

Automatic Compensation

Response to Ofcom from
Citizens Advice



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Why telecoms consumers need automatic compensation

Citizens Advice strongly welcomes Ofcom's decision to introduce an industry-wide automatic compensation scheme for broadband and landline consumers. The scheme will be an important step towards addressing a fundamentally unfair aspect of the current telecommunications market: that so few consumers receive any redress when companies fail to fulfill their most basic obligations. Citizens Advice research on complaints has found that only 15% of consumers who complain to their telecoms providers receive any kind of financial compensation.¹ By contrast 30 % of consumers who had complained about other essential regulated services received financial compensation, including energy and water which have long had systems of mandatory payments for service failures.

Ofcom's proposed scheme will improve the current situation in three important ways. First, it will create a set of clearly defined circumstances in which compensation should be paid, giving consumers much needed clarity. Currently, as the consultation document notes, few broadband suppliers make explicit statements about when they will pay compensation. The few commitments they do make are contained in, lengthy, terms and conditions documents, which consumers rarely read.² This makes it hard for consumers to know what standard of service they have a right to expect from their telecommunications provider and therefore difficult to know when they have a right to complain.

Second, the fact that payments will be made automatically when providers fail to meet these standards will remove a crucial barrier to consumers gaining redress. Currently consumers only tend to receive compensation if they make a complaint about the incident. We know that many consumers decide against making complaints: either because they don't feel they have the time, think that process is too complicated, or think that it's unlikely they will get anything in return.³ Under the new system, all consumers who experience problems will receive compensation, not just those who can spare the time to make a complaint.

¹ Analysis of survey conducted on behalf of DJS Research on behalf of Citizens Advice. For more information see [Understanding Consumer Experience of Complaints Handling](#) (2016)

² According to our research only 15% of consumers claim to read all the terms and conditions before making a purchase. T. Ogunye, [Against the Clock: Why more time isn't the answer for consumers](#) (Citizens Advice, 2016)

³ [Understanding Consumer Experience of Complaints Handling](#), pp.9-11

Finally, requiring providers to make payments when they fail to fulfill certain basic obligations, will create new incentives for them to improve service standards more generally. As noted in the consultation document, some respondents have argued that creating such a system is unnecessary as ordinary retail competition should be sufficient to incentivise networks to improve their service standards by itself. However this view does not fully take into account either the nature of the telecoms market or the way consumers actually behave. The minimum terms of telecoms contracts can last for up to 18 months, which means that after a service failure consumers would have to wait up to a year and half they can take their business elsewhere. Delays to the installation of the new services (one of the situations covered by the scheme), may actually discourage consumers from changing provider again, as they won't want to risk further service disruption.

Furthermore, switching rates for broadband and fixed voice services are comparatively low. Ofcom's research found only 12% of consumers have changed broadband providers in the last 12 months.⁴ Furthermore, our recent research found that some vulnerable groups are much less likely to switch. Households earning less than £7,000 a per year are 77% less likely to have changed their contracts in the first 4 years than the highest earning. Similarly people aged 65 and over are also more than twice as likely as those under 65 to have been in the same broadband contract for more than 10 years.⁵ We cannot rely on consumers changing providers to motivate providers to improve service standards.

Ofcom's proposed scheme would help to address three consumer problems which the Citizens Advice consumer helpline regularly helps people with:

- Delays to repairs following a total loss of broadband or voice service
- Failure to initiate a new broadband or voice service on the date promised
- Engineers appointments being cancelled or rescheduled at short notice

A review of our cases indicates that just under one in five (18%) of the consumers who call our helpline with broadband problems would be eligible to receive a payment under the proposed scheme. This figure is almost certainly a significant underestimate, as it only includes cases where the records give enough information for us to be *certain* the criteria for a payment has been met.

⁴ [Ofcom Switching Tracker 2016](#): 25th July to 21st August 2016. Table 138

⁵ R. Merola and L. Greenhalgh, *Exploring the loyalty penalty in the broadband market* (Citizens Advice, 2017)

⁶ . Nevertheless, it is clear that the introduction of automatic compensation payments for these three problems would address a substantial proportion of the detriment we see and represent a considerable improvement for consumers.

