



OFCOM'S CONSULTATION ON AUTOMATIC COMPENSATION FOR LANDLINE AND/OR BROADBAND CUSTOMERS

RESPONSE BY SKY

Executive Summary

1. Ofcom's policy on automatic compensation is targeted at two issues: (i) making it easier for consumers to obtain redress when they experience service problems in relation to their fixed line telecoms services; and (ii) increasing incentives to improve the quality of service delivered to consumers in relation to these services over time. The latter is part of a broader set of initiatives being undertaken by Ofcom.

Compensating consumers when things go wrong with their fixed line telecoms and broadband services

2. Ofcom has provisionally concluded that it is appropriate to introduce new regulation to require all retailers of fixed line telecoms services to provide compensation to consumers automatically when they experience problems with: (i) repairs after a loss of service; (ii) delays in installing new services; and (iii) missed appointments.
3. We have considerable concerns with Ofcom's case in relation to the necessity of intervention on this issue. The reality is that the vast majority of UK consumers are satisfied or very satisfied with their fixed line telecoms and broadband services, and firms' policies provide reasonable compensation for consumers when things go wrong.
4. Nevertheless, Sky has engaged pragmatically with Ofcom and other firms in the sector on this issue. In parallel with Ofcom's consideration of this issue key firms in the sector have developed an industry Code of Practice on automatic compensation, which, if adopted, would address Ofcom's concerns. Following the publication of Ofcom's consultation, the proposed Code of Practice has been revised to reflect many of the requirements that Ofcom proposed should be included in formal regulation.
5. Accordingly, the key issue now facing Ofcom in relation to automatic compensation is whether to accept and give its backing to the industry Code of Practice, or to proceed to introduce formal regulation.
6. In the first instance, Ofcom has a legal obligation to support and facilitate such self-regulation, where appropriate. This area is an ideal opportunity for Ofcom to further its objectives via industry self-regulation, given that some of the largest players in the sector – including BT, Virgin Media and Sky – have indicated their willingness to take action on this issue. It is an approach that has a proven track record of success in other areas. The Code of Practice provides a viable and effective alternative to formal regulation.
7. Second, Ofcom has a legal obligation to introduce new regulation only where it is necessary. Given that the Code of Practice would deliver broadly the same outcomes as

the proposed regulation, then it is evident that it is not necessary to introduce new formal regulation.

8. In fact, the Code of Practice has a number of distinct advantages over formal regulation, including:
 - speed of implementation: the Code of Practice is likely to be up and running sooner than processes required by formal regulation, delivering benefits to consumers;
 - future flexibility: industry codes of practice are inherently easier to amend over time, which is important in a fast evolving sector such as the telecommunications sector; and
 - lower administrative costs to Ofcom.
9. In the consultation Ofcom sets out a number of reasons for preferring formal regulation to the earlier draft Code of Practice. The revisions to the draft Code proposed after publication of the consultation should alleviate Ofcom's concerns.
10. Those firms willing to sign up to it today represent over 80% of UK fixed line customers, and more firms are likely to sign up if Ofcom supports the proposal. Furthermore, any operators who choose initially not to sign up to the Code will be less attractive to consumers, which will put pressure on them to join.
11. The figures for compensation payments set out in the draft Code (as revised) are below those published by Ofcom in the consultation. However, it is important to recognise that: (a) the figures in the Code are specified as minimum payment levels; it will be open to firms to set their own compensation payments above this level; and (b) the figures put forward in the Consultation are likely to overestimate the cost of harm suffered by consumers.
12. For these reasons, adoption of the Code of Practice is a clearly superior option to the imposition of formal regulation, and should be supported by Ofcom.
13. Ofcom has the ability to monitor developments in relation to consumer compensation in the sector, and to return swiftly to its proposals for formal regulation in the unlikely event that the self-regulatory regime is found not to be working effectively.

Encouraging improvements in the quality of service delivered to consumers

14. The second key focus of Ofcom's policy is on encouraging improvements in the quality of service delivered to consumers. In principle, having to compensate consumers automatically when things go wrong should encourage firms to take steps to reduce such incidents.
15. In practice, the three types of issues identified by Ofcom are (in the case of users of BT's network) principally issues that arise at the wholesale level and are therefore beyond the control of retail providers of fixed line telecoms services. In these circumstances, unless the cost involved in addressing such issues (including compensation paid to consumers) is passed back to Openreach, as the provider of wholesale services, it will have no incentive to reduce the level of service problems.
16. We welcome Ofcom's recognition of this issue in the Consultation and the assurances provided that it is fair and reasonable that Service Level Agreements and Service Level Guarantees with Openreach should require it adequately to compensate retailers when

they incur costs, including being required to make compensation payments to consumers, which result from problems for which Openreach is responsible. Section 3 of our response to the Consultation suggests a number of areas where it will be important to ensure alignment between compensation payments at the retail level and Service Level Agreements and associated Service Level Guarantees to ensure Ofcom's stated principle is achieved.

Ofcom's views about service quality in the sector

17. Ofcom also makes a number of statements in the consultation about the overall quality of service delivered to customers of fixed line telecoms services in the UK, and firms' incentives to improve service quality. In particular, Ofcom appears to take the view (albeit tentatively expressed) that the intense competition that is readily observed in this sector, particularly in relation to broadband services, does not translate into strong incentives to deliver high quality services to consumers.
18. Ofcom's provisional views on this issue are not supported by the facts. UK consumers have a wide variety of combinations of price and service quality from which to choose, with a number of operators – including Sky – offering high quality customer service. There is no sound reason to depart from a view that competition is the best guarantor of delivering appropriate levels of customer service at the retail level within the sector.
19. Plainly, this is not the case at the wholesale level of the sector, where there is enduring significant market power. However, service quality issues at this level are being tackled via a range of other regulatory initiatives.
20. Ofcom's analysis in the consultation appears to confuse the extent to which firms compete in terms of: (a) the amount of compensation provided to consumers when things go wrong; and (b) service quality. These are two different things. It is rare, in any sector of the economy, for compensation for problems to be a central element of competition. In keeping with many other sectors, however, service quality is a key aspect of competition among firms in the UK fixed line telecoms sector.



OFCOM'S CONSULTATION ON AUTOMATIC COMPENSATION FOR LANDLINE AND/OR BROADBAND CUSTOMERS

RESPONSE BY SKY

Introduction

- 1.1 Ofcom's consideration of compensation provided to consumers when they suffer service failures in relation to their landline and/or broadband service is targeted at two distinct issues:
 - (i) consumer redress – for example, compensating them for costs incurred or inconvenience when there are problems with their services; and
 - (ii) providing incentives to improve service quality – to reduce the incidence of service problems.
- 1.2 We address the first of these issues in Section 2, and the second in Section 3, below.
- 1.3 Section 4 addresses Ofcom's proposals in relation to SME and mobile customers.
- 1.4 Section 5 discusses the conflation in the Consultation of the separate issues of firms' policies on compensating consumers in the event of service problems, and the quality of service provided by firms in the UK fixed line telecoms sector.
- 1.5 Finally, Section 6 addresses views set out by Ofcom in the Consultation about the quality of service delivered by firms operating in the UK fixed line telecoms sector.

SECTION 2: DELIVERING APPROPRIATE CONSUMER REDRESS

Ofcom's proposals and the proposed industry code of practice

- 2.1 One of the two key objectives of Ofcom's policy is to make it more straightforward for consumers to receive appropriate redress if they suffer problems with their fixed line telecoms services. Ofcom has provisionally concluded that this objective should be met via the provision of 'automatic' compensation, with clearly specified amounts, in relation to three specific types of service problems: (i) repairs after a loss of service; (ii) delays in installing new services; and (iii) missed appointments. Ofcom's Consultation sets out a proposal to implement this via the introduction of new General Conditions.
- 2.2 The case set out by Ofcom in the Consultation for such regulation, however, is weak. We consider that it fails to meet Ofcom's legal requirements to demonstrate that proposed

new regulation is necessary and proportionate, and be accompanied by an impact assessment of an appropriate standard. Nevertheless, in view of the foregoing, we do not consider it to be a productive use of Sky's resources at this point in time to undertake a substantive critique of that case.

- 2.3 Notwithstanding concerns about the weak basis for Ofcom's proposed intervention, in a spirit of co-operation and pragmatism firms in the industry have been working to develop a voluntary industry code of practice ("VICOP") on automatic compensation for consumers in the event of service problems. Industry dialogue on the VICOP has been driven by Sky, BT and Virgin Media.
- 2.4 A first iteration of this code of practice is discussed in the Consultation. Whilst Sky considers that this proposal addressed Ofcom's proposals effectively, the industry group has continued dialogue with Ofcom. As a result, the industry group is proposing to revise the Code. The revisions are set out in Annex 1. We refer to the proposed code as amended by these improvements as the 'revised VICOP'. This now includes the majority of Ofcom's proposals set out in the Consultation that would be included in new regulation.
- 2.5 Accordingly, the key issue now facing Ofcom in relation to automatic compensation is whether to accept and give its backing to the industry Code of Practice, or to proceed to introduce formal regulation. As set out below, Sky's strong view is that Ofcom should support the industry Code of Practice.

