more appropriately covered in any regulated switching process.

same timeframe as where this is not the case. Moreover, the time period for a service to be delivered could be an area of differentiation and competition between providers.

### **The point from which payment is automatic**

- 6.21 On the basis of the consumer expectations described in paragraph 6.6 above and the harm they are liable to suffer, our provisional judgment is that it is reasonable that consumers who have contracted for a new service should have it start by the date that their new provider commits to. If they do not, they should get compensation automatically.<sup>143</sup> We propose that the date from which compensation is due would be the date the provider confirms to the consumer as a firm service start date in a formal communication.<sup>144</sup> If a scheduled activation date was missed (for reasons other than those caused by the customer) then automatic compensation of £6 would be payable for missing this date and a further £6 would be payable for each subsequent calendar day of delay.

### **Value of the payment**

- 6.22 We consider that compensation should reflect the level of harm, in order to achieve our objective of ensuring that consumers are provided with adequate redress, and sufficiently protected, if the start of their service is delayed. As described above, we recognise that the harm experienced may depend in part on the consequences of the delayed provisioning, and in particular whether there is a loss of service as a result. Therefore, we have considered whether providers should pay different amounts of compensation for consumers experiencing different types of delays, i.e. those who suffer a complete loss of service and those who do not.
- 6.23 However, our provisional view is that this would not be practical to implement, or easy for consumers to understand what they were entitled to. Moreover, it would be difficult for providers to know whether a consumer has an existing service or not, and therefore to evaluate the degree of compensation.
- 6.24 We are proposing that compensation of £6 per calendar day of delay is appropriate, reflecting our estimate of the average harm experienced from a delayed provision (described in Annex 4). This average reflects the harm incurred by consumers who lose their service as well as those who do not. As such, our assessment is that a payment at this level would ensure that, in aggregate, consumers who suffer harm from delays in provisioning would on average be adequately compensated. We also propose that compensation payments at this level will provide an efficient signal to providers to improve service quality in relation to the provision of new services.

### **When compensation would be payable**

- 6.25 We propose that compensation would automatically be payable where the provider does not provision the service on the date agreed by the consumer and formally notified to them by the provider. We also consider that the consumer should be able to move that date (for example, if an engineer visit is required and they are not going to be at home that day). This would ensure that new installation dates are pushed back only at the customer's request and not because the provider wants to do so. This distinction between customer-caused changes and provider-initiated changes

---

<sup>143</sup> The deadline would be midnight on the day the provider has committed to. The provider would be able to move the start date earlier than the original date.

<sup>144</sup> A durable medium, for example, letter, e-mail, text message, online documentation etc.



also features in other areas where we propose automatic compensation should apply (such as missed appointments).

- 6.26 If a service does not start on the date committed to as a result of actions by the consumer (e.g. an engineer visit is required but the consumer is not at home at the scheduled appointment time) then compensation will not be due.

### **We consider our proposed compensation requirement will protect consumers**

- 6.27 Our provisional conclusion is that customers who are due to have a new provision should have it activated when their provider promised it to them, and that if they do not, they should receive compensation automatically. Our assessment is that our proposal would secure greater protection for consumers.

*Question 5: Do you agree with our proposal to provide automatic compensation when there are delays in provisioning a landline or fixed broadband service?*

## Section 7

# Missed appointments

## Introduction

- 7.1 In this section we set out our proposal to introduce automatic compensation when providers miss agreed appointments to repair or install a landline or broadband service. We set out the current consumer experience and how the harm consumers face when appointments are missed is going unaddressed. We then go on to describe the details of, and rationale behind, the key elements of our proposed rule.

## The consumer experience

### A significant minority of consumers experience missed appointments each year

- 7.2 Just under 50% of fixed broadband and landline faults and provisions require an engineer visit to undertake repairs or to install a service.<sup>145</sup> In a minority of cases, providers arrange appointments for an engineer visit and then fail to meet them. While we found that only 3% of appointments are missed, this equates to almost 250,000 appointments a year.<sup>146</sup>
- 7.3 In some cases these appointments will be arranged and then missed repeatedly. Our consumer research found for instance that 29% of the respondents who had experienced a missed appointment had two or more appointments missed in the last two years.<sup>147</sup>
- 7.4 For similar reasons as in relation to delayed provisioning, our provisional judgment is that consumers' expectations that appointments will occur on the day agreed with their provider are reasonable.<sup>148</sup> Consumers make an agreement that an engineer's visit will occur on a particular date, to activate or repair services that they are paying for. Again, they may take time off work, or away from other activities they regard as important, to accommodate engineers' visits. In that context, and given they may rely on their ability to use their services from the agreed date of the appointment for particular tasks they regard as important, it seems a reasonable expectation that the appointment should occur on the date agreed with the consumer.

---

<sup>145</sup> 49%. Ofcom calculations based on provider responses to August 2016 fixed s135 request, Annex 2 question 3

<sup>146</sup> 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.

<sup>147</sup> 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](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.

<sup>148</sup> Subject to adequate notice of any re-arrangement.

## Consumer harm occurs as a result of missed appointments

- 7.5 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. This is a view that was reflected in responses to the CFI from consumer groups, such as Citizens Advice who argued that “engineers not turning up to appointments, or cancelling them at the last minute, can cause considerable disruption to consumers’ lives”.<sup>149</sup>
- 7.6 Our research has helped identify several ways in which consumers are harmed when their appointments are missed.<sup>150</sup> Firstly, it found that just over a quarter of consumers who had experienced a missed appointment had to make arrangements to take time off work to accommodate the engineer visit.<sup>151</sup> One consumer described their frustration when their repair appointment was missed as follows:
- “I was annoyed because...I’ve wasted half a day of holiday. That was annual leave...a lot of money. I think they said they were going to reimburse me but they didn’t.”*<sup>152</sup>
- 7.7 When appointments such as this are missed, or cancelled at the last minute, the time the consumer took 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.
- 7.8 Furthermore, time spent waiting for an engineer and rearranging the appointment affects more than just those who are unable to work as a result. Having to stay at home can prevent consumers from carrying out a range of activities they would normally undertake and in some instances cause them to postpone important tasks or to rely on others to carry them out for them. 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.<sup>153</sup>
- 7.9 In addition, missed appointments can often mean that consumers spend time contacting their provider to find out why their appointment has been missed and to rearrange the appointment. Our consumer research indicated that 73% of consumers that had an appointment missed then contacted their provider to rearrange the appointment, with just over half of those who contacted their provider having to call

---

<sup>149</sup> Communications Consumer Panel and ACOD, CFI response, p.3:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/57556/ccp-acod.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/57556/ccp-acod.pdf); Which?, CFI response, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55352/which.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55352/which.pdf); Citizens Advice CFI response, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/98020/CitizensAdvice.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/98020/CitizensAdvice.pdf)

<sup>150</sup> 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.

<sup>151</sup> 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf). Note sample size is 72.

<sup>152</sup> Jigsaw Research, February 2016, *Quality of service in telecoms*, p.33: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/78370/jigsaw\\_quality\\_of\\_service\\_in\\_telecoms.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/78370/jigsaw_quality_of_service_in_telecoms.pdf)

<sup>153</sup> 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf) Note sample size is 72

more than once.<sup>154</sup> As with the other service failures discussed in this consultation, this time and effort spent rectifying the problem adds to the harm consumers face and, in the case of missed appointments, means that more of the consumer's time is wasted.

- 7.10 This wasted time is coupled with the potential stress caused by waiting in for long periods of time for an engineer to visit, only for them to not arrive. Having an appointment missed can be a frustrating experience for consumers, especially if the consumer is not told why the appointment was missed, and is left wondering when, or if, the engineer will arrive. Two fifths of consumers who had experienced a missed appointment claimed that this had caused them anxiety and stress.<sup>155</sup>
- 7.11 We discuss harm in more detail in Annex 4 and use a broad range of factors to arrive at an estimate of the harm consumers face. Based on our analysis set out in that Annex, we provisionally assess that a reasonable estimate of the harm caused by a missed appointment is £30.

### **Current compensation does not provide adequate redress for harm from missed appointments**

- 7.12 Though consumers would prefer that appointments are kept, the harm caused when they are missed could be mitigated if the consumers affected were receiving adequate redress for that harm. We have considered how often providers currently pay compensation to consumers for missed appointments, and the level of compensation paid, but the evidence suggests that adequate redress is not being given.
- 7.13 Our analysis of industry data suggests that only 14% of consumers affected received compensation for their appointment being missed.<sup>156</sup> As with other quality of service problems, this is likely partly because consumers commonly do not request compensation from their providers for missed appointments as they are not aware of what they may be eligible to receive, or they believe the amount paid is not worth the hassle involved with claiming.<sup>157</sup> Of the largest providers, only BT Consumer

---

<sup>154</sup> Jigsaw, *Automatic Compensation*, March 2017, slide 55, Question I7, n=72; 58% of consumer 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

<sup>155</sup> 41%. Jigsaw, *Automatic Compensation*, March 2017, slide 55, Question I6:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf) Note sample size is 72.

<sup>156</sup> Ofcom calculations based on provider responses to August 2016 fixed s135 request, Annex 2, question 1 and 3, see Annex 6 for more detail. 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

<sup>157</sup> 79% of those that did not receive compensation did not ask for it; 37% of those who did not ask for compensation did not do so as they didn't expect their provider to say yes; 28% didn't think claiming was worth the hassle. Jigsaw, *Automatic Compensation*, March 2017, slide 58, Question I12bi, n=72; Question I12c M18a, n=52: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

publicises how much a consumer is entitled to receive if an appointment is not kept.<sup>158</sup>

- 7.14 We also found that, amongst those receiving compensation, the average monetary value consumers receive for a missed appointment is £24.28.<sup>159</sup> This suggests that for those who receive compensation, it is on average slightly below our estimate of the harm associated with missed appointments. However, because only 14% of consumers receive compensation, the total amount paid out by the largest providers divided by the number of missed appointments is only £3.35.<sup>160</sup>

## Provisional conclusion on consumer experience

- 7.15 As noted above, consumers experience harm when their appointment is missed. Our provisional assessment of the evidence we have gathered suggests that most consumers are not being given adequate redress for the harm they experience.
- 7.16 We therefore propose to introduce a requirement on landline and broadband providers to pay compensation automatically when appointments are missed.<sup>161</sup> This would ensure that all consumers receive redress for the harm they suffer, and are adequately protected, for their appointment being missed. In addition, we propose that requiring providers to pay compensation when appointments are missed will incentivise them to reduce the frequency of missed appointments, and/or encourage them to notify consumers of any unavoidable changes to their appointment time as soon as possible.

## The rule we are proposing

Figure 9: Automatic compensation for missed appointments

- We propose that for any repair or provision appointment that is not attended at, or during, the time agreed with the consumer, the retail provider will automatically pay the consumer £30 compensation, except in instances where:
  - The appointment was rearranged with more than 24 hours' notice;
  - The appointment was rearranged with less than 24 hours' notice but the provider obtained the consumer's recorded permission to reschedule the appointment for another time on the same day

<sup>158</sup> BT's Customer Service Guarantees state that: "If we fail to keep an appointment we have made with you, you can claim a one-off fixed rate payment of £10." BT Consumer, Customer Service Guarantee, [http://bt.custhelp.com/app/answers/detail/a\\_id/9394/~customer-service-guarantee](http://bt.custhelp.com/app/answers/detail/a_id/9394/~/customer-service-guarantee) [accessed 2 March 2017]

<sup>159</sup> Ofcom calculations based on provider responses to August 2016 fixed s135 request, Annex 2, question 1, see Annex 6 for more detail.

<sup>160</sup> Ofcom calculations based on provider responses to August 2016 fixed s135 request, Annex 2, questions 1 and 3

<sup>161</sup> Either by the provider itself or its supplier.

## **The point from which payment is automatic**

- 7.17 As explained in section 4, ideally consumers should be compensated automatically for poor quality of service, without having to make a claim for compensation.
- 7.18 In order to best serve their customers and manage appointments effectively, providers should be aware when their staff or contractors have not attended an appointment as agreed with the consumer. This is a view that appears to be supported by responses we received from stakeholders such as BT who, in response to the CFI, commented that missed appointments are objectively identifiable and measurable.<sup>162</sup>
- 7.19 Providers using the Openreach network are sent KCI (Keeping Customers Informed) messages to update them as to the status of appointments.<sup>163</sup> The KCI messages they receive notify the provider when an appointment is “Openreach missed” or “customer missed”. Engineers will also take time-stamped photos of their visits to prove they arrived at the appointment at the specified time should there be any dispute. Furthermore, providers receive weekly reports on missed appointments from Openreach. The reports distinguish between appointments missed by Openreach and those where the Openreach engineer attended the customer’s property, but was unable to gain access.<sup>164</sup>
- 7.20 In light of this, we propose that compensation should be payable automatically for missed appointments, with no requirement for the consumer to notify their provider that an appointment has been missed before compensation becomes payable. Some providers have highlighted to us that they occasionally face suspected inaccuracies with Openreach’s reporting regarding appointments. However, given the occasional nature of missed appointments, and the fact that retail providers have 30 days to pay compensation, we do not consider that this is likely to cause difficulties or impose disproportionate costs on retail providers.<sup>165</sup>

## **Value of payment**

- 7.21 We propose that the level of compensation should be set at our estimate of harm of £30 (explained in more detail in Annex 4). Our provisional assessment is that compensation set at this level is necessary to achieve our objective of ensuring that consumers are provided with adequate redress, and sufficiently protected, if their appointments are missed. Likewise, paying compensation at this level will provide an efficient signal to providers to improve service quality in relation to customer appointments.

## **Minimum notice period of 24 hours for rearrangement of appointments**

- 7.22 We recognise that, in some cases, appointments will occasionally need to be rearranged by providers, e.g. in order to ensure efficient deployment of their

---

<sup>162</sup> BT Group, CFI response, p.8: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0010/50104/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0010/50104/bt.pdf)

<sup>163</sup> Our proposed rule would apply where the appointment is arranged by the retail provider but attended by its supplier.

<sup>164</sup> Cartesian, *Automatic Compensation*, March 2017, section 3.2.2:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/98712/automatic-compensation-cartesian-report-cost-model.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/98712/automatic-compensation-cartesian-report-cost-model.pdf)

<sup>165</sup> Confidential Input to Cartesian report; Confidential response to August 2016 fixed s.135 request, Annex 5 question 1b. [3<]

engineering field force. Where this happens, however, we consider that consumers should be given sufficient notice.

- 7.23 On the one hand, 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.
- 7.24 In the gas and electricity sectors, compensation for missed appointments includes instances where the appointment is cancelled with less than one working days' notice (unless the consumer expressly consents to the rearrangement),<sup>166</sup> and in the water sector, compensation is payable where the appointment is cancelled with less than 24 hours' notice.<sup>167</sup>
- 7.25 This is broadly in line with our research, which found that 57% of consumers view 24 hours to be a reasonable amount of notice for an engineer appointment to be cancelled or changed.<sup>168</sup>
- 7.26 Based on the above, we consider 24 hours to be an appropriate time frame for prior notice of an appointment being rearranged.

### **Rearranging appointments for another time on the same day**

- 7.27 As discussed in sections 5 and 6 above, consumers not only care that their appointments are kept, but also that their fault is fixed or service provided as soon as possible.
- 7.28 We are aware that in some circumstances unavoidable delays occur that can cause an engineer to be running late for an appointment. In these instances, the engineer may contact the consumer to see if they can arrive later than the allocated timeslot, rather than miss the appointment without notice and have it arranged for another day, delaying the repair or provision.
- 7.29 In order to give providers the flexibility to allow this to happen, we propose an exception to the required notice period of 24 hours. If the consumer gives their explicit consent for the engineer to arrive on the same day as originally agreed, but at a different time, then the provider will not be required to pay compensation.
- 7.30 Where the consumer consents to the proposed change, it would suggest that the harm or negative impact of waiting in for longer than initially intended on the day is relatively low or outweighed by the benefits of having the job completed on that day. For instance, the consumer may agree to the change if they were already intending to be in all day or had taken the whole day off work.

---

<sup>166</sup> The Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015, Regulation 3

<sup>167</sup> The Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008, Regulation 6

<sup>168</sup> 44% consider 24 hours to be reasonable, 13% consider less than 24 hours to be reasonable.

Jigsaw, *Automatic Compensation*, March 2017, slide 52, Question I1:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)



- 7.31 This exception may help to avoid the unintended consequence of providers offering longer appointment timeslots to try to decrease the likelihood of paying compensation. A respondent to the CFI commented that automatic compensation could discourage providers from offering tighter engineer visit windows as it could potentially mean they would be more likely to pay compensation. However, we believe that having this greater flexibility should help providers keep to more narrow timeslots.<sup>169</sup>

## **We consider our proposed compensation requirement will protect consumers**

- 7.32 Consumer harm is likely to occur when providers set appointments but then fail to meet them. As discussed earlier, the evidence suggests that consumers experiencing this problem suffer harm through disruption, their time being unnecessarily wasted and through anxiety and stress. Yet, compensation payments are currently given to only a minority of consumers that suffer harm, meaning that most consumers are not being given adequate redress. Therefore, we propose to require providers to pay £30 compensation automatically when an appointment is missed (or rearranged with insufficient notice). Our provisional assessment is that this would secure our policy objectives and greater protection for consumers.

*Question 6: Do you agree with our proposal to provide automatic compensation when missed appointments take place with less than 24 hours of prior notice?*

---

<sup>169</sup> Confidential CFI Response [X]

## Section 8

# Making automatic compensation simple for consumers and practical to implement

8.1 To ensure that automatic compensation is easy for consumers to understand and receive, as well as practical to implement, we propose a number of additional features for our proposed automatic compensation scheme. We also set out the reasons for our provisional view as to why the obligation to pay automatic compensation should apply to retail providers.

8.2 This section is structured as follows:

- Transparency;
- The method of payment;
- The timing of payment;
- Payment cap;
- Exceptions to automatic compensation;
- Force majeure;
- Complaints and disputes; and
- Our proposal for the obligation to apply to retail providers.

## Transparency

8.3 As set out in sections 2 and 3, a key issue underpinning our concerns about residential fixed line services today is that many consumers are not aware of the availability of compensation and/or how to go about seeking compensation when a problem arises.

8.4 This is despite the fact that there are already some requirements on providers to set out details of any compensation scheme they operate. One of the General Conditions that applies to all providers (condition 10.2(e)) requires them to publish 'any compensation and/or refund policy, including specific details of any compensation and/or refund schemes offered' and ensure that this information is clear and up to date.

8.5 We are concerned that this issue of consumer awareness could persist and potentially undermine the effectiveness of the automatic compensation regime, for example where providers may depart from the minimum amounts required. Consumers should be aware of their rights in the event that there is disagreement between the provider and the consumer about whether compensation is payable. We expect that, following the implementation of automatic compensation, providers would set out consumers' rights under the applicable rules in a 'clear, comprehensive and easily accessible form' in consumers' contracts and in a prominent place on their

website (in order to comply with the existing requirements of General Conditions 9.2(k) and 10.3(b)).

- 8.6 However, additionally, we think it is important that consumers are aware of compensation arrangements specifically at the point when a quality of service problem arises. This would ensure they have their rights front of mind when a quality of service problem arises and are informed, for example, in the event of a disagreement with their provider over eligibility for compensation.
- 8.7 These points suggest there is a need for greater transparency about our proposed automatic compensation scheme, going beyond the current requirements of the relevant General Conditions. Accordingly, we also propose to require providers to proactively inform individual consumers of their entitlement to automatic compensation at particular points in time in relation to each of provisioning, appointments and reports of loss of service.
- 8.8 To comply with this requirement, we would not consider it sufficient for providers to inform consumers of their right to compensation by providing a link to a contract or other general information contained on their website. Below we set out the proposed transparency requirement for each of our proposed triggers for automatic compensation.

### **Loss of service**

- 8.9 Where a consumer experiences a loss of service, they would usually contact their provider (for example by phone, email, SMS, or webchat) to report the fault. We propose that, at that point, the provider should inform the consumer that they may be entitled to compensation if the fault has not been fixed by a particular point in time (e.g. “by midnight on Thursday”) and the time frame within which any compensation would be payable.

### **Delayed provision**

- 8.10 We propose that, at the time the provider first communicates the committed activation date to the consumer, it must also inform the consumer that, if this date is not met, the consumer may have a right to compensation and the time frame within which any compensation would be payable.

### **Missed appointments**

- 8.11 If a provider misses an appointment, the consumer will not need to report the problem in order to receive compensation.<sup>170</sup> We are therefore proposing that the consumer should be informed of their potential entitlement at the point in time when they accept an appointment offered by their provider. At this point, the provider should inform the consumer that they may be entitled to compensation if this appointment is missed (or if less than 24 hours of notice is given before rescheduling it) and the timeframe within which any compensation would be payable.