Delays to repairs following a total loss of broadband or voice service

Under Ofcom's proposed scheme, if a consumer experiences a total loss of their broadband or fixed service providers would have two working days to fix the fault. After this they would have to pay £10 for every day the service remains inactive.

Consumers frequently come to Citizens Advice with problems with loss of service. For example:

Victoria was particularly concerned when her phone and broadband connection stopped working as she used it to run her business from home. She had phoned her provider as soon as the initial error had occurred, and they had sent an engineer round. The engineer was unable to fix the fault and suggested installing a new router. Victoria had done this, but her service still didn't work. When she phoned her provider, they made the same suggestion as the engineer, despite the fact that Victoria had already tried that solution. When she called Citizens Advice Victoria had been without internet for 8 days and still had no idea when her service would be restored.

The current situation fails consumers like Victoria several ways. Most providers will not give her any form of refund unless she makes a specific request. This would mean that yet more of her time would be spent trying to get money back for a service she is paying for but not receiving. If the request was not successful, or she was unhappy with the amount of compensation paid, she would then have to expend further time pursuing the case through Alternative Dispute Resolution (ADR) - a lengthy process to gain redress for such a straightforward issue. Finally, Victoria still has to pay her bills and deal with the inconvenience of having no internet for as long as the problem last, whereas the network suffers no additional costs if they delay the repair. By contrast, the proposed scheme would ensure that Victoria receives compensation as a matter of course, and the provider has a clear incentive to fix her problem swiftly.

Failure to initiate a new broadband or voice service on the date promised

⁶ For instance, in many cases it was not entirely clear exactly when the consumer had reported the service loss from the case notes - therefore we could not say for certain that the two working days required to be eligible for a payment had elapsed.

Under Ofcom's proposed scheme providers would have to pay £6 for every day beyond the promised initiation date when a network fails to provide a new broadband/voice service. A survey conducted by Citizens advice in March 2017 of 2,000 people who had moved house in the past 2 years found that over a third (35%) of consumers experienced some delay in the initiation of their broadband service.⁷ More than 1 in 8 (14%) consumers experienced a delay that lasted more than 2 weeks.

Consumers who are experiencing this problem frequently contact Citizens Advice. For example:

Zoe had bought a Fibre broadband contract, paying a £50 installation fee and £32 upfront monthly payment. The next week she was visited by engineer, who told her that the Fibre connection would not be available until 12pm tomorrow. The broadband was still not working the evening afterwards. Zoe phoned the network several times, and each time was told the service would be working shortly. When she phoned Citizens Advice it had been 3 weeks since she'd initially made her purchase and her provider was still telling her that she would not have a service for at least another five days. Zoe had asked to cancel the contract, but had been told that as the 14 cancellation period had passed she would have to pay an exit fee of over £200 in order to do so.

Consumers in Zoe's situation should be able to exit contracts without paying any penalty. However the proposed compensation scheme would still be a considerable improvement on the current situation. It would mean that consumers like Zoe would receive payments for the time that has been wasted, and create an incentive for providers to initiate services on time. Furthermore, it would ensure that consumers who don't want to switch provider, either because they don't want to spend more time trying to secure a working service or because no other network provides an equivalent product in their area, will receive adequate redress.

Engineers appointments being cancelled or rescheduled at short notice

Finally under Ofcom's proposed scheme consumers would receive a £30 payment whenever their network cancels or reschedules an engineer's

⁷ 'Q. Did you experience any unexpected delays to the start of your new broadband service?.
'Base = All who Transferred or set up a new broadband service when they moved: (1264).
Forthcoming Yougov survey of 2009 consumers from England and Wales who have moved to a new address in the last two years. Fieldwork conducted between 6th to 15th March 2017.

appointment with less than 24 hours notice. Missed appointments can cause considerable disruption to consumers lives. For instance:

Jamie's broadband had stopped working, so he contacted his provider to arrange for an engineer to come and look at the problem. The engineer failed to turn up to three appointments in a row. Nearly three weeks after the fault had developed Jamie was left with no broadband provision and had wasted a days annual leave waiting in for an engineer who never turned up.