Ofcom should prefer the industry code of practice to the introduction of formal regulation

- 2.6 Sky considers that Ofcom should prefer the proposed revised VICOP to the introduction of formal regulation for the reasons set out below.
- 2.7 In the first instance, Ofcom has a legal responsibility to consider and where relevant promote self-regulation of this type. Section (3)(4)(c) of the Communications Act requires Ofcom, in carrying out its duties, to have regard to "*the desirability of promoting and facilitating the development and use of effective forms of self-regulation*"¹. In Sky's view, the delivery of automatic compensation for service problems in fixed line telecom services represents an ideal opportunity for Ofcom to fulfil this obligation. Ofcom could contribute significantly to the success of the VICOP by endorsing it and, for example, by creating an appropriate 'kite mark' indicating that firms are signatories to the Code, which they can use in consumer marketing.
- 2.8 Ofcom-backed Codes of Practice have been shown to work effectively in a number of other areas, including the Code of Practice on Broadband Speeds, the Open Internet Code and the Code of Practice for the sales and marketing of subscriptions to mobile networks.
- 2.9 There is, in practice, now relatively little difference between the terms of the revised VICOP and the proposed formal regulation. The principal difference is that formal regulation would apply to all retail providers of fixed line telecoms services, whereas it may be the case that some providers choose not to sign up to the VICOP. We discuss this issue further below.

¹ This is noted by Ofcom, among other legal responsibilities, at paragraph 2.29, 'Automatic Compensation, Protecting consumers from quality of service problems' Ofcom, March 2017. (Available at https://www.ofcom.org.uk/data/assets/pdf_file/0030/98706/automatic-compensation-consultation.pdf.) All paragraph references are to the consultation document, unless otherwise stated. Ofcom does not, however, refer to it in a subsequent discussion of its legal responsibilities at paragraphs 13.13 – 13.15.

- 2.10 In principle, there also remains a difference between the levels of compensation identified by Ofcom, and those proposed in the revised VICOP. However, (a) the amounts specified in the VICOP are clearly specified as minimum levels of compensation, and it may be the case that service providers choose to provide higher levels of compensation to consumers, and (b) in any case, as discussed further below, Sky considers that there are good grounds for considering that the amounts specified by Ofcom are too high.
- 2.11 In addition to Ofcom's legal responsibilities, there are a number of factors that we consider should lead Ofcom to favour the VICOP approach.

The VICOP is likely to be implemented more quickly than formal regulation

- 2.12 Sky considers that the VICOP approach is likely to be up and running earlier than the formal regulatory approach for a number of reasons:
- (i) the regulatory approach would require Ofcom to consider responses from the Consultation, and prepare a full regulatory statement setting out its reasoning for adopting this approach. Where respondents have challenged Ofcom's evidence and/or analysis, this may require additional work to be undertaken. By contrast, acceptance by Ofcom of the VICOP approach could be indicated relatively quickly, and therefore the work required to deliver the new system would start earlier;
 - (ii) there is a real risk of challenge to Ofcom's decision under the formal regulatory route. This could in principle delay the start date for the work required to deliver the new system; and
 - (iii) the formal regulatory route is likely to specify a particular date at which the new approach would come into force. In practice, firms would therefore be unlikely to deliver the new approach any sooner. By contrast, under the VICOP approach if it proved possible to deliver the new approach more quickly (once implementation was underway) signatories have committed to introduce such initiatives as soon as practicable.

There is likely to be greater scope for differentiation under the VICOP approach

- 2.13 An unintended consequence of mandated regulation in prescribing higher compensation amounts is that it is possible this becomes an accepted ceiling for compensation with little incentive for service providers to offer more flexible alternatives. It may also have the consequence of providers seeing the prescribed compensation amounts as all that is needed to remedy a customer's harm as opposed to tailoring a solution to suit a customer's specific needs.
- 2.14 The VICOP supports the objectives of providing greater choice on price and service quality more effectively than formal regulation. In introducing a voluntary framework with minimum standards, service providers have the option to participate and have greater flexibility to go further. In doing so, a service provider is better able to distinguish itself from its competitors.

Easier adaptability

- 2.15 The VICOP also offers inherent flexibility for industry to adapt as the market and products develop. The products and services offered within the broadband market have undergone significant transformation over recent years. For example, recently Sky was the first to offer a fibre product that can be installed by a customer. Sky has also looked at innovative new ways to service customers with a new dedicated team of broadband engineers to resolve customer issues and introduced a customer service app which allows customers to

review their broadband performance and run tests. With the proliferation of new products and innovation in how such services are delivered, it is inevitable that any framework for automatic compensation will need flexibility to adapt to such circumstances. The VICOP allows industry to adapt more readily and quickly and so avoid the need for Ofcom to re-consult each time a change is needed. This adaptability and relative ease of evolution is shown in the development of the Broadband Speeds Code of Practice since its introduction and the development of a similar code for SMEs in parallel.

Lower costs to Ofcom of enforcement and updating the regulation

- 2.16 A further advantage of self-regulatory options is that they are likely to lower the cost of enforcement borne by regulators. Plainly, such costs would not be eliminated entirely, as it would be necessary for Ofcom to maintain a watching brief on this issue, to ensure that the Code is operating effectively. However, if it were successful, Ofcom would avoid costs such as the costs of investigating regulatory breaches, and/or complaints about regulatory breaches. Similarly, the costs of any amendment or updating of the regulation as circumstances change would be borne by industry rather than Ofcom.

Alleged potential detriments of the Code of Practice

- 2.17 In the Consultation, Ofcom has indicated that it does not consider the initial Code of Practice to be sufficient due to:

- (a) the number of signatories;
- (b) the level of compensation offered; and
- (c) the timing of compensation for delayed repair.

As a result, Ofcom states that its preliminary view is that the initial draft Code “*would not meet* [Ofcom’s] *policy objectives*”. We discuss each of these below.

The number of signatories

- 2.18 We consider that the analysis of this issue set out by Ofcom under the heading of “*the number of consumers covered*”² is broadly cogent. As Ofcom recognises, the current list of firms willing to sign up to the Code would cover 80% of UK broadband and fixed line telephony customers³ and it is likely that this figure will increase if Ofcom agrees to back the Code of Practice approach.

- 2.19 As Ofcom appears to recognise, the absence of particular retailers should not act as an obstacle to Ofcom accepting the VICOP. Non-participation in the Code will place retailers of fixed line telecoms services at a competitive disadvantage, which will induce them to sign up or otherwise suffer the consequences of being labelled as offering a poorer quality of service to customers. If they choose not to sign up to the Code, and this is clear to consumers (as we believe it would be by participating providers advertising this fact in conjunction with Ofcom’s endorsement), this will be a factor consumers will reasonably take into account when choosing their provider.

- 2.20 Provided the current range of firms willing to sign up to the Code of Practice remains as it is today, the number of signatories to the Code should not be a reason for Ofcom

² Paragraphs 10.20 - 10.24.

³ Paragraph 10.20.

preferring formal regulation. Clearly though, if all major retailers of fixed line telecoms services were to become signatories, then only a very small minority of consumers would not be covered by the Code and so the case for formal regulation would be very weak.

The level of compensation

2.21 As discussed in greater detail at Annex 2, the process by which Ofcom has established the required compensation figures set out in the Consultation means that:

- (i) the reliability of the estimates of the ranges for these figures is highly questionable;
- (ii) it is strongly arguable that these ranges are biased upwards; and
- (iii) even setting these factors to one side, the approaches adopted result in wide ranges for these figures, and it is arguable that figures within those ranges can be said to be reasonable levels for compensation payments to consumers.

2.22 As Ofcom is aware, the minimum levels of compensation set out in the revised VICOP are higher than those set out in the initial draft Code. Whilst Sky considers the amounts originally proposed were reasonable, we consider that the revised levels proposed should now be acceptable to Ofcom.

Timing of compensation for delayed repair

2.23 As suggested in the Consultation, the industry group has further considered its position with respect to timing of the payment of automatic compensation following a delayed repair. In line with Ofcom's proposed regulation, the industry group is now aligned with Ofcom in proposing compensation payments to be triggered after midnight on the second working day after the day on which a customer reports a loss of service to the retail provider.

2.24 Ofcom's proposed regulation suggests that automatic compensation for a delayed repair for a loss of service would only apply in the event a customer contacted the retailer about such incident. However, the time from which such payment will be triggered to apply (the "*Loss of Service Trigger Day*") is the day on which the retailer may become aware of the loss of service.⁴ Ofcom acknowledges in the Consultation the variability in the ability of retailers to accurately identify network issues affecting individuals. Ofcom's proposed regulation therefore would introduce inherent uncertainty in how this may affect consumers across retailers. It would also have the unintended consequence of inhibiting investment in identification of issues at a network level by retailers and so dis-incentivise quality of service improvements. The VICOP applies this principle straightforwardly by starting the timeline from the point of contact from the customer.

Supporting a Code of Practice does not preclude formal regulation in the future

2.25 It is important to recognise that a choice between the VICOP and formal regulation would not be set in stone. Ofcom always has the ability to return to its proposals for formal regulation at any point in the future – particularly in the unlikely event that the voluntary approach was found not to be working effectively.

⁴ Proposed General Condition CX.10 and defined term for "*Loss of Service Trigger Day*", Annex 14.

The appropriate counterfactual

- 2.26 Before introducing new regulation Ofcom must assure itself, to an appropriate standard, that such regulation meets the tests set out in Section 3(3) of the Communications Act, including that it is “*targeted only at cases in which action is necessary*”. Any consideration of the necessity of regulation, however, must occur against a counterfactual: what would happen, or is likely to happen, absent that regulation.
- 2.27 In the current case, Ofcom must assess the need for formal regulation against the following facts:
- absent formal regulation, the revised VICOP would be put in place; and
 - Ofcom has the ability to monitor developments in relation to compensation closely. Ofcom has now set out the type of formal regulation that it could seek to impose if the Code of Practice is found not to be working effectively. This is a factor that those operating in the sector would not be able to ignore going forward.
- 2.28 Accordingly, Ofcom must ask itself whether formal regulation is needed in circumstances where the VICOP was put in place and there is on-going potential for Ofcom to intervene at any point in future.
- 2.29 Ofcom should only proceed with the introduction of formal regulation in relation to automatic compensation if such regulation demonstrably offers significant additional net benefits compared to the revised VICOP. We do not consider that it could be credibly argued that this is the case.

