



Communications Consumer Panel and ACOD response to Ofcom's call for inputs into automatic compensation

The Communications Consumer Panel (the Panel) and the Advisory Committee for Older and Disabled People (ACOD) welcome the opportunity to respond to this consultation on automatic compensation.

The Panel works to protect and promote people's interests in the communications sector, including the postal sector. We are an independent statutory body set up under the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and microbusinesses.

The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers.

Four members of the Panel also represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues. Following the alignment of ACOD with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

Response

We are pleased to see that this consultation - and the promotional materials - have been produced in an inclusive and accessible format (including videos and infographics), which takes into consideration the recommendations made by the Panel in our review of Ofcom's consultation processes. We believe this will give consumers a better chance of inputting their views on Ofcom's policies.

We responded to Ofcom's July 2016 call for inputs on automatic compensation and supported the introduction of an automatic compensation scheme that covers the issues that matter most to consumers. We believe that the scheme will help focus communications providers' (CPs') efforts on improving quality of service.

The key points from our response to the call for inputs are summarised below:

- We believe that automatic compensation offers a real opportunity for Ofcom to put safeguards in place to genuinely protect and empower consumers; and help build trust in the market.
- We consider Ofcom's proposals to publish service quality performance data and to introduce automatic compensation, necessary measures to protect consumers and allow them to make informed choices, so that communications markets work better for them.



- Both residential consumers and smaller businesses (and especially micro businesses) should be included within scope;
- It is vital that automatic compensation is arranged in a way that does not result in consumers, in effect, paying for their own protection. CPs failing consumers and then indirectly passing them the bill for automatic compensation is a risk that must be mitigated against.
- We urged that attention be given to the position of consumers in vulnerable circumstances, including those who do not use the internet (in the case of landline services);
- Compensation should be set at a level that is proportionate, tangible and meaningful - and in some circumstances, non-financial compensation may be applicable - for example, the provision of alternative connectivity options, without additional charges.

Scope

We support the use of both consumer research and complaints data, in providing insights into the depth and range of consumer harm. We agree with Ofcom's focus on the following measurable aspects of quality of service that cause consumers harm and detriment:

- 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.

We believe that consumers impacted by each or any of the above service quality failures should receive automatic compensation, to at least the levels proposed in the consultation document.

We believe that in calculating the number of days a consumer (or micro business) has been affected, calendar days should be used to measure the duration of harm, in every case. It is not possible for consumers to buy communications services on a 'working days only' contract, so it is fair and logical that compensation is also paid for calendar days of lost service - as opposed to working days, as is suggested in the case of repair delays, where compensation would not be triggered for two working days.

With 66% of households claiming to be unable to function without broadband (as highlighted in the consultation document) and the harm to small businesses identified in Ofcom's research, published in January 2016¹, the fundamental importance of communications services to consumers and micro businesses is clear.

Providing automatic compensation to consumers who have been let down by their providers in the above ways will not nullify the harm and inconvenience, nor make the delay or missed appointment less significant. But it should provide consumers with a proportionate level of redress, without the need for them to endure further detriment by

¹ https://www.ofcom.org.uk/__data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf

having to navigate their providers' complaints procedures and provide proof of the harm caused to them.

As we know, from our research, 'Going Round in Circles?'² published in October 2013, simply trying to contact providers can be a source of frustration in itself, for consumers and small businesses. This is illuminated further in Ofcom's recent Comparing Service Quality Report³, where in terms of complaints about landline service those satisfied with getting through to the right person was 45%. This, in our view, represents significant consumer harm and is an indictment of the industry's ability to handle complaints effectively.

Furthermore, our research also showed that a negative past experience affected the likelihood of consumers bothering to contact their provider with further issues. The previously mentioned research by Ofcom on small businesses shows that 25% of the businesses surveyed were dissatisfied with the ease of contacting the customer service department and the figure was 19% for small businesses attempting to contact their landline provider.

We would suggest that the amount of compensation is set by a precedent that is meaningful to consumers, such as the cost of a day at average or minimum wage to reflect a day lost waiting in for a missed appointment. Another way could be that if consumers are billed monthly then any month in which they don't receive a full month's service becomes a month that they don't have to pay for. We have seen CPs charge consumers for a month of service or asking them to give a month's notice, so it does not seem unreasonable to use the same period as a precedent for deciding how much compensation should be paid. The principle ought to be that compensation is directly relatable to the service failure or the billed amount, not an arbitrary sum; we are unclear about what the proposed amounts relate to in terms of the consumer experience.

Opportunity for further review

We recognise that some of the types of failures in quality of service have been deemed out of scope. In the first instance, we believe that a good outcome for consumers is a simple and clear scheme, which is practical for CPs to implement quickly and administer effectively. Enabling consumers to receive compensation automatically where a clearly defined failure has occurred - thus removing the hassle, worry and uncertainty of applying for compensation; and making it possible for those who would not apply for compensation to receive the redress that they are entitled to - should be the immediate goal.