As with the above examples, currently Jamie is left in a situation where it is hard for him to gain any redress. The only options available to him are to make formal complaint to the provider, or take the case for an ADR scheme: both processes would require him to invest yet more of his time and energy into solving the problem. Consumers like Jamie deserve to receive compensation automatically, without having to follow a lengthy complaints process.

The need for a compulsory scheme

In response to the original call for inputs, three of the biggest broadband providers argued that Ofcom's aims would be better achieved by creating a *voluntary* scheme.⁸ These providers argued that Ofcom should only mandate the basic principle that consumers are eligible for automatic compensation payments in certain circumstance, and allow individual companies to decide the precise triggers/amount of compensation which should be paid. In the words of one of the providers, such an arrangement 'would encourage [providers] to compete on service, allowing greater differentiation, including differentiation on automatic compensation paid when the offered service levels are not met.'⁹

Citizens Advice disagrees with this approach for two reasons. First, we do not believe that the implementation of a voluntary scheme will be sufficient to ensure that all consumers receive adequate compensation for service failures. The minimum payment amounts in the industry proposal are all substantially lower than those proposed by Ofcom, and in two out of three cases are lower than the average payments in the minority of cases where compensation is already being paid.¹⁰ In addition, the proposal allows networks to put a cap on the total value of payment, which would mean that consumers who suffer lengthy disruptions to service may not receive compensation in proportion to the inconvenience caused.

⁸ The providers are BT, Virgin Media and Sky

⁹ [BT's submission to the Call for Inputs](#).

¹⁰ Ofcom, [Automatic Consultation: protecting consumers from quality of service problems](#) (consultation document, 2017)

Table 1: Proposed compensation payments

	Industry scheme	Ofcom Scheme	Average Existing Compensation payment	Energy Scheme ¹¹
Loss of Service	£3 for each working day after, after three working days, that the relevant service is not repaired	£10 for each calendar day, after two working days, that the relevant service is not repaired	£13.71 per incident	£75 if power cut is more than 12 hours + £35 for each subsequent hour
Missed Appointment	£20 if not informed 24 hours before	£30 if not informed 24 hours before	£24.39	£30 if not informed the working day before
Delayed initiation	£3 per day	£6 for each calendar day of delay beyond the promised start date	£2.39 per incident	Not applicable

The result of implementing the voluntary scheme as it currently stands would be to endorse the idea that consumers should be entitled to *less* compensation than companies currently pay out. It is also not clear how industry have determined that these minimum payments are adequate. In contrast, the Ofcom’s proposal includes a detailed methodology for determining the level of compensation in each case. These comparisons do not inspire confidence in the industry scheme, although, as the consultation document notes, the companies are open to further discussion about the precise payments.

Our second, more fundamental, concern relates to the idea that a voluntary scheme would lead to competition. Our work on consumer behaviour leads us to question whether many consumers would prioritise compensation payments when choosing their fixed voice or broadband providers.

¹¹ Contained in [The Electricity \(Standards of Performance\) Regulations 2015](#)

For instance, our work with the Behavioural Insights Team highlighted that consumers tend to show 'present' bias (a tendency to prioritise their immediate, rather than long term, needs) and 'optimism' bias (a tendency to underestimate the likelihood of things going wrong) when making consumer decisions.¹² Such biases make it highly unlikely that the level of payments they would receive when the service goes wrong would be a large driver in many consumers purchasing decisions.

There is also little evidence of networks currently competing on the basis of the compensation they pay when problems arise. We also see no reason why a voluntary scheme would incentivise providers to do so to a greater extent than Ofcom's proposed scheme. Ofcom's scheme would set a minimum standard - there is nothing to stop providers from going further should they wish to.

In competitive markets consumers with higher incomes (or more time to shop around) have the opportunity to choose between a wider range of products and services than lower income consumers whose choices are more limited by price. This makes competition an inappropriate mechanism for delivering adequate compensation, as the extent to which you can assert your basic consumer rights should not be dependent on your household income. Every consumer is entitled to get the telecommunications service they have paid for - and receiving compensation when providers fail to do this cannot be considered a premium product.