The cost and time required to implement automatic compensation

Cost of implementation

- 2.30 In the relatively short time available for responding to the Consultation, and given that we consider that the revised VICOP represents an appropriate solution to the issue identified by Ofcom, we have not undertaken a comprehensive review of the cost estimates prepared for Ofcom by Cartesian. However, we consider that, were such an exercise required to be undertaken, both past experience and a high-level examination of their cost estimates suggests that they significantly understate the cost of implementing either the VICOP or Ofcom’s proposed formal regulation.

Time required to implement the proposals

- 2.31 The development task required by retail providers to support automatic compensation payments to customers is material and requires the deployment of specialist resources already heavily engaged in other development projects.
- 2.32 In addition to activity required by retail providers Openreach will need to undertake system and process developments to support automatic compensation payments at the retail level. For example, Openreach will need to improve its system messages (“KCI’s”), the information provided by engineers and also the granularity of data provided when Openreach experiences network outages. The requirements (as they are currently known in the VICOP and proposed regulation) were the subject of an industry discussion, hosted by the OTA2, on 2 May 2017 and will be consolidated in an industry statement of requirements. The dependencies on Openreach were not considered in the report prepared by Cartesian and represent a significant oversight in assessing the cost and time for implementation.

- 2.33 To manage implementation of system developments, Openreach has a number of system releases each year. These tend to be 'locked down' for the upcoming six to nine months such that any new requirements are unlikely to be able to be delivered within this timescale. In addition, a number of retail providers take service from intermediate wholesale providers who may also need to make similar developments for their retail customers to reliably make automatic compensation payments to end-customers.
- 2.34 Based on the above impacts, an obligation to implement the automatic compensation payment process within 12 months is unrealistic and not achievable. Based on initial estimates, a timeframe of 18 to 24 months is more realistic for the delivery of either the revised VICOP or the proposed regulated framework. As noted above, however, signatories to the Code of Practice would commit to begin operating the new approach as soon as possible, if it proved feasible to implement it in a shorter timeframe.

SECTION 3: ENSURING WHOLESALE PROVIDERS BEAR THE COST OF PROBLEMS FOR WHICH THEY ARE RESPONSIBLE

- 3.1 The second key objective of Ofcom's policy is to seek to encourage firms to improve the quality of service delivered to consumers. Requiring firms to compensate consumers for service problems should, in principle, result in them raising service standards in order to reduce the cost of compensation.⁵ It is plain that such a policy can only work, however, when the cost of compensation is borne by those who are responsible for, and have the ability to address, service problems.
- 3.2 In the telecoms sector a number of firms, including Sky, rely on Openreach for the wholesale provision of inputs to their retail offering to consumers.⁶ Accordingly, where service problems are caused by, or able to be addressed by, Openreach, achieving Ofcom's second policy objective requires Openreach to bear the cost of compensating consumers. This is recognised by Ofcom.⁷ Sky welcomes Ofcom statement in the Consultation of its expectation that the cost of compensation should in principle fall where the issue is caused and their expectation that retail providers can negotiate appropriate contractual terms with their wholesalers as appropriate.⁸
- 3.3 Given Openreach's significant market power, it is challenging for retailers to renegotiate and agree revised wholesale service level agreements ("SLAs") and service level guarantees ("SLGs") to ensure recovery of compensation provided to consumers where Openreach is at fault. Sky welcomes the support of OTA2 facilitated discussions and possible Ofcom intervention to ensure appropriate recovery of compensation costs by retailers from Openreach.

⁵ In effect, the policy involves imposing a type of a 'tax' on poor performance.

⁶ Sky therefore depends heavily on the quality of service provided by Openreach to enable it to meet customer expectations for service quality in relation to its broadband and talk services. Sky welcomes the fact that Ofcom recognises the need to set more ambitious service standards for Openreach in relation to standard broadband and to extend those minimum standards to fibre-based broadband for the first time. While Ofcom's proposed new service standards are a step in the right direction, they do not go far enough and – critically – do not address the underlying cause of the most significant service failures retailers face today in the telecoms sector.

⁷ The relevant issues are discussed at paragraphs 8.47 – 8.64 of the Consultation.

⁸ Paragraph 8.63.

- 3.4 It is important for Ofcom to bear in mind that the existing SLGs paid by Openreach merely contribute to the costs borne by Sky in compensating customers impacted by Openreach service problems. SLG payments by no means recover the full cost of putting things right and the remainder of costs of redress are borne by Sky. The gap between the costs to be borne by Sky and recovery under SLGs will only widen under either the revised VICOP or Ofcom's proposed regulation.
- 3.5 In order to ensure proper alignment between the proposed VICOP and arrangements with Openreach a number of issues need to be addressed (many of which also apply to Ofcom's proposed regulation). In the following sub-sections we discuss:
- the desirability of a cap on compensation payments at the retail level;
 - Openreach payments and reporting;
 - Openreach compensation is currently paid on a working day basis;
 - Openreach does not pay compensation if a fault is not identified by a line test;
 - Matters beyond our reasonable control ("MBORC"); and
 - Payment of compensation by Openreach to retailers for any delayed provision irrespective of whether a customer subsequently activates.

Cap on compensation payments

- 3.6 Ofcom's proposed regulation does not anticipate a cap on the compensation paid to a customer affected by a loss of service or delayed provision. Under Sky's existing SLGs with Openreach, such a cap exists for issues related to certain services. Sky welcomes the approach proposed in the 'Quality of Service' consultation⁹ that such cap is removed at the wholesale level across all products.
- 3.7 The revised VICOP proposes to apply a cap at the retail level. Sky considers the concept of a cap in this instance to be proportionate and reasonable. Provided the length of time for the application of automatic compensation payments is reasonable it is highly likely the factual circumstances of any customer issue that cannot be resolved in that timeframe will be unique to that customer.
- 3.8 It is also possible that in such cases the resolution is outside the control of the retailer - for example due to a need to obtain permission from a third party to complete works. In such circumstances, an open-ended compensation framework does not deliver a financial incentive to improve the outcome from a quality of service perspective.
- 3.9 Sky's current approach of applying a tailored solution to address a customer's specific issue to their satisfaction is more appropriate. It is also highly likely that, at this point, the customer has taken appropriate mitigating steps to minimise the harm suffered and it would be open to the retail provider to offer alternative solutions. By this point, it is likely the customer will have a right to terminate their services in any event, in line with their terms of service - the revised VICOP makes this right clear.

⁹ Paragraphs 5.100 and 6.115, 'Quality of Service for WLR, MPF and GEA, Consultation on proposed quality of services remedies', Ofcom, 31 March 2017. (Available at https://www.ofcom.org.uk/__data/assets/pdf_file/0033/99645/QoS-WLR-MPF-GEA.pdf.)

- 3.10 Ofcom should also be aware of unintended consequences. If a retailer is faced with potentially unlimited compensation payments it may be incentivised to terminate a customer's service rather than incur the costs of addressing the customer's specific issue and potentially unlimited compensation payments.
- 3.11 There is substantial merit in avoiding such an issue by imposing a proportionate cap on compensation payments and putting in place a framework allowing a customer to escalate an issue quickly, in conjunction with a right to terminate services if appropriate.

Openreach payments and reporting

- 3.12 In order for Sky to comply with obligations under either the VICOP or the proposed regulation to pay compensation within a specified time, it is imperative that Sky has adequate and timely reporting and payment from Openreach. This will allow Sky to properly and easily validate the cause of any fault and to pay any applicable amount to an affected customer. This should be in good time ahead of the required timeline for payment following resolution of the fault. Today, retailers are able to manage the relationship between timing of payments from Openreach and payments to consumers as there is no prescribed time limit imposed on retail providers for payment of compensation. This will necessarily change if a retail provider is required to make a compensation payment within a given window (as under the revised VICOP or proposed regulation).

Openreach compensation is currently paid on a working day basis

- 3.13 Following recent discussions, the industry group is now aligned with Ofcom in proposing compensation payments to be paid on a calendar day basis across all service issues. Currently Openreach's SLGs for Fault Repair and payments for Late Provision of LLU only apply on a working day basis and so this requires a change to ensure consistency with both the revised VICOP and proposed regulation.

Openreach does not pay compensation if a fault is not identified by a line test

- 3.14 Under current SLG arrangements, Openreach does not pay Sky compensation if an initial line test does not identify an Openreach network issue. This is the case even if a subsequent engineer visit identifies the network fault. In this instance Sky incurs such costs both with respect to compensation paid to a customer and the handling of the customer service issue. This is an obvious inconsistency that should be addressed as part of the parallel considerations under the 'Quality of Service' consultation.

