

A8. Draft guidance on General Conditions C7.43-45 on compensation

Ofcom's Guidance under General Conditions C7.43-45 – switching and porting compensation requirements relating to residential customers

- A8.1 This document sets out Ofcom's guidance on compensation for residential customers under General Conditions C7.43-45. It focuses on:
- delays;
 - compensation levels;
 - method of payment; and
 - responsibility for making a payment.
- A8.2 This guidance does not form part of conditions C7.43-45. Its purpose is to assist Communications Providers (CPs) to comply with the minimum requirements of conditions C7.43-45 by outlining Ofcom's likely approach to investigating compliance.
- A8.3 This guidance is not binding on Ofcom, and while we will take it into account, we will determine compliance with conditions C7.43-45 on the basis of the individual circumstances of any given case. However, where we decide to depart from the guidance, we expect to give reasons for doing so. Words and expressions used in conditions C7.43-45 shall have the same meaning when used in this guidance.
- A8.4 We have also included some examples of what we consider to be good practice, drawing on the Automatic Compensation Voluntary Code of Practice.⁶³

GC requirement

- A8.5 Customers should be able to exercise choice and take advantage of competition in communications markets by being able to switch provider and/or port their numbers easily and reliably. CPs should provide reasonable compensation to customers where things go wrong with the switch and/or the porting process.
- A8.6 Condition C7 states that:

'C7.43 Regulated Providers shall provide Switching Customers with compensation in an easy and timely manner in the case of failure to comply with the obligations laid down in this Condition C7, as well as any missed service and installation appointments.

C7.44 Where compensation is payable in accordance with Condition C7.43 to a Switching Customer that is a Consumer, compensation must be paid no later than:

(a) where compensation is due for delays in completing the Communications Provider Migration, 30 calendar days after the date on which the delayed Communications Provider Migration is completed or the Switching Customer or Regulated Provider

terminates or cancels the Relevant Communications Service(s) intended to be transferred;
or

(b) where compensation is due for a missed service or installation appointment, 30 calendar days after the date of the missed appointment.

C7.45 No compensation shall be payable in accordance with Condition C7.43 where the Regulated Provider has given notice of a change or cancellation of a service or installation appointment at least 24 hours in advance of the original appointment time or if the Switching Customer has otherwise agreed to a change in the appointment time slot for the same day. Any such agreement by the Switching Customer must be recorded by the Regulated Provider.'

Delays

- A8.7 We expect customers to receive compensation for each full calendar day after the date of a switch when the switch does not occur on that day. They should continue to receive compensation for every day until the switch occurs or is cancelled by the customer or the provider.
- A8.8 For example, if a provider agreed that the switch date was Monday, compensation should be paid if that service has not started by 11:59pm on Monday. If the switch then occurred and the services activated on the Friday the customer would be compensated for three days' delay.
- A8.9 We would also expect providers to pay compensation if a customer informs them that a router has not arrived by the date the service is due to start unless the provider can demonstrate proof of postage.

Compensation levels

- A8.10 We expect compensation payments to be proportionate to the length and amount of disruption and inconvenience caused to the customer.
- A8.11 Compensation payments should include the proportion of the daily rental or contract charges paid. For Pay as You Go mobile customers, a proxy could be to calculate the CP's daily average revenue per PAYG customer. Providers should also consider any direct payments and costs incurred by the customer as a result of the provider failing to comply with their switching or porting responsibilities. For example:
- Compensation should take into account any higher bills a customer faced if they were unable to leave their previous provider.
 - If a provider switches a customer without their knowledge or consent, the compensation paid by the provider should include any Early Termination Charge that the customer paid to the losing provider and reimburse the customer for any additional service costs the customer has faced.
- A8.12 Providers can always choose to pay higher levels of compensation and there will be cases where it is appropriate to do so. For example, where the provider has made repeated attempts to switch a customer without their explicit knowledge or consent.

We consider it good practice for CPs to consider the minimum compensation payments set out in the Automatic Compensation Voluntary Code of Practice for fixed residential customers which includes:

£25 for a missed installation or service appointment.

An initial £5 if the service does not start on the date agreed with the customer and an additional £5 for each calendar day of delay.

£8 per calendar day for loss of service greater than one working day.

Method of payment

- A8.13 We expect providers to pay financial compensation to the customer. This will often be in the form of bill credit but could also include cash, bank transfer or cheque or other means of payment acceptable to the customer.
- A8.14 CPs should only provide alternatives to financial compensation with the explicit agreement of the customer or in addition to financial compensation. Such alternatives should be worth the same or more than the level of financial compensation.
- A8.15 Where a provider pays compensation in the form of a bill credit, they should ensure that any outstanding bill credit is refunded to the customer where they exit their contract.

Responsibility for making a payment

- A8.16 The provider responsible for a service failure should generally be responsible for paying the compensation to the customer. It is the gaining or losing provider that should pay compensation to the customer even if the 'fault' lies with the gaining or losing provider's network operator or other third parties that they use.
- A8.17 Providers should determine responsibility in line with their obligations in Condition C7 and any industry agreed processes.
- A8.18 For example:
- Where a gaining provider misses an agreed appointment to activate a new service, they would be liable to pay compensation.
 - Where a losing provider fails to provide information to the customer about the implications of switching, they would be liable to pay compensation.
- A8.19 It is important that providers do not leave it to the customer to try and work out whether it is the losing provider or the gaining provider that is responsible for paying compensation.
- A8.20 For example, if the customer experiences a loss of service of more than one working day during the switch, the gaining and losing provider should work out whether this was caused by a failure of the gaining or losing provider to comply with their obligations and for the relevant provider to make the compensation payment to the customer. If something goes wrong at the point of switch and the fault lies with the network operator that both the losing and the gaining provider are using, we would expect the gaining provider to pay the compensation to the customer and resolve any issues with the network operator and losing

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provider 'behind the scenes'. The customer should not have to go back and forth between the losing and gaining provider to work out who should provide the compensation.