---

<sup>170</sup> As set out above, the proposed rule would apply where the appointment is arranged by the retail provider but attended by its wholesale supplier.

## The method of payment

- 8.12 In our CFI we noted that, where appropriate, automatic compensation should take the form of a financial payment, for example a cheque, bill credit, or pre-paid card.
- 8.13 Providers told us that when compensation is paid to consumers at the moment it can take various forms – both monetary and non-monetary. Where the compensation is monetary, the most popular method of payment is in the form of a bill credit. Providers explained that this type of compensation is quick and cost-effective. The most popular methods of non-monetary compensation are benefits-in-kind, such as upgrades, as well as complimentary engineer appointments.<sup>171</sup>
- 8.14 Our provisional view is that automatic compensation should be offered as a monetary amount as this will give consumers meaningful redress, and is also likely to provide a stronger incentive for telecoms providers to improve their service quality. We propose that compensation should be paid by way of a bill credit unless either: (i) the consumer will not, for some reason, receive any further bill from their provider; or (ii) the consumer expressly consents to the use of a different payment method. In general, a bill credit appears to be the most convenient and practical means of payment both for the provider and for the consumer. In particular, we expect this approach to limit the implementation costs and, from the consumer perspective, it will be quick and simple.
- 8.15 However, we do not wish to foreclose the option of non-monetary compensation should this be preferred by the consumer. Some consumers may have a preference for receiving discounts, upgrades, or time-limited free offers. Therefore, we also propose to include an exception which will allow providers to satisfy their obligation to pay compensation by providing a non-monetary benefit to a particular customer – so long as the provider has first informed the customer of the amount of compensation due to them and offered it to the customer as a monetary payment, and the consumer has given his or her express consent to receiving the non-monetary benefit as an alternative. This will ensure that consumers do not receive a non-monetary benefit that is worth less than the amount of compensation due, unless the consumer places greater value on it.

## Timing of payment

- 8.16 In order for compensation to be meaningful and relatable to the harm suffered, it is important that the provider pays compensation reasonably quickly. However, the speed at which payments are required may have an impact on implementation costs. For example, given that, if we adopt our proposal, we would expect the compensation to be paid through a bill credit in the vast majority of cases, the implementation costs are likely to be lower if providers are able to apply this credit when they next issue a bill, rather than before.
- 8.17 In light of this, we propose that the provider should pay compensation to the customer within 30 calendar days after a scheduled appointment has been missed. Where a loss of service has occurred or a provisioning date has been missed, compensation should be paid by the provider to the consumer within 30 calendar days of resolution. This would provide a reasonable balance between providing

---

<sup>171</sup> Ofcom analysis of provider data collected by Ofcom in response to August 2016 fixed s135 information request, Annex 6.

timely recognition and redress to the customer, while not imposing undue costs on the industry given most providers tend to have monthly bill runs.

## Payment cap

- 8.18 We have considered carefully whether we should propose a cap on the obligation to pay automatic compensation. There are points for, and against, doing so but, on balance, we are not currently minded to take that approach.
- 8.19 In reaching that provisional view, we have taken into account that some industry stakeholders have suggested that a payment cap would be necessary for the following reasons:<sup>172</sup>
- Most faults that are not fixed quickly, and most long provisioning delays, are not under the control of the provider. This could be because civil works may be required, meaning providers depend on third parties (e.g. wayleaves or road construction permits) to address customer issues.<sup>173</sup>
  - There is a risk that, if the provider cannot fix the issue in the short term, the customer may have an incentive to continue receiving the payment instead of, for example, switching provider.<sup>174</sup>
  - As wholesale customers of Openreach, they would be left out of pocket if Openreach was not going to agree to an unlimited liability in relation to their wholesale payments to providers.<sup>175</sup>
- 8.20 In addition it is possible that, after a certain point, consumers may not consider compensation appropriate address. They may at that point seek alternatives, such as exiting their contract, although this is likely to depend on the circumstances and the alternatives available.
- 8.21 A payment cap could be appropriate if we were able to strike a balance between ensuring, on the one hand, that consumer harm is redressed and providers have incentives for timely repair and service provision while, on the other, avoiding a potentially unlimited liability on providers. We note that the automatic compensation regimes in the electricity and gas sectors have caps in certain circumstances (although there is no cap in the water sector that we are aware of).

---

<sup>172</sup> This view was communicated to us in a stakeholder meeting on [§<] 2017; as well as by Margrathea and ISPA in their CFI responses (Magrathea, CFI response, p. 2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/62647/magrathea.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/62647/magrathea.pdf) ; ISPA CFI response, p. 3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/53947/ispa.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/53947/ispa.pdf))

<sup>173</sup> This view was put forward to us in a stakeholder meeting on [§<]. Magrathea argued along the same lines that a cap would be appropriate to prevent customers benefiting from a long term issue that could be resolved by taking more appropriate steps such as exiting a contract or engaging with the service provider to resolve, Magrathea, CFI response, p. 2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/62647/magrathea.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/62647/magrathea.pdf)

<sup>174</sup> [§<]

<sup>175</sup> On [§<] informally suggested a 60 working day cap in a meeting with Ofcom. This cap coincides with the time limit applicable to current Openreach SLGs, and compensation payments that Openreach must pro-actively pay to its wholesale customers for missing the repair or provisioning SLA. In addition, Openreach payment limits are currently under review as part of the forthcoming Wholesale Local Access market review including Openreach Quality of Service.

- 8.22 While a minority of consumers experience long term loss of service or delays in provisioning,<sup>176</sup> they can suffer a considerable amount of cumulative harm. It does not seem to us that harm is likely to be a one-off, per event. Rather, harm is likely to continue with every day that the service is not provisioned or restored. If that is right, our provisional view is that consumers should not be left with the risk that the harm would be unaddressed if it persists beyond a certain point.
- 8.23 Some providers put forward the idea of a cap of 60 working days, in line with existing Openreach Service Level Agreements (SLAs) and Service Level Guarantees (SLGs).<sup>177 178</sup> We have considered whether a cap set at that level would still leave a number of consumers inadequately protected.
- 8.24 We do not have granular data for when repairs and provisions were concluded beyond 28 days for retail providers. However, on the Openreach network in 2015/16 around [X]% of all repaired faults took more than 60 working days to resolve, and [X]% of provisions were delayed by more than that.
- 8.25 While those percentages appear small, they still affect thousands of lines per year. Specifically: [X] per year for delayed repairs (excluding ISDN) and [X] for delayed provisions after 60 working days. On that basis a cap of 60 working days would leave a material number of consumers unprotected.<sup>179</sup>
- 8.26 This seems to us to suggest that any sort of payment cap on automatic compensation payments would not be appropriate. It could still leave some consumers suffering long term service problems without redress after the cap is applied. We are, however, keen to understand from stakeholders whether we have taken all of the relevant factors into account and whether we should take a different approach (and, if we were to impose a payment cap, what it should be).
- 8.27 With regard to the argument that retail providers should not have to pay automatic compensation at the retail level should they not obtain direct pass-through of the cost from their wholesale provider, we set out our views on this later in this section. We also expect to consult on Openreach's service quality as part of the Wholesale Local Access (WLA) market review shortly, which will consider wholesale arrangements.

---

<sup>176</sup> Ofcom analysis of provider data collected by Ofcom in response to August 2016 fixed s135 information request, Annex 2, question 3.

<sup>177</sup> A Service Level Agreement (SLA) is a part of a standardised service contract where a service is formally defined. Particular aspects of the service – scope, quality, responsibilities – are agreed between the service provider and the service user. The Service Level Guarantees (SLGs) associated with Openreach's SLAs specify the level of compensation that the customer would be entitled to receive should the service not be provided at the quality specified in the SLA, e.g. if delivery of the service was late.

<sup>178</sup> Openreach, Contracts: <https://www.openreach.co.uk/orpg/home/products/contracts/contracts.do> [accessed 22 March 2017].

<sup>179</sup> Note that this is 60 working days from the report of fault/missed CDD on the Openreach system, not 60 working days over SLA. For example, a value here of 0 working days represents the day provision is delayed or fault is reported. Analysis of BT data submitted in response to the 2nd QoS information request to BT of 3 May 2016, the 3rd QoS information request to BT of 19 July 2016, the 4th QoS information request to BT of 9 December 2017 and the 5th QoS information request to BT of 13 January 2017.

## Exceptions to automatic compensation

8.28 In our CFI we set out our initial views regarding exceptions to the requirement to pay automatic compensation and said that we would “consider on a case-by-case basis whether there is a need to specify exceptions to any future rules on automatic compensation and what these might be.”<sup>180</sup>

- While many stakeholders did not comment on exceptions, of those that did most said that we should consider them and gave their view of what those should be: ADR schemes were generally supportive of including exceptions in an automatic compensation regime. Ombudsman Services said there should be flexibility for exceptions and decisions to be made on a case by case basis,<sup>181</sup> while the Centre for Effective Dispute Resolution (CEDR) said it would be prudent to permit exceptions where a problem has occurred because of circumstances beyond a provider’s control, such as unforeseen events or exceptional weather conditions.<sup>182</sup>
- ISPA and [3<]: noted that factors out of the ISP’s control should be regarded as exceptions, taking into consideration the different technologies that deliver broadband provision and the customers’ set up.<sup>183</sup> Another respondent ([3<]) highlighted that there may be disputes as to whether the consumers equipment (or operation of equipment) has caused a service quality problem. Therefore, it argued there should be an independent party that can decide whether the consumer is eligible for a compensation payment or not.
- Of the consumer groups, Which? said it is reasonable to consider exceptions but these should be kept to the minimum and be objectively justified;<sup>184</sup> the Advisory Committee for Northern Ireland (ACNI) said severe weather was a possible exception to automatic compensation but argued that industrial strikes should not be, as these are a result of poor management and poor industrial relations.<sup>185</sup> In addition one industry participant [3<] warned that that while exemptions were needed they could add complexity, uncertainty, and potentially confusion.

8.29 We have taken into consideration stakeholders’ responses in relation to exceptions and are minded to agree that some exceptions should apply.

8.30 Our provisional view is that compensation should not be paid by the provider to the customer if the loss of service, delayed provisioning, or missed appointment is caused by the customer’s actions or omissions. For example, the wiring within the home may have been damaged by the customer, causing a loss of service, or an engineer appointment may have been missed because the customer is not at home at the appointed time.

---

<sup>180</sup> Ofcom, *Automatic Compensation Call For Inputs*, p.15:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/76260/automatic-compensation-call-for-inputs.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/76260/automatic-compensation-call-for-inputs.pdf)

<sup>181</sup> Ombudsman Services CFI response, p.9:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/98019/Ombudsman-Services.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/98019/Ombudsman-Services.pdf)

<sup>182</sup> CEDR CFI response, p.5: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/55704/cedr.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/55704/cedr.pdf)

<sup>183</sup> ISPA CFI response, p.4: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/53947/ispa.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/53947/ispa.pdf); [3<] CFI response, p.6

<sup>184</sup> Which? CFI response, p.4: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55352/which.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55352/which.pdf)

<sup>185</sup> ACNI CFI response, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/55032/acni.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/55032/acni.pdf)



- 8.31 In line with the above, in some cases, providers may offer a consumer an appointment to repair a service, which the consumer refuses as they cannot make the offered time. Similarly, if a provider has failed to provision a service on the initially committed date, it may need to offer the consumer a further appointment, which the consumer may refuse. In such cases, compensation will not be payable by the provider for the days between the appointment date offered by the provider and the subsequent appointment date accepted by the consumer.
- 8.32 We are also minded to introduce the following additional exceptions and would welcome stakeholder views on them:
- Compensation would not be payable if the provider reasonably believes that the customer's notification of a loss of service is frivolous or vexatious. A similar exception applies to the payment of compensation in other utility sectors. This would ensure, for example, that providers do not feel obliged to investigate reports from vexatious callers in order to satisfy themselves that compensation is not payable. However, we consider it appropriate to include a qualification that the provider must reasonably believe the report to be frivolous or vexatious.<sup>186</sup>
  - Compensation would not be payable if it is triggered as a result of a civil emergency. Part 2 of the Civil Contingencies Act 2004 empowers the Government to make emergency regulations in the event of civil emergencies, such as a terrorist attack, an epidemic, or contamination of land with a chemical matter. We consider that, in these extreme circumstances, it would not be appropriate to expect providers to compensate customers for quality of service problems;
  - Compensation would not be payable if the provider could reasonably expect that it would be breaking the law by taking the action required to avoid triggering compensation. We consider that regulatory intervention should not put providers at risk of acting illegally under other enactments;
  - The consumer has committed an offence under sections 125 or 126 of the Act.

## Force majeure

- 8.33 In our CFI we said we would consider further whether force majeure-type events (e.g. extreme weather, strikes, and third party acts) should provide an exemption from the obligation to pay compensation.<sup>187</sup> We note that in the statutory compensation schemes applicable in utility sectors some force majeure-type exceptions exist, although this varies depending on the specific event, sector and whether the obligation to compensate is on the wholesaler or the retailer.<sup>188</sup>

---

<sup>186</sup> If the consumer does not agree that the report is frivolous or vexatious, then they can pursue a complaint with their provider.

<sup>187</sup> We note that Civil emergencies as under the Civil Contingencies Act 2004 are covered as a proposed exception separately in the above.

<sup>188</sup> In some instances, the occurrence of force majeure (e.g. severe weather conditions) will result in no payment being made (see for instance The Electricity and Gas (standards of performance)(Suppliers) Regulations 2015 regulation 9(3)). In other instances, payment will still be due when severe weather conditions occur but different standards of performance and level of

- 8.34 Of the few responses that addressed the issue specifically, BT was of the view that it was not necessary for us to specify whether or not there should be exceptions to providers' compensation schemes, such as "force majeure" events. Rather, BT noted the specific rules of any scheme should be left to individual providers to determine.<sup>189</sup> Nine Group noted the need for alignment between force majeure type events affecting consumers on the one hand, and BTs MBORC process at the wholesale level on the other (see below).<sup>190</sup> It argued specifically that the relative timing of MBORC declaration and payment was key to ensuring that no payments to consumers would need to be made before the situation with the MBORC was clear.<sup>191</sup>
- 8.35 In considering these points, we take account that force majeure-type events can potentially affect a large number of consumers. Although the data can vary year on year – the number of faults declared to be impacted by an MBORC on the Openreach network amounted to [X] in 2014/15, which is [X]% of all faults or [X]% of faults that exceeded their SLA,<sup>192</sup> [X] in 2015/16, [X]% of all faults or just under [X]% of faults that exceeded their SLA; and [X] in 2016/17 which is [X]% of all faults.<sup>193</sup> This is much lower for provisions, only approximately [X] incidents in 2014/15 and in 2015/16 and [X] incidents in 2016/17 corresponding to little over [X]% in proportion to the total number of provisions that missed their contracted due date (CDD) in 2014/15 and in 2015/16.<sup>194</sup> We do not have data for networks other than Openreach, but assuming this proportion was the same for force majeure-type events affecting them, then the absolute number of loss of service events would come to [X] in 2014/15, [X] in 2015/16 (as an upper bound).<sup>195</sup>

payment will be applicable (see for instance The Electricity (Standards of performance) Regulations 2015 regulation 7(4)).

<sup>189</sup> BT Group CFI response, p.9: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0010/50104/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0010/50104/bt.pdf)

<sup>190</sup> 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/orpg/home/mborc.do>

<sup>191</sup> Nine Group CFI response, p.3:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/63616/nine\\_group.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/63616/nine_group.pdf)

<sup>192</sup> Repairs affected by MBORCs that have exceeded their SLA. As they include care levels 1, 2 and 3, only those for care level 1 correspond to being "delayed taking 2 working days or more". We were unable to insert the percent in total faults for 2016/17 denominator was unavailable. Source: Ofcom analysis of BT data submitted in response to the 2nd QoS information request to BT of 3 May 2016, the 4th QoS information request to BT of 9 December 2017, the 5th QoS information request to BT of 13 January 2017 and Openreach mandatory non-discrimination KPIs. All figures for 2014/15 have been adjusted pro rata to represent the full from 8 months of data.

<sup>193</sup> As we do not have the number of total Openreach faults going beyond the SLA for the year 2016/17 we cannot report this proportion for this year.

<sup>194</sup> Source: Ofcom analysis of BT data submitted in response to the 2nd QoS information request to BT of 3 May 2016, the 3rd QoS information request to BT of 19 July 2016, the 4th QoS information request to BT of 9 December 2017, the 5th QoS information request to BT of 13 January 2017 and Openreach mandatory non-discrimination KPIs. All figures for 2014/15 and 2016/17 have been adjusted pro rata to represent the full from 8 months and 9 months of data respectively. The figures for repair relate to repairs affected by MBORC that have exceeded their SLA. As they include care levels 1, 2 and 3, only those for care level 1 correspond to being "delayed taking 2 working days or more".

<sup>195</sup> There is a high level of uncertainty around this number because translating the Openreach data to industry level data is not straightforward. [X] We consider the figures to be an upper bound because we assumed in scaling up that all loss of service events taking more than 2 calendar days (not working days as in the Openreach data) to resolve would be compensated for. In reality, given our proposed rule on time to repair of loss of service (see section 5 above) is expressed in working days,

- 8.36 Given the above, it appears to us that excluding the payment of automatic compensation on the occurrence of force majeure-type events would leave a material number of consumers without adequate redress for harm. Consumer harm occurs when quality of service problems arise, irrespective of whether there is a force majeure event. For instance, if severe weather conditions cause a loss of landline or broadband services, then consumers would still experience harm and expect the services to be restored within a reasonable period of time. Allowing an exception for force majeure-type events could therefore mean that we would fall short of our policy objective to protect consumers from harm. It would also mean that consumers would be treated differently depending on the cause of the problem, even though consumers experience harm irrespective of its cause.
- 8.37 In addition, network resilience and security are important aspects of network quality, impacting the degree to which force majeure-type events, such as natural disasters, and criminal or accidental damage, may impact network operations and in turn impair the services provided over the network. While the cause of the loss of service or delayed provision may not be directly within the provider's control in the event of a force majeure event, the speed with which they restore service or complete installation is likely to be more within their control. Therefore, in so far as automatic compensation incentivises improvements in network quality, not allowing for a blanket exclusion of force majeure-type events would also contribute to our second policy objective.
- 8.38 It is our preliminary view that consumers suffer regardless of the cause of the quality of service issue, while providers can often take mitigating measures to protect their networks and operations against the impact of force majeure events. The potential reduction in cost to industry of not having to make pay-outs for force-majeure type events of up to £[X] per year, is not large relative to the aggregate additional compensation pay-outs likely to flow from our proposals of £147.4 – £184.8m per annum (see section 9 below).<sup>196</sup> As a result it is our provisional assessment that we should not allow for an exception for force-majeure type events. However, we welcome stakeholder views on this.

## Complaints and disputes

- 8.39 We envisage that there will be circumstances in which a provider has decided that a specific consumer is not entitled to compensation, and where the consumer is unhappy with this decision. Similarly, a consumer may disagree with the amount that the provider has calculated as being due. The General Conditions already impose requirements on providers in relation to handling complaints from consumers and the escalation of unresolved complaints to alternative dispute resolution (ADR) schemes. As these requirements are already in place, we consider that any consumer complaints about the payment of compensation, or a provider's refusal to pay compensation, should be dealt with under these existing mechanisms.
- 8.40 The existing requirements are currently in General Condition 14, but we consulted in December 2016 on a revised version of these rules, which would be set out in

---

we would expect the number of compensatable events overall, and as a result the proportion of MBORCs within it, to be lower than set out here.

<sup>196</sup> Based on the proportion of Openreach MBORC incidents (for the years 2014/15 and 2016/17) scaled up to the total average number of loss of service incidents taking longer than 2 calendar days to repair.

Condition C5 of our proposed new General Conditions.<sup>197</sup> The revised rules on which we consulted would require providers to ensure that their complaints handling procedures are accessible to consumers and are set out in a Code of Practice that conforms with the Ofcom Approved Code of Practice.<sup>198</sup> Providers would have to promptly take steps to resolve complaints to the complainant's satisfaction and would also be required to notify consumers of the outcome of their investigation. If consumers are not satisfied with that outcome (or a complaint remains unresolved after 8 weeks of the date on which it was received), providers would need to write to the consumer, informing them of their right to refer the matter to ADR and giving details of the particular ADR scheme to which the provider belongs.

## **We propose that the obligation will apply to retail providers**

- 8.41 We set out above that automating the payment of compensation (i.e. limiting the level of consumer involvement required to receive payment) should ensure that consumers are compensated quickly and easily by their retail provider. In the CFI we noted our preliminary view that when entitled, consumers should be compensated by their retail provider irrespective of whether there is a wholesale supplier involved and the underlying issue arises on the wholesale network, to ensure quick redress. We also recognised that this may result in a renegotiation of wholesale arrangements.<sup>199</sup>
- 8.42 In particular, we said that where a retail provider buys services from a wholesale supplier, there will be instances when quality of service problems would be the supplier's fault but the retailer would be required to pay compensation. We indicated that, in those circumstances, we would expect retailers to be able to commercially negotiate and agree wholesale service levels with their suppliers, including payments for breaches, so that compensation would normally be paid for by the party responsible for the problem.