Matters beyond our reasonable control ("MBORC")

- 3.15 For issues arising that are beyond the reasonable control of any party, for example, extreme weather or an external and unanticipated event not caused by the access provider, retailer or consumer, the key issue is incentivising service providers (at both the retail and wholesale level) to do all that is reasonable to ensure services are back up and running.
- 3.16 Under current SLG arrangements, MBORC events are excluded from compensation payments and so, as drafted, both the revised VICOP and proposed regulation anticipate this cost being borne by the retailer. In circumstances where reliance is placed on Openreach to restore services, it is more appropriate that such cost is borne by Openreach. This will incentivise Openreach to find a quick resolution to the restoration of services.
- 3.17 Given the current regime in which Openreach can avoid compensation in circumstances when it claims an event of MBORC, situations have arisen in which Openreach's

justification for calling such an event is unclear. Although this has improved in recent years through increased transparency, Openreach will be incentivised to initiate MBORCs more often in the event that SLGs are increased to align with automatic compensation payments. It is imperative that Ofcom gives careful scrutiny to the ability and scope of Ofcom's ability to call MBORC and avoid paying SLGs. To avoid such an issue arising, the exclusion of MBORCs from SLG payments should be removed at the wholesale level.

Openreach should pay retailers compensation for any delayed provision irrespective of whether a customer subsequently activates

- 3.18 It is not clear from the drafting of the proposed regulation whether compensation is payable in the event that the provision of a customer's service is delayed but never activated. This is not proposed in the revised VICOP due to the difficulty in assessing the consumer harm and appropriate period over which such compensation should be paid. If Ofcom's intention is for the regulation to have the effect that compensation is paid in the instance that a customer does not subsequently activate services, then Openreach should be obliged to pay compensation to retailers in such instance so that there is parity at the wholesale level - this is not currently the case. Sky has previously requested SLGs from Openreach in relation to these instances. These requests were rejected.

SECTION 4: AUTOMATIC COMPENSATION FOR SMES AND MOBILE CUSTOMERS

SME customers

- 4.1 Sky supports the need for clarity in the information provided to SMEs to ensure they are aware of the service standard being offered under a business product for telecoms services and the process by which an SME customer can claim compensation if problems occur. This transparency enables SMEs to make an informed choice in choosing their service and also ensure that they are aware of their rights in the event of a service failure.
- 4.2 Given the variety of tailored products and services available in the telecoms sector for SMEs and associated choice, Sky agrees that an automatic compensation regime is not necessary for SMEs. The flexibility offered by current arrangements allows for services (and associated contracts) to be offered on a bespoke basis as required by the customer.
- 4.3 In line with our position in respect of residential services (see Section 2 above), an industry-led voluntary approach within which industry self-regulates itself is appropriate to deal with any perceived issue. Sky welcomes the opportunity to work with Ofcom and industry to support this. To ensure a significant proportion of the market benefits from such approach, a separate and standalone code should be adopted. Given the relatively low level of complexity, as compared to the framework proposed for residential customers, Sky anticipates this could be provided on a shorter timeframe than that required for development of the residential system.
- 4.4 Sky accepts that automatic compensation should apply to SMEs who sign up to a residential contract. This is anticipated in the drafting of the VICOP. However, the proposed regulation inadvertently goes further.¹⁰ The drafting could feasibly catch public WiFi services (e.g. a high street coffee shop) or business broadband products taken out by business customers on a business contract for use by end-users (e.g. a company which operates serviced apartments). These types of services are marketed at business

¹⁰ See proposed General Condition CX.2 and related definitions.

customers with appropriate service levels and are commonly tailored to their specific needs (including providing a VAT invoice and billing arrangements that cater for multiple premises on a single customer account).

Mobile customers

- 4.5 Sky is a relatively new entrant in the provision of mobile services. As for all services that Sky offers, we take the customer service of our mobile customers seriously. Sky supports Ofcom's decision at this stage not to intervene and welcomes the opportunity to work with the mobile industry and Ofcom going forward to ensure customers' needs are appropriately met.

SECTION 5: OFCOM FAILS PROPERLY TO DISTINGUISH BETWEEN THE SEPARATE ISSUES OF SERVICE QUALITY AND COMPENSATION FOR SERVICE PROBLEMS

- 5.1 Throughout the Consultation Ofcom intermingles two issues¹¹:
- (i) the quality of service provided by CPs to consumers; and
 - (ii) compensation provided by CPs to consumers in the event of service problems.
- 5.2 These are entirely separate issues, and Ofcom's conflation of them is a fundamental flaw in its analysis.
- 5.3 'Quality of service' is a broad term, which encompasses a wide range of factors – including not only the quality of the core services provided to consumers (such as the speed and reliability of their broadband connection), but also such diverse factors as accuracy of bills, the ease of contacting a provider, and the helpfulness of staff on the phone.
- 5.4 Compensation in the event that something goes wrong with a customer's service, however, cannot reasonably be considered to be a key element of service quality. On the contrary, it is instead something that may be triggered in the event of problems with a CP's service, or even a failure of that service.
- 5.5 This is a critical distinction because, whilst competition might reasonably be expected to drive average levels of service quality, this will not necessarily be the case in relation to firms' policies on compensation for service problems. It is possible for there to be strong competition in relation to service quality even if compensation for service issues does not play a prominent role in competition among firms in the sector.
- 5.6 In Section 4 of the Consultation Ofcom discusses a number of factors that may result in competition not delivering appropriate outcomes for consumers. Whilst a number of them might be considered to apply to the issue of delivery of compensation for service problems (notably, potential difficulties in claiming compensation), in general they do not apply to competition among firms in relation to service quality.

¹¹ See for example, paragraph 4.18, which states: *"This suggests that consumers are unlikely to have sufficient information on quality of service 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 poor quality service than expected."*

- 5.7 Compensation payable in the event that something goes wrong is rarely a prominent facet of competition among firms, in any sector of the economy. There are good reasons for this, including:
- (a) firms have little desire to draw consumers' attention to the risk of something going wrong with their products or services – that is only likely to deter customers; and
 - (b) most firms prefer to put effort and resources into making sure that things don't go wrong, rather than focusing such effort and resources on compensation for consumers when things go wrong.
- 5.8 Although Sky is sceptical of the need for regulation of the type proposed by Ofcom in relation to automatic compensation, there is a credible case to be made for it – in terms of weak incentives on firms to deliver compensation in the manner desired by Ofcom, and at the types of levels proposed by Ofcom. The credibility of such a case, however, is diminished significantly by inter-mingling it with concerns about quality of service.
- 5.9 In short, Ofcom's assertions about service quality in the sector are unnecessary to the Consultation. It would have been both possible and preferable for Ofcom to focus the Consultation on the issue of firms' policies on compensating consumers in the event of service problems.
- 5.10 The following section addresses Ofcom's analysis of service quality in the Consultation, notwithstanding this fundamental point. We focus only on those parts of Ofcom's analysis that deal with service quality, rather than the separate issue of firms' policies on compensating consumers in the event of service problems.

SECTION 6: OFCOM'S VIEWS ON CUSTOMER SERVICE IN THE UK FIXED LINE TELECOMS SECTOR

- 6.1 It is commonly accepted that tough competition among firms is the best way of ensuring benefits to consumers, not only in terms of low prices, but also product and service quality, and innovation. Accordingly, it would normally be expected that the tough competition that exists at the retail level of the UK's fixed line telecommunications sector would be considered to be a key driver of appropriate quality of service being delivered to consumers.
- 6.2 There is some indication in the Consultation, however, that Ofcom appears to have developed a view that:
- (i) firms in the UK telecommunications sector do not compete with each other on the basis of the quality of service they offer to consumers; and
 - (iii) competition alone is not sufficient to drive improvements in service quality, or adequate service quality.
- 6.3 For example, Ofcom states:
- “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 Reliability, quality of service levels and compensation for quality of service failures, may, in turn, have been downplayed.”¹²

“the competitive pressures on providers to avoid quality of service problems are currently muted.”¹³

6.4 These views appear to be encapsulated in Ofcom’s second consultation question:

“Do you agree that in landline and broadband markets consumers are insufficiently protected from poor quality of service and that intervention is required.”

6.5 We do not agree. We consider that this proposition is wrong. Firms at the retail level of the UK’s fixed line telecommunications sector compete strongly with each other in terms of service quality, and there is no sound reason to depart from a commonly accepted view that competition is the best driver of benefits to consumers. Proceeding on the basis of the beliefs set out above is likely to lead to confirmation bias in Ofcom’s analysis and flawed conclusions on the need for regulatory intervention.

The need properly to differentiate between the wholesale and retail levels of the sector

6.6 At the outset, it is critical to ensure proper differentiation in any analysis of service quality between the wholesale and retail levels of the sector. Whilst competition at the retail level of the sector is strong, there are only two main suppliers at the wholesale level – Openreach and Virgin Media – and Openreach has significant market power. Accordingly, it should be unsurprising to find that there are significant service quality problems at the wholesale level of the sector of the type that have been documented extensively by Ofcom.¹⁴ The absence of effective competition at this level of the sector is the key reason that significant regulatory intervention in relation to service quality, of the type in which Ofcom is now fully engaged, is needed.

6.7 The only evidence cited by Ofcom on service quality focuses on problems in relation to three issues – loss of service for landline and/or broadband, delayed provisioning, and missed appointments.¹⁵ These are all, fundamentally, network and/or wholesale related service problems, over which retailers have little or no control. They are issues that have been of concern to Sky for many years.

6.8 Any proposition that the quality of service delivered to UK consumers in relation to fixed line telecoms services by *retailers* of those services is inadequate would need to focus on those service elements that are in the control of such operators. A proper analysis of the quality of service provided by CPs to their customers would:

- (a) focus on those customer service issues for which CPs are responsible – such as billing, query handling, communications with customers, provision of end-user equipment, provision of ancillary services, technical support;
- (b) have regard to the differentiated nature of firms’ approach to service quality (discussed further below); and

¹² Paragraph 4.33.