In the case of broadband speeds, we agree that this is already being handled under the voluntary Code and we will be contributing to the development of the Code. That said, we recommend that Ofcom does not rule out looking at poor broadband speeds as a candidate for automatic compensation in future.

² <http://www.communicationsconsumerpanel.org.uk/downloads/going-round-in-circles.pdf>

³ <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/quality-of-service/report>

However, in the case of mobile telephony while we note that there are already rules about porting, billing and delayed PAC (and that in some circumstances Ofcom has powers to fine CPs that fail to meet published standards) fining a CP does not necessarily guarantee that those who were harmed are duly compensated. And it certainly doesn't guarantee that compensation happens without effort on the part of the consumer. So we do not believe that the current rules offer sufficient protection from the harm that has been identified and highlighted in the consultation document.

As explained above, we believe the amounts of compensation proposed by Ofcom (and therefore the amounts proposed by CPs) are too low. However, we appreciate that it is important to get a scheme established and that there must be a starting point for the those levels of compensation, but the amounts proposed seem to be on the low side in the context of the harm experienced by consumers. For a scheme to be effective and have the confidence of consumers the compensation needs to be meaningful and the suggested amounts may not adequately reflect the harm and inconvenience endured by customers.

We therefore welcome Ofcom's intention to keep the automatic compensation scheme under review. We trust that the appropriateness of the amounts of compensation payable will be reviewed after the initial period, and regularly thereafter.

Once the scheme is embedded into the processes of CPs, we believe that insights about other types of harm that could be compensated for automatically should be built into the scheme. As part of its review, we would urge Ofcom to revisit previously identified sources of consumer harm for inclusion in the scheme where relevant.

We would also like to see a clear timetable for review.

Framework

We believe the framework Ofcom has used in assessing the options is sensible and practical. The evidence shows that "option one: maintaining the status quo" is not an option that will provide consumers with adequate protection.

Option two would simply involve clarifying information on existing complaints and redress processes, which we believe should happen anyway, alongside implementation of the automatic compensation scheme.

We fully support option three as the most appropriate way to provide consumers with adequate protection and believe that the evidence provided by Ofcom in this consultation shows that this is a necessary measure. Furthermore, Ofcom publicly announced that automatic compensation would be introduced and we believe that it is vital to maintain consumers' and citizens' trust by delivering on that promise.

Consumers in vulnerable situations or with additional communications needs

The Panel's qualitative research, 'We're Not All the Same'⁴, published in December 2015, provided insights into the experiences of consumers in vulnerable situations and those

⁴ <http://www.communicationsconsumerpanel.org.uk/research-and-reports/we-re-not-all-the-same-inclusive-communications>



with additional communications needs - and their providers. One of the participants, who has a cognitive impairment, explained:

“... you’re talking to robots. They’re not understanding. Especially when you’ve got cognitive dysfunction, like I have. No understanding whatsoever.”

Another participant, who has a hearing impairment, said:

“Because when you phone them they speak or mumble too fast and I can’t hear, and I just said “oh I give up [...] I’m partially deaf can you speak very slowly” but they never speak slowly, they always mumble.”

Reducing the instances where consumers need to contact their CP means that consumers in vulnerable situations, or those who have sensory impairments and additional communications needs, will be less likely to need to endure these frustrating encounters.

Micro businesses

As we have stated above, it is vital that CPs’ complaints and redress schemes are clear for consumers and small (particularly micro) businesses to use - and the introduction of an automatic compensation scheme may raise consumers’ awareness and expectations. We believe this is an ideal time for CPs to clarify and promote their complaints and redress processes, alongside the announcement of the automatic process.

Ofcom’s small business research, which we have referred to above, showed that only 28% of the businesses involved said they were aware of Ofcom’s Advice for Businesses web service⁵. We believe that the automatic compensation scheme should be promoted via that service and the service should be publicly relaunched.

Summary

We welcome:

- The introduction of a simple to use, practical to implement, automatic compensation scheme for consumers who experience:
 - 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;
- The provision by CPs of a level of automatic compensation that meets the level of harm experienced;
- The fact that Ofcom has recognised that this initial scheme should be kept under review. Amendments should be made where other types of consumer harm that can be objectively measured are identified and previously

⁵ <https://www.ofcom.org.uk/advice-for-businesses>

identified sources of harm should be reconsidered where existing protections are not enough.

- Improved information for smaller businesses - particularly micro businesses - and would suggest more active promotion of Ofcom's small business portal.

We also recommend that CPs better promote their complaints and redress processes, making it clear that consumers are not restricted from applying for a higher level of compensation where more harm is experienced.