## **CFI responses**

- 8.43 In response to the CFI, some stakeholders supported our view that retail providers would be able to commercially negotiate compensation arrangements for breaches of agreed wholesale service levels.<sup>200</sup> Ombudsman Services and ACNI stressed that consumers must not suffer as a result of disputes between retailers and wholesalers

---

<sup>197</sup> Ofcom, *Review of the General Conditions of Entitlement Consultation on the general conditions relating to consumer protection*, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0032/95873/Review-of-the-General-Conditions-of-Entitlement-Consultation-on-the-general-conditions-relating-to-consumer-protection.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0032/95873/Review-of-the-General-Conditions-of-Entitlement-Consultation-on-the-general-conditions-relating-to-consumer-protection.pdf)

<sup>198</sup> Draft revised condition C5 on complaints handling and dispute resolution. The Ofcom Approved Code of Practice for Customer Service and Complaints Handling is contained in the annex to draft revised condition C5.

<sup>199</sup> Ofcom, *Automatic Compensation Call For Inputs*, p.15: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/76260/automatic-compensation-call-for-inputs.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/76260/automatic-compensation-call-for-inputs.pdf)

<sup>200</sup> BT Response to CFI, p.6: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0010/50104/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0010/50104/bt.pdf)  
CISAS, CCP response to CFI, p. 2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/57556/ccp-acod.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/57556/ccp-acod.pdf); Ombudsman Services Response to CFI, p.9: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/98019/Ombudsman-Services.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/98019/Ombudsman-Services.pdf); Prospect Response to CFI, p.7: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/59187/prospect.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/59187/prospect.pdf)

as to who must pay compensation and therefore the responsibility must lie with the retail provider to ensure the consumer gets the compensation they are owed.<sup>201</sup>

- 8.44 However, most providers raised concerns over their ability to renegotiate contracts with suppliers to reflect retail-level automatic compensation payments where they failed to meet certain service levels. One of these respondents stated that Ofcom “must not leave retailers to commercially negotiate service levels with providers with SMP.”<sup>202</sup>
- 8.45 Small fixed providers were also concerned about practical complexities especially where there is a longer chain of wholesale suppliers involved. ITSPA cautioned that if automatic compensation was not formulated carefully, having to pay for their wholesaler’s faults could bankrupt some small providers.<sup>203</sup> In light of these issues, some providers argued that we should impose separate obligations to pay compensation on wholesale and retail providers, respectively.<sup>204</sup>
- 8.46 Some providers also claimed in response to the CFI that the majority of service problems consumers encounter originate at the wholesale level.<sup>205</sup> Because of this, any retail level compensation remedies would be ineffective at achieving our secondary objective of improving service quality.<sup>206</sup>

## Our proposal

- 8.47 Our provisional view remains that it is appropriate for requirements for automatic compensation to be imposed on the retail provider. This would ensure that the provider that has the contractual relationship with the consumer to deliver the service provides redress when problems occur. Given that it is the retail provider that a consumer would contact when they have a problem with their service and the retail provider holds the necessary customer information, this approach would ensure that the problem is addressed, and if necessary the consumer is paid compensation, in the easiest and most straightforward way.
- 8.48 A starting point is that the relevant provisions of the Act and the Framework are more suited to the imposition of General Conditions for consumer protection on the retail service providers with whom consumers have a service relationship.<sup>207</sup> That

---

<sup>201</sup> Ombudsman Services Response to CFI, p.9:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/98019/Ombudsman-Services.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/98019/Ombudsman-Services.pdf); ACNI Response to CFI, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/55032/acni.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/55032/acni.pdf)

<sup>202</sup> Vodafone Response to CFI, p.8:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0029/58682/vodafone.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0029/58682/vodafone.pdf)

<sup>203</sup> ITSPA Response to CFI, p.3:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0011/54011/itspa.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0011/54011/itspa.pdf)

<sup>204</sup> [3<]; Maxxwave Ltd Response to CFI:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0029/58763/maxxwave.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0029/58763/maxxwave.pdf); SSE Response to CFI p. 9: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/54928/sse.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/54928/sse.pdf)

<sup>205</sup> [3<]; SSE Response to CFI, p.2:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/54928/sse.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/54928/sse.pdf); Federation of Communication Services Response to CFI, p.2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/54918/fcs.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/54918/fcs.pdf)

<sup>206</sup> [3<]; following this reasoning these and one other provider urged Ofcom to focus efforts on improving service quality at the wholesale level through means other than automatic compensation. Three Response to CFI, p9: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/54396/three.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/54396/three.pdf)

<sup>207</sup> In that regard, section 51(1)(a) of the Act empowers us to set general conditions for protecting the interests of end-users of public electronic communications services (PECS). Imposing a condition on network providers could also protect such interests (where the service is provided over the relevant network), but our assessment is that the obvious focus should be on the retail relationship. We also

approach would also be more practicable as the retailer is the primary point of contact for the consumer and largely controls the processes from the consumer's perspective.

- 8.49 We have considered placing obligations on wholesale providers to pay compensation to the retailer in cases where the wholesaler is at fault; whereby the retailer would be obliged to pass this on to the consumer. This could help in ensuring that the cost of compensation would fall on the provider responsible for the problem and be consistent in principle with optimally incentivising improvements in service quality. However, our provisional assessment remains that formal regulation would not be the best means to achieve it.
- 8.50 We take account that telecommunications services involve a range of different wholesale and retail relationships. Some providers have complete control over their networks and others have contracts with several wholesale providers. Even where retail providers are reliant on wholesalers for some of their inputs, faults or the speed of fixing them, may well be in their control. In that context, different wholesale and retail providers are likely, in our judgment, to have a range of concerns and interests that would best be dealt with through commercial negotiations and contractual terms between them.
- 8.51 In making this assessment, we recognise the importance to many retailers of negotiating suitable terms. We acknowledge that those negotiations may be more challenging where the wholesale provider has significant market power (SMP), but also that the regulation of such providers offers a framework within which negotiations can take place. We discuss our approach on this below.
- 8.52 We also do not consider it appropriate to impose requirements on wholesale providers to pay out compensation directly to consumers. Given the range of different wholesale and retail relationships in telecommunications, it is not clear to us that the service problems we have identified would lend themselves to a clear distinction of wholesalers' and retailers' responsibilities.<sup>208</sup>

## **BT Openreach**

- 8.53 BT is currently subject to SMP conditions in relation to wholesale line services, such as Wholesale Line Rental (WLR), Local Loop Unbundling (LLU), and Virtual

---

note that, under the current proposals for a new EU Directive establishing an Electronic Communications Code, it would only be permissible in future to attach general conditions for consumer protection to a general authorisation for the provision of electronic communications services (but not electronic communications networks) (see point 3 of Part C of Annex 1 to the proposal for a Directive).

<sup>208</sup> This contrasts with the gas and electricity sectors, where there are obligations placed on the wholesale provider to pay compensation that are separate and different to those applying to the retailer. However, in those sectors, there is a clear demarcation in the functions performed by each. For instance, the responsibilities to pay compensation for a delayed restoration of supply following a loss of service fall solely on the electricity distributor, whereas, the electricity supplier may have to pay compensation for a faulty meter reading. The responsibilities placed on the gas and electricity retail providers to pay compensation to consumers are detailed in The Electricity and Gas (Standards of Performance) (Suppliers) 2015, whereas electricity distributors' obligations are largely outlined in The Electricity (Standards of Performance) Regulations 2015 and gas transporters' duties are in The Gas (Standards of Performance) Regulations 2005.



Unbundled Local Access (VULA).<sup>209</sup> For these wholesale services, BT is required to provide network access on fair and reasonable terms and conditions and to publish a Reference Offer which sets out the terms and conditions for each. The Reference Offers must include, amongst other things, service level commitments (SLAs) and the amount of compensation payable for a failure to meet SLA requirements (SLGs).<sup>210</sup>

8.54 In practice SLAs and SLGs are set and revised from time to time through a process of industry negotiation overseen by the Office of the Telecommunications Adjudicator (OTA2).<sup>211</sup> This is set out in more detail below.

8.55 At present, Openreach has SLAs and SLGs in place in its contracts that broadly correspond to each of our proposed automatic compensation triggers (i.e. in relation to fault repairs, provisioning on the committed date, and missed appointments). However, automatic compensation payments to be made to consumers as proposed in this consultation may mean that:

- the monetary amount of the current SLG may not be sufficient to cover the retail providers' increased costs which will be incurred as a result of the payment of retail level compensation; and/or
- the terms of the relevant SLA (i.e. setting out when an SLG is payable) may not precisely match circumstances in which we propose retail level compensation should be payable.

8.56 As noted above, we propose that in principle the party responsible for the quality of service problem should bear the cost of retail level compensation. We expect that any changes to Openreach's SLAs or SLGs necessary to achieve this should be the subject of industry negotiations, facilitated by the OTA2, in line with current practice.

8.57 In previous regulatory decisions (as described below), we have set out certain principles that would be relevant to those negotiations:

- as noted above, BT is required to offer network access on fair and reasonable terms and to publish a Reference Offer including SLAs and SLGs (which are, in turn, required to be fair and reasonable);
- in our 2008 statement on SLGs ('2008 Statement')<sup>212</sup> we stated that a service level regime that meets a number of general principles is likely to be fair and reasonable;
- one of these principles is that compensation for a failure to meet agreed service levels should be based on a pre-estimate of an average provider's loss;<sup>213</sup>

---

<sup>209</sup> These are the wholesale services that providers without their own network buy from Openreach to supply retail consumers. The SMP conditions can be found in: Ofcom, *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*, pp. 150 ff.

<sup>210</sup> Ibid.

<sup>211</sup> OTA2 is an independent organisation tasked by Ofcom to oversee co-operation between communications providers.

<sup>212</sup> Ofcom, *Service level guarantees: incentivising performance*, March 2008, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/33617/statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/33617/statement.pdf).

<sup>213</sup> Ibid, paras 3.31, 3.60 – 3.61



- we also noted that it was possible to use various methodologies to calculate this, namely lost/delayed revenue, lost customers, compensation paid by providers to their end-users, additional customer service costs, operational costs of dealing with Openreach and damage to reputation;<sup>214</sup>
- another general principle is that providers should be entitled to claim for additional loss beyond the average reflected in the SLG, but that this would only be efficient where the additional gain was greater than the cost of claiming;<sup>215</sup> and
- in our August 2013 determination of a dispute between TalkTalk and Openreach relating to SLGs, we referred to these general principles and, in particular, applied the principle that the SLG should be based on a pre-estimate of the average provider's loss.<sup>216</sup>

8.58 Openreach's current wholesale contracts set out that Openreach will not be liable if it is delayed in meeting its contractual obligations because of a matter beyond its reasonable control (MBORC). As a result, industry stakeholders have argued that the lack of an equivalent exemption to our automatic compensation rules might leave retail providers to pay automatic compensation to customers without receiving compensating SLG payments from Openreach. At present, we do not have a view on whether the cost of force majeure-type events should be borne by the wholesale provider or retailers, especially as the issue may be no more under the wholesale network provider's control than the retail provider's. As noted above, our provisional view is that the aggregate cost to industry of providing automatic compensation for service problems caused by force majeure-type events is not disproportionate.

8.59 In terms of the negotiations process more generally, and the role of the OTA2 within it, as well as the time such negotiations could take, the principles for the contract negotiation process are currently set out in the 2014 FAMR Statement.<sup>217</sup> These set out that the OTA2 should facilitate all negotiations to create or change SLAs and SLGs. Amongst other things these principles set out under what circumstances a request to renegotiate should be facilitated through this process, and that no negotiations should extend beyond 6 months, with regular reporting to Ofcom. If, in the opinion of the OTA2, negotiations cannot be successfully concluded or have not been concluded within 6 months, then the OTA2, as part of its final report to Ofcom, will set out its view on whether and on what basis Ofcom should initiate a review.

8.60 In the event that industry is unable to reach agreement on changes to Openreach SLAs and SLGs, then a dispute could potentially be referred to us for resolution.<sup>218</sup> In reaching a determination, we would take account of the particular facts of the dispute (including the regulatory conditions to which Openreach is subject at the relevant time), the history of negotiations between the parties and the other evidence submitted to us. However, as noted above, our provisional policy position is that in principle a wholesaler - in this case, Openreach - should meet the cost of retail level compensation in circumstances where it is at fault. In addition, SLGs are more likely

<sup>214</sup> Ibid, paras 4.29, 5.28

<sup>215</sup> Ibid, paras 4.33, 537

<sup>216</sup> Ofcom, *Dispute between TalkTalk Telecom Group PLC and Openreach relating to whether Openreach offered MPF New Provide to TalkTalk on fair and reasonable terms and conditions*, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0018/84114/dispute\\_between\\_talktalk\\_te1.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0018/84114/dispute_between_talktalk_te1.pdf)

<sup>217</sup> Ofcom, *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*, pp. 350 ff. These principles were replicated in the 2016 BCMR Statement (Ofcom, Fixed Access Market Review 2014: Statement, June 2014).

<sup>218</sup> Sections 185-191 of the Act.

to be fair and reasonable where compensation is based on a pre-estimate of an average CP's loss and one relevant factor when calculating this would likely be the amount of automatic compensation paid by providers to their end-users.

- 8.61 As set out in section 10, we are proposing an implementation period of 12 months between the date of our final statement and the introduction of automatic compensation. Our assessment is that this would be sufficient time to allow for a six month OTA2-led industry negotiation process and a four month dispute resolution process, should both of these prove necessary.

### **Provisional conclusion**

- 8.62 To secure our policy objectives we propose that it is appropriate to apply the obligation to pay automatic compensation on retail providers.
- 8.63 To achieve our objective of incentivising improved quality of service, we propose that the cost of compensation should in principle fall where the issue is caused and we would expect retail providers to be able to negotiate appropriate contractual terms with their wholesalers as appropriate. We have set out above how we consider negotiations with Openreach should proceed, given its position of SMP in various wholesale markets.
- 8.64 We are aware that the approach outlined above does not fully remove the uncertainty retail providers face in advance of negotiations with suppliers. Nevertheless, our provisional judgment is that the above framework should deliver sufficient protection for retail providers. We would welcome stakeholder comments on the issues set out.

*Question 7: Do you agree with our proposals on transparency?*

*Question 8: Do you agree with our proposals on the method and timing of payment?*

*Question 9: Do you agree with our proposal not to have a payment cap (and our assessment of the reasons for and against it)? - If you consider there should be a payment cap, what should it be and why?*

*Question 10: Do you agree with our proposed exceptions?*

*Question 11: Do you agree we should not allow for a blanket exception for force majeure-type events?*

*Question 12: Do you agree with our proposal on complaints and disputes?*

## Section 9

# Impacts of a regulatory approach for residential landline and broadband services

## Introduction

- 9.1 Before making an overall assessment of the effect of our proposals in section 10, in this section we first analyse a number of the impacts from introducing automatic compensation for residential landline and broadband services through formal regulation. We identify the main expected impacts and the parties on which they may fall and make provisional conclusions about the likely overall effect of these impacts for consumers and providers.
- 9.2 Our assessment in this section covers all three quality of service problems (i.e. delayed repairs for loss of service; delayed provisions and missed appointments) on a combined basis. For completeness, we have also examined each on a standalone basis, and refer to this primarily in our discussion of implementation costs at paragraphs 9.20-9.24 below.
- 9.3 The provisional conclusions we draw are that our proposals would increase the compensation paid to consumers,<sup>219</sup> but providers are likely to pass at least some of the costs through to consumers. As long as the rate of pass-through to retail bills is less than around 80%, the net impact on consumers as a whole would be positive, though it would be different for different individuals. The effects on providers would depend on the rate of pass-through and the extent to which they are incentivised to improve quality of service.

## Identification of impacts

- 9.4 Consistent with our impact assessment guidance, we identify the impacts of our proposals and the stakeholders these will affect.<sup>220</sup> Below we discuss the main effects and the stakeholders affected under the following headings:
- recipients of compensation payments;
  - funding of compensation payments;
  - time savings from automation;
  - implementation costs;
  - quality of service improvements; and

---

<sup>219</sup> As well as, for the reasons set out in section 10 in particular, produce a better and fairer outcome for consumers who suffer quality of service problems.

<sup>220</sup> Ofcom, *Better Policy Making*, 2005, p14:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/57194/better\\_policy\\_making.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/57194/better_policy_making.pdf)

- the effect on competition.

9.5 We have also taken into account various other factors (such as the form and structure of payments) in designing our proposals and these are discussed elsewhere in this consultation. The consultation as a whole therefore comprises our full impact assessment.

## Recipients of compensation payments

9.6 Under our proposals, consumers of residential landline and broadband services who suffer certain pre-specified quality of service problems would receive compensation automatically. For the quality of service problems covered by our proposals we would expect the aggregate value of compensation paid to consumers to increase. There are two reasons for this.

9.7 First, we expect the value of the average compensation payment would increase. Currently, the average monetary compensation paid for each type of quality of service problem appears insufficient to redress the estimated harm incurred. Our proposals therefore increase the average level of compensation that will be paid out for each incident shown in Figure 10 below.

**Figure 10: Increase in average level of compensation per qualifying incident for fixed residential services**

	Loss of service (£ per day)	Delayed provisioning (£ per day)	Missed appointments (£ per incident)
Current average compensation among those receiving compensation	3.69	2.39	24.28
Proposed compensation	10.00	6.00	30.00
Increase in average compensation	6.31	3.61	5.72

Source: Current average compensation based on Ofcom analysis of operator data collected by Ofcom in response to s.135 information requests, dated August 2016, responses to Annex 2.

9.8 Second, more consumers would receive compensation payments. Currently, some of the consumers who experience quality of service problems receive no compensation at all. Under our proposals the payment of compensation would be automatic and therefore we expect that a greater number of consumers would receive such payments, as shown in Figure 11 below.<sup>221</sup>

<sup>221</sup> The estimated volume of compensation payments under our proposals was calculated using historic data on the number of incidents. This does not take into account any improvements in quality of service as a result of our proposals (which would reduce the number of incidents qualifying for compensation) and, potentially, in response to other Ofcom policy decisions. For example, we have consulted on proposals for reform of the process for the cross-platform switching of services and expect to consult on Openreach's service quality as part of the Wholesale Local Access (WLA) market review shortly. We discuss the potential for improvements as a result of our automatic compensation proposals in further detail later in this section and in Annex 8.

**Figure 11: Increase in number of annual compensation payments for fixed residential services**

	Loss of service (m)	Delayed provisioning (m)	Missed appointments (m)
Current volume of compensation payments	0.87	0.16	0.03
Estimated volume of compensation payments under our proposals	1.14 – 2.16	1.28	0.25
Increase in volume of payments	0.27 – 1.29	1.11	0.21

*Note: The volume of compensation payments under our proposals for loss of service differs from the total number of loss of service incidents reported in section 5 and Annex 6, because we are proposing a period of 2 working days before automatic compensation would be due. The range for loss of service is based on incidents that last 2+ calendar days and 4+ calendar days respectively. We have used this range as our data on incidents is recorded as calendar days while our proposals for the period before automatic compensation is due are based on working days. For more details see Annex 6.*

*Source: Current volume of compensation payments based on Ofcom analysis of operator data collected by Ofcom in response to s.135 information requests, dated August 2016, responses to Annex 2.*

- 9.9 Based on our proposals for the level of compensation and our estimates of (qualifying) incidents, and their average duration, we estimate that total annual compensation will be around £164m – £201m under our proposals which is an increase of £147m – £185m above current levels. This is shown in Figure 12 below.

**Figure 12: Increase in annual aggregate compensation paid**

	Loss of service (£m per year)	Delayed provisioning (£m per year)	Missed appointments (£m per year)	Total (£m per year)
Current aggregate compensation payments	11.8	3.7	0.8	16.3
Aggregate compensation payments under our proposals	83.1 - 120.5	73.2	7.4	163.7 - 201.2
Increase in aggregate compensation	71.3 - 108.8	69.5	6.6	147.4 - 184.8

*Note: The volume of compensation payments under our proposals for loss of service differs from the total number of loss of service incidents reported in section 5 and Annex 6, because we are proposing a period of 2 working days before automatic compensation would be due. The range for loss of service is based on incidents that last 2+ calendar days and 4+ calendar days respectively. We have used this range as our data on incidents is recorded as calendar days while our proposals for the period before automatic compensation is due are based on working days. For more details see Annex 6.*

*Source: Current aggregate compensation payments based on Ofcom analysis of operator data collected by Ofcom in response to s.135 information requests, dated August 2016, responses to Annex 2.*

## Funding of compensation payments

- 9.10 While the compensation payments would benefit those consumers that receive them, we recognise that these payments involve redistribution between stakeholders. The

total amount of funding for these increased payments must be equal to the compensation that is paid out i.e. an increase of around £147m – £185m. In the first instance the payments will be paid by providers, but ultimately they will be funded either by providers themselves (their shareholders) or by increases in consumer bills. The split of funding between providers and consumers will be determined by the level of pass-through i.e. the amount that providers pass onto consumers in their bills.