¹³ Paragraph 9.31.

¹⁴ See, for example, Section 5 of ‘Making communications work for everyone, Initial conclusions from the Strategic Review of Digital Communications’, Ofcom, February 2016. (Available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0016/50416/dcr-statement.pdf.)

¹⁵ This is provided at a high level in Section 4 of the Consultation, and in more detail in Section 5.

- (c) consider a broad range of metrics of service quality – including ones which highlight areas of good performance, rather than just focusing on areas in which there may be problems.

6.9 Absent such analysis it is inappropriate to reach conclusions about the adequacy of service quality delivered by CPs to their customers.

The tentative nature of many of Ofcom’s assertions and conclusions

6.10 A substantial number of Ofcom’s assertions about service quality are put in tentative terms in the Consultation. For example:

*“[consumers’] ability to access information about the various offers available (including the quality of service offered) **maybe** limited.”¹⁶*

*“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.”¹⁷*

*“if consumers have poor information on providers’ quality of service (as discussed above) then they **may** decide that it is not worth switching.”¹⁸ (Emphasis added in each case.)*

6.11 The tentative nature of these assertions is reflected in Ofcom’s conclusions. For example:

*“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 Reliability, quality of service levels and compensation for quality of service failures, **may**, in turn, have been downplayed.”¹⁹ (Emphasis added.)*

6.12 We welcome the fact that these are put as tentative propositions, or conclusions, rather than confirmed views.²⁰ However, the provisional conclusions reached by Ofcom are not right, and it would be unfortunate if Ofcom were to proceed to accept them.

Ofcom presents no reliable evidence that service quality is not an important element of competition among retailers in the sector and its analysis of this issue is flawed

6.13 A key theme in the Consultation is that there may be “*market features*” which result in firms failing to compete in terms of the quality of service they offer to consumers.

6.14 The only direct evidence cited by Ofcom in relation to competition among CPs in terms of service quality offered by Ofcom is a small selection of marketing material taken from CPs’ web sites during March 2017. Ofcom cites this selection as evidence that “*retail providers do not appear to market to customers on the basis of quality of service features*”²¹ (which is

¹⁶ Paragraph 4.16.

¹⁷ Paragraph 4.20

¹⁸ Paragraph 4.25.

¹⁹ Paragraph 4.33.

²⁰ However, we note in this respect that there is a risk that propositions that are put tentatively, or for exploratory purposes, are put more firmly elsewhere. For example, even though in Section 4 the proposition that competition in relation to quality of service *may be* muted, this is put as a firm proposition (“*the competitive pressures on providers to avoid quality of service problems **are** currently muted*” (emphasis added)) in Section 9 of the Consultation.

²¹ Paragraph A5.7.

part of a broader set of assertions by Ofcom to the effect that CPs focus on marketing features such as price, and broadband speed over service quality).

- 6.15 Plainly, it is not possible to draw reliable inferences about firms' marketing on such a small evidence base. As a result, no weight can be placed on Ofcom's conclusions.
- 6.16 In fact, Ofcom's expectation that marketing material is likely to provide a good source of evidence on competition in relation to service quality is misconceived. Firms do not advertise all attributes that may be attractive to consumers.²² As a result whilst it is reasonable to examine firms' marketing to determine those elements that are important to competition among them, the reverse is not true: an observation that a particular factor is not heavily marketed does not mean that it is unimportant to competition among them. Similarly, an observation that firms consider that advertising other aspects of their services is likely to be more successful in attracting consumers to those services is not reliable evidence that service quality is unimportant to consumers.
- 6.17 Notwithstanding these observations, a broader consideration of marketing material would show that Sky does, in fact, use service quality in its consumer marketing from time to time. We have included examples of such marketing at Annex 3.
- 6.18 Second, it places undue weight on a lack of emphasis on service quality on firms' acquisition marketing material. This is looking for evidence of the importance of service quality to competition for new customers in the wrong place. There are many other ways that consumers who are considering a new supplier consider the reliability of their services other than via marketing material. In particular, Ofcom overlooks the critical importance of factors such as (i) firms' brands, (ii) word of mouth (such as friends and family), and (iii) the myriad of online information services available to consumers. A reputation for poor service quality can be transmitted to consumers via any of these means, and will damage customer acquisition. Concomitantly, a reputation for high quality service will enhance future customer acquisition.
- 6.19 Third, Ofcom fundamentally undervalues the role of customer service in *customer retention*. Ofcom correctly identifies the fact that service quality is an experience good. What matters most to a firm's existing customers is the quality of service they receive on a daily basis – not the types of things on which Ofcom appears to place weight, such as firms' marketing material, or "*commitments to service levels*" in "*providers' policies*"²³.
- 6.20 In this respect Ofcom exaggerates the significance of barriers to switching provider – on the basis of fairly meagre analysis. Policy concerns about switching barriers, or process issues when switching, often miss the fundamental point that such barriers or issues impact only a small minority of consumers. Evidence is consistent that the vast majority of consumers find switching provider to be easy, or very easy, and every year substantial numbers of consumers switch provider. The market reality is that consumers who receive poor quality services can and do switch supplier. This imparts an enormous discipline on firms in the sector, as losing customers has a significant impact on their profitability – particularly where customers take multiple services from an operator.
- 6.21 Millions of consumers switch provider of fixed line telecoms and broadband services every year, and it is Sky's firm view – on which it acts – that customers who have a bad experience are likely to switch to a competitor.

²² For example, safety may be considered to be an attractive feature of cars, and it is something on which car manufacturers spend substantial amounts. However, it is rarely a prominent feature of car advertising.

²³ Paragraph 4.28.

6.22 In general, we consider that a framework of analysis that posits a series of theoretical “market features” that may be considered to result in competition not working effectively, and then seeking evidence on those market features, is apt to lead to biased conclusions. We consider that Ofcom should, instead, seek a broad range of evidence on (a) the quality of service actually delivered by firms to consumers, and (b) firms policies and efforts in relation to the quality of service they deliver to consumers. This would deliver a far stronger evidence base for well-informed policy in this area.

There is a substantial amount of readily available evidence that service quality is a significant element of competition among firms in the sector

6.23 There is a substantial amount of readily available evidence that supports a conclusion that service quality is a significant element of competition among firms in the sector.

6.24 In Sky's case, delivering first class customer service is one of the core pillars of Sky's business strategy. Sky's ambition is not to deliver the best customer service in the sectors in which it operates, but to deliver the best customer service in the UK. This ambition is widely publicised, both internally and externally. It drives a wide range of activities, initiatives and investment across the business, on which Sky spends hundreds of millions of pounds every year²⁴.

6.25 First and foremost, such spending and investments relate to the quality of the services actually delivered to consumers – from Sky's linear and on-demand television services, through to fixed line and mobile telephony services. A huge amount of effort and resources, across the business, is devoted to ensuring that these are of the highest possible standard.

6.26 More broadly, equally substantial levels of effort and resources are devoted to seeking to ensure the highest possible levels of customer service, for all interactions with Sky's customers – from visiting their homes to install new equipment, to answering technical queries on the phone or online, to offering customers innovative new ways to contact Sky, such as via the new Sky customer app.

6.27 Like other firms in the sector, Sky constantly monitors and evaluates its customers' views on its performance – placing particular weight on customers' 'net promoter scores'. This metric is used widely within Sky to measure satisfaction with many elements of its service delivery to its customers.

6.28 We would welcome an opportunity to enable Ofcom to become better aware of the substantial efforts and investments that Sky devotes to ensuring that it delivers a high quality customer experience, every day.

6.29 Plainly, these efforts and investments are motivated by the competition faced by Sky. We regard them as a key source of competitive advantage against Sky's rivals. However, from Sky's point of view, delivering great customer service is not only a reaction to the threat of losing customers to rivals. Sky firmly believes that, as a business that is fundamentally rooted in the delivery of services to consumers, delivery of high quality customer service is integral to its long term sustainability and commercial success.

6.30 We strongly suspect that other firms in the sector would take a similar view. For example, in the recent past cable companies were notorious for their poor quality of customer

²⁴ See Annex 4 of this response for examples of Sky's public statements.

service. One of Virgin Media's key focuses has been to reverse this reputation, which has no doubt taken enormous amounts of effort and investment.

The need to base analysis on an appropriate model of competition in relation to service quality

6.31 There is some indication in the Consultation that Ofcom expects all firms in the sector to offer first-class customer service. This would be both unrealistic, and, in fact, would limit consumer choice. Particularly in the context of fixed line telecoms and broadband services, investment in customer service is one of the key means available to firms to differentiate themselves from rivals, given the relatively undifferentiated nature of broadband and telecoms services. Accordingly, it is critical that outcomes in relation to service quality are evaluated against an appropriate model of competition, namely one in which firms offer consumers a variety of price and service quality combinations. For example TalkTalk and Plusnet have positioned themselves as low cost 'value' propositions, while Sky, BT and Virgin Media seek to offer consumers higher quality services at higher prices.

Sky

June 2017

Annex 1: PROPOSED AMENDMENTS TO INDUSTRY-LED VOLUNTARY PROPOSAL

This will be submitted separately. To follow.

