



Consultation Response

Response to Ofcom's call for input on Automatic Compensation

Which? is the largest consumer organisation in the UK with more than 1.2 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Introduction

Which? is pleased that Ofcom is addressing the issue of automatic compensation for consumers who suffer interruption to or disruption of telecom services. We called for this in our response to Ofcom's Digital Strategic Review when we said 'Ofcom should consider how to put in place arrangements that ensure appropriate levels of, where possible, automatic compensation to consumers for telecoms service failures, based on clear principles and research to understand consumers' expectations'.

Since then we have undertaken further work on the issue of automatic compensation across a range of critical consumer services and have attached our report 'Compensation for consumers when things go wrong'. Our report outlines in detail a number of the issues raised in the Call for Inputs, with the added benefit of taking a cross-sectoral perspective that could be of value to Ofcom. We urge Ofcom, as stated in the report, to collaborate with other regulators in developing a set of principles for setting compensation levels and processes – including levels set in statute, licence or schemes, and levels paid out by ADR schemes.

However, such collaboration should not delay the implementation of automatic compensation in telecoms, and we are disappointed with the projected timescale that Ofcom has set out. The timescale implies that at the earliest, an 'implementation plan' for introducing such measures will be published by the autumn of 2017. We do not believe this delay is either necessary or desirable.

Consumers will continue to suffer detriment in the intervening period, the incentive value of firms having to pay out when they fail their customers will not bite, and poor service will continue to be the norm. Ofcom should address this by speeding up its process of consultation and decision.

Below we summarise our response to the questions in the Call for Inputs and refer to the relevant sections of our detailed report.

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

- (a) scope, including possible eligibility;*
- (b) form and process of compensation;*
- (c) level of and basis for compensation; and*
- (d) possible costs and risks of introducing automatic compensation?*

Ofcom should consult on a set of principles that will govern the scope of automatic compensation (when it should apply) and how the levels of compensation are set. These principles can take into account the potential costs and risks associated with the introduction of automatic compensation. We address these issues in more detail in our report.

Response to Question 1(c) and (d)

First, we set out the principles that should guide the setting of levels of compensation. Critically such principles should apply to both fixed levels of compensation set in statute, licence or scheme, as well as levels of awards by ADR schemes. This is because compensation paid via Ombudsman or ADR schemes can deliver similar benefits to that fixed in statute, licence or scheme and so should take into account the same factors. Furthermore such schemes are essential in circumstances where fixed levels of compensation are not appropriate.

Our principles include assessing the potential costs of introducing automatic compensation and the impact this might have on bills.

Straw man principles for setting levels of compensation (p.11 of our report 'Compensation for consumers when things go wrong')

	Framework elements			
	Incentives	Impact on bills	Redress	Distress and inconvenience
Fixed compensation	Levels of compensation should incentivise firms to improve performance to all consumers.	Compensation should be at levels that do not have a disproportionate impact on bills compared to the consumer benefit.	A 'standard' amount for costs/losses to the consumer as a consequence of a service failure. This might include a refund for the service not received (if applicable), a loss element set at a 'median' level, and an escalation factor for prolonged or exacerbated failures.	
Ombudsmen awards	Ombudsman decisions on levels should include an 'incentive element' where appropriate – both to drive improvements across the sector (through the immediate award and the secondary impact of ombudsman decisions on levels firms offer) and satisfy consumers' expectations.	Compensation should be at levels that do not have a disproportionate impact on bills compared to the consumer benefit.	Repaying the consumer where they have been without a service. Repaying the consumer for consequential financial losses incurred as a result of the failure.	Practical and emotional costs/losses to the consumer as a consequence of the service failure, and the process to get it fixed/get redress from the firm (where not already covered by fixed compensation).

Response to Question 1(a):

Second, we set out our view of the circumstances where fixed compensation is likely to be appropriate. Importantly the presence of a fixed scheme does not exclude a role for ADR because, as noted in section 2.7 of the Call for Inputs, fixed compensation may not be appropriate in all cases. This is likely to be the case where there are usually complex issues to address and where judgement of an individual's circumstances is needed. In such cases, ADR schemes can consider the individual consequences of failures and make appropriate awards.

**Criteria for determining when fixed compensation is appropriate (p.12 of our report
'Compensation for consumers when things go wrong')**

Applying these, criteria, we initially identified five candidate services where there is evidence of consumer harm and it is appropriate to consider the introduction of fixed compensation. These are listed in more detail on page 13 of our report, along with references to supporting evidence. They are:

- Loss or degradation of service (fixed and mobile)
- Missed appointments or lack of notice of planned interruptions
- Specific billing problems
- Delays in line installation
- Errors in switching

We also suggest that a delay in making an automatic compensation payment should attract a fixed compensation payment.

