

## **ISPA Response to Automatic Compensation Consultation**

### **Introduction**

ISPA welcomes the opportunity to submit feedback on Ofcom's consultation on automatic compensation. In preparing this response, we have consulted with our membership of over 200 members, 90% of which are SMEs, who play a fundamental role in delivering broadband and internet services across the UK to consumers and business.

Customer service is a priority for our members, and a key differentiator in what is a highly competitive market. We believe that, alongside ADR and easy switching, automatic compensation can play a role in further enhancing the position of consumers in the market. We support the introduction of automatic compensation in principle. However, we believe that, at the very least, Ofcom needs to engage in a more comprehensive dialogue with players across the industry to ensure that automatic compensation delivers on all the objectives set out in the consultation document, works appropriately for all providers in the market and with minimal impact on competition. This should include the consideration of a voluntary industry agreement as well as the need to reflect any expected retail service levels that providers can expect from Openreach.

### **Key points:**

- ISPA supports the principle of automatic compensation.
- The cost of compensation should fall where the issue is caused. Ofcom's proposal for a retail provider focused approach does not achieve this and risks putting a significant burden on industry, particularly small or regional providers.
- Should Ofcom insist on moving ahead with a retail provider focused approach, we strongly urge Ofcom to consider the alternative of an industry agreement.
- The current proposal for a Voluntary Industry Code of Practice (VICOP) would ensure that a large majority of consumers would be covered from the get go while allowing smaller or regional providers to make the necessary administrative and contractual arrangements before adopting automatic compensation. Competitive pressure should ensure that this happens over time. Any intervention at retail level – whether via regulation or an industry agreement – needs to be complemented with a corresponding effort to ensure that any automatic compensation related service level requirements are reflected in Openreach SLAs and SLGs.

### **Comment on automatic compensation objectives**

We agree with Ofcom that the introduction of automatic compensation – whether via regulation or an industry agreement – would reduce ambiguity over compensation entitlements and reduce complexity by making payments as 'automatic' as possible. However, we do not believe that the

proposed regulated compensation levels are set at a proportionate level and are concerned that the introduction of automatic compensation at the retail level will fail to create the expected incentive to improve service quality at the wholesale level.

The suggested compensation levels for loss of service issues are disproportionate compared to annual/monthly subscription costs of telecoms products<sup>1</sup> as well as the low margins that providers can usually expect. The levels further fail to take account that most consumers can rely on the mobile network as a temporary backup for landline and broadband issues.

Ofcom is significantly overestimating the ability of providers to improve quality of service levels in response to a higher cost base due to increased compensation payments. The reason for this is the exclusive focus on retail providers which fails to take full account of the dynamics of the broadband market, particularly the commercial relationship between resellers, wholesalers and network operators. In other broadly comparable markets, e.g. the electricity market, automatic compensation payments fall on distribution network operators rather than the retailers. The broadband market is arguably more complex with a fuzzier differentiation between network operators, wholesalers and resellers, but we believe that more work is needed to ensure that there is a better link between the automatic compensation requirements and the ability to effectively address quality of service issues. Many quality of service issues are beyond the direct control of resellers and (particularly smaller) providers will find it difficult to renegotiate contracts with their suppliers to ensure that they can pass on costs or improve their SLG and SLA levels.

We note and welcome that Ofcom's statement that it expects the cost of compensation to fall where the issue is caused. However, we also note Ofcom's suggestion that retail providers can negotiate appropriate contractual terms with their wholesalers as appropriate. In reality, given market dynamics this will prove extremely challenging for many ISPA members without appropriate regulatory support.

Accordingly, we believe that Ofcom needs to engage in a wider consultation and conversation with industry to make sure that the introduction of automatic compensation – whether via regulation or a voluntary industry measure– does not negatively affect market dynamics and competition and achieves the intended objective of quality of service improvements. We believe that this should include the consideration of voluntary industry measures as well as the need to reflect any automatic compensation related service level requirements in Openreach SLAs and SLGs. The current proposal for a Voluntary Industry Code of Practice (VICOP) would ensure that a large majority of consumers would be covered from the get go while allowing smaller or regional providers to make the necessary administrative and contractual arrangement before adopting automatic compensation. Competitive

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<sup>1</sup> Ofcom's own data suggest that the average household spend on telecommunications services is £15.05 a month: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/26273/uk\\_context.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/26273/uk_context.pdf)

pressure should ensure that this happens over time. Any intervention at retail level – whether via regulation or an industry agreement – needs to be complemented with a corresponding effort to ensure that any automatic compensation related service level requirements are reflected in Openreach SLAs and SLGs.

