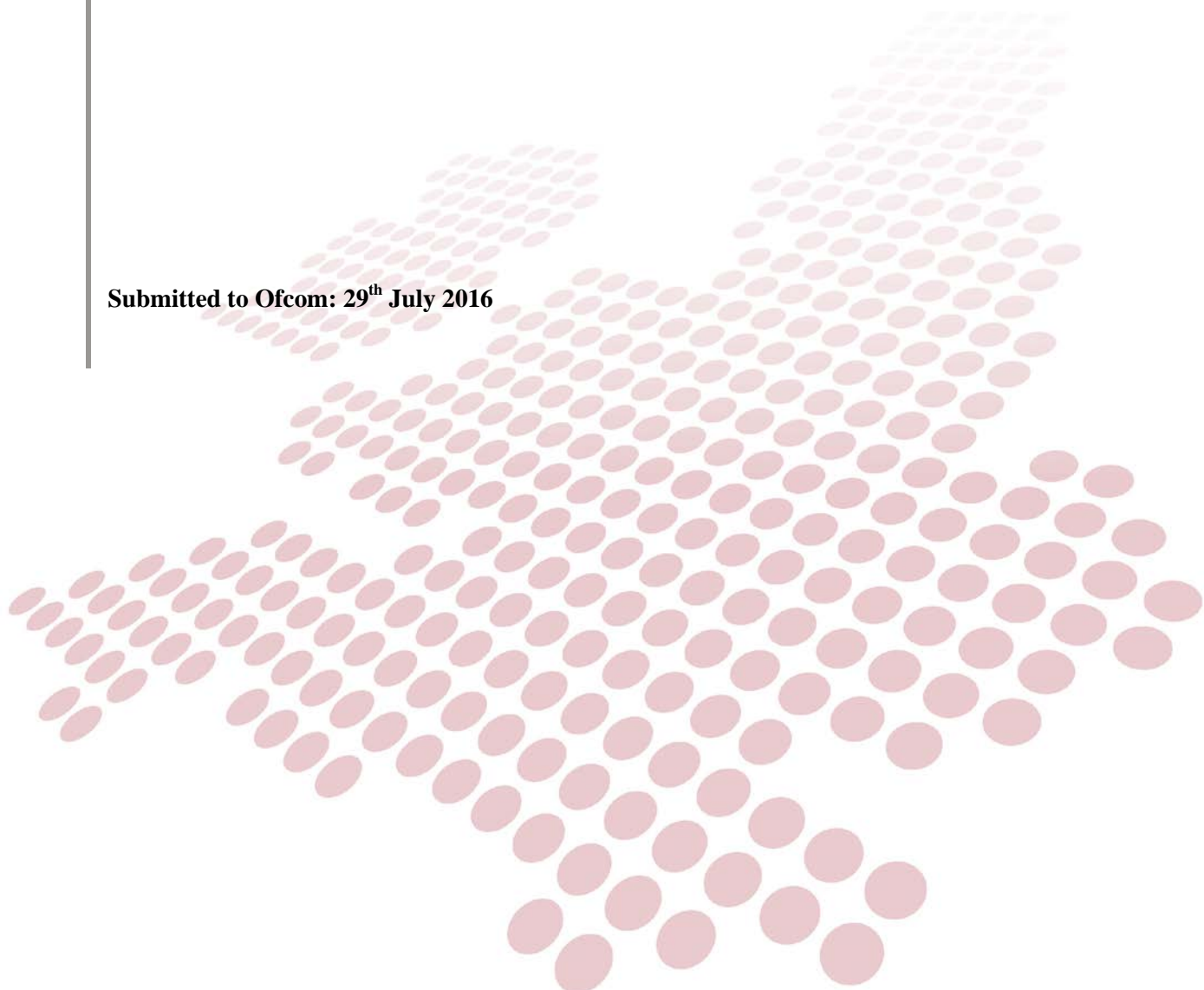


# UKCTA Response to Ofcom Call for Inputs on Automatic Compensation

Submitted to Ofcom: 29<sup>th</sup> July 2016



## Introduction

1. UKCTA is a trade association promoting the interests of fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at [www.ukcta.org.uk](http://www.ukcta.org.uk). We welcome the opportunity to respond to the call for inputs on automatic compensation.
2. This submission does not necessarily fully represent the views of SSE on a proposed way forward. SSE has submitted a separate response.

## Inputs Response

3. 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 members continually strive to ensure high levels of consumer satisfaction with the services offered.
4. The paramount issue to be addressed is the quality of service (or lack of quality of service) at the wholesale level. Openreach's poor quality of service is one of the single biggest issues highlighted in the DCR. The priority for customers is ensuring a high quality of service provision. A delay in a telephone or broadband line being installed and in faults being repaired can be a huge inconvenience to consumers and can also deter switching<sup>1</sup>.
5. The priority for customers is ensuring a high quality of services rather than compensation. Ofcom's proposal is based on a misunderstanding of the source of the issues and the respective incentives of CPs. 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.
6. Competition already exists at the retail level and service quality is an important differentiating factor. This contrasts with the wholesale level (where Openreach has Significant Market Power) where there is limited or no competition, and it is here that Ofcom should focus its remedies. The DCMS Select Committee believes that BT has failed to improve already poor quality levels at Openreach in recent years, while overall investment has remained flat until very recently.<sup>2</sup>

