

## About ISPA

The Internet Services Providers' Association is the trade association for the Internet industry in the UK. ISPA has over 200 members from across the sector, including a large number of access provider ISPs from small to large, content platforms, hosting providers, and others. Our membership consists of ISPs rolling out and operating networks on a national and local scale utilising a variety of technologies, to those that resell wholesale services or a combination of both. ISPA provides a complaints service and ADR for its members.

## Summary

Customer service is fundamental to how ISPs do business and is a priority area for our members. Our members are constantly innovating and investing in their networks and customer service infrastructure in what is a highly competitive industry. We note that Ofcom's research shows that 80% of consumers are happy with their service, yet we understand that on occasion service standards may fall short of expected standards. ISPA is supportive of a strong and fair consumer protection regime that provides for redress when things go wrong. However, there is already a comprehensive consumer protection framework in place and a high level of competition between providers that underpins this. Ofcom's own [Infrastructure Report](#) suggests that network incidents are not common and that broadband networks are, in general, robust. Industry is open to new approaches but moving to a system of automatic compensation represents a significant shift. If Ofcom goes down this route, it is crucial that the implications are fully identified and explored.

A strong ADR system is already in place, which in our members' experience favours the interests of consumers. We would thus question the need for this new regime, since there is already an effective consumer regime in place and network incidents are relatively rare, and ask that any regime Ofcom put in place be carefully thought out and evidence-based. If there is a move to regulate broadband more in line with more traditional utilities, such as gas and electricity, that offer automatic compensation, are regulated in a different way.

## Initial factors relevant to considering automatic compensation

### Scope and eligibility

ISPA welcomes Ofcom's view that any automatic compensation should not apply to large businesses, as compensation arrangements are already in place between larger businesses and their providers, with SLAs to measure performance. However, the consultation indicates that the regime would apply to small businesses as well as consumers. Whilst we understand that there is a need to treat small and large businesses differently, it is important that Ofcom fully understands the SME market and the

impact additional regulation could have. For instance, it may act as an incentive for SMEs to purchase consumer-grade connectivity in order to receive the additional consumer protection, which may not be best suited to an SME's needs.

We also agree that automatic compensation may not be suitable where resolving a service issue that may require long-term network investments, as network issues are not always in the control of an ISP. However, later in the consultation it is stated that Ofcom do not want to exclude the possibility of some form of automatic compensation in addition to a right to exit for problems that involve network investment. We would welcome clarity around this approach. We would highlight that this may reopen existing contractual relationship negotiations between ISPs and network providers, and would therefore suggest that Ofcom consult closely with both groups before imposing regulation upon them, as the implementation of this regime will likely make the market more complex.

We welcome Ofcom's view that consumers should not receive compensation where the cause of the issue lies with the consumer. However, we would call on Ofcom to determine a thorough list of circumstances are not likely to lie with the ISP. For example, a loss of service could be the result of: hardware failure of the end customer's modem; power failure to the customer's premises; severing of a cable to the premises by a third party contractor; a vehicle knocking over the cabinet; network equipment failure in the exchange; engineer's mistakenly pulling out a cable; power failure in the exchange; failure of the wholesale provider's edge router etc. - none of which are events the ISP has any control over, or in many cases even evidence of, but for which under this proposal they may be held liable. Creating a contingency fund to cover such a spectrum of claims is, in our view, likely to lead to ISPs having to raise prices to make up the shortfall.

### **Form and process of compensation**

ISPA does not support Ofcom's initial view that automatic compensation should take the form of financial payment, we would propose instead that automatic compensation payments take the form of reductions in customers' bills, as this would be a more straightforward and efficient process of offering compensation for the consumer and ISP.

We would suggest that there should be a time limit placed on how long a customer can claim compensation for.

### **Level of and basis for compensation**

There appears to be an ongoing shift to regulate broadband in a manner more akin to traditional regulated utilities as the importance of internet connectivity increases. While we welcome the

increased recognition of the importance of connectivity, broadband has arguably been regulated by Ofcom with a lighter touch than more traditional utilities. In moving to a potentially higher level of regulation, it is important to consider the characteristics of the broadband sector and how it differs from energy, for example, and should be treated on an industry-by-industry basis. For example, costs to consumers are far lower, in part because of Ofcom's own strategy to keep broadband prices low.