- 9.11 We consider the potential extent of pass-through in Annex 7. While the precise level of pass-through would be uncertain, we consider that at least some pass-through would occur though it would be unlikely to be full. Therefore, it is likely that at least some portion of the costs of automatic compensation would fall not only on providers but also consumers. We discuss the magnitude of these potential impacts below.

## Time savings from automation

- 9.12 Under our proposals, qualifying quality of service problems would lead to automatic compensation for consumers, without requiring further effort from them to seek compensation. This contrasts with the current situation in which consumers typically have to spend time researching, claiming and negotiating with providers before receiving compensation.
- 9.13 We have estimated the value of this benefit by focusing on the value of the time that would be saved from the avoided process of claiming compensation. We recognise this may be an underestimate since it may not incorporate the stress which may accompany making an application for compensation to a provider.
- 9.14 Our estimate starts from the total number of compensation payouts for relevant quality of service issues today – approximately 1.1m (total of the first row in Figure 11 above).
- 9.15 Next we estimate the duration of each of these claims. We have based our estimate on the expected time saving that providers' customer service agents may make from removing the call handling aspect of a compensation claim.<sup>222</sup> Our estimate is 2-3 minutes per claim (0.03–0.05 hours), depending on the type of quality of service problem.<sup>223</sup>
- 9.16 Finally, we apply a value of time to this estimate. For present purposes, we use a value of time of £5.51/hour as used by the Department for Transport in its Transport Appraisal Guidance.<sup>224</sup>
- 9.17 Combining these components described above we multiple the current number of compensation claims for each type of quality of service problem, by our assumed length of each claim and by the value of time. This gives an estimate of a benefit to consumers of £0.3m.<sup>225</sup>

<sup>222</sup> This reflects the additional time consumers spend trying to obtain compensation, over and above the time spent contacting the provider to report a fault.

<sup>223</sup> This is based on assumptions used in Cartesian, *Automatic Compensation*, March 2017, p. 7: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/98712/automatic-compensation-cartesian-report-cost-model.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/98712/automatic-compensation-cartesian-report-cost-model.pdf). We recognise that these are assumptions but consider that an estimate of 2-3 minutes is conservative.

<sup>224</sup> Department for Transport, 2016, webTAG data book, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/544166/webtag-data-book-summer-2016-v1-6.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/544166/webtag-data-book-summer-2016-v1-6.xls)

<sup>225</sup>  $((0.87\text{m} \times 0.05\text{hrs}) + (0.16\text{m} \times 0.03\text{hrs}) + (0.03\text{m} \times 0.03\text{hrs})) \times £5.51/\text{hr} = £0.3\text{m}$

- 9.18 This is likely to be an underestimate since the estimated current number of compensation claims is based on consumers who ultimately receive compensation. There may also be some consumers who spent the time and effort in attempting to claim compensation but did not receive any. We did not have data on the number of these unsuccessful claims and hence have not included them in the above quantification. On the other hand, there may be some consumers who, following the introduction of the automatic compensation scheme, remain unaware of the scheme and attempt to claim compensation anyway, before they receive the automatic payment. Where this is the case these consumers will not fully avoid the time spent requesting compensation, although they may spend less time doing so.
- 9.19 In addition to the benefit of automation for consumers, there may be some benefit of automation to providers. Where automatic compensation leads to the amount of contact time between the consumer and provider being reduced there would also be corresponding benefits for providers in the form of reduced customer service agent time. This in turn would lead to operating expenditure (OPEX) savings. The size of these cost savings is estimated to be around £0.6m per year.<sup>226</sup> They have been taken into account in our overall assessment of implementation costs (see section immediately below).

### Implementation costs

- 9.20 Most providers of communications services do not operate automatic compensation schemes at present.<sup>227</sup> Our proposals would therefore require providers to make changes to their operations to meet regulatory requirements. As such they will likely incur costs in changing their systems, processes and training for customer service agents to ensure that compensation can be automated.
- 9.21 We commissioned Cartesian to calculate these costs. They have estimated the capital expenditure (CAPEX) involved in making these revisions as well as the annual OPEX (including any savings from reduced customer service agent time).
- 9.22 Overall, the implementation costs across the industry would likely be around £4.0m per year across a ten-year period.<sup>228</sup> This estimate includes the costs required to implement our proposals for all three types of quality of service problems covered by our proposals.
- 9.23 We have also examined the implementation costs for each of these quality of service problems on an incremental basis, assuming that the implementation costs for the other two have already been implemented. These incremental costs are £0.4m for delayed repair of loss of service (assuming automatic compensation for delayed provisioning and missed appointments is already in place), £0.7m for delayed provisioning (assuming automatic compensation for delayed repair of loss of service and missed appointments is already in place) and £0.7m for missed appointments (assuming automatic compensation for delayed repair of loss of service and delayed provisioning are already in place). This demonstrates that once automatic

---

<sup>226</sup> Cartesian, *Automatic Compensation*, March 2017, p. 8:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/98712/automatic-compensation-cartesian-report-cost-model.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/98712/automatic-compensation-cartesian-report-cost-model.pdf)

<sup>227</sup> Some providers do provide compensation for certain quality of service issues once the issue is reported. [3<]

<sup>228</sup> Cartesian, *Automatic Compensation*, March 2017, p. 8:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/98712/automatic-compensation-cartesian-report-cost-model.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/98712/automatic-compensation-cartesian-report-cost-model.pdf)



compensation is in place, the incremental cost of addressing additional quality of service problems through automatic compensation would be low.

- 9.24 We have sought to limit the implementation costs to a proportionate level when designing our proposals. For example, by requiring payments to be in the form of bill credits (see para 8.14) and giving flexibility to providers in terms of precisely how they implement these changes to their systems.

### **Quality of service improvements**

- 9.25 One of our objectives for automatic compensation is to provide greater incentives for providers to improve quality of service. Improving quality of service means either preventing these service issues or resolving them more quickly when they arise.
- 9.26 To the extent that providers respond to the stronger incentive to improve quality of service then, relative to the base case where automatic compensation is not introduced, consumers would avoid the harm that would have resulted from the now avoided (or shortened) quality of service problems. However, providers would be likely to face additional costs in fixing issues more quickly and/or investment costs in preventing their occurrence.
- 9.27 We also note that a reduction in the number of quality of service problems would reduce the total amount of compensation payments due. It would thus dampen the magnitude of the effects shown in Figure 12 above.
- 9.28 We have sought to gauge the relative magnitude of the benefits from fewer quality of service incidents as compared to the implementation costs (as set out above) and the cost to providers of avoiding those quality of service problems. Our calculations are set out in in Annex 8. We estimate that if the number of quality of service incidents were to fall by around 3-4% then the benefits from improved quality of service would likely be of a comparable magnitude to the costs of implementing automatic compensation and delivering improved service.
- 9.29 We have considered whether our proposals would be likely to result in a fall in quality of service problems that is higher or lower than this figure (see Annex 8). While it is not possible to be definitive, our provisional judgment is that the likely reduction in quality of service problems could be at least of this magnitude. This suggests that the benefits from fewer quality of service problems would likely be similar, or even greater, than the costs of implementing automatic compensation and the costs of improving quality of service.

### **Impact on competition**

- 9.30 We do not expect our proposals would create distortions to competition. First, they would be implemented via a General Condition and as such will apply to all providers.
- 9.31 Second, as explained in section 4, the competitive pressures on providers to avoid quality of service problems are currently muted. Under our proposals, providers whose customers experience more quality of service problems would pay more compensation. This could lead such providers to increase retail prices, which might incentivise some of their existing consumers to switch provider. This risk of losing customers as a result of price increases would, in turn, act to incentivise providers to improve quality of service (or might deter them from raising prices in the first place). We recognise that the strength of these effects in aggregate is hard to specify with

certainty – not least since the quality of service varies so much between providers – and there are many dimensions of competition in retail fixed telecoms. Nonetheless, our provisional judgment is that the direction of the impact of our proposals on competition would likely be positive.

- 9.32 We do not currently consider that quality of service receives much emphasis in how providers seek to attract consumers, notwithstanding the fact that quality of service clearly varies between providers.<sup>229</sup> Therefore, we would not expect the introduction of automatic compensation to have a detrimental impact on existing competitive differentiation between providers / products. As noted in the preceding paragraph, our provisional view is that automatic compensation is more likely to incentivise providers to compete on their quality of service than today.

## Assessment of impacts

- 9.33 Having identified the main impacts, we now assess how consumers and providers would likely be affected when these impacts are combined.
- 9.34 In the analysis below, where we look at the maximum impact on each of consumers or providers, the scenarios are mutually incompatible. For example, retail pass-through cannot be simultaneously 100% (i.e. full impact on consumers) and 0% (i.e. full impact on providers). Overall, we expect that the realised impacts would be below the maximum impacts that we have presented for each group.

### Aggregate impact on consumers

- 9.35 We have identified above that we would expect consumers to gain from increased compensation payments (by around £147m–£185m) and a reduced need to spend time and effort claiming compensation (by around £0.3m). These figures suggest the total gross benefit is likely to be around £148m–£185m.
- 9.36 We also identified that consumers may experience price increases as providers would be likely to pass-through compensation costs and implementation costs to consumers to some extent (at most around £189m). If retail price rises, as a result of our proposals, lead to increased consumer bills of less than the consumer benefits from automatic compensation, then overall consumers would be better off. This corresponds to a pass-through rate of around 80% (including taking account of VAT due on price increases).<sup>230</sup>
- 9.37 While we recognise there are some uncertainties in the figures set out above, this calculation suggests that the impact for consumers in aggregate would likely be positive provided the level of pass-through is less than approximately 80%.
- 9.38 We consider the scope for pass-through in further detail in Annex 7. For the reasons set out in that annex (such as different quality of service by different providers,

---

<sup>229</sup> See the section on information asymmetries in Annex 5 for a discussion of the limited prominence that quality of service receives. See Figure A8.3 in Annex 8 for evidence on the outturn difference in provider performance on the three quality of service metrics we are considering in this consultation.

<sup>230</sup> We have assumed all providers incur VAT at a rate of 20%. The threshold level is calculated by dividing total benefits by total costs multiplied by the VAT rate. Using the upper end of our range for compensation payments as an example, the calculation is  $(£185m / (£189m \times 1.2) = 82\%)$ . The pass-through rate is little changed if we use the lower end of our range on costs faced by providers.

absence of perfect competition, limited empirical evidence), it is likely that at least some pass-through would occur in the medium term but it is unlikely to be full.

- 9.39 Nevertheless, we have also considered the maximum possible negative impact on consumers if pass-through were full (i.e. 100%). In this case, there could be an increase in residential fixed telephony bills of £7–9 per annum (around 2% of the average annual bill).<sup>231</sup> If, however, pass-through were only 50% then this would be around £4 per annum of residential bill impact and if pass-through were 0% then there would be no impact on consumer bills.
- 9.40 To the extent that our proposals lead to improvements in quality of service as described in 9.25-9.29 above consumers would benefit further. Given that we have set compensation levels equal to the estimated average level of harm, the magnitude of this benefit is already captured in the £147m–£185m estimate set out above.<sup>232</sup> However, as explained below, the scope for providers to improve quality of service rather than pay compensation would tend to reduce the costs for providers. This, in turn, would tend to reduce the extent to which retail prices would need to rise in response to paying out automatic compensation.

### **Impact on individual consumers**

- 9.41 The impact on consumers would vary across individuals. Those consumers that suffer a quality of service problem (or would have suffered, absent our proposals) would likely benefit, e.g. from higher compensation, notwithstanding any rise in retail prices. However, those consumers that do not suffer a quality of service problem would likely be worse off as a result of the rise in retail prices.
- 9.42 But over time, a given consumer is likely to suffer a quality of service problem at some point..<sup>233</sup> While some fixed lines may have a higher probability of a fault than others, consumers will tend to move from one place of residence to another and/or switch provider. As a result, while consumers in one year might be contributing (through average bills) to funding compensation to other consumers, in other years, they would be benefitting from automatic compensation. Clearly, any general improvements in quality of service would benefit all consumers in all years.
- 9.43 If providers pass through costs to consumer bills, we would not expect them to target these increases at any particular group, since our proposals do not differentiate between any particular groups and hence incentives related to retail pricing between different consumers would be unchanged. Nevertheless, for low spending consumers the bill increase would be above the average reported above and for lower income

---

<sup>231</sup> The £7–£9 impact on the annual average bill is calculated as £151m x 1.2 to £189m x 1.2, i.e. = £182m to £227m of passed-through costs (including VAT) divided by 25.6m residential lines (Ofcom, Communications Market Report 2016, Figure 4.11). An increase of 2% is calculated as £7–£9 divided by an average annual spend of £453 (average annual spend of £15.05/month for fixed internet and £22.66/month for fixed voice taken from Ofcom, Communications Market Report 2016, Figure 4.34).

<sup>232</sup> For example, our proposals mean consumers either (i) receive £30 in compensation if an appointment is missed; or (ii) avoid £30 of harm if that appointment is no longer missed. Accordingly, regardless of which of these outcomes occurs, the £147m–£185m figure above captures the benefits to consumers across the three quality of service metrics covered.

<sup>233</sup> As shown in Figure A6.1 of Annex 6, the number of quality of service incidents per line is at least 0.22 per year (and higher still when adding delayed provisioning and missed appointments to loss of service). This implies around one quality of service incident at least every four to five years on each line if incidents were randomly distributed across lines and not correlated.

households would represent a larger proportion of their monthly budget than higher income households.

## Impact on providers

- 9.44 As noted above, we consider it likely that providers would pass through costs to consumers, at least to some extent. The closer to full pass-through this is, the less the financial impact on providers.
- 9.45 We estimate that additional compensation payments to consumers would be around £147m–£185m and that providers would incur implementation costs of around £4m per annum leading to a maximum total annual impact of £151m–£189m across the industry if there were no pass-through. To put this in context, aggregate EBITDA for fixed residential services is of the order of £5,475m, see Figure 13 below.<sup>234</sup>
- 9.46 As well as analysing the potential impact on the industry as a whole, we have reviewed the potential impact on individual providers if they had to bear all of the costs and if they had to bear half of the costs of automatic compensation (shown in Figure 13 below). Under the upper end of our range for expected compensation payments, the weighted average financial impact across all providers would be around 3% of EBITDA and 1% of revenues. This is the maximum potential impact assuming that retail providers bear all the costs of automatic compensation – i.e. that costs are not passed on to wholesale providers and/or retail consumers. Our provisional judgment is that the overall impact on retail providers is likely to be sufficiently limited that it would not compromise the ongoing operations of these providers nor undermine their incentives to invest.

**Figure 13: Potential impact on retail providers' financials (assuming no pass-through)**

	Revenue	EBITDA	Cost increase					
Pass-through			0%	50%	0%	50%	0%	50%
	£m	£m	Absolute (£m)		% Revenues		% EBITDA	
BT Consumer (includes Plusnet and EE)	4,608	1,063	[X]	[X]	[X]	[X]	[X]	[X]
Virgin Media	4,806	2,167	[X]	[X]	[X]	[X]	[X]	[X]
Sky	8,374	1,910	[X]	[X]	[X]	[X]	[X]	[X]
TalkTalk	1,838	260	[X]	[X]	[X]	[X]	[X]	[X]
Post Office	126	n/a	[X]	[X]	[X]	[X]	n/a	n/a
KCOM	349	75	[X]	[X]	[X]	[X]	[X]	[X]

Source: Ofcom calculations based on providers' published financial statements (based on providers' own financial years ending between March 2016 and December 2016). In the above we have sought to present values for retail fixed landline and broadband service, however, due to limitations in publicly available data, the revenue and EBITDA values shown above include the following: BT Consumer values include TV, Virgin Media values include TV, business and mobile, Sky values include TV and advertising and cover both the UK and Ireland, TalkTalk values include TV and KCOM values include wholesale and retail.

Note (\*): As well as passing through some of the costs to consumers, retailers may also offset some of the costs through payments from network operators for the quality of service problems that they are responsible for (see section 8). Given Openreach is the largest network operator, this may increase the costs incurred by BT Group. Insofar as Openreach subsequently increases its charges, some of these costs will be passed back to retailer

<sup>234</sup> Ofcom estimate based on providers' published financial statements.

*providers using its network. We note that even if the full costs to providers on the Openreach network were passed back to BT Group then the impact on BT Group as a whole would be less than shown in Figure 13 ([§]).*

- 9.47 In addition, providers may be able to mitigate the cost of compensation payments by improving quality of service (and would presumably do so where the savings from lower compensation outweigh the cost of that quality of service improvement).

## **Informing our proportionality assessment**

- 9.48 Our assessment of the impacts on consumers and providers informs our consideration of the proportionality of our proposals in relation to achieving our policy objectives. This is set out in section 10.

*Question 13: Do you agree with the impacts we describe? Please wherever possible give your reasoning and provide evidence for your views.*

## Section 10

# Provisional conclusions on residential landline and broadband services

- 10.1 In section 4 we provisionally concluded that the introduction of an automatic compensation scheme is most likely to achieve our policy objectives. In sections 5 to 8 we described how we would propose to design such a scheme if it were to be implemented by way of formal regulation. In this section, we set out the proportionality assessment of our proposals and provisional conclusions on residential and landline services. This includes an assessment of the draft proposal that we received from BT, Sky and Virgin Media in early March 2017 to implement automatic compensation for their customers on a voluntary basis ('draft voluntary code'). In the limited time available since it was submitted to us, we have been unable to carry out a detailed impact assessment of the draft voluntary code. In this section, we instead draw on our assessment of the formal regulatory approach in sections 4-9, and consider whether the draft voluntary code might be a more proportionate means of achieving our policy objectives.
- 10.2 Our provisional assessment is that this is not the case and that we should therefore implement automatic compensation by way of formal regulation. Nevertheless, should the draft voluntary code evolve further following this consultation to substantially meet our policy objectives, and with our bias against intervention in mind, we would be prepared to adopt it instead of imposing formal regulation.
- 10.3 Having reached a provisional decision to impose an automatic compensation scheme by way of formal regulation, we go on at the end of this section to consider how such a scheme should be implemented and monitored.

## Draft voluntary code to implement automatic compensation

- 10.4 In response to the CFI, some industry respondents acknowledged the benefits of better redress for consumers, but said that we should explore other means of achieving this, including through an automatic compensation scheme that was developed by providers themselves on a voluntary basis, rather than being implemented through regulation. BT said that "Ofcom should adopt a set of principles as a 'base line' and leave CPs with the flexibility to decide at which point the consumer becomes eligible, what the best form of compensation is, and the mechanism and process for providing it." It added that this would allow "differentiation on automatic compensation paid when the offered service levels are not met" and would "provide consumers with choice as well as protection".<sup>235</sup> One academic response to the CFI seemingly supported a voluntary approach to automatic compensation, arguing that there is limited evidence that regulatory enforcement and deterrence will cause a behavioural change in business and that it will be difficult to effectively address the quality of service issues raised "without extensive voluntary movement by business". The response therefore suggests that engaging with businesses on Ethical Business Regulations may be more productive.<sup>236</sup>

---

<sup>235</sup> BT, Response to CFI, p.2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0010/50104/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0010/50104/bt.pdf)

<sup>236</sup> Professor Christopher Hodges, Centre for Socio-Legal Studies, response to CFI, p.2, 4: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/74563/hodges\\_professor\\_c.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/74563/hodges_professor_c.pdf)

- 10.5 Since then, in March 2017, BT, Sky and Virgin Media jointly put forward the draft voluntary code that we publish at Annex 13 to this document. The proponents of the draft voluntary code were of the view that introducing automatic compensation through a voluntary code would be quicker and easier to implement which would allow consumers to benefit from it sooner.<sup>237</sup> BT, Sky and Virgin Media also argued that such a voluntary code would continue to allow competitive differentiation between providers.

## Comparison of the draft voluntary code with our proposals

- 10.6 Figure 14 below provides an overview of the key similarities and differences between the formal rules we propose in sections 4-8 above and the draft voluntary code.