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<sup>1</sup> See Chapter 30 Years after Privatisation: Is the Telecoms market working?  
[http://spcnetwork.eu/uploads/The\\_Development\\_of\\_the\\_UK\\_Telecoms\\_-\\_Executive\\_Summary\\_-\\_FINAL.pdf](http://spcnetwork.eu/uploads/The_Development_of_the_UK_Telecoms_-_Executive_Summary_-_FINAL.pdf)

<sup>2</sup> House of Commons Culture, Media and Sport Committee: Establishing world-class connectivity throughout the UK Second Report of Session 2016–17

7. Automatic compensation will not incentivise CPs who are not vertically-integrated and rely on third parties such as Openreach to improve quality of service as they lack control of those critical elements of the service which are provided by the third party. Common issues attributable to Openreach include a high number of faults, failing to meet targets for remedying faults, waiting times for new installations and early life failures.
8. Ofcom suggests CPs will be able to renegotiate their wholesale agreements to ensure that they can recoup the costs of automatic compensation when the wholesale provider is at fault. CPs have previously indicated Service Level Guarantees are a problem and they do not have the negotiating power to address this. If costs are not recouped from Openreach the proposals will not achieve their objective of incentivising Openreach to improve its quality of service and the unrecovered costs may well be passed on to customers.
9. Ofcom's proposals for automatic compensation do not address the harm they are seeking to prevent – quality of service failures. The only other issue Ofcom's research appears to have identified at a retail level is that some customers are unaware of what compensation is available from CPs. This can be addressed more effectively (and proportionately) by industry measures to improve transparency and levels of customer awareness.

#### **Automatic compensation would have negative consequences for customers**

10. CPs currently offer compensation which is appropriate on a case-by-case basis having regard to the circumstances of the individual customer and harm suffered. A customer who is unaware of a service failure and not experienced any harm (for example, a service outage while a customer is at work which is fixed before they return home) would not expect to receive compensation. In contrast, a customer who experiences harm will seek to agree appropriate compensation with their CP who will be incentivised to offer it in order not to lose the customer. This allows compensation to be directed where it is most needed rather than “compensating” customers who have not suffered any harm.
11. Quality of service issues can be complex and are not necessarily caused by fault on the part of the CP or its suppliers. The Consumer Rights Act recognises that traders are not subject to strict liability and can exclude liability for matters outside their reasonable control, where a customer has failed to follow instructions or has issues with their home set-up which are outside the CP's control or knowledge.
12. CPs currently have the flexibility to deal with individual customer issues including the possibility of providing redress as a matter of goodwill in order to keep the customer even where the cause of the issue is unclear or the CP is not at fault. Automatic compensation would make it much harder for CPs to take a quick, flexible and individualised approach as the costs of making payments to a large number of customers would be hard to justify unless it has been clearly established that the CP is at fault and customers have genuinely been affected. This could significantly delay customers receiving compensation even where it is ultimately found to be appropriate.

13. Automatic compensation would result in CPs needing to implement additional processes and rules to identify whether a service failure has occurred and in what circumstances compensation would be payable. This will be complex to explain to customers and difficult to implement as identifying the precise cause of an issue and then attributing “fault” to the appropriate party may not be obvious or even possible to establish. Dispute processes would need to be put in place between suppliers to deal with “deadlock” where neither party accepts that they were at fault.
14. Automatic compensation will not avoid the need for customer engagement as this will often still be needed to identify the underlying service issue and fix any issues.
15. Automatic compensation may act as a barrier for new entrants to the market by increasing their costs and exposing them to significant liability if service issues are experienced including where they may ultimately be found not to have been at fault.
16. Whether it is proportionate and appropriate to offer automatic compensation for all small business customers as defined by Section 52(6) of the Communications Act needs to be considered. The communications needs of businesses with say 10 employees, are likely to be significantly different than the communications needs of a sole trader or a home office worker.
17. Automatic compensation may inhibit product innovation and service levels by encouraging CPs to dedicate resource so as to be sure to meet the minimum service level. For example, CPs may be reluctant to provide services to a location which carries with it an inherently higher risk of service interruptions (such as high winds or falling trees disrupting overhead wires) or offer faster services unless sufficient safeguards have been included to prevent even a momentary dip in service which could trigger automatic compensation payments far in excess of any customer harm actually suffered.
18. Enabling CPs to compete effectively with transparency on customer service will drive improvements rather than automatic compensation.
19. Ofcom’s qualitative consumer research shows that the vast majority of fixed line, broadband and mobile customers are satisfied with their services and consider them to be reliable with problems being infrequent. CPs are committed to improving further the quality of service provided and, as explained above, maintain that addressing Openreach issues is by far the most effective way of achieving this as CPs’ have limited scope to improve quality of service issues arising from matters outside their control.
20. 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. There are more proportionate ways of ensuring at a retail level that customers receive appropriate compensation.

21. Many CPs already provide clear online and other guidance to customers on what to do if they experience a service issue and how to seek redress. Greater transparency of information will help customers receive appropriate compensation which reflects their individual circumstances and enable CPs to compete even more effectively on customer service levels without the negative consequences for customers of automatic compensation.
22. Reliability and customer service levels are significant differentiators for CPs operating in a competitive and effective market. CPs who are able to make claims about their level of reliability (for example, “99.9% Network Reliability” and “Best for customer service”) do so and are incentivised to continuously drive the improvements necessary to substantiate such effective marketing claims.

### **Conclusion**

UKCTA members continually strive to ensure high levels of consumer satisfaction with the services offered. However, unless Ofcom uses its powers to ensure the necessary improvement of quality of service in the wholesale market the harm that Ofcom is seeking to prevent will not be eradicated.

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