Annex 2: OFCOM'S ESTIMATES OF APPROPRIATE COMPENSATION LEVELS

- 1.1 Ofcom seeks to estimate an appropriate level of compensation to be paid to consumers in the event that they suffer one of the three identified service problems. This analysis is set out in Annex 4 of the Consultation. In the relatively short time available for responding to the Consultation we have not undertaken a full consideration of the approach used by Ofcom. Nevertheless, even a brief consideration of it indicates that it suffers from significant flaws, and is unreliable.
- 1.2 We have also not devoted significant attention to Ofcom's analysis partly because there is an opportunity to address Ofcom's policy objectives in this case co-operatively via the industry Code of Practice.²⁵ Sky reserves the right to comment further on the analysis set out at Annex 4 of the Consultation (and its underlying data, particularly the relevant consumer surveys) if Ofcom were to reject that approach and, instead, proceed to impose formal regulation.
- 1.3 We consider that, *at best*, the analysis can be considered to provide feasible ranges for compensation, and that – particularly in view of the significant uncertainty associated with these ranges – there is no sound reason to prefer figures around the mid-points of these ranges as appropriate values for compensation.

Ofcom's estimates rely principally on consumer research

- 1.4 Ofcom states that its "*approach to quantification [of harm to consumers from quality of service problems] draws upon a range of evidence including consumer surveys*"²⁶. Ofcom further states that its consumer survey evidence is supplemented "*with other sources of evidence, including current compensation levels and sectoral and international benchmarks*".
- 1.5 This clearly overstates the breadth of data relied upon in Ofcom's analysis. In particular, Figure A4.8 is wholly misleading in relation to the extent to which Ofcom relies on data from other sectors and other countries in compiling its estimates of appropriate compensation levels.
- 1.6 For example, the data available on "*international benchmarks*" is extremely limited, comprising information on compensation only in relation to loss of service in four countries. Similarly, in relation to delayed provisioning, Ofcom states: "*we have not found any equivalent comparator to telecoms provisioning from UK utilities.*" Figure A4.7, which summarises the data obtained from other sectors and other countries shows that: (a) the largest number of comparators that Ofcom was able to obtain pertained to compensation for loss of service – comparative data on compensation for delayed provisioning and missed appointments is sparse; and (b) within the loss of service category, which has the greatest number of comparative observations, there is enormous variation – ranging from compensation of 56p per day to £70 per day.
- 1.7 In reality, the comparator data obtained by Ofcom adds little, if anything, of value to Ofcom's analysis.

Ofcom's consumer survey evidence is not reliable

- 1.8 The core of Ofcom's analysis of this issue is responses to questions in consumer surveys undertaken for Ofcom. Much of the consumer survey data is based on asking consumers,

²⁵ We have not, for example, examined in detail the myriad of calculations used by Ofcom to construct its estimates.

²⁶ Paragraph A4.3.

directly, how much they would be willing to pay for something (for example, faster service), or how much they consider that they should be compensated for a service problem. Use of consumer surveys to elicit reliable values for this type of information is well known to be very difficult, for numerous reasons.²⁷ Unless appropriate research techniques are used, and measures taken within surveys to address potential biases, the results are likely to be unreliable.

- 1.9 For example, in stated preference surveys aimed at eliciting willingness to pay 'hypothetical bias' is a common problem. Because consumers are often presented with hypothetical situations in which they don't actually have to pay the amounts they indicate, there is a tendency for respondents to exaggerate the amounts that they are, in reality, willing to pay. There are various ways of undertaking stated preference surveys to attempt to reduce such bias (for example, via the use of 'cheap talk' scripts), or alternative survey techniques can be used (such as conjoint analysis).
- 1.10 Ofcom's consumer research, however, is unsophisticated. Despite recognising the likelihood that its approach is inadequate and at significant risk of being biased²⁸, Ofcom fails to adopt any of the standard methods for addressing such issues.
- 1.11 It is also clear that in at least some of the consumer survey data used by Ofcom the numbers of respondents to particular questions was small.²⁹ Ofcom should not place any weight on such results.
- 1.12 As a result of these flaws it is evident that the data used by Ofcom as the key input to its analysis are unreliable, and, as a result, little if any weight can be placed on the results of that analysis.

Delayed provisions and loss of service raise different issues

- 1.13 In relation to delayed provisioning Ofcom states:

"We have relatively little direct evidence on the degree of harm from delayed provisioning."³⁰

As a result, Ofcom argues that it can use data on loss of service to estimate appropriate compensation levels.

- 1.14 This is inappropriate, as the two matters are likely to raise different issues for consumers. For example, a customer may continue to receive services from any existing provider until the switchover of services - in such case no significant harm is apparent. Similarly if it is the first time a customer is activating a broadband service, that person will clearly not suffer the same harm as compared to a customer who has previously relied on such services. Given the variability of circumstances it is not credible to simply rely on the same analysis as for harm caused during a delay to repair of a loss of service.

²⁷ There are many resources available that set out these issues. See, for example, 'Review of Stated Preference and Willingness to Pay Methods', a report prepared for the Competition Commission by Accent and Rand Europe, April 2010. Available at: http://webarchive.nationalarchives.gov.uk/+http://www.competition-commission.org.uk/our_role/analysis/summary_and_report_combined.pdf. See also: 'Review of company surveys on consumers' willingness to pay to reduce the impacts of existing transmission infrastructure on visual amenity in designated landscapes', a report for Ofgem by London Economics, September 2011. Available at: <https://www.ofgem.gov.uk/ofgem-publications/53802/visualamenity.pdf>.

²⁸ Paragraph A4.22. Ofcom also refers to the risk of stated preference bias at paragraph A4.3.

²⁹ Ofcom refers to issues associated with small sample sizes at paragraphs A4.3 and A4.74.

³⁰ Paragraph A4.66.

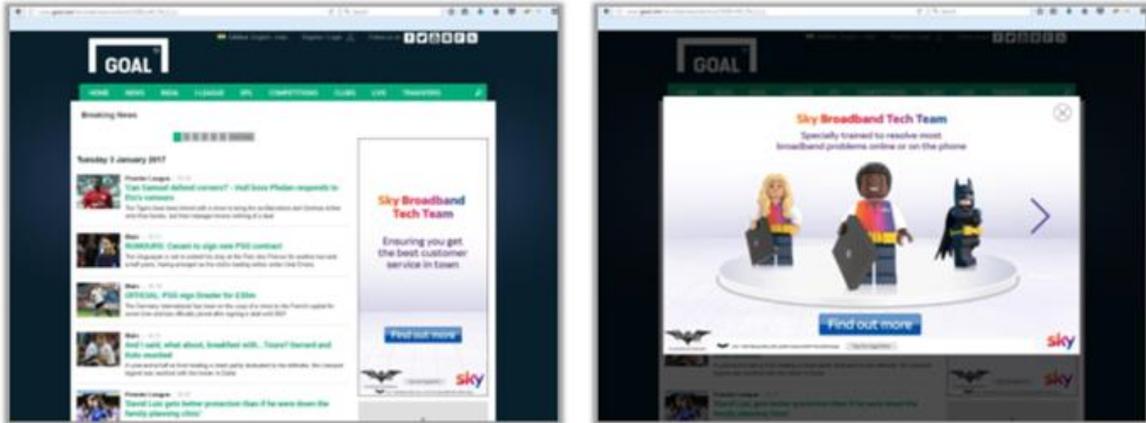
Relationship between legal obligations and Ofcom's estimates of desired compensation

- 1.15 A further problem with Ofcom's approach is that it is likely to generate values that exceed the amounts that service providers are required to pay consumers under general consumer law. A service provider should not be obliged to pay more than as required by consumer law, being the reasonably foreseeable harm caused in any given instance.
- 1.16 Ofcom's analysis generates, in the case of each of the three service problems, a range of figures for consumer harm. In order to identify specific 'point estimates' for proposed compensation values, Ofcom has adopted figures around the average of each range. Such an approach is therefore bound to lead to a value that exceeds the amount that many consumers would be entitled to receive as compensation under consumer law. Given the range of values put forward in Ofcom's analysis, in some cases this difference will be significant.
- 1.17 It is also apparent that Ofcom has not appropriately and fully considered the duty on a customer to mitigate their loss and the effect this has on the harm suffered. In the scenario of a loss of service or delayed provision, a customer will often have existing alternatives available to them -for example, internet/phone access via an existing mobile service at little or no incremental cost. Sky is also trialling offering substitute services via 4G mobile broadband for customers experiencing a complete loss of service helping to mitigate the harm suffered. Whilst Ofcom appears to acknowledge mitigating circumstances, there appears little supporting assessment of how this affects the cost of harm actually suffered by customers in any context.

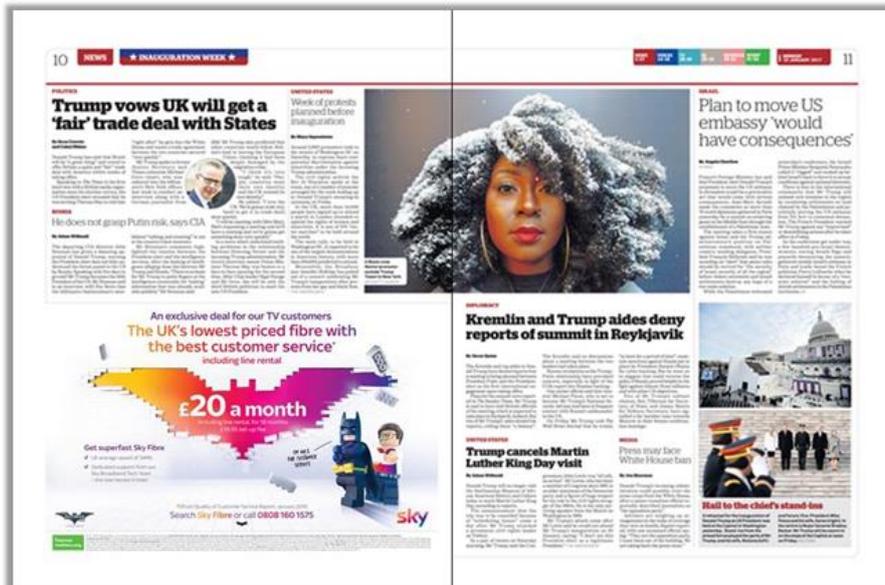
Annex 3: EXAMPLES OF RECENT SKY MARKETING ADDRESSING QUALITY OF SERVICE ADVANTAGES

A3.1 NEW BROADBAND TECH TEAM LEGO BATMAN CAMPAIGN DEC 2016: MAY 2017

Digital advertising placements across a network of sites



Press: In Situ Half Page



Out of Home Billboard/Press Advertising



TV ad Screen Shots ³¹

Home Visits - Bat Fans TV



³¹ Sky's new Broadband Tech Team full TV ad on YouTube <https://www.youtube.com/watch?v=SG9XFYU4oGM>.