**Figure 14: Comparison of key features of the draft voluntary code and our regulatory proposal**

Factor	Our proposals	Draft voluntary code
Number of consumers covered	<ul style="list-style-type: none"> <li>All consumers of landline and broadband services for residential services</li> </ul>	<ul style="list-style-type: none"> <li>Only consumers of the landline and broadband providers who adopt the voluntary code – initially proposed by BT, Sky and Virgin Media</li> </ul>
Compensation for delayed repair of loss of service	<ul style="list-style-type: none"> <li>£10 per calendar day if the customer experiences a total loss of landline and/or broadband service and their service is not fully restored by midnight on the second working day after the provider becomes aware of the loss</li> </ul>	<ul style="list-style-type: none"> <li>£3 per working day for loss of service beyond three working days after a customer reports a total loss of service and a fault recorded on that line</li> </ul>
Compensation for delayed provisioning	<ul style="list-style-type: none"> <li>£6 per calendar day where there is a delay in the commencement of a landline and/or broadband service beyond the date that the provider has committed to in a written form</li> </ul>	<ul style="list-style-type: none"> <li>£3 per day for each working day beyond the date of intended activation</li> </ul>
Compensation for missed appointments	<ul style="list-style-type: none"> <li>£30 to be paid by the provider where an appointment is missed (and notice of at least 24 hours has not been given or the consumer expressed consent to changed appointment time)</li> </ul>	<ul style="list-style-type: none"> <li>£20 for a missed appointment slot (if 24 hours' notice of change is not provided)</li> </ul>
How compensation would be paid	<ul style="list-style-type: none"> <li>Compensation to be paid automatically when appointment is missed and there is a delay in provisioning</li> </ul>	<ul style="list-style-type: none"> <li>Compensation to be paid automatically when appointment is missed and there is a delay in provisioning.</li> </ul>

<sup>237</sup> This was something that Which? advocated for, stating that they were “disappointed with the projected timescale that Ofcom has set out”. Which? response to CFI, p.1: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55352/which.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55352/which.pdf)



	<ul style="list-style-type: none"> <li>• Compensation to be paid automatically for delayed repair after customer contacts provider to notify it of the loss of service and a fault is recorded</li> </ul>	<ul style="list-style-type: none"> <li>• Compensation to be paid automatically for delayed repair after customer contacts provider to notify it and a fault is recorded</li> </ul>
Cap on payments	<ul style="list-style-type: none"> <li>• No cap proposed</li> </ul>	<ul style="list-style-type: none"> <li>• Providers have ability to impose a cap, although this must be above a minimum level. Precise minimum level is not specified. This cap does not limit customers' other rights of redress (to exit their contract or claim additional compensation)</li> </ul>
Form of payment	<ul style="list-style-type: none"> <li>• Bill credit (unless otherwise agreed by the customer)</li> </ul>	<ul style="list-style-type: none"> <li>• Bill credit (unless otherwise agreed by the customer).</li> </ul>
Timing of payment	<ul style="list-style-type: none"> <li>• Within 30 days of missed appointment</li> <li>• Within 30 days of loss of service or delayed provision is resolved</li> </ul>	<ul style="list-style-type: none"> <li>• In a timely manner and no later than the next bill after the issue is resolved</li> </ul>
Exclusions	<ul style="list-style-type: none"> <li>• Compensation excludes customer-caused incidents</li> <li>• Force Majeure and MBORC type events not excluded</li> </ul>	<ul style="list-style-type: none"> <li>• Compensation excludes customer-caused incidents</li> <li>• Force Majeure and MBORC type events not excluded</li> </ul>
Implementation	<ul style="list-style-type: none"> <li>• Implementation period of 12 months after statement (see below)</li> </ul>	<ul style="list-style-type: none"> <li>• "As soon as reasonably practicable"<sup>238</sup></li> </ul>
Enforceability	<ul style="list-style-type: none"> <li>• Legally enforceable</li> </ul>	<ul style="list-style-type: none"> <li>• Not enforceable</li> </ul>

## How we assess proportionality

10.7 Under our regulatory principles we operate with a bias against intervention, which is derived from our duty in section 3(3) of the Act to have regard to the principles under which regulatory activities should be (amongst other things) proportionate and targeted only at cases in which action is needed.<sup>239</sup>

10.8 We have set out in sections 4-8 why we propose that action, in the form of the introduction of automatic compensation, is required for residential landline and broadband services. In assessing proportionality, we consider:

- whether a potential measure is an appropriate means of achieving our policy objectives;<sup>240</sup>

<sup>238</sup> [X]

<sup>239</sup> <https://www.ofcom.org.uk/about-ofcom/what-is-ofcom>

<sup>240</sup> In order for an intervention to be proportionate, the objectives pursued must also be legitimate. We consider that our objectives are legitimate in light of our statutory powers and duties. In particular, and as set out in Section 2, one of our principal duties is to further the interests of consumers (section 3(1) of the Act). In performing this duty, we must have regard to the interests of consumers in respect of quality of service (amongst other things) (section 3(5) of the Act).

- whether the potential measure is necessary to achieve those objectives, or whether those objectives could be achieved by a less onerous approach; and
- whether the potential measure is, in the round, disproportionate (i.e. whether the burden imposed is disproportionate to the benefits secured).

10.9 We consider below whether a formal regulatory scheme for introducing automatic compensation is proportionate, including whether the draft voluntary code could achieve our objectives in a less onerous manner.

### **Appropriate means of achieving our objectives**

10.10 As set out in section 2, our policy objectives are:

- to ensure that consumers are able to receive adequate compensation when their provider does not deliver service quality standards 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.

10.11 Our provisional assessment is that imposing automatic compensation by way of formal regulation (as described in more detail in sections 4-8) would achieve these objectives. In particular:

- We expect that in aggregate the compensation paid under our proposals would address the typical harm arising from quality of service problems. This is apparent from our choice of proposing that the compensation payment should equal the average level of harm incurred.
- Our proposals also strengthen the incentives on providers to improve quality of service.
- The benefits from fewer quality of service incidents are likely to be at least as great as the costs of implementing an automatic compensation regime and the costs of avoiding those incidents.

10.12 If we were to introduce formal regulation, this would take effect 12 months after the date of our final statement (see below for further detail). We consider that the benefits of a regulatory approach would begin to accrue to consumers from this point, albeit any benefits from improvements in service quality would likely take longer to be felt by consumers.

### **Could we achieve our objectives through a voluntary code of practice?**

#### **Is the draft voluntary code less onerous than a regulatory scheme?**

10.13 The draft voluntary code may result in lower industry costs. For providers that chose to adopt the draft voluntary code, the incremental implementation costs for each provider of the formal regulation option over and above the draft voluntary code option may well be small. However, it is likely that formal regulation would involve these costs being incurred by more providers, including a number of smaller ones. For these smaller providers, the costs of implementing automatic compensation may be higher on a per customer basis than for larger ones given they have fewer

customers and lower economies of scale. Our proposed formal regulation would also require providers to pay higher levels of compensation to more consumers. At present, the draft voluntary code may therefore be lighter touch than a regulatory scheme.

#### Does the draft voluntary code achieve our objectives?

- 10.14 The draft voluntary code is similar to the regulatory scheme in that it tackles the same quality of service problems that we propose should be subject to automatic compensation: delayed repair following loss of service, delayed provisioning and missed appointments.
- 10.15 Furthermore, it makes clear that compensation would be 'automatic' in that the consumer would not have to undertake a prolonged process to claim compensation. There are a number of other similarities, as detailed in Figure 14 above.
- 10.16 Nonetheless, while the development of the draft voluntary code is a positive step, it also has three notable shortcomings which, in combination, mean that we do not think it would, as currently drafted, achieve our policy objectives. We discuss each of these in turn below.

#### The proposed compensation levels

- 10.17 Our provisional assessment is that the proposed compensation levels in the draft voluntary code may result in consumers being insufficiently compensated for the harm they suffer. In Annex 4 we set out our estimate of the most likely value of harm suffered by the average consumer for each of the three quality of service problems that we focus on. The compensation levels in the draft voluntary code are lower than our estimates of harm and it only provides for compensation to be paid for each working day of delay whereas we consider that consumers suffer harm for each calendar day of delay and not only working days.
- 10.18 We recognise that, if compensation values were set below the level of harm, consumers might nevertheless receive adequate redress if the competitive process operated to fill the "gap". Specifically, if the proposed compensation values in the draft voluntary code became a true minimum level in practice, with providers competing to provide compensation at sufficiently higher levels, then consumers could receive adequate redress. However, at present, we are not confident that this would occur in practice. As we noted in section 4, the evidence suggests that there is inadequate information about providers' compensation policies available to consumers. Furthermore, we considered that behavioural biases and switching barriers may mean that consumers do not switch providers in response to poor redress or choose the service that best meets their needs in relation to quality of service. The market features described in section 4 may therefore mean that competitive pressure would not lead to an increase in compensation to a level that ensures adequate redress for consumers.
- 10.19 BT, Sky and Virgin Media have not ruled out potential changes to the values of compensation in the code, once stakeholders have had an opportunity to comment through the process of this consultation. We would welcome this and would assess any such enhancements in reaching a final decision. However, for the purposes of this consultation, it is appropriate for us to assess the draft voluntary code as it currently stands.

### Number of consumers covered

- 10.20 Currently the draft voluntary code has only been committed to by BT, Sky and Virgin Media. Unless other providers adopt the code, around one in five landline and broadband consumers would not be entitled to automatic compensation.<sup>241</sup> We therefore consider that these consumers would be unlikely to receive adequate redress for the harm suffered as a result of quality of service problems.
- 10.21 BT, Sky and Virgin Media anticipate that publication of the draft voluntary code in the consultation would drive additional take-up from other providers. We would welcome this and would take into account any such commitments made by other providers between this consultation and our final statement.
- 10.22 BT, Sky and Virgin Media also suggested to us that if automatic compensation through a voluntary code was implemented then competition between providers would encourage more providers to adopt the voluntary code over time. They committed to publicising the fact that their customers would receive redress for failures, considering it to be a point of differentiation, and suggested that we could maintain a list of signatories to the draft voluntary code so consumers would know which providers had adopted it and offered automatic compensation. They also argued that a positive consumer outcome may emerge even if not all adopters offered automatic compensation, provided consumers were well-informed.<sup>242</sup>
- 10.23 As set out in section 4, we recognise that a healthy market outcome would see providers offering a variety of products to consumers, including different quality of service arrangements. If BT, Sky and Virgin Media introduced automatic compensation and consumers were fully informed about this, then it may be true that some consumers may switch to these providers where they placed a higher value on quality of service. If this happened, other providers might face incentives to also offer automatic compensation (via the draft voluntary code or through offering their own scheme). Conversely, consumers who placed less emphasis on quality of service might elect to remain with providers who did not offer automatic compensation and who may be cheaper.
- 10.24 However, even if sufficient information were available and there were a greater variety of offers in the market under a voluntary scheme, consumers may still not switch providers in response to poor redress or choose the service that best meets their needs in relation to quality of service. The market features described in section 4 may mean that competitive pressure would not materialise even if a scheme is put in place and adequately publicised.

### Timing of compensation for delayed repair

- 10.25 Under the draft voluntary code, consumers would only have the right to compensation for delayed repair after midnight on the third working day, not by midnight on the second working day as per the design of our regulatory approach. We have set out our reasons for proposing midnight on the second working day for delayed repair in section 5 above and assess that this is in line with consumers' reasonable expectations. A time period of three working days would not, however, be

---

<sup>241</sup> BT Group (including EE), Sky and Virgin Media together accounted for just under the 80% of the fixed broadband market. See [https://www.ofcom.org.uk/data/assets/pdf\\_file/0021/12828/facts-figures-table16.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0021/12828/facts-figures-table16.pdf)

<sup>242</sup> [3<]

in line with those expectations. In addition, three working days may not incentivise providers to undertake repairs much faster than their current average repair times.

- 10.26 As with the proposed values of compensation, BT, Sky and Virgin Media have not ruled out a potential change to the three working day approach for delayed repair, once stakeholders have had an opportunity to comment through the process of this consultation. As set out above, we would welcome any enhancements to the draft voluntary code and would assess them in reaching a final decision.

### Provisional view

- 10.27 On the basis of these shortcomings, taken together, our provisional view is that the draft voluntary code would not achieve our policy objectives. Specifically, the compensation that would be provided to consumers (taking into account the proposed values, the number of consumers that would be covered and the proposed timing of payments for delayed repair) would not give them adequate redress for the harm they suffer from quality of service failures. In turn, this shortfall between the amount of compensation paid and the amount of harm suffered by consumers would mean that providers would not be provided with sufficient incentive to improve service quality.
- 10.28 BT, Sky and Virgin Media argued that introducing automatic compensation through the draft voluntary code may be quicker to implement than through a formal regulatory scheme. If true, this would allow consumers to benefit from it sooner. Whereas our proposals involve a 12 month period for implementation from the date of our final statement, the draft voluntary code would be implemented “as soon as reasonably practicable”. It is therefore not clear that the voluntary code would be the quickest way of implementing automatic compensation, given the systems changes that would be required under both approaches. However, we would welcome further information from stakeholders on whether a voluntary code would be a quicker means of implementing automatic compensation and delivering our stated policy objectives.

### **Are the burdens of the regulatory scheme disproportionate to the benefits secured?**

- 10.29 In answering this question, we take into account the importance of the policy objectives we are pursuing, in light of our statutory duties.<sup>243</sup>

---

<sup>243</sup> This accords with the judgment of the Competition Appeal Tribunal (CAT) in the *0845* litigation, see *British Telecommunications Plc and Everything Everywhere Limited - v - Office of Communications*, case Numbers: 1151/3/3/10, 1168/3/3/10 and 1169/3/3/10, and also the approach of the European Court of Justice (ECJ) in *Fedesa* (R v Minister of Agriculture, Fisheries and Food and Secretary of State for Health, ex parte: Fedesa and others, case C-331/88, [1990] ECR I-4023). In *0845*, the CAT said that, in exercising its judgment as to whose interests to consider in its impact assessment, Ofcom should be guided by its statutory duties (taking account of the classes of person – including consumers – whose interests Ofcom must, in line with those duties, have regard to) and its policy preferences (and the CAT would allow Ofcom a margin of appreciation in relation to the latter). Although the CAT’s comments were made in the context of an impact assessment, we consider that the underlying point applies equally to this proportionality assessment. In *Fedesa*, the ECJ, in considering the proportionality of a proposed measure, stated that the importance of the objectives pursued justified even substantial negative financial consequences for certain parties (paragraph 17).

- 10.30 As described in section 2, 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 quality of service (amongst other things).<sup>244</sup>
- 10.31 We set out in that section our view of the importance of telecoms services to consumers and the increasing reliance they place on them. We also refer there, and in sections 5-7, to the reasonable expectations we provisionally judge consumers to have in relation to loss of service and delayed repair, unscheduled delays in provisioning and missed appointments. We describe the important policy objectives we propose to pursue in order to further consumers' interests. We propose that consumers should have protection in respect of their reasonable expectations, given our duties and the special importance of telecoms services.
- 10.32 The evidence available to us, set out in sections 4-7, suggests most consumers who experience quality of service problems are not currently being compensated for them. Even if they do receive compensation, they do not typically receive levels of redress that reflect the harm they suffer. We are therefore concerned that consumers are not being treated fairly and the market is not providing them with the level of service (including compensation) that they reasonably expect and should receive. Our provisional view is that they are not being sufficiently protected for failures in quality of service, and that market features, such as information asymmetries and/or behavioural biases, mean the market alone is unlikely to meet their reasonable expectations in this regard.
- 10.33 We take account that water and energy consumers already receive compensation when services are lost or appointments missed. Given the growing importance of telecoms services, our proposals would ensure that telecoms consumers are also entitled to redress when they suffer problems. As set out in section 2, Parliament considers compensation to be a legitimate regulatory tool for protecting consumers' interests and has already given Ofcom general consumer protection powers enabling us to implement a compensation scheme for quality of service problems. Parliament is currently considering making more explicit Ofcom's powers in this area in the Digital Economy Bill, where it has signalled its support for automatic compensation in the communications sector to bring it in line with the compensation schemes in the utility sectors.
- 10.34 We therefore make the provisional judgment that the objectives pursued, and benefits that would be secured, by our regulatory compensation scheme are important and legitimate in light of our statutory duties. Indeed, we consider achieving this outcome is a significant priority in our work on protecting consumers.
- 10.35 As described in section 9, our proposals will have a range of impacts across stakeholders. We provisionally assess that, if the level of pass through is less than around 80%, the impact on consumers overall is likely to be net positive and the impact on providers is likely to be net negative. The balance between these two impacts will depend on the level of costs passed through to retail prices, which is inherently uncertain, and will also depend on the extent to which providers improve quality of service.
- 10.36 In addition, the implementation costs of the intervention are relatively low (around £4.0m per year across the industry, corresponding to less than 20p per residential line per year) compared to the consumer redress (incrementally worth around

---

<sup>244</sup> Section 3(1) and 3(5) of the Act.

£147m–£185m per year) and the incentives for improved quality of service that we are seeking to deliver.

- 10.37 Taking the above points carefully into account, our provisional regulatory judgment is that the costs of automatic compensation are proportionate to the benefits that would be secured, given the importance of those benefits as described above.
- 10.38 We likewise judge that the regulatory scheme would be proportionate even in the unlikely event of no pass-through at all of the costs to consumers (which we do not consider is likely), as the costs for industry are not so large as to be likely to have a significant impact on the ongoing operations of providers (see section 8 for further detail). We do not consider this burden on providers would be disproportionate to the important consumer benefits that would be secured.
- 10.39 As set out in section 9, we cannot rule out the possibility that pass-through of costs to retail prices could be at or beyond the level at which aggregate consumer benefits would become net negative. However, we also provisionally judge that this outcome would nevertheless be proportionate to the first policy objective that automatic compensation is designed to secure, as the re-distribution of benefits (amongst consumers) will ensure that those suffering a quality of service problem receive redress. Our assessment is that this would be a fairer outcome than today.
- 10.40 We also take account that our proposals are designed to give providers greater incentives to improve quality of service (as well as protecting consumers' interests where they do not do so). In so far as the proposals would result in increased retail prices (as a result of pass-through), we would expect these to be lower than if there were no improvement in quality of service and providers would be subject to competitive pressures (i.e. those less able to improve quality of service will be at a greater competitive disadvantage). We think that the overall effect of mandated automatic compensation would be to further consumers' interests, taking account of all our statutory duties.

## Provisional conclusion

- 10.41 We therefore make the overall provisional judgment that the proposed formal regulatory scheme would meet our objectives in a proportionate way. On that basis, we propose to require providers to implement such a scheme.
- 10.42 Nevertheless, under our regulatory principles we operate with a bias against intervention (but with a willingness to intervene firmly, promptly and effectively where required).<sup>245</sup> If our policy objectives are substantively met by other means, we would have a preference against regulation.
- 10.43 We welcome the fact that the largest landline and broadband providers have responded to our call for better redress for consumers, and have recognised that automatic compensation would ensure that consumers are compensated quickly and easily when they experience a service quality problem. However, at present, our assessment is that there are some important gaps between the benefits that would likely be delivered by a regulatory scheme and those likely to be delivered by the

---

<sup>245</sup> Our regulatory principles are set out at: See <https://www.ofcom.org.uk/about-ofcom/what-is-ofcom>. The regulatory principles take account of our duty in section 3(3) of the Act to have regard to the principles under which regulatory activities should be (amongst other things) proportionate and targeted only at cases in which action is needed.



draft voluntary code. These mean that we do not think the draft voluntary code, as it stands, would be likely to substantially achieve our policy objectives.

- 10.44 At this stage, therefore, we do not think that the industry proposal sufficiently meets our concerns when quality of service falls short, although we welcome the opportunity to continue dialogue with industry in parallel to this consultation.
- 10.45 We encourage further enhancements to the draft voluntary code as well as commitments from other providers that they would be willing to sign up to it. We will take into account the responses received to this consultation, and any further enhancements to the draft voluntary code, and aim to publish a statement setting out our final conclusions around the end of 2017.

## Implementation of automatic compensation

- 10.46 Having provisionally concluded that we will implement an automatic compensation scheme by way of formal regulation, we now consider how quickly this should be implemented.
- 10.47 We are mindful that providers will need time to implement the changes that we propose in relation to automatic compensation and consider that a 12 month period should allow providers sufficient time to do this.
- 10.48 We therefore propose to allow all providers a period of 12 months following our final statement before our proposals come into force. Specifically, we propose that automatic compensation will come into effect on the first calendar day of the next month after the 12-month period has expired (as we understand from previous regulatory interventions that it may be easier for providers to implement any system changes, particularly those with an impact on billing, at the beginning of a calendar month).