¹² The Behavioural Insights Team on behalf of Citizens Advice, [*Applying Behavioural Insights to Regulated Markets*](#) (2016)

Proposed improvements to Ofcom's scheme

As outlined throughout our response, Citizens Advice strongly supports Ofcom's proposed scheme and believe that it represents a significant, and overdue strengthening of consumer protections in the broadband market. However, there a few small changes we would make to the proposed scheme to ensure that it is as effective as it can be in tackling common sources of detriment and ensuring consumers are adequately compensated for service failures.

Delayed Repair following loss of service

Companies will only have to pay compensation if the service is not fixed within two full working days of the consumer reporting the problem. Since this payment trigger relies on consumers contacting their providers, at a time when one of their core communication services won't be working, it is important that the networks make this process as easy as possible. When implementing this scheme companies should be required to review their procedures to ensure that consumers can report such faults as soon as they occur. At a minimum networks should ensure that:

- Consumers can report faults by phone and through the publicly available website
- It is possible to report faults by phone outside call centre opening hours, for example through automated systems
- There is a 'no wrong door' policy, whereby reporting a fault through all channels counts as a notification

The General condition should also be altered to clarify that if a notification is received during a non-working day then the next working day counts as a '*full working day*' for the purposes of triggering a compensation payment. So, for example, if a consumer were to report a service outage on a Sunday evening, they would be eligible for a compensation payment if their service was not restored by midnight on Tuesday.

Consumers need to be able to feel they can rely on their home voice and internet connections, so the scheme should also recognise the cumulative effect on the consumer of having repeated problems with a service. Therefore we propose that :

- If another loss of service happens within a week after the initial repair, then consumers should be eligible for payments immediately after reporting it (as this essentially part of the same incident)
- If there are more than two total losses of service within a year the consumer should be allowed change their provider without having to pay an exit fee

Delayed provision of service

The general condition should also explicitly state that consumers will be eligible for a compensation payment if a provider fails to supply any devices necessary to connect to the internet, for example, routers, which are included in the contract. Of the consumers we polled 8% had received a router that did not work properly and 5% had not received one at all. The detriment to consumers who do not receive these devices is exactly the same as it would be for consumers whose connection is not initiated: they are unable to use an service they have paid for. Therefore they should receive the same compensation.

There should also be greater clarity on when consumers should be given an installation date for their service. The consultation only specifies that this should be 'in a durable medium', and there is a risk that providers will be incentivised to be vague about installation dates until just before the service goes live in order to reduce the risk of paying compensation. This would leave consumers uncertain when they would have working voice or internet connection, and unable to effectively compare start dates when choosing between providers. We believe that the consumer should be given the proposed start date when the consumer signs the contract.

Missed appointments

The scheme should take into account the effect that repeat problems can have on customers. Under the current proposals companies will not have to pay compensation if they give consumers 24 hours notice of any cancelled appointment. This grace period is reasonable for a single cancelled appointment. However, it should be recognised that appointment cancelled with as little as 24 hours notice can still disrupt consumers' lives. For instance, a consumer may not be able to cancel annual leave they have booked or reorganise any other plans they have cancelled in order to be in their home for the scheduled appointment. The scheme should recognise this by requiring that if an appointment has already been rescheduled once then consumers should receive for compensation for any further cancellation, whether or not they are given 24 hours notice.

Further comments

Automatic compensation is the most appropriate solution in the majority of these cases, but some incidents may have aggravating factors that would justify further compensation. For instance, consumers may have felt that network staff were rude or aggressive when dealing with their complaint, or that they had been in some way discriminated against during the process of solving the problem. It should be specified in the General Condition that the fact that compensation was offered or accepted should have no effect on whether a case is eligible to go to an Alternative Dispute Resolution Scheme, or indeed access to any other consumer remedy. An automatic payment could, however, be taken into account when determining any additional compensation.

The consultation suggests that compensation should be paid to most consumers in the form of bill credit. This payment method may be the most straightforward way of getting the money to the consumers. However, there is a risk that payments made in this way could act as a disincentive for consumers to switch. A large compensation payment could take consumers several months to spend, during which time consumers could feel that they are not able to change providers without losing the money. Therefore the condition should explicitly state that any bill credit should be refundable at the point of contract exit.

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