Introducing the Tech Team – Epic Trailer TV



A3.2 OFCOM COMPLAINTS REPORT ADVERTISING : OCT 2016

One table
we're proud to be at
the bottom of.



Ofcom residential telecoms and pay TV complaints, Q2 (April to June), published Sept 2016.

Search **Sky** Broadband



A3.3 SKY SWITCH SQUAD KUNGFU PANDA CAMPAIGN: DEC 2015 - FEBRUARY 2016

Digital
Xaxis



12

Digital
Switching (MPU)



VOD

Switch Squad



10

Press

Half Pages

Two side-by-side promotional banners for Sky Broadband switching. Each banner features Po the panda from Kung Fu Panda. The left banner shows Po sitting and holding a glowing orb, with the headline 'Harness the power of stress-free switching'. The right banner shows Po standing with several smaller pandas on his back, with the headline 'Switch your broadband without the pandamonium'. Both banners include the text 'Take the hassle out of switching broadband' and 'To join now search Sky Broadband or call 0800 151 27 21'. The banners also feature the Sky logo, the 'The Sky Switch Squad' logo, and a 'Kung Fu Panda: The Legend Begins' logo with the text 'IN CINEMAS MARCH'. Small text at the bottom of each banner reads: 'Sky Network areas only. Set-up costs may apply. £6.95 router-delivery charge applies.' The banners are framed with decorative corner elements.



9

Brand OOH

Paired 6\$



Annex 4: SKY PUBLIC COMMUNICATIONS HIGHLIGHTING IMPORTANCE OF AND INVESTMENT IN CUSTOMER SERVICE

A4.1 LAUNCH OF NEW MY SKY APP: 2017

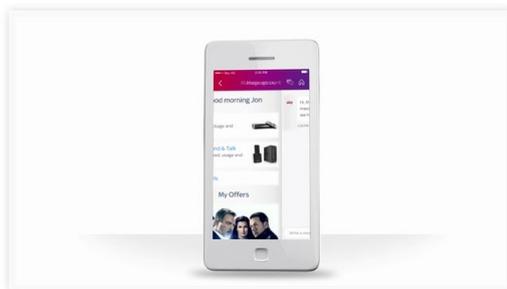
Meet the new My Sky app

Download on the App Store | GET IT ON Google Play

See the app in action | View and manage your bill | Get in touch

Smart Broadband features | Manage your mobile account | Fast Problem Solving

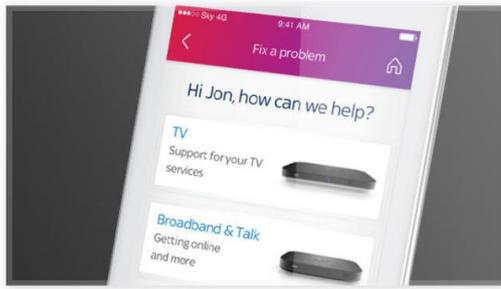
Close X



Get in touch

If you ever need a Sky expert to help you, use our new Sky messaging service. It's easier than calling and lets you go about your day without having to wait on the phone. Simply tap the messaging icon, type your message and a Sky expert will reply to your query. We'll send a notification to your phone when we reply so you don't miss it.

Close X



Fast Problem Solving

Select Fix a problem from the main menu to find easy to follow articles and videos which will help you quickly resolve questions or issues with your Sky services. We will also keep you up to date with any developments relating to your account or services with in-app notifications.

Close X



Smart Broadband features

Discover smarter features to make managing your account simpler. Simply select Broadband & Talk from the manage account menu and you can check your broadband speed or keep track of your broadband usage - helping you to stay connected.

A4.2 SKY CORPORATE TWEET OF OFCOM COMPLAINTS REPORT RESULTS March 2017

sky Sky Corporate @SkyCorporate Follow

Sky also received the fewest complaints again for Landline and Broadband in Q4, according to [@ofcom](#). sky.co/SbGeg9 (2/2)

Landline:
complaints per 100,000**

Most complaints	
Plusnet**	24
Post Office	23
TalkTalk	23
EE**	19
BT	18
----- Industry average = 15 -----	
Virgin Media	13
Sky	7
Fewest complaints	

**Figures rounded to nearest whole number. Actual responsible different may in some cases be less than one. **Based on data by Ofcom. Actual responsible different may in some cases be less than one. **Based on data by Ofcom. Actual responsible different may in some cases be less than one. **Based on data by Ofcom. Actual responsible different may in some cases be less than one.

Broadband:
complaints per 100,000**

Most complaints	
BT	33
Plusnet**	30
TalkTalk	29
EE**	26
----- Industry average = 22 -----	
Virgin Media	13
Sky	8
Fewest complaints	

**Figures rounded to nearest whole number. Actual responsible different may in some cases be less than one. **Based on data by Ofcom. Actual responsible different may in some cases be less than one. **Based on data by Ofcom. Actual responsible different may in some cases be less than one. **Based on data by Ofcom. Actual responsible different may in some cases be less than one.

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A4.3 CORPORATE BLOG – SKY'S CUSTOMER SERVICE PERFORMANCE BASED ON OFCOM REPORT

[Media centre](#) > [Our blog](#) > [Sky's customer service comes out top yet again in latest Ofcom report](#)

Our blog

Sky's customer service comes out top yet again in latest Ofcom report



Chris Stylianou, MD, Customer Service Group
03 October 2016

Last week Ofcom released its latest [Telecoms and Pay TV Complaints publication](#) and I'm really pleased to say that we have, once again, generated the fewest complaints of any provider across pay TV, broadband and home phone services.

And we haven't just outperformed our competitors. We've pushed ahead and received fewer complaints for our broadband and home phone services compared to last quarter.

Millions of households choose Sky for their TV, broadband or home phone service, and many choose Sky for all three. It's our job to ensure that in addition to bringing them innovative products such as Sky Q and the best content line-up through our news, movies and sports coverage, our customers also have a brilliant Sky experience online, face to face and over the phone.

To do this we invest tens of millions of pounds every year into tools, systems and training to help us improve and deliver an exceptional standard of customer service day in day out. We know that one complaint is one too many which is why we value every single Sky customer and come into work every day wanting to offer the best service in the country.

We take great pride in seeing this effort reflected in the latest Ofcom report, as the number of complaints about our services continues to drop. Through sheer hard work and commitment from everyone in the Customer Service team and across Sky, we will continue this momentum to make our service the best service it can possibly be for years to come.

A4.4 FIRST HALF YEAR RESULTS INVESTORS REPORT 2016/17 ³²

Clear strategy

- Broadest range of best content
- Best products and market leading innovation
- No. 1 brand supported by brilliant customer service
- Continuous focus on efficiency
- Expanding into new markets; building new revenue streams

Babylon Berlin
sky ATLANTIC

20

Market leading customer service

- Consistently high customer satisfaction levels
- Fewest number of complaints among our peers⁽¹⁾
- Good progress in Italy and Germany & Austria
- Moving from Direct Contact to Digital First
- Digital Only will be the next step

(1) Ofcom Survey to September 2016

Formula 1®
sky SPORTS

30

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Sky Investor's Report 2016/17:
https://corporate.sky.com/documents/investors/results/2017_results/5c4c1852c1d34db1b6344598b5fa58d9/q2%201617%20presentation.pdf



A4.5 INVESTOR STRATEGY REPORT 2016 – CUSTOMER SERVICE FOCUS ³³

Our business model

We are focused on delivering the very best content, innovation and service for our customers

Our strengths	<p>Great content</p> <p>We invest to deliver the best and broadest range of content rights across the portfolio of channels and services we provide to customers, offering something for everyone in the household. We partner with content owners to secure the very best content from around the world, and produce our own original productions.</p>	<p>Market-leading innovation</p> <p>We combine our investment in technologies with our deep understanding of customers to offer a great viewing experience whenever, wherever and however our customers want to watch.</p>	<p>Our customer focus</p> <p>We are a customer-centric organisation, focused on meeting the needs of all our customers in every market. We are able to meet their needs through the strength of our trusted brand, by ensuring that we offer a market-leading TV experience and our commitment to superior customer service.</p>
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Full Investor Strategy Report 2016 <https://corporate.sky.com/investors/annual-report-2016/strategic-report/strategy>

A4.6 INVESTOR STATEMENT OF GROUP CEO 2016 EXCERPT ³⁴

Jeremy Darroch,
Group Chief Executive Officer

2016 has been another excellent year for Sky, as we build on our leading position in Europe, working to achieve our ambition of being the best customer-led entertainment and communications company in the world.