## Monitoring automatic compensation

- 10.49 We consider it is important to monitor the impact that automatic compensation has on the industry and on consumers on an ongoing basis. We therefore propose that providers should be required to provide us with information, by completing a template table (to be published on our website), initially 6 months after the date of implementation and after that annually. We propose that the template table would be as follows:

**Figure 15: Information we propose to use to monitor the impact of automatic compensation**

	Delayed repair following a loss of service (incidents falling within condition CX.[10])	Delayed provisioning (incidents falling within condition CX.[7])	Missed Appointments (incidents falling within condition CX.[5])
Number of incidents in which compensation has been paid	<i>Total number: [...]</i>  Total to be broken down by the number of full calendar days that the loss of	<i>Total number: [...]</i>  Total to be broken down by the number of full calendar days after	<i>Total number: [...]</i>

	<p>service persists after the point in time referred to in condition CX.[10],<sup>246</sup> as follows:</p> <p><i>0 calendar days.</i><sup>247</sup>  [...]  1 calendar day: [...]  2 calendar days: [...]  3 calendar days: [...]  etc.</p>	<p>the activation date that the service(s) remained inactivated,<sup>248</sup> as follows:</p> <p><i>0 calendar days.</i><sup>249</sup>  [...]  1 calendar day: [...]  2 calendar days: [...]  3 calendar days: [...]  etc.</p>	
Total value (£) of compensation paid	£[...]	£[...]	£[...]

10.50 We propose that providers will have one month following the end of the 6-month period (and each 12-month period thereafter) within which to compile the information and send it to us.

*Question 14: Do you agree with our provisional conclusions on residential landline and broadband services?*

*Question 15: Do you agree with our proposal of 12 months to implement automatic compensation?*

*Question 16: Do you agree with our proposal to monitor the impact of automatic compensation?*

<sup>246</sup> I.e. Midnight on the second working day after the Loss of Service Trigger Day.

<sup>247</sup> I.e. Service restored during the course of the first calendar day.

<sup>248</sup> See condition CX.[8](a) and (b)

<sup>249</sup> I.e. service restored during the course of the first calendar day after activation date.



## Section 11

# Small and medium sized enterprises

## Introduction

11.1 In this section we assess whether we should intervene in order to ensure that the interests of small and medium sized enterprises (SMEs) are protected.<sup>250</sup> To make this assessment, we employ the framework we have set out in section 3. We consider SMEs' expectations, the current extent of quality of service problems they experience and the harm that can result from these problems. We then consider whether SMEs appear to be receiving adequate redress for the harm they experience from quality of service problems and consider whether providers are likely to have sufficient incentive to provide the level of service SMEs reasonably expect without intervention. We set out the options considered to address the issues identified and our proposal to require better information on the service quality that SMEs can expect and the associated compensation arrangements.

## Our position in the CFI and stakeholder responses

11.2 In the CFI we noted that businesses tend to place even greater importance on quality of service when purchasing communication services than residential consumers and particularly value a provider's responsiveness to faults and service performance. We also said that larger businesses and some SMEs tend to buy bespoke communication services where service levels and compensation arrangements are more clearly defined and set out in their contracts, and which in many cases may be individually negotiated. On this basis we said that automatic compensation may not be necessary to protect larger businesses from service quality issues. However, we said that we should consider automatic compensation for residential consumers and smaller businesses, some of which may buy services targeted at residential consumers.<sup>251</sup>

11.3 Stakeholders who responded to our CFI were divided on whether automatic compensation should be extended to smaller businesses. Some argued that smaller businesses should be included within the scope of automatic compensation. This included the Advisory Committee for Northern Ireland, who argued that SMEs should be included on the grounds that SMEs lack specially qualified IT staff, even though their business depends on being able to use digital communications. They considered that larger businesses should be free to negotiate their own service level agreements.<sup>252</sup> It also included the Centre for Effective Dispute Resolution, who said that small businesses may not have bespoke contracts with providers – unlike many business customers and it therefore makes sense to consider them as eligible for automatic compensation.<sup>253</sup>

---

<sup>250</sup> Small and medium sized enterprises are businesses with 249 or fewer employees.

<sup>251</sup> Ofcom, *Automatic Compensation Call for Inputs*, pp.7-8, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/76260/automatic-compensation-call-for-inputs.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/76260/automatic-compensation-call-for-inputs.pdf)

<sup>252</sup> Advisory Committee for Northern Ireland response to CFI, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/55032/acni.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/55032/acni.pdf), p.1.

<sup>253</sup> Centre for Effective Dispute Resolution response to CFI, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/55704/cedr.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/55704/cedr.pdf), p. 1.

11.4 A number of respondents argued that SMEs should not be included in automatic compensation. There were a range of reasons given for this view.

- Some respondents argued that communications failure is something that all businesses should anticipate and therefore should be able to prepare to minimise any impact on them. Andrews and Arnold argued that any business should consider the risk of service failure and that businesses should be able to choose the business continuity measures they consider appropriate, rather than being forced to participate in an automatic compensation regime.<sup>254</sup> The Federation of Communications Services said that businesses of any size should operate within the same parameters and should be able to look after themselves and that issues of automatic compensation would be better matched to the type of contract, i.e. residential or business.<sup>255</sup>
- Other respondents argued that it would be a mistake to treat business customers like residential customers. Magrathea said that the provision of a service to a business was quite different from provision to a residential user and that businesses should enter into an appropriate commercial agreement.<sup>256</sup> UKCTA and ITSPA said that the communication needs of small businesses (those with ten employees or fewer) were likely to be very different from the needs of a residential user.<sup>257</sup>
- Some respondents raised the practical difficulties of extending compensation to a certain subset of businesses based on business size. For example, [3<].<sup>258</sup> Nine Group questioned how a provider should explain to a business with 11 employees why it is not eligible for compensation when a 10 person business is.<sup>259</sup>

## UK businesses and communications services

### The importance of communications services to SMEs

11.5 Figure 16 below illustrates the significance of SMEs to the UK business landscape.

---

<sup>254</sup> Andrews and Arnold response to CFI, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/74456/andrews\\_and\\_arnold.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/74456/andrews_and_arnold.pdf).

<sup>255</sup> Federation of Communication Services response to Ofcom automatic compensation CFI, p.2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/54918/fcs.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/54918/fcs.pdf)

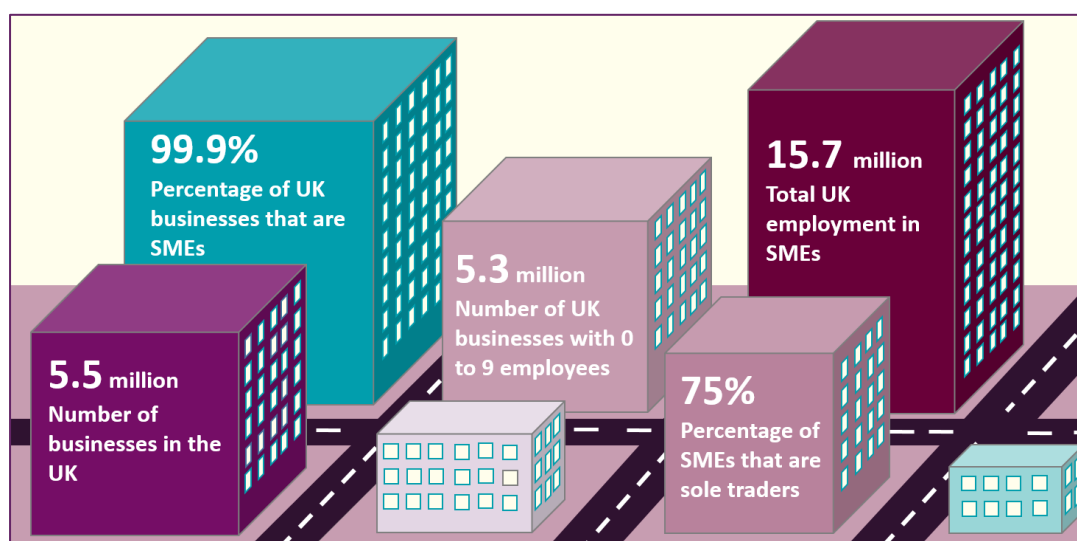
<sup>256</sup> Magrathea response to CFI, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/62647/magrathea.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/62647/magrathea.pdf), p.1.

<sup>257</sup> UKCTA response to CFI, p.4: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/54661/ukcta.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/54661/ukcta.pdf); ITSPA response to CFI, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0011/54011/itspa.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0011/54011/itspa.pdf).

<sup>258</sup> [3<].

<sup>259</sup> Nine Group response to CFI, p.1: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/63616/nine\\_group.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/63616/nine_group.pdf)

**Figure 16: UK business landscape, 2016**



Source: Department for Business, Energy and Industrial Strategy, *Business Population Estimates for the UK and Regions (2016)*<sup>260</sup>

- 11.6 Our research into the SME experience of using telecoms showed the extent to which SMEs depend on their landline and broadband services. More than 80% of SMEs use the internet to order goods and services; almost two thirds use it to access HMRC services and a third use it for taking orders for goods and services online.<sup>261</sup>
- 11.7 This is supported by evidence from our automatic compensation consumer research. When we asked SMEs about the importance of their communications services, 53% said that their business would struggle to function without their landline, while 59% said that they would struggle without their broadband.<sup>262</sup> Other research has suggested that at least 60% of SME landline and internet users consider these services “absolutely vital”.<sup>263</sup>

### **Most SMEs use specialist business telecoms services, which can include guarantees about quality of service**

- 11.8 Some SMEs choose to purchase communications products marketed at residential consumers and have contracts that reflect this. Residential contracts for broadband typically contain limited service care levels, meaning they will not be suitable for all businesses. Nonetheless, our recent research has indicated that 30-33% of SME

<sup>260</sup> See

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/559219/bpe\\_2016\\_statistical\\_release.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559219/bpe_2016_statistical_release.pdf)

<sup>261</sup> Jigsaw, *SME experience of communications services*, January 2017, p. 99,

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf).

<sup>262</sup> 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](https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

<sup>263</sup> Jigsaw, *SME experience of communications services*, January 2017,

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf), p. 28.

users have a residential contract for their internet service, while 25-30% have a residential landline contract.<sup>264</sup>

- 11.9 However, the diversity of the SME sector has meant that a wide number and variety of specialist landline and broadband products and providers have arisen to serve their specific needs. Firms providing services to SMEs range from large national providers with significant network operations to smaller resellers, many of them operating in local geographic areas. It is challenging to determine the number of these small resellers. Estimates suggest that there are more than 500; one stakeholder has estimated their number as closer to 2,500.<sup>265</sup>
- 11.10 SMEs also have access to specialist business landline and broadband services, and most of them buy products aimed specifically at business users – including products and contracts that offer guarantees about service levels and compensation. Our research has found that almost two-thirds of SMEs agree that there is a good choice of products or services available for broadband, and more than 7 in 10 agree for broadband.<sup>266</sup>
- 11.11 The variety of products and services, along with the ability to negotiate bespoke agreements or buy bespoke products from a greater number of specialist business-oriented providers leads us to provisionally conclude that the SME market for landline and broadband services appears different from that for residential services. Specifically, we consider that SME landline and broadband services have features in relation to quality of service that residential services do not:
- SMEs are able to specify, and contract for, bespoke aspects of service quality. Specifically, SMEs can negotiate guarantees about service levels which define the terms of the service a business is being provided with. These may cover general issues such as connection speed as well as issues relating to quality of service such as fault repair and installation times.
  - There are standard products and services available to SMEs that include service levels. For example, Zen Internet's Unlimited Fibre Office product commits to responding to and resolving faults within 12 hours of a fault ticket number being assigned to the customer.<sup>267</sup> Plusnet's Enhanced Care option for business services aims for a one hour response time to faults and aims to fix faults within 24 "working hours" (rather than 40 working hours for standard faults).<sup>268</sup>

---

<sup>264</sup> Based on two pieces of research: Ofcom, *SME experience of communications services*, January 2017, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf), p. 85 and Jigsaw, *Automatic compensation research*, March 2017, slide 66, questions B8A and B11A, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

<sup>265</sup> For further discussion of the SME retail market structure see Ofcom, *Broadband services for SMEs: assessment and action plan*, pp. 41-45, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/37755/bb-for-smes.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/37755/bb-for-smes.pdf).

<sup>266</sup> Ofcom, *SME experience of communications services*, January 2017, pp. 60 and 68, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/51036/sme\\_research\\_report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/51036/sme_research_report.pdf).

<sup>267</sup> See <https://www.zen.co.uk/smallerbusiness/superfast-fibre-and-broadband-packages/>.

<sup>268</sup> See <https://www.plus.net/help/my-account/about-enhanced-care/>. Other examples of service levels that we found through desk research included: (1) BT's care levels for business landlines: [https://btbusiness.custhelp.com/app/answers/detail/a\\_id/11758/~/what-support-does-bt-offer/c/5114/](https://btbusiness.custhelp.com/app/answers/detail/a_id/11758/~/what-support-does-bt-offer/c/5114/); (2) Daisy's service levels for business landline and broadband: <https://daisygroup.com/wp->



- SMEs' contracts may include monetary or non-monetary compensation for poor service, including for instances in which agreed service levels are not met. These can be negotiated on a bespoke basis or in providers' standard terms. For example, BT Business' standard broadband offer includes a £25 incident repair service credit should BT fail to meet the repair times for a chosen Service Care Level, while O2 offers one month's rental charge per affected landline for each day or part day that O2 is late in clearing a failure of a business landline service.<sup>269</sup>

11.12 In our consumer research, we found that 57% of SMEs who are on a business contract said that they have SLAs in their contracts for their landline service, and 53% of SMEs who are on a business contract said that they have SLAs in their contracts for their broadband service. Furthermore, 23% of SMEs on a business contract said that their contracts contained specified compensation or refund arrangements if service quality levels are not met for their landline service and 22% of those on a business contract said that they had such provisions for their broadband service. But we also found that almost half of SMEs on a business contract were unclear on whether their contracts contained provisions for compensation.<sup>270</sup>

11.13 This consumer research, together with the ability for SMEs to negotiate bespoke service levels and compensation arrangements and the standard offers that already include these, suggest that, to some extent, providers already compete for SME customers who choose to buy services on the basis of quality. Equally, other SMEs may take the conscious decision not to buy products with service levels or compensation or to buy products targeted at residential users instead. Qualitative

---

[content/uploads/2016/02/Daisy-Maintenance-Service-Levels-reseller.pdf](#); (3) Utility Warehouse's business care level packages: <https://www.utilitywarehouseforbusiness.co.uk/comms/moreStandard>; (4) Virgin Media's business broadband service level agreements: <http://www.virginmediabusiness.co.uk/PageFiles/4973/Business-Broadband-SLA.pdf>; (5) XLN's care levels: <https://www.xlntelecom.co.uk/care-levels.aspx>; (6) Zen Internet's critical care option: <https://www.zen.co.uk/smallerbusiness/superfast-fibre-and-broadband-packages/>. These websites were accessed on 15 and 21 March 2017.

<sup>269</sup> BT's incident repair service credits for broadband:

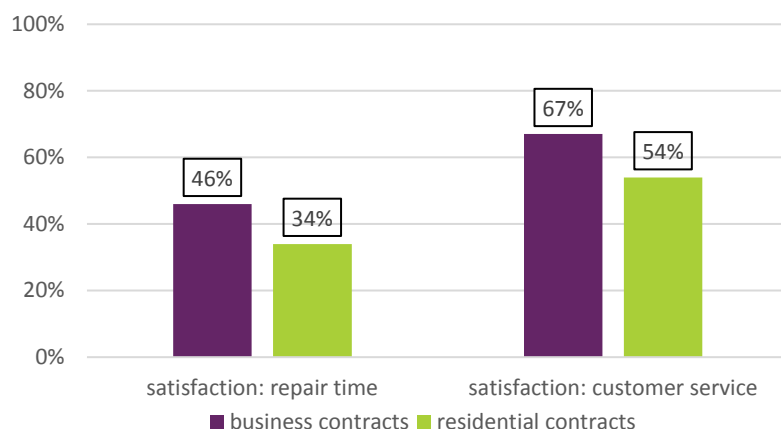
[http://www2.bt.com/static/i/btetail/panretail/terms/pdfs/BTL\\_BTBPBS\\_BsnssBrdbndSch.pdf](http://www2.bt.com/static/i/btetail/panretail/terms/pdfs/BTL_BTBPBS_BsnssBrdbndSch.pdf); O2's 's compensation for late fault response: "Subject to clause 10.5 of this Service Schedule, if O2 fails to meet its commitments set out in clause 9.4 of this Service Schedule, then for each day or part day O2 is late in clearing a Failure of the Landline Service, subject to any limitation set out in this Agreement, the Customer shall be entitled to an amount equal to one month's rental Charge per affected Landline Service", see para. 11.3 of O2 Terms and Conditions for Business Customers at [http://static.o2.co.uk/www/docs/termsandconditions/landline\\_service\\_schedule.pdf](http://static.o2.co.uk/www/docs/termsandconditions/landline_service_schedule.pdf). Other examples of compensation arrangements we have found include: (1) Spitfire Network Services' service credits for broadband and landline: <https://www.spitfire.co.uk/wp-content/uploads/2016/04/Spitfire-Service-Level-Agreement-v2.pdf>; (2) Virgin Media's service credits: <http://www.virginmediabusiness.co.uk/PageFiles/4973/Business-Broadband-SLA.pdf>; (3) Zen Internet's critical care service credit: <https://www.zen.co.uk/smallerbusiness/superfast-fibre-and-broadband-packages/>; These websites were accessed on 15, 21 and 22 March 2017.

<sup>270</sup> 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](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

research indicates that telecoms compensation rights are better understood among SMEs than among residential consumers.<sup>271</sup>

- 11.14 SMEs on business contracts may, therefore, experience a service that better meets their needs. This is illustrated by the respective satisfaction with repair times and customer service for those on business and residential contracts, as set out in Figure 17.

**Figure 17: Satisfaction with repair time and customer service among SMEs**



Source: Jigsaw, *SME experience of communications services*, January 2017, p. 121.<sup>272</sup>

## When problems occur, SMEs are likely to suffer harm

### A significant minority of SMEs experience service quality problems

- 11.15 We have specifically considered the impact of the quality of service problems we have defined as within scope, as set out in section 3.
- 11.16 We asked the largest fixed landline and broadband providers for information on quality of service failures covering loss of service, delayed provisioning and missed appointments. In summary, it appears that nearly 780,000 landline and broadband SME customers suffered loss of service incidents, provisioning delays and missed appointments each year between 2014 and 2016 (see Figure 18 below) – accounting for around 15% of the total number of SMEs.<sup>273</sup>

<sup>271</sup> Jigsaw, *Quality of Service in telecoms*, February 2016, p. 5, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/78370/jigsaw\\_quality\\_of\\_service\\_in\\_telecoms.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/78370/jigsaw_quality_of_service_in_telecoms.pdf).

<sup>272</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf)

<sup>273</sup> The data from Department for Business, Energy and Industrial Strategy given in Figure 16 sets out 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.

**Figure 18: Estimated quality of service problems for SMEs (annualised figures for period Q3 2014 – Q2 2016)**

Issue	Incidents
Loss of service <sup>274</sup> (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 fixed s135 requests Rainbow, XLN, BT, KCOM, Plusnet, TalkTalk, Utility Warehouse, Verastar, Vodafone and Chess (whose response was sent on 24 January 2017). We have scaled up the figures calculated to an industry level using subscriber numbers from our consumer survey.

11.17 In our consumer research, however, SMEs reported higher incidence of quality of service problems than suggested by the above figures. When SMEs with a fixed line were asked whether they had experienced any loss of service or delayed provision involving their broadband or landline, 42% said that they had experienced loss or delay:<sup>275</sup>

- 39% had experienced loss of service due to a fault over the last two years;
- 5% had experienced provisioning outside of the time-scale given over the past five years;
- 1% had experienced delayed provisioning outside of the time-scale given when they did not have an existing service at the property over the past five years; and
- 6% experienced loss of service during provisioning or upgrading over the past five years.<sup>276</sup>

In addition, 7% of SMEs with landline or broadband had at some point experienced a missed appointment.<sup>277</sup>

<sup>274</sup> That is any loss of service requiring repair.

<sup>275</sup> It was possible for SMEs to select one or more reasons for the loss of service.

<sup>276</sup> Jigsaw, *Automatic compensation research*, slide 88, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf). Differences between provider data and consumer research results are due to a number of factors including sampling issues. Note that some respondents had experienced more than one of the quality of service issues listed.