The broadband supply chain is also more complex than traditional utility services, as highlighted in Ofcom's ['Measurement of Internet Quality of Service'](#). The report states that the Internet is a 'global mesh of interconnected providers of network, content and infrastructure services, all of whom must work together to enable consumers and businesses to work'. It also points out that 'seemingly benign' variations in different places may combine to push Internet service quality over an 'experience cliff' – the point at which the consumer notices a degradation in service quality, however, the same behaviours in one supply chain that can push quality over that cliff, may not do so in another supply chain.

ISPA would highlight that increased competition within the UK over the last 10 years has improved consumer choice and reduced prices, resulting in very low broadband prices, some of the lowest throughout Europe. While we agree with Ofcom about the importance of broadband in everyday life, we would suggest that any compensation should be within reason. If ISPs are forced to pay large amounts of compensation, they will need to make up for the financial shortfall elsewhere, with the likely result higher prices for consumers.

We would suggest that there should be a cap on any compensation that can be awarded, similar to the cap offered in the event of an electricity power cut. In the event of a power cut, customers can claim £75 if the power cut lasts more than 12 hours and £35 for every 12 hours after that, up to a limit of £300. Whilst we expect that broadband compensation will be lower, due to its relative importance and price, we would suggest that there is a cap on the amount of compensation that is paid by the ISP.

### **Possible costs and risk of introducing automatic compensation**

As aforementioned and highlighted by Ofcom in the consultation, the automatic compensation regime may have an impact on retail prices, with prices pushed on to consumers. We would therefore suggest that Ofcom proceeds cautiously in this area and take this into account in any cost benefit analysis undertaken, to make sure that any new regime is proportional.

ISPA also would highlight that many alt net providers that are currently helping to provide broadband services to the hardest-to-reach areas could be disproportionately impacted by this regulation and

may be dissuaded from entering the market. Creating more and more regulation may put up barriers for companies offering services in rural areas, particularly if the challenging circumstances lead to outages.

## **Service quality issues**

### **Do you agree with Ofcom's initial views on the service quality issues that could matter most to consumers?**

ISPA view a good reliable connection as the most important issue to consumers. We would highlight, however, that in Ofcom's Infrastructure Report, it is stated that network problems are infrequent and that the majority of incidents are caused by the failure of hardware components, the loss of power supply or by software bugs. This is reinforced by Ofcom's research that shows consumers feel services are reliable with infrequent service quality issues. We would thus suggest that the broadband network is robust and should be taken in account when determining the need for an automatic compensation regime.

## **Further Considerations**

### **Do you agree that Ofcom should consider the need for exceptions and dispute resolution?**

ISPA agrees with Ofcom's view that there is a need for exceptions to rules, and we welcome that Ofcom view that 'force majeure' events, such as strikes or severe weather, should be included in any exception. We would ask that other events that are out of the control of an ISP be regarded as exceptions, taking into consideration the different technologies that deliver broadband provision and the customers' set up.

We would also ask Ofcom to provide more information on what other exemptions may be. The consultation states that Ofcom will decide on a case-by-case basis whether there is a need for an exception, this uncertainty is troubling for our members, we would thus suggest that Ofcom produce a detailed list of what may count as an exception to avoid confusion.

In terms of dispute resolution, a system of ADR is already in place which provides a high level of consumer protection and effectively acts as automatic compensation. When a customer reports a problem to ADR, the ISP will have to pay a case fee, irrespective of whether the complaint is upheld, plus spend their time managing the complaint, meaning that in practice ISPs are likely to settle the complaint before it reaches this stage. We would thus question the need for the automatic compensation regime.

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

ISPA agrees with Ofcom that the relationship between retailers and suppliers need to be considered as in many cases providers do not have control of the network they operate in. In the consultation, it is suggested that retailers should commercially negotiate and agree wholesale service levels with their suppliers, however, this may disrupt already agreed contractual relationships and could be commercially damaging. We would thus ask for more information about how Ofcom plan to deal with this issue, as it will create a more complex market. We would urge Ofcom to give this further consideration and consult with both suppliers and wholesalers on this issue, as it is likely to be highly contentious and we do not want to be in a situation where ISPs are paying compensation for issues that they have no power over. In designing consumer policy in this area, including automatic compensation, these relationships must be fully understood and taken into account.