³⁴

Group CEO Statement – Investor’s Annual Report 2016 https://corporate.sky.com/investors/annual-report-2016/strategic-report/group_ceos_statement

A4.7: SKY CORPORATE COMMS – LAUNCH OF A NEW DEDICATED BROADBAND TECH TEAM: 2016

Media centre > News releases > Sky launches the UK's lowest priced fibre and brand new Broadband Tech Team

Sky launches the UK's lowest priced fibre and brand new Broadband Tech Team

21 December 2016

< Share



Sky has today launched the UK's lowest fibre broadband and line rental offer exclusive for Sky TV customers and a brand new Sky Broadband Tech Team, offering customers superfast broadband speeds and Sky's industry leading customer support at a great price.

Sky Fibre will be available for just £20 a month, including line rental (usually £27.40), and a reduced one off set up cost of just £19.95, in an exclusive deal for new and existing Sky TV customers, as well as TV customers with Sky Broadband when they sign up to an 18 month contract.

With UK average download speeds of 34Mb and a 25GB monthly usage allowance, Sky TV customers will love the opportunity to explore even more of Sky's On Demand world of entertainment. From movies like *Zoolander 2* and *The Revenant*, to addictively good box sets *Fortitude* and *Grey's Anatomy*, plus all their favourite shows.

And that's not it, as Sky introduces the Sky Broadband Tech Team, knowing how important specialist, broadband customer service is. The new, dedicated UK team of experts are specially trained to resolve customers' broadband issues, and will build on Sky's leading customer service, as rated Number 1 by Ofcom for the last two years.

From ensuring their broadband runs at its optimum speed, to solving most broadband problems online or over the phone, or if needed sending a specially trained engineer to their home, the new team will be available to give a better, personalised customer experience. The expert team will even be kitted out with their own bespoke tools, new Tech Team branded uniform and iconic vehicles, so customers can't miss them!

Lyssa McGowan, Director, Communication Products, Sky commented: *"Faster and more reliable internet, is becoming ever more important for our TV customers. That's why we are offering Sky Fibre at such a brilliant price, exclusively for our Sky TV customers, alongside launching our new, dedicated Broadband Tech Team, so they get the best service in town."*

Both announcements are supported by a brand new Sky Fibre ad campaign. In partnership with Warner Bros. and featuring LEGO® Batman, the new ads will hit screens from 28 December.

The campaign kicks off as Sky leads the industry by being one of the first UK broadband providers to give customers what they want, and introduce 'average download speeds' to its advertising, allowing them to more accurately assess and understand what speed they can expect to get before purchasing.

And for customers downloading more, Sky's also offering Fibre Unlimited (with UK average download speeds of 34Mb, unlimited usage) for £30 a month, including line rental (usually £37.40) or Fibre Max (with UK average download speeds of 60Mb, unlimited usage) for £35 a month, including line rental (usually £42.40), both exclusive to Sky TV customers.

[For further information, please contact:](#)

A4.8: SKY CORPORATE COMMS - LAUNCH OF SKY BROADBAND SHIELD AUTOMATICALLY ON - 2015

Sky to automatically turn on parental controls for all new broadband customers

21 December 2015

Share



@SkyCorporate

@SkyCorporate - New & exclusive Sky Original Production Aliens Love Underpants made by @TigerAspectUK is coming.

← ↻ ★ 🐦

@SkyCorporate - Sky and A+E Networks® forge enhanced long term partnership across Europe. <https://t.co/ZjuQQbZQAY..>

← ↻ ★ 🐦

@SkyCorporate - RT @sky1: Meet the Pembertons. Philip Glenister & Lesley Sharp will star in our brand new comedy.

← ↻ ★ 🐦

Sky today announces its commitment to automatically turn on Sky Broadband Shield for all new broadband customers as standard in 2016¹. Currently new customers are asked whether they want to use Sky Broadband Shield, which lets them filter which websites are seen in their home, as part of the broadband set-up process. In the future, Sky Broadband Shield will be switched on when the broadband is first activated.

Sky Broadband Shield gives Sky customers control of their household's internet experience by allowing them to filter what sites can be accessed, as well as protecting against malware-infected or phishing sites. Its watershed feature has adjustable settings which use age rating options (PG, 13, 18, Custom or none) to restrict sites and these can be varied depending on the time of the day.

The first time a new customer visits the internet they will be informed that Sky Broadband Shield is on. It will be automatically set to 13 until 9pm and then 18 afterwards unless it is amended. Customers can amend the settings or turn it off if they want, by logging into MySky with their password. Sky Broadband Shield works across all devices connected to Sky Broadband, including laptops, tablets, smartphones and game consoles.

Sky Broadband Shield was launched in November 2013. It was offered to all existing Sky Broadband customers from that point with new customers having the option to turn it on as they set up their broadband. Earlier this year, Sky emailed all Sky Broadband customers who had joined Sky before the launch of Sky Broadband Shield but hadn't made a choice about whether they wanted it or not. If there was no response it was automatically turned on. 62% of these customers have kept some form of parental control - significantly higher engagement than any other broadband provider.

As part of the changes announced today, Sky will repeat this process for all Sky Broadband customers who have joined since November 2013 and have not turned on Sky Broadband Shield. Sky led the way in being the only broadband provider to introduce default filtering. Following the customers' positive response to that initiative, in 2016 Sky will be the first broadband company to automatically provide filtering to all its new customers. Sky will continue to highlight the benefits of Sky Broadband Shield for customers, but this is just one way of protecting children online. Sky continues to support www.internetmatters.org which provides guidance and resources for parents. It offers advice on a variety of parental concerns including inappropriate content, cyber bullying and radicalisation as well how-to guides for setting up parental controls on a range of devices.

Lyssa McGowan, Director, Communications Products, Sky commented: "Customers have really come to appreciate the value of Sky Broadband Shield in protecting their families from unwanted and potentially harmful internet content. What we have learnt is that as well as the flexibility to set the right level of protection for their homes, they also want us to make it as easy as possible for them. The simplest thing we can do to help them is to automatically turn on filtering and then allow customers to easily choose and change their settings. This means they can have complete peace of mind that they will be protected online from the word go."

Peter Wanless, Chief Executive of the NSPCC, said: "This is a big step forward in keeping children safe online and we hope other internet providers will follow Sky's example and automatically turn on parental controls for all broadband customers. Frankly this is a no-brainer, default filters on home broadband put children's safety first while still giving adults the freedom to remove them."

"However, filters are only one part of any parent's online safety toolkit. Talking to children about their digital lives and the potential risks is also vital, and the NSPCC is on hand to help parents understand what they can do to protect their children whenever and wherever they venture online."

Minister for Internet Safety and Security, Baroness Shields said: "Family filters have proven to be an extremely helpful tool for parents to safeguard children from age-inappropriate content. Sky's "default on" approach is a great example of how industry is exploring different technologies to help keep children safe online."

¹ Exact timing to be confirmed.

Sky protects millions of families online

14 July 2015

 Share

Millions more families across the UK are enjoying the internet in safety following the successful roll out of Sky Broadband Shield. Sky's award-winning free internet filtering and safety tool is now active in over 70% of the homes in the roll-out to customers who had not previously made a choice, with the majority of families keeping the parental controls in addition to the malware and phishing protection Sky Broadband Shield provides.

Following the introduction of Sky Broadband Shield in 2013, Sky initially asked its existing customers to choose whether or not to turn Sky Broadband Shield on, and new customers were required to choose whether or not to turn it on at activation. Beginning in January 2015, Sky then rolled Broadband Shield out to all customers who hadn't already made a choice about whether to activate it or not.

Sky took the decision to roll out Sky Broadband Shield to customers after the Government challenged ISPs to look at how they protected children and families online. By making the default position of Sky Broadband Shield 'on' and making it easy to adjust or decline at any time, Sky gave customers a choice about whether they wanted the protection whilst making their online safety a priority.

Throughout the six-month roll-out, Sky received just 27 calls from customers asking for help, underlining the simplicity of the product and user-friendly approach.

Sky's decision to give customers a choice about Broadband Shield whilst making the default position 'on' meant that many more customers took an active interest in what the product offers. When customers were previously emailed and asked to choose, less than 5% engaged. This evidence supports Sky's unique approach as the safest and easiest way to protect families online.

Last week Sky launched its best-ever fibre broadband offer of Superfast Sky Fibre broadband free for 12 months, giving switching customers even more choice and better value. As Sky makes superfast broadband more accessible and more people choose Sky Broadband for better quality and value, it becomes increasingly important to ensure the entire family can enjoy the internet safely.

Lyssa McGowan, Director, Sky Broadband comments: *"As more customers choose Sky for better quality and value, we are committed to ensuring everyone can choose to enjoy the internet in a safe environment. We're proud of Sky Broadband Shield and the approach we took to ensure that millions more people are safer online."*

Free to all customers, Broadband Shield is a simple tool that gives customers the ability to enjoy the internet in a safe environment. With its watershed feature, families can protect their children from unsuitable content yet have the flexibility to pick and choose the categories that are filtered and the time of day this happens.

With a diverse base of millions of broadband customers, the ability to activate, adjust or decline depending on the level of protection customers need for their home is an added benefit. It means that no families are left unprotected unless they choose to be.

Sky Broadband Shield is part of Sky's commitment to internet safety and protecting children online. Sky supports Internet Matters [www.internetmatters.org], providing guidance and resources for parents including advice on a variety of parental concerns including inappropriate content, cyber bullying and radicalisation as well 'how-to' guides for setting up parental controls on a range of devices.

-ENDS-