<sup>277</sup> Jigsaw, *Automatic compensation research*, slide 113, question I1a, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

## SMEs experience harm

- 11.18 SMEs who encounter loss of service, delayed provisioning or missed appointments are likely to experience harm. As with residential consumers, different types of harm may result from these quality of service problems, which are set out below. Like those consumers, SMEs are also likely to have certain reasonable expectations of their services. For instance, that they will generally be provided from the time agreed and on an ongoing, if not always fault-free, basis.
- 11.19 SMEs are increasingly reliant on communications services. When SMEs experience problems with their service and they have no alternative communications service, they experience harm. For example, 53% of SMEs who experienced a loss of their landline and/or broadband service said it had a negative impact on their day-to-day activities.<sup>278</sup>
- 11.20 SMEs may also need to pay for an alternative means of communications. Our survey showed that two thirds of SMEs who had lost service found an alternative workaround at an average financial cost of £270.<sup>279</sup> SMEs can also experience other financial impacts. For instance, of SMEs who experienced negative impacts as a result of a loss of service for fixed broadband or landline, 52% said that it had an impact on sales.<sup>280</sup>
- 11.21 SMEs conduct a range of activities and may schedule work or appointments at the times that best fit their work schedules. When they have problems with their service they may need to rearrange their activities, which is likely to be detrimental to them. For example, SMEs may need to re-schedule meetings that involve the use of their landline or broadband services, such as conference calls or video conferencing.
- 11.22 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 as a result of losing their landline or broadband service said that it wasted manager time.<sup>281</sup> If an engineer visit is required to install or repair a service, this can require staff to take time away from their normal working activities to facilitate the appointment. Additionally, if the engineer does not turn up, this would involve time to rearrange.<sup>282</sup>

---

<sup>278</sup> Jigsaw, *Automatic compensation research*, slide 95, question F7a, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

<sup>279</sup> Jigsaw, *Automatic compensation*, slide 96, question F7c, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

<sup>280</sup> Jigsaw, *Automatic compensation*, slide 101, question F9, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

<sup>281</sup> Jigsaw, *Automatic compensation*, slide 101, question F9, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

<sup>282</sup> Of those who have experienced a missed appointment in the past two years, 59% said that it took time to rearrange. Jigsaw, *Automatic compensation*, slide 114, question I4,

- 11.23 Managers and employees of SMEs are also likely to experience annoyance, frustration or anxiety when the communications service they were expecting to receive falls short of expected standards.<sup>283</sup>

## Only a minority of SMEs experiencing harm receive compensation

- 11.24 The majority of SMEs do not receive compensation when service quality is poor, indicating that - despite their seeming ability to get bespoke service level agreements - many amongst them may not be receiving adequate redress for the harm they experience from loss of service, delayed provision and missed appointments.
- 11.25 Analysis of operator data on monetary compensation payments showed that there were 13,033 compensation pay outs for loss of service, 1,551 pay outs for delayed provisioning and 788 pay outs for missed appointments, corresponding to about 2% of loss of service incidents, 1% of delayed provisioning incidents and 8% of missed appointments per year.<sup>284</sup> We describe our approach to estimating the annual number of quality of service incidents in Annex 6.
- 11.26 Our consumer research also indicated that only a minority of SME customers received compensation. When we asked SMEs who suffered a loss of service of landline or broadband services whether they had received any form of compensation as a result, 11% said that they had done so,<sup>285</sup> while 4% said that they had received any compensation for a missed appointment.<sup>286</sup>
- 11.27 While the precise figures vary, both sources indicate that a small minority of SMEs are receiving compensation when they experience loss of service, delayed provisioning and missed appointments.
- 11.28 The low incidence of compensation pay outs could be due to several factors, including the low value of compensation expected by SMEs (or committed to by the provider) relative to the effort required to claim it, lack of information about what may or may not be available or a combination of these factors. Our research asked SMEs who did not receive compensation whether they had asked for it. We found 89% of those who had experienced a loss of service and did not receive compensation did

---

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf). Warning, small sample size, results should be taken as indicative only (n=97).

<sup>283</sup> For example, of SMEs who experienced a negative impact as a result of their loss of service, 69% said that stress was experienced as a result. Jigsaw, *Automatic compensation*, slide 101, question F9, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

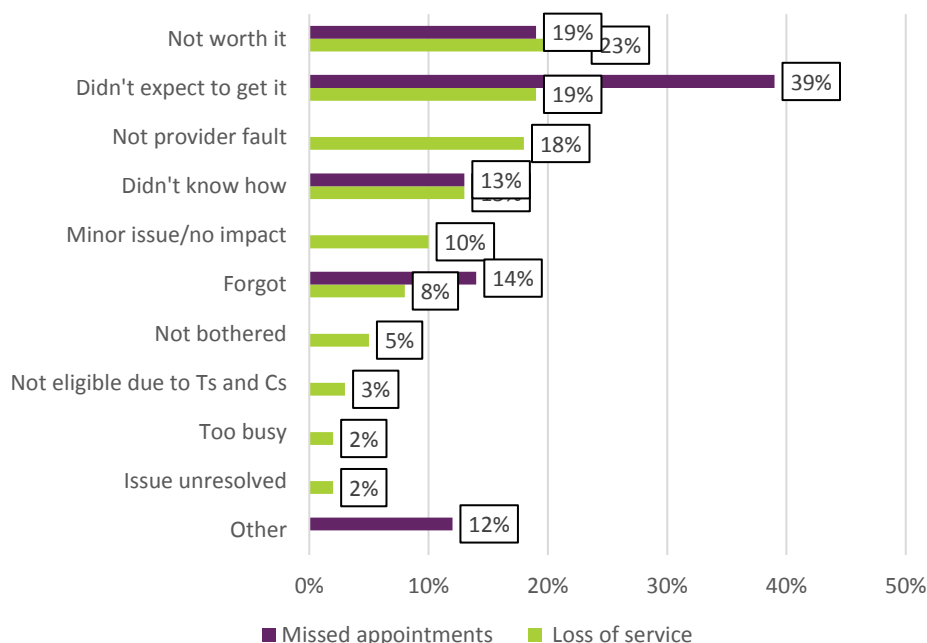
<sup>284</sup> Ofcom calculations based on provider responses to January 2017 fixed s135 requests Rainbow, XLN, BT, KCOM, Plusnet, TalkTalk, Three, Utility Warehouse, Verastar, Zen, EE and Vodafone and Chess (whose response was sent on 24 January 2017). We have scaled up the figures calculated to an industry level using subscriber numbers from our consumer survey.

<sup>285</sup> Jigsaw, *Automatic compensation research*, slide 107, question H1a, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

<sup>286</sup> Jigsaw, *Automatic compensation*, slide 118, question I12a M16, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](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).

not ask for it.<sup>287</sup> The corresponding figure for those who had experienced missed appointments was 85%.<sup>288</sup>

**Figure 19: SME reasons for not asking for compensation for loss of service – loss of service and missed appointments**



Source: Jigsaw, *Automatic compensation*, slide 107, question H1ei and slide 118 question I12c M18a.<sup>289</sup> Why did you not ask for compensation? Base: all who did not get or ask for compensation n=321. Why did you not ask for compensation? Base: all who did not get or ask for compensation n=73. Low sample size.

## Lack of information may cause poor service quality outcomes

11.29 The evidence described above indicates that a) there are packages available for SMEs to choose from (or which may be negotiated) offering service levels agreements and compensation when things go wrong; b) many SME customers appear to purchase business landline and broadband services with contracts that allow them to receive better service quality than those on residential contracts; and, c) despite this, many SME customers are unlikely to be receiving adequate redress today for loss of service, delayed provisioning and missed appointments.

11.30 As set out in section 3, a competitive market is only likely to protect consumers' interests under certain conditions. If SMEs can act in a way that allows them to

<sup>287</sup> Jigsaw, *Automatic compensation*, slide 107, question H1c/H1d, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf). For a SME to be counted as having lost service they must have done so for more than one hour.

<sup>288</sup> Jigsaw, *Automatic compensation*, slide 118, question I12bi, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](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 were only able to gather data to report on the reasons SMEs gave for not asking for compensation for missed appointments and loss of service.

<sup>289</sup> See [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).



choose the most appropriate service for their needs, this will provide the correct incentives to providers to offer them a level of service quality in line with their reasonable expectations. It will mean that providers are penalised by consumers who choose other providers when the service quality commitments and redress they are offered are insufficient for their needs. In order to choose effectively between a range of offers and find the product that is right for them, SMEs need to be able to access the appropriate information in order to properly assess the services on offer. If they are unable to do this, providers may in turn have weakened incentives to offer products in line with the needs of SMEs.

- 11.31 Stakeholders have previously identified concerns about the lack of information available to SMEs. The Federation of Small Businesses (FSB) has said that small businesses perceive a lack of the clear, readily comparable information that would allow them to make purchasing decisions with confidence.<sup>290</sup> This appears to be borne out by SMEs' views on the broadband market. While almost two-thirds of SMEs say that there is a good choice of products or services available, more than two-thirds report difficulty in comparing between providers on network quality and customer service.<sup>291</sup>
- 11.32 Concerns about information provision are not limited to the information that is available to SMEs when making purchasing decisions. The FSB has said that many small businesses report that they do not completely understand their rights or what means of redress they can use when quality of service fails to match their expectations or requirements.<sup>292</sup>
- 11.33 We have therefore considered further the information available to SMEs in two areas.
- **At the point of sale**, that is, when SMEs select a product (possibly over another). Point of sale information could give SMEs clarity about providers' commitments to service quality, and potential redress when these are not met, in turn helping them choose one product over another. Some SMEs are clearly able to engage with the information currently available, as indicated by the fact that more than half of SMEs told us that their contracts included service levels and a smaller proportion who are aware they have compensation or refunds specified. But where clear and comparable information is not available at the point of sale, there is a risk that many SMEs cannot currently make fully informed choices on a package which meets their needs.
  - **After the sale takes place** – this information can help SMEs claim redress by helping them to understand what compensation is available to them when poor quality of service arises. Information on service levels and redress is sometimes included in the documentation supplied by the provider after the sale but it may not be sufficiently clear. This suggests that information on eligibility, and/or how to claim compensation, is not transparent at present.
- 11.34 To better understand whether there is a lack of information available to SMEs at the point of sale, we undertook desk research that considered the most popular products

<sup>290</sup> Federation of Small Businesses, *Reassured, optimised, transformed: driving digital demand among small businesses*, p. 45, [http://www.fsb.org.uk/docs/default-source/Publications/reports/fsb-telecoms-report---september-2015\(2\).pdf?sfvrsn=0](http://www.fsb.org.uk/docs/default-source/Publications/reports/fsb-telecoms-report---september-2015(2).pdf?sfvrsn=0).

<sup>291</sup> Ofcom, *SME experience of communications services*, January 2017, p. 68, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf).

<sup>292</sup> Federation of Small Businesses response to DCR, p. 16, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/42825/fsb.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/42825/fsb.pdf).



sold by a range of communications providers to SMEs. Our research examined the customer journey that a potential customer would undertake from arrival on selected providers' websites to making a purchase. This research indicated that there is often very little information available to SMEs at the point of sale on service levels and compensation, particularly when compared to the emphasis on other characteristics of the product such as price and speed. Where it is available, it is often not straightforward to locate. For example, for a SME customer to see such information, he or she might have to click a link to uncover information on a page, or search through information in sections setting out legal terms and conditions. Often, at the point of sale – even where the product description contains a commitment to certain service levels including repair times – there is then no information available on applicable compensation arrangements. But there are also instances of clear information. In the best example we examined, information on the service levels and compensation was available alongside the product listing.<sup>293</sup>

- 11.35 Regarding post-sales information, we looked at materials supplied by providers to SME customers taking communications products, as well as consumer research.<sup>294</sup> We found that information on service levels and compensation often do not feature prominently in this material. In the large majority of cases, this information is to be found in the “small print” setting out the terms and conditions of the service. Conversely, in the best examples we found, service levels and the availability of compensation are set out clearly in an obvious place within documents.
- 11.36 As set out above, our consumer research has found that about one-third of SMEs do not know whether they have specified service levels,<sup>295</sup> and approximately half of SMEs said that they did not know whether their contract contained any compensation arrangements if the service level was not met (for their landline or broadband).<sup>296</sup>
- 11.37 On these bases, our provisional view is that it is likely that SMEs do not have clear and comparable information on providers' quality of service commitments or the redress that is offered if these are not met. While some SMEs appear to have engaged in market offerings which differentiate on the basis of quality of service, there is a risk that many SMEs are unlikely to be able to readily and easily access and assess information about the various offers available. Further, even where they have purchased services giving such commitments, it may be difficult for them to find information relevant to making a claim.

---

<sup>293</sup> 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.

<sup>294</sup> Post-sales materials we looked at included documents such as welcome materials, terms and conditions and pricing schedules. We obtained these materials via our August 2016 and September 2016 fixed s.135 requests. The respondents were BT, EE, Plusnet, TalkTalk, O2, Virgin Media, Vodafone, Daisy, Rainbow, Unicom and Utility Warehouse.

<sup>295</sup> 30% of SME broadband and 28% of SME landline customers did not know whether their contract contained SLAs. See Jigsaw, *Automatic compensation research*, slide 66, questions B8C and B11C, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

<sup>296</sup> 49% of landline and 49% of broadband consumers. Jigsaw, *Automatic compensation research*, slide 66, questions B8D and B11 D : [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf).

11.38 We found behavioural biases, along with switching barriers, to be important factors in our assessment of market outcomes for residential consumers in section 4. It is possible that these may also affect SMEs, but this may be less clear-cut. In contrast to that segment of the market, there are packages available to SMEs which offer different levels of quality of service. So, at least some SMEs are sufficiently engaged to take advantage of these. We have also considered a number of responses to the CFI which, as set out above, consider that businesses should be able to look after themselves in considering the risks of service failure and entering into an appropriate commercial agreement to reflect this.

## **Intervention is likely to be necessary to protect the interest of SMEs**

11.39 In our provisional assessment, there are some strong grounds for concern to protect the interests of SMEs in relation to quality of service and compensation. SMEs place significant reliance on their telecoms services and are liable to suffer significant harm where they suffer quality of service problems. A substantial proportion of them, however, are not receiving redress for the harm they suffer from loss of service, missed appointments and provisioning delays. There could however, also be some points of difference between SMEs and residential consumers. Notably, the offers that may be available to them and their respective ability to negotiate bespoke terms.

11.40 In light of this assessment, we have considered three policy options:

- maintaining the status quo;
- greater transparency; and
- introducing regulation that mandates automatic compensation.

11.41 We propose for the time being to require greater transparency from providers. That proposal turns significantly on there being a range of specialist (standard or bespoke) landline and broadband products for SMEs to choose from. While a significant proportion of SMEs may be able to select services better suited to their needs, the evidence leads 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 are minded to consider that seeking to address that shortfall would, for now, be an appropriate and proportionate intervention.

11.42 Given our assessment that SMEs are not adequately protected from failures in service quality, it does not appear to us that our policy objectives would be achieved if we maintain the status quo.

11.43 By contrast, we have set out our concerns about the difficulties SMEs encounter in accessing information on service levels and compensation both at the point of sale and post-sale. Our provisional view is that better access to information should help SMEs to select the services and providers that best meet their needs and secure appropriate protection for service failures.

11.44 On that basis, requirements for greater transparency could be an adequate remedy to secure our policy objectives of ensuring that SMEs are able to receive compensation when their provider does not deliver the service quality standards that they reasonably expect and to ensure that providers have greater incentives to improve the service quality they deliver.

- 11.45 This differs from the position for residential services where, as we set out in section 4, providers do not seem to differentiate or market their offers on the basis of service levels and redress. In that context, our provisional view with regards to residential services is that transparency requirements alone would not achieve our objectives.
- 11.46 The third option we have considered is the introduction of automatic compensation for SME landline and broadband services.<sup>297</sup> The ability to negotiate bespoke terms and the existence of standard offers for SMEs with service level and compensation commitments is an important consideration. With better information, SMEs should be able to engage with providers on service quality and make better choices. Therefore, at this stage, we provisionally conclude that mandating automatic compensation is not necessary to achieve our policy objectives. But, if outcomes for SMEs do not improve, and our objectives are not achieved, we will reconsider whether an automatic compensation regime would be appropriate.

## The rule we are proposing

### Proposed structure of transparency requirements

- 11.47 Transparency remedies can serve different purposes. They can allow consumers to compare what is available when selecting a communications provider. They can also ensure that a provider gives clear information to each individual consumer they deal with when a consumer is signing up for a service.<sup>298</sup>
- 11.48 In order for SMEs to be in a position to secure redress for harm when they experience delayed repair, provisioning delays or missed appointments, they need to have specific information about what level of service to expect in regard to these issues at the time when they choose a service. They also need to have this information available to them when an issue arises so they can claim compensation. In light of the evidence set out above, our provisional judgment is that greater transparency is required to address both of these needs and we propose that would be best achieved as follows:
- through information available on providers' websites; and
  - in a durable medium that an SME receives when signing up for a new service, for example as part of a welcome pack or other introductory material specific to the product in question, irrespective of whether a service is bought with standard terms or individually negotiated ones.
- 11.49 At a minimum, the information should be provided for each landline and broadband product targeted at SMEs, for delayed repair, delayed provisioning and missed appointments.<sup>299</sup> Providers may also want to provide transparency for other quality

---

<sup>297</sup> As set out above, 30-33% of SME users have a residential contract for their internet service, while 25-30% have a residential landline contract. These SMEs will benefit from our residential proposals.

<sup>298</sup> We have used this distinction when distinguishing the information requirements contained in General Condition 9 from those in General Condition 10. See Ofcom, *Review of the General Conditions of Entitlement: Consultation on the general conditions relating to consumer protection*, p. 21, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0032/95873/Review-of-the-General-Conditions-of-Entitlement-Consultation-on-the-general-conditions-relating-to-consumer-protection.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0032/95873/Review-of-the-General-Conditions-of-Entitlement-Consultation-on-the-general-conditions-relating-to-consumer-protection.pdf).

<sup>299</sup> Leased line services are excluded from the scope of the General Condition, including our proposed transparency requirements.

issues, but we have limited our proposal to those service problems within the scope of this consultation. We propose that providers should set out the following:

- whether an SLA applies (if any), and if so what it is; and
- what compensation a customer will be due in the event of such an incident.

11.50 If a provider does not have service levels or compensation available, we propose that the provider should indicate this equally on their website and in the introductory material. If service levels and compensation are negotiated on a case-by-case basis, we propose that a provider should indicate on their website that these provisions can be negotiated on this basis. However, the bespoke negotiated service level and compensation arrangement should be included in the introductory material supplied when the SME signs up for the service.

11.51 We propose that providers should set out this information in a clear format that aids comparisons with offers from other providers. For example, the information could be provided in the form of a table as set out below.

**Figure 20: Example of SLA and compensation information**

Type of incident	Service level commitment	Compensation available
Delayed repair for loss of service	We will fix the service within X hours/days from midnight of the day you first raised the issue with us.	£X for each 24 hour period after the SLA is missed
Delayed provisioning	We will commit to delivering the service to you on the date we provide you with when you first buy the service	We will pay you £X for every 24 hours the service is provisioned late
Missed appointment	We will keep appointments and not change them with less than 24 hours notice.	£X per missed appointment

11.52 To supplement these transparency requirements, we also intend to make further information on compensation arrangements for SMEs available on Ofcom's "Advice for business" website, accessible at <https://www.ofcom.org.uk/advice-for-businesses>.

## Provisional conclusion on SMEs

11.53 We set out above how our proposed transparency requirements should achieve our policy objectives.

11.54 We propose that these requirements should take effect six months after our final statement. This 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 would expect their implementation costs to be limited.

- 11.55 To the extent that it would lead to an increased proportion of SMEs receiving compensation, and to improved service quality, the intervention may also have an impact on SME customers generally and providers. However, it is not clear what that would be, since it would depend largely on the service levels and compensation amounts that SMEs may take up or agree with providers compared to today.
- 11.56 Better, simpler and more concise information on quality of service and available compensation should enable SMEs to purchase services that provide the right service level for them and empower SMEs who experience quality of service problems to claim redress. In turn, facing an additional cost for not meeting customer commitments will incentivise providers to improve service quality in the first place. Our provisional judgment is that, set against these benefits, the limited costs, so far as we can assess them, would be proportionate.
- 11.57 Accordingly, we propose for the time being to impose transparency requirements to secure our objectives for SMEs. We also note that for the third of SMEs that purchase residential services, they will benefit from our automatic compensation proposals for residential consumers. We will monitor the success of our proposed transparency requirements. Should we find that any requirements we impose have not been successful, we propose to revisit the question of whether automatic compensation is necessary to ensure SMEs are sufficiently protected in relation to quality of service.

*Question 17: Do you agree with our proposals for greater transparency regarding service quality and compensation for products targeted at SMEs?*

## Section 12

# Delayed repair of mobile loss of service

## Introduction

12.1 In this section, we set out responses to our CFI, our assessment of the case for intervention, our provisional conclusion not to introduce automatic compensation for mobile consumers at this time and our next steps.

## Responses to our Call for Inputs

12.2 In response to our CFI, on delayed repair for mobile loss of service:

- EE was supportive of a more automated compensation regime but argued for a principles-based approach where CPs have flexibility to choose when and how much compensation to award.<sup>300</sup>
- Three and Vodafone argued that automatic compensation is not a suitable mechanism to provide redress for mobile outages and that the current system is working well (i.e. where customer service agents have discretion to make compensation or goodwill payments to customers where they consider it appropriate).<sup>301</sup>
- Consumer group Which? and Ombudsman Services were supportive of automatic compensation in principle, but highlighted the practical difficulties of identifying who has been affected by mobile loss of service.<sup>302</sup>

## Assessing the case for intervention

12.3 As set out in section 3, we have used a common framework across our fixed and mobile proposals to assess whether regulatory intervention is required. This includes assessing consumers' expectations and the current extent of quality of service problems and considering the degree of consumer harm that is likely to result from these problems. We then consider the extent to which consumers currently receive adequate redress for the harm experienced. Specifically, we consider:

- how many consumers are currently receiving compensation for quality of service problems; and
- whether the amount of compensation received is, on average, commensurate with the likely degree of consumer harm.