Response to Question 1(b):

We recommend Ofcom require compensation to be paid automatically whenever a firm becomes aware of a breach affecting known consumers, as is currently the case in utilities. This should be the case for (at a minimum) qualifying outages caused by an Openreach street cabinet failing which affects known households, or missed/short-notice cancellation of engineer appointments. We recognise that further technical work will be necessary to understand the extent to which loss or degradation of service can be identified, verified, and linked to particular consumers.

It should also be possible to link compensation to specific billing failures. Which? does not have the data to be able to identify which billing failures cause the most significant consumer detriment and we recommend that Ofcom explore this further.

We recognise that automatic payment may not always be feasible. So, where identifying a breach – or those affected – may or will require a consumer to make a claim, firms should be required to adopt a proactive strategy to inform consumers of their rights. This strategy should be developed either at a regulator or provider level through engagement with consumers, to identify the most effective methods of raising awareness.

Finally, we agree that because of the nature of mobile phone signal and difficulties identifying the location of a device and what caused a problem, there may be few candidates for fixed compensation for mobile service issues. Ofcom should consider alternatives to reduce the detriment experienced by consumers experiencing poor mobile signal. We set out two possible options below.

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1. Ofcom should require providers to perform a 'signal check' before entering into a contract. The consumer would provide a small number of addresses that the provider would need to check for signal against their map. If the provider knows that an address is in a 'signal hole', based on Ofcom's coverage map, but does not tell the consumer upon starting the contract, the consumer can exit the contract without penalty and receive a fixed sum.
2. A 'cooling off' period for mobile contracts would prevent consumers from being locked into lengthy contracts when they experience poor signal despite not being in a 'signal hole' by allowing them to cancel without penalty within a set period. This should be accompanied by an appropriate 'prompt' to ensure consumers are aware of their right.

Question 2: Are there any additional considerations?

As noted in our response to question 1, Ofcom should take a holistic approach to compensation in telecoms services, including ensuring that the principles for setting levels of compensation are used by ADR schemes approved by the regulator.

Ofcom should, in approving new schemes, or reviewing approval in accordance with the ADR Regulations, satisfy itself that the schemes are taking appropriate approaches to setting levels of awards for consequential and non-financial losses in particular.

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

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

Please see our detailed report, and our response above. Automatic compensation should apply to loss or degradation of service for fixed telecoms services. It should also apply to mobile services where possible, but where this is not feasible we have made alternative suggestions in our response to question 1 above.

We also consider (as set out in our response to question 1) that automatic compensation should be considered for missed appointments or lack of notice of planned interruptions, specific billing problems, delays in line installation, errors in switching, and delays in making an automatic compensation payment.

We recognise that automatic payment may not always be feasible which is why we recommend that where a consumer will have to make a claim, firms should be required to adopt a proactive strategy to inform consumers of their rights. Our report also sets out alternative approaches, especially in the mobile sector.

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

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

It is reasonable to consider exceptions but these should be kept to the minimum and be objectively justified.

It is critical that Ofcom consider the role of ADR schemes in the context of introducing fixed compensation and automatic payments. In our research, consumers told us that they see clear roles for

both fixed levels of compensation (set in statute, licence or scheme) and discretionary awards (made by ADR schemes or Ombudsman schemes). This depended on the circumstances of the service failure and the losses experienced by the consumer. The key benefits and drawbacks consumers saw for each type of scheme are summarised in the table below.

Scheme type	Benefits	Drawbacks
Fixed levels	<ul style="list-style-type: none">• Enables standard minimums to be set• Provides more transparency for consumers• Potentially allows for compensation to be paid automatically in some cases	<ul style="list-style-type: none">• Doesn't take into account individual circumstances and impacts• Provisions do not cover all service-related problems that consumers identified
ADR-determined	<ul style="list-style-type: none">• Enables individual circumstances and impacts to be taken into account• May result in higher compensation awards	<ul style="list-style-type: none">• May result in inconsistencies in awards• Places more onus on the consumer to take their case forward• Some perceived ombudsman resources to be stretched

As set out earlier in our response, the criteria for setting levels of compensation awards should apply to ADR schemes as well as fixed levels, and Ofcom should use its role in reviewing and approving ADR schemes to hold schemes to account for working within those principles. Ofcom should pay particular attention to ADR schemes' approaches to setting levels of compensation for consequential and non-financial losses, as our research indicates that how they do this is not in line with consumers' expectations (see section 2.3 of our report).

**For more information,
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