Below we set out our direct response to the consultation questions but we strongly urge Ofcom to consider the comments that we have made in this section of our response.

## **Response to consultation questions**

### ***Question 1: Do you agree with our framework for assessment?***

- Yes.

### ***Question 2: Do you agree that in landline and broadband markets consumers are insufficiently protected from poor quality of service and that intervention is required?***

- Yes.

### ***Question 3: Do you agree that it is appropriate for automatic compensation to be introduced for landline and broadband consumers?***

- ISPA believes that it should be made easier for customers to claim compensation and that automatic payments can play an important role in this. However, greater consultation with players from across the industry is needed to minimise impact on competition, and in particular small and medium-sized or regional ISPs.
- We have some concerns about Ofcom's product based approach to automatic compensation that provides SMEs who purchase consumer products access to automatic compensation. This might encourage some SME to opt for consumer rather than business-grade products and there is a risk that the automatic compensation regime creates the perception that consumer-products almost deliver a business-grade service at lower costs.

### ***Question 4: Do you agree with our proposal to provide automatic compensation when a loss of service takes more than two full working days to be restored?***

- While a two-day period seems reasonable at a general level, ISPA believes that there are certain circumstances where a fixed period fails to take account of complexities involved in resolving some loss of service issue. For example, in some cases identifying a fault requires a customer to carry out a line check or take other actions in their own home – would the two-day period start even if the customer is unable or unwilling to carry out these checks?

- We would welcome clarity on whether an automatic compensation payment would need to be made separately for a missed appointment and delayed service restoration, if the delay was due to a missed appointment.
- More clarity is needed in relation to the circumstances under which a provider would be regarded to be 'able to accurately identify the individual lines that have lost service without any contact from the affected customer' (page 44). For example, would a provider be regarded to know that individual lines have been affected if, for example, a natural disaster or third party roadworks disrupt the network for a specific geographic area?
- The consultation document currently fails to outline how automatic compensation would apply to a customer who takes a landline from one provider and a broadband product from another. Assuming there is a fault with the landline rather than the broadband product, would:
  - a) both providers be required to pay automatic compensation if the customer logs the service issue with both providers; and
  - b) would the broadband provider be required to pay automatic compensation if the customer only raises the loss of service issue with the broadband but not the landline provider?

***Question 5: Do you agree with our proposal to provide automatic compensation when there are delays in provisioning a landline or fixed broadband service?***

- In cases of delayed service provisioning, customers should have easier access to redress and automatic compensation can play a part in this.
- Clarity is needed on whether compensation for delayed service provision would be due if the delay was due to the customer missing the provisioning appointment.

***Question 6: Do you agree with our proposal to provide automatic compensation when missed appointments take place with less than 24 hours of prior notice?***

- In cases of missed appointments, customers should have easier access to redress and automatic compensation can play a part in this.
- Clarity is needed on whether two separate automatic compensation payments would need to be made if:
  - A) there is a delay to the service provision because of a missed appointment.
  - B) there is a delay in restoring a service because of a missed appointment.

***Question 7: Do you agree with our proposals on transparency?***

- No comment

***Question 8: Do you agree with our proposals on the method and timing of payment?***

- We agree with the 30-day timing period but further discussion is needed on the impact on timing and payment of compensation if a customer chooses to leave a contract before an issue is resolved.

- We agree that bill credit should be provided unless otherwise agreed by the customer.

**Question 9: Do you agree with our proposal not to have a payment cap (and our assessment of the reasons for and against it)? - If you consider there should be a payment cap, what should it be and why?**