12.4 There are challenges to applying this framework to mobile loss of service. In particular, as explained in more detail below, calculating the extent to which consumers are affected by mobile mast outages has not been straightforward.

---

<sup>300</sup> EE CFI response, p.2: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0010/50104/bt.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0010/50104/bt.pdf)

<sup>301</sup> Three CFI response, paragraph.32:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/54396/three.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/54396/three.pdf); Vodafone CFI response, p.6: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0029/58682/vodafone.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0029/58682/vodafone.pdf)

<sup>302</sup> Which? CFI response, p.3: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55352/which.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55352/which.pdf); Ombudsman Services CFI response, p.8: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/98019/Ombudsman-Services.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/98019/Ombudsman-Services.pdf)

Notwithstanding these data limitations, our provisional conclusion is that intervention in this area is not justified at this time. We set out our findings below.

### **Given high consumer reliance on mobile services, losing service causes consumer harm**

- 12.5 Mobile services are playing an increasingly important role in our daily lives. Consumers rely on their mobile to communicate with friends and family, work remotely and use essential services such as online banking. The smartphone has overtaken the laptop as the device internet users say is the most important for connecting to the internet.<sup>303</sup>
- 12.6 When things go wrong, consumers can therefore experience significant difficulties and inconvenience. Nearly two-thirds of consumers (65%) say their household would struggle to function without a working mobile service.<sup>304</sup>
- 12.7 We recognise that alternatives (e.g. Wi-Fi Calling, femtocells) may help to restore service for individual consumers when a mobile outage occurs. However, as these are typically in-home solutions, these would not be available to consumers when they are on the move. Secondly, even if the consumer was at home, both of these options depend on the consumer having access to a working fixed broadband and Wi-Fi service. While broadband penetration has risen rapidly in recent years, nearly 20% of households do not have fixed broadband at home.<sup>305</sup> Furthermore, some consumers will have a data cap on home broadband.
- 12.8 Landline services may also serve as an alternative for consumers when they lose mobile service at home (though not for those on the move). However, not all households have fixed telephony, and penetration has been declining (in 2016 take-up was 81%, down from 90% in 2006).<sup>306</sup> Furthermore, some consumers may have limited inclusive calls within their fixed line packages (e.g. only weekend calls included).

### **However, only a small number of consumers experience loss of service for an unreasonable length of time**

- 12.9 Unlike fixed providers, mobile providers have not put in place systems and processes that routinely calculate how many of their customers lose service, and for how long, as a result of network failures. In part this is because, typically, an outage on one mast will not affect a consumer if their handset can receive service from a different mast with overlapping coverage. In principle, mobile operators could use the relevant sections of their network coverage models, coupled with historic records of individual cell site usage, to produce an incident specific estimate of affected customers on a routine basis. However, this is not something that any of the mobile operators currently undertake.

---

<sup>303</sup> In 2016, 36% chose their smartphone, and 29% chose their laptop, compared with 15% and 46% respectively in 2013. Ofcom, *Communications Market Report 2016*, August 2016, Figure 5.14: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/26826/cmr\\_uk\\_2016.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/26826/cmr_uk_2016.pdf)

<sup>304</sup> Jigsaw, *Automatic Compensation*, March 2017, slide 132, question D1: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

<sup>305</sup> 82% of households now have a fixed broadband connection, Source: Ofcom, *Communications Market Report 2016*, August 2016, Figure 1.4:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/26826/cmr\\_uk\\_2016.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/26826/cmr_uk_2016.pdf)

<sup>306</sup> Ibid.



- 12.10 Therefore, in order to provide an alternative, first order estimate of the extent to which consumers lose service as a result of mobile network outages, we have had to conduct complex analysis using industry data on mast locations and mast outages to estimate the number of consumers that would lose service when there is an outage on a mast that has no overlapping coverage. This analysis entails making several necessarily crude assumptions and only gives us a sense of the order of magnitude of loss of service experienced by mobile consumers. The assumptions and analysis, along with the significant caveats of this exercise, are set out further in Annex 9.
- 12.11 From this analysis, we have estimated the number of mobile consumers who lose service for more than 12 hours, 24 hours, 48 hours and 1 week in the course of a year. Given the crude nature of our analysis, there are significant differences in the upper and lower bounds of our estimates which are shown in Figure 21 below.

**Figure 21: Number of consumers who lose mobile service in one year, by time period**

	>12 hours	>24 hours	>48 hours	>1 week
Number of consumers who lose service ( <b>lower bound</b> )	153,017	111,080	62,830	38,001
Number of consumers who lose service ( <b>upper bound</b> )	782,516	530,632	276,455	94,825

- 12.12 Consumer research indicates that around 50% of consumers consider that 24 hours or more is an unreasonable amount of time to repair a mobile outage.<sup>307</sup> Taking practical considerations into account, the vast majority (c.87%) of mast outages are fixed within 24 hours,<sup>308</sup> but a significant minority of consumers experience loss of service for longer periods of time. On this basis, our provisional view is that the number of consumers losing service for an unreasonable length of time are those that lose service for 24 hours or more.

### **There is insufficient evidence that current compensation provides inadequate redress for harm**

- 12.13 We have looked at both the number of times that mobile providers have paid compensation for loss of service and the average compensation that they paid. We discuss these two issues in turn below.

#### Number of times that compensation is paid

- 12.14 We requested data from mobile network operators (MNOs) and mobile virtual network operators (MVNOs) on the amounts and number of compensation payments that they made to their customers for loss of service. Only two MNOs ([§]) were able to provide suitable data.<sup>309</sup> Therefore, we have used this data to estimate compensation levels for the industry as a whole.
- 12.15 For the two MNOs that provided data, we have calculated the proportion of compensation payments per subscriber and then scaled up to account for the other

<sup>307</sup> Jigsaw, *Automatic Compensation*, March 2017, slide 165, question C11: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

<sup>308</sup> Confidential responses [§] to s.135 request dated 16 December 2016.

<sup>309</sup> Confidential responses [§] to s.135 request dated 15 August 2016.

mobile providers in the market. This suggests that mobile providers make approximately between 647,000 and 764,000 compensation payments per year.<sup>310</sup>

### Level of compensation

12.16 Based on information from the two MNOs that were able to provide suitable data, the average payment among those who received compensation for loss of service was around £12 per incident.<sup>311</sup>

12.17 This appears to be of a comparable scale to the potential harm caused by a loss of service based on the following:

- We estimate that the average harm from fixed loss of service is around £10 per day (see Annex 4). We have not completed an equivalent exercise to estimate the average harm from delayed repair of mobile loss of service. However, we consider that it is likely to be of a similar scale to £10 per day given there are broad similarities between the two services, in respect of consumers using both to access voice and data services and the reliance consumers have on both services.<sup>312</sup>
- Most (around 87%) mobile loss of service incidents last less than 24 hours.<sup>313</sup>

12.18 In other words, if the average harm from mobile loss of service were in the region of £10 per day and the average incident lasts in the region of a day then average compensation of around £12 per incident appears broadly in line with the level of harm that consumers may experience from loss of service.

### **Conclusion on current compensation levels**

12.19 Given our estimates of the number of consumers that experience an unreasonable period of loss of service and current compensation payments made by mobile providers, we consider there to be insufficient evidence to conclude that consumers are currently receiving inadequate redress for the harm caused by mobile loss of service. It would appear that the mobile providers make more compensation payments to consumers than our estimate of consumers affected by an unreasonable period of loss of service.<sup>314</sup>

---

<sup>310</sup>The data we received was substantially affected by outliers. If we exclude these outliers then this suggests that mobile providers make in the region of [647,000] compensation payments per year [3<]

<sup>311</sup> We divided the total amount of compensation by the total number of incidents and excluded outliers from one MNO [3<] to arrive at this value. Source: confidential responses to s.135 request dated 15 August 2016.

<sup>312</sup> A similar proportion of consumers say they would struggle to function without a mobile or fixed broadband service (65% and 66% respectively). Jigsaw, *Automatic Compensation*, March 2017, slide 132, question D1: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/98711/automatic-compensation-jigsaw-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/98711/automatic-compensation-jigsaw-report.pdf)

<sup>313</sup> Confidential responses to s.135 request dated 15 August 2016.

<sup>314</sup> As noted above we estimate that mobile providers make between 647,000 and 764,000 compensation payments per year while between 111,080 and 530,632 mobile users lose service for more than 24 hours and between 62,830 and 276,455 mobile users lose service for more than 48 hours (see Figure 21 above).

## Provisional conclusions

12.20 In light of the above, we do not consider that requiring automatic compensation to be paid for delayed repair of mobile loss of service is justified at this time.

## Next steps

12.21 While we consider automatic compensation is not an appropriate intervention at this stage, as discussed above there is currently considerable imprecision in our estimates of the number of consumers that are affected by mobile outages. Accordingly, we intend to carry out further work to monitor the degree of loss of mobile service consumers are experiencing. This will inform our policy making in this area in the future. Specifically, we plan to:

- **Work to better understand the performance of mobile networks:** This will include collecting additional data from mobile operators to refine our understanding of mobile quality of service. We plan to overlay our internal model of mobile outages with coverage and population density information.
- **Seek to collect more granular information on mobile outages:** In future, we will look to collect easily comparable data on the incidence of mast outages leading to loss of service (i.e. critical mast outages).

*Question 18: Do you agree with our provisional conclusions not to introduce automatic compensation for delayed repair of mobile loss of service?*

## Section 13

# Legal powers and consultation on legal instrument

## Introduction

- 13.1 In section 3 we explain why we propose that formal regulation is the option we consider more likely to secure our policy objectives for fixed residential consumers. In sections 4 to 8, we set out in more detail how our proposed scheme for automatic compensation would work. Subject to the requirements of the draft general condition, payments would be due when customers purchasing residential landline and/or broadband services experience loss of service; delays in activation of their services; or a missed appointment.
- 13.2 In section 11, we explain why we are proposing to introduce specific information requirements for the benefit of SMEs.
- 13.3 This section introduces the general condition we are proposing to make to effect these changes and explains why we consider that the setting of this condition is consistent with our statutory powers, duties and other relevant legal tests.

## Draft general condition

### Alignment with proposed revised General Conditions

- 13.4 Annex 14 sets out our Notification of the draft general condition we are proposing to introduce to implement our proposals.
- 13.5 We are currently conducting a review of the General Conditions as a whole and consulted in December 2016 on a revised approach to, and draft of, them.<sup>315</sup> One of the aims of that review is to make the General Conditions simpler and clearer and some of our specific proposals are:
- to renumber all the conditions to reflect the proposed categorisation into three parts: Part A for “Network functioning conditions”, Part B for “Numbering and technical conditions” and Part C for “Consumer protection conditions”. E.g. GC 1 would be renumbered as GC A1; and
  - to move away from having separate definitions of “Communications Provider” in each General Condition and to use the term “Regulated Provider” instead; and to move all the definitions to a separate Annex and to use a single definition across the GCs as a whole, wherever possible.
- 13.6 It is likely that our final statement concluding that review will be published (and any revised version of the General Conditions will take effect) before a final statement is

---

<sup>315</sup> Ofcom, *Review of the General Conditions of Entitlement, Consultation on the general conditions relating to consumer protection*, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0032/95873/Review-of-the-General-Conditions-of-Entitlement-Consultation-on-the-general-conditions-relating-to-consumer-protection.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0032/95873/Review-of-the-General-Conditions-of-Entitlement-Consultation-on-the-general-conditions-relating-to-consumer-protection.pdf)

issued in relation to the proposals set out for consultation in this document. We have therefore drafted our proposed new general condition in relation to automatic compensation and the SME transparency requirements in the same style as we are proposing for the General Conditions as a whole. In particular:

- we are proposing that the draft general condition set out in Annex 14 of this document would be inserted as a new condition in Part C of the General Conditions immediately after the condition entitled ‘Complaints handling and dispute resolution’. That condition was numbered C5 in our December 2016 consultation, but may be renumbered in the final version of the new General Conditions. We have therefore numbered the draft condition set out in Annex 14 of this document as “Condition C[X]” and will insert a number in the final version;
- we have adopted the approach of specifying which providers would be “Regulated Providers” at the start of our proposed new condition; and
- our proposed new condition would not contain any defined terms. Instead, we propose to insert some new defined terms into Annex 1 of the General Conditions (and we make use of terms already defined in that Annex) and to amend the existing definition of “Complaint”.<sup>316</sup>

13.7 For these reasons, the proposed new condition set out in Annex 14 should be read alongside the revised General Conditions on which we consulted in December 2016.<sup>317</sup>

### **Does the proposed condition achieve our regulatory policy objectives?**

13.8 In other sections of this consultation we invite comments on the substance of our provisional views and our draft proposals. We also welcome comments on whether the drafting of the proposed condition in Annex 14 would achieve what we intend it to do, as we have explained that intention in this document. In particular, we would welcome comments on the definitions it contains of the terms, “Loss of Service,” “Provision,” “Relevant Broadband Service” and “Relevant Voice Service.”

### **Implementation period**

13.9 As explained in section 10, we propose to allow a 12-month period for implementation before our proposals in relation to automatic compensation enter into force. However, we are also aware that providers may find it easier to implement systems changes (particularly those that have an impact on billing) on the first day of a calendar month. We are therefore proposing that the provisions relating to

---

<sup>316</sup> If for any reason a revised version of the General Conditions does not enter into force prior to a final statement being issued in relation to this project, then we would need to make some drafting amendments to the draft condition proposed in Annex 14. In particular, the numbering of the condition would change and it would need to contain a number of definitions within the condition itself, which we currently envisage would be inserted into Annex 1 of the General Conditions. However, subject to the outcome of the consultation set out in this document, the substance of the requirements set out in the condition would not be affected.

<sup>317</sup> Ofcom, *Review of the General Conditions of Entitlement, Consultation on the general conditions relating to consumer protection*, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0032/95873/Review-of-the-General-Conditions-of-Entitlement-Consultation-on-the-general-conditions-relating-to-consumer-protection.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0032/95873/Review-of-the-General-Conditions-of-Entitlement-Consultation-on-the-general-conditions-relating-to-consumer-protection.pdf)

automatic compensation would take effect on the first day of the thirteenth calendar month following the date of publication of our final statement.

- 13.10 As set out in section 11, we propose to allow a 6-month implementation period (from the date of our final statement) for the transparency obligations in relation to SMEs.
- 13.11 The draft condition at Annex 14 currently includes a placeholder for these dates, but we would specify exact dates in the final condition to provide certainty as to when the new obligations would take effect.

## **Legal tests and statutory duties**

- 13.12 Section 2 of this document sets out our general statutory powers and duties as well as the powers, duties and requirements relevant to the setting of general conditions. In this sub-section we explain why the introduction of our proposed general condition accords with these provisions of the Act.

### **Ofcom's general duties**

- 13.13 As explained in this consultation, our provisional judgment is that the introduction of rules in relation to automatic compensation in draft general condition C[x] fulfils our duty to further the interests of citizens and consumers by providing them with redress for the harm they suffer when the quality of service they receive does not meet their reasonable expectations. Our proposed general condition would also increase the incentives on communications providers to improve the service quality they deliver. These twin objectives are in line with our principal duty set out in section 3(1) of the Act, as well as our duty to have regard to the interest of consumers in respect of choice, price, quality of service and value for money (section 3(5) of the Act), to the desirability of encouraging investment in relevant markets (section 3(4)(d) of the Act), the needs of persons with disabilities, of the elderly and those with low incomes (section 3(4)(i) of the Act), and to the opinions of consumers in relevant markets (section 3(4)(k) of the Act), insofar as our proposals have been informed by research into consumers' expectations of quality of service.
- 13.14 Similarly, we are minded to regard our proposed information requirements in relation to SMEs as consistent with the furthering of the interests of consumers in relation to communications matters and with the desirability of encouraging investment in relevant markets. They would enable SMEs to purchase services that provide the service level right for them, including compensation for relevant quality of service problems and to claim redress. That in turn would incentivise providers to improve service quality.
- 13.15 We also assess that the introduction of the proposed regulation is in line with our obligation to ensure that our regulatory activities are proportionate and targeted only at cases in which action is needed (section 3(3) of the Act). As set out in section 10 of this consultation, we do not consider, at this stage, that the industry-led proposal would be effective in securing our policy objectives. However, we will keep this under review following the publication of this consultation. We have further sought to design our proposed intervention in a manner that minimises implementation costs for industry, with a view to ensuring that our proposed intervention is proportionate (as described in section 10 above). In that regard, we carefully considered whether to propose an automatic compensation scheme for SMEs and propose that we could achieve our objectives by lighter-touch means at this stage.

## **Duties for the purpose of fulfilling EU obligations**

13.16 We also provisionally assess that, by proposing to introduce draft general condition C[x], we are acting in accordance with the six European Community requirements in section 4 of the Act, read in light of Article 8 of the Framework Directive. Article 8 sets out the policy objectives of the Framework. These include:

- the promotion of competition in the provision of electronic communications services 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; and
- the promotion of the interests of EU citizens by (i) ensuring a high level of protection for consumers in their dealings with suppliers and (ii) promoting the provision of clear information (in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services).

13.17 For the reasons set out in this document, our assessment is that introducing the proposed rules in relation to automatic compensation would be in line with the objectives of Article 8 of the Framework Directive as described above. In particular, it would increase protection for consumers by providing them with redress for the harm they suffer when quality of service does not meet their reasonable expectations, and would increase the incentives on providers to improve the quality of service they offer.

13.18 Similarly, we assess that the information requirements we are proposing in relation to SMEs would promote competition in the provision of electronic communications services by ensuring that they derive maximum benefit in terms of choice and quality. They would also promote the provision of clearer information in relation to SMEs' contractual terms about quality of service and the payment of compensation.

## **Power to set general conditions under section 51(2)**

13.19 As set out in section 2, we have 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.

13.20 As noted in section 4, our provisional judgment is that, in respect of quality of service, consumers are currently not receiving sufficient protection relative to their reasonable expectations. Similarly, we assess that SMEs do not have sufficient transparency about the quality of service they can expect to receive (and any compensation that may be due to them), such that their interests are also not sufficiently protected at present. Our proposed condition seeks to address these issues and we therefore consider that it falls within the current scope of our powers under section 51(1)(a).

13.21 Notwithstanding this, and as explained in section 2, we note that the Digital Economy Bill seeks to amend section 51(2), which contains a non-exhaustive list of the types of condition that may be set under section 51(1)(a). This amendment would make more explicit our power to set conditions requiring a provider to pay compensation to an end-user on failing to meet a specified standard or obligation. The Bill is currently expected to receive Royal Assent this year.



## Test for setting general conditions

13.22 As set out in section 2, the test in section 47(2) of the Act must be met before we can set the proposed condition.

13.23 We are minded to consider that the setting of the proposed condition is:

- **objectively justifiable**<sup>318</sup> in that, for the reasons set out in sections 4 to 8 it seeks to provide redress for the harm that is suffered by consumers when they receive quality of service that does not meet their reasonable expectations and would increase the incentives on communication providers to improve the service quality they deliver; and in that, for the reasons in section 11, it would address the harm suffered by SMEs in relation to quality of service;
- **not unduly discriminatory** as it would apply equally to all communications providers providing (or having agreed to provide) services to residential consumers and to those providing services to SMEs (as defined in the draft condition);
- **proportionate** in relation to automatic compensation for residential consumers in that, as set out in section 10, taking account of our general duties, the importance of the relevant telecoms services and our policy objectives, together with our assessment of the possible impacts, it would secure our objectives and the costs would be proportionate to the benefits that would be secured;
- **proportionate** in relation to our proposed information requirements for SMEs in that, as set out in section 11, it would secure our objectives by placing SMEs on a fairer footing, providing them with the benefits of greater redress and providers with better incentives to provide adequate service quality for SMEs, while imposing a limited requirement on providers; and
- **transparent** in that the proposed condition is set out in full in Annex 14 and explained in detail in this document. The proposed condition would also increase transparency by setting out a clear framework for when compensation is due to consumers purchasing residential services and by setting out specific information requirements for providers serving SMEs.

## Consultation

13.24 We welcome comments from stakeholders on the draft condition set out in Annex 14 and, in particular, on the matters described at paragraph 13.8 to 13.10 above.

*Q19: Do you have any comments on the draft condition set out in Annex 14 to this document?*

---

<sup>318</sup> 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.