**Question 10: Do you agree with our proposed exceptions?**

**Question 11: Do you agree we should not allow for a blanket exception for force majeure-type events?**

- The implementation of a regulated automatic compensation scheme without a payment cap or significant exceptions poses a serious risk of putting a significant and undue burden on providers, particularly SMEs and those who primarily resell broadband products. Going further, it is not unimaginable that rural, regional or alternative providers could face an existential threat to their business if they are affected by a natural disaster or if a long-term service problem is beyond their immediate control as compensation costs be higher than overall company turnover.
- We recognise Ofcom's assessment that a consumer suffers harm independently of whether a quality of service issue is within or without the control of a provider. However, regulation in most other markets recognises that the lack of exceptions, caps or even recognition of exceptional circumstances risks putting a disproportionate burden on providers and, due to the pass-through of cost, can create consumer harm in the long-run.
- We assume that Ofcom is aware of the framework for the UK water, electricity and gas sectors which have payment caps and allow for total or moderating exceptions for force-majeure type incidents. Other examples include aviation where EU Regulation 261 on compensation for delays, cancellation and denied boarding provides exceptions for extraordinary circumstances.
- Further consideration with industry is needed in this area and should include:
  - Introduction of a payment cap that more adequately reflects monthly/annual subscription costs for quality of service issues that are outside of the control of the provider; and
  - Introduction of a grace period in force-majeure type incidents to reflect during which automatic compensation would not be applicable to reflect that these incidents can lead to a delay in service (re)provisioning or missed appointments.

**Question 12: Do you agree with our proposal on complaints and disputes?**

- While ISPA understands that the consumer protection regime should be balanced in favour of the consumer, we are concerned that the combination of automatic compensation with the current ADR regime will create an opportunity for a small set of consumers with malicious intent or claims management services to game the system.
- The consultation document proposes that 'compensation would not be payable if the provider believes that the customer's notification of a loss of service is frivolous or vexatious.' ISPA supports this exception but believes that it will very difficult for providers to actually make use of this

exception, even in cases that are evidently frivolous or vexatious, due to the risk of being taken to ADR. As outlined in our [response to Ofcom's ADR consultation](#), numerous ISPA members have had cases going through ADR adjudication that should not have been accepted by the ADR provider. There is a clear risk that ADR providers will accept a case even though the consumer complaint is about the failure to pay out against a clearly frivolous or vexatious claim. Given that any case that is accepted by an ADR provider results in a minimum fee of over £300, there is a clear economic incentive for a provider to make the much smaller automatic compensation payment even if it reasonably believes that the customer's notification of a loss of service (or service provision delay or missed appointment) is frivolous or vexatious.

- Customers should not be barred from taking an automatic compensation claim to ADR, however, the clear-cut nature of automatic compensation cases and the clearly identifiable value of these claims warrants a tailored and streamlined ADR procedure that should come with lower costs for providers and ensure that ADR providers systematically reject claims that are frivolous or vexatious.

***Question 13: Do you agree with the impacts we describe? Please wherever possible give your reasoning and provide evidence for your views.***

- ISPA believes that the consultation document underestimates the cost implications for providers, particularly SMEs and resellers.
- Feedback from our members suggests that some smaller and regional providers, would need to engage in a contract renegotiation with more than three separate wholesalers to ensure that its contracts reflect the new compensation regime. It is very likely that smaller providers will find it more difficult to quickly and successfully engage in these negotiations than larger providers which will not only lead to higher compliance costs for these providers but also negative impacts on competition overall.
- As mentioned elsewhere in this document, ISPA also questions the strength of the assumption that automatic compensation will lead directly to an improvement in quality of service.

***Question 14: Do you agree with our provisional conclusions on residential landline and broadband services?***

- ISPA believes that further work and consultation is needed to support the provisional conclusions. This includes the consideration of impacts on the whole value chain, competition and whether voluntary measures can address the concerns that Ofcom has raised while minimising negative impacts on industry. Ofcom also needs to ensure that Openreach SLAs and SLGs adequately reflect any requirements that are put on resellers in the context of automatic compensation.

***Question 15: Do you agree with our proposal of 12 months to implement automatic compensation?***

- Feedback from our members suggests that a longer implementation period, e.g. 18 to 24 months, would be needed to ensure that providers can make the necessary changes to their systems.

***Question 16: Do you agree with our proposal to monitor the impact of automatic compensation?***

- No comment

***Question 17: Do you agree with our proposals for greater transparency regarding service quality and compensation for products targeted at SMEs?***

- We favour the introduction of greater transparency requirements over a more intrusive regulatory intervention but urge Ofcom to ensure that its proposals are consistently implemented. Retail consumers who consciously buy SME-products should not have access to automatic compensation as long as the product was clearly targeted at SMEs (e.g. if bought from a B2B provider).

***Question 18: Do you agree with our provisional conclusions not to introduce automatic compensation for delayed repair of mobile loss of service?***

- No comment

***Question 19: Do you have any comments on the draft condition set out in Annex 14 to this document?***

- No comment