

FCS Response to Ofcom's Automatic Compensation Consultation

Introduction

The Federation of Communication Services represents companies which provide professional communications solutions to professional users. Our members deliver telecommunications services via mobile and fixed line telephony networks, broadband, satellite, wi-fi and business radio. Our members' customers range from SMEs, home-workers and micro-businesses up to the very largest national and international private enterprises and public sector users. FCS is the largest trade organisation in the professional communications arena, representing the interests of around 350 businesses with a combined annual turnover of more than £45 billion.

Overview

We understand and agree with the main thrust of this consultation: to ensure that residential consumers get appropriate compensation without having to go through the complexities of claiming it. However, as Ofcom notes, around 30% of SMEs run their businesses on contracts that are more suited to residential consumers and therefore they would fall into the automatic compensation group.

FCS members may offer a contract for residential services, but the vast majority will offer business contracts only, so our main concern is to ensure that there is a clear view of what each type of contract "looks like" and how the delineations between the two are made. Our answers to the consultation questions are therefore offered with this in mind, and reflect possible effects and outcomes for our members.

Answers to consultation questions

Q1: Do you agree with our framework for assessment?

We believe that the scope and framework are correct and Ofcom has identified three areas that can be measured accurately.

Q2: Do you agree that in landline and broadband markets consumers are insufficiently protected from poor quality of service and that intervention is required?

The figures presented would appear to show this is the case.

Q3: Do you agree that it is appropriate for automatic compensation to be introduced for landline and broadband consumers?

Yes, this seems appropriate

Q4: 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?

Whilst the overall premise seems appropriate, we think that Ofcom needs to be very precise in the wording it uses to ensure its intentions are met. At present Openreach's service management level 1 (offered to the majority of residential customers) offers a clear by 23:59 on day after next (fault occurs on Tuesday should be fixed by Thursday. SLG would be due Friday if not cleared).

The wording in the draft GC is for compensation to be paid when:

“any loss of service is persisting at midnight on the second working day after the loss of service trigger day”

Which would appear to mean the same thing: fault on Tuesday (trigger day) must be paid if it continues post-midnight on Thursday – ie Friday.

However, in para 10.25 when discussing the merits of the voluntary code Ofcom states:

We have set out our reasons for proposing midnight on the second working day for delayed repair in section 5 above and assess that this is in line with consumers' reasonable expectations. A time period of three working days would not, however, be in line with those expectations. In addition, three working days may not incentivise providers to undertake repairs much faster than their current average repair times

The statement that “three working days would not...be in line with those expectation” is vague as a fault could well persist for three days (within SLA) if it is reported at 09:00 on the first day.

We think that Ofcom's intention is that the GC should match SML1 – but would ask that this is clarified and, if possible, examples used with named days of the week for simplicity's sake.

We are concerned that, at present Openreach only has a target performance of 77% against SML1, so this would potentially leave CPs immediately liable for 23% of failures that are out of their hands (as the fault lies in the Openreach network) from day one.

Q5: Do you agree with our proposal to provide automatic compensation when there are delays in provisioning a landline or fixed broadband service?

We agree with the principle of compensation in these instances but are concerned about the fact that such delays are often entirely out of the CPs hands. Openreach has control of the provisioning process and sets the dates on which events and completion will happen. The suggestion that there may “simply be a problem with the retail provider's systems or processes which causes the scheduled start date to be missed” is a scenario that FCS members are unfamiliar with.

Q6: Do you agree with our proposal to provide automatic compensation when missed appointments take place with less than 24 hours of prior notice?

We agree that missed appointments are exceptionally frustrating for consumers and can cause financial loss for business customers.

There are currently concerns expressed by our members about the missed appointment validation process, ie, whether it was Openreach missed or customer missed. We would not want to see members in a situation where Openreach say they called and got no entry to property and will now charge a missed appointment fee, while the end customer is adamant that they were in the property at the appointment time. This could result in the CP making payments both up and down the chain.

Q7: Do you agree with our proposals on transparency?

We agree with the overall principles of transparency proposed.

Q8: Do you agree with our proposals on the method and timing of payment?

If payments are to be made to end-customers within 30 calendar days then there ought to be back to back reciprocal agreements up the chain to allow CPs to claim the money back with the party that caused the payment to be triggered, within the same period. This is obviously for industry to put in place, but we would welcome Ofcom making a statement about its expectations in this area.

Q9: 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?

FCS members can supply many examples where a complex fault has persisted for weeks, if not months. The residential market may have a different experience, but uncapped payments could lead to financial difficulties for smaller CPs if a similar rule was applied to business contracts.

Q10: Do you agree with our proposed exceptions?

We agree with the exceptions identified.

Q11: Do you agree we should not allow for a blanket exception for force majeure type events?

We believe that this may merit further consideration, although the volume CPs will be best placed to provide specific detail of the impact. Currently when Openreach declares MOBRC it is absolved from paying SLGs, yet under Ofcom's proposals the CPs would still be required to pay compensation to their customers.

If a similar expectation was in place for SLAs within business contracts this could have an extremely damaging effect on members who cover areas within specific geographies.

We understand that Ofcom expects the industry to negotiate new SLGs as appropriate following the outcome of this consultation, but history shows that this can be a long-drawn out process which may well not be concluded within the six-month window set out by the FAMR.

Q12: Do you agree with our proposal on complaints and disputes?

We agree with the principle of Ofcom’s proposal, however, as noted above re timings of payments we are concerned about the ability of the retailer and others in the chain to be able to negotiate back to back arrangements that mean that compensation will flow promptly from the party that causes the harm.

Q13: Do you agree with the impacts we describe? Please wherever possible give your reasoning and provide evidence for your views.

Some of our members have expressed concern about the potential for overall costs to rise. This could be because of pass through of compensation costs (as identified by Ofcom) or from the increased levels of reporting that will be required.

The worry is also that if similar expectations are put on B2B CPs, higher costs (paying out larger sums than they are receiving) could lead to smaller CPs going out of business.

Q14: Do you agree with our provisional conclusions on residential landline and broadband services?

We believe the proposals are correct but leave the volume providers to answer the specifics of this question.

Q15: Do you agree with our proposal of 12 months to implement automatic compensation?

This appears a reasonable timeframe.

Q16: Do you agree with our proposal to monitor the impact of automatic compensation?

For members who have B2C contracts we are concerned that the reporting might be burdensome. Perhaps Openreach could provide centralised reports of issues they cause and compensate for as a basis for Ofcom undertaking the monitoring they need. It would then be possible to extrapolate this down the value chain.

Q17: Do you agree with our proposals for greater transparency regarding service quality and compensation for products targeted at SMEs?

Much of s11 makes generalisations about all SMEs without distinguishing between the 30% on residential type contracts and the 70% on Business contracts. We have assumed that Ofcom is generally referring to those in the latter category.

We agree with the high-level proposals in this section. However, the detail is the issue and we think Ofcom should be clear in its expectations: there are references to “a business contract” (11.12) as well as “business products” and enhanced service levels. Will a CP easily be able to prove to Ofcom that it is providing a business service and therefore does not fall under the automatic compensation requirements? Is there an appropriate form of words that should be used?

As an example, one of our members provides services to a customer who runs 350 care homes: this is a business arrangement but the ultimate users of the service are the residents. Would they be entitled to automatic compensation?

We agree with Ofcom's proposals for greater transparency in the B2B market but would want to be able to give our members reassurance that they will be clearly differentiated from the residential market and viewed appropriately.

Q18: Do you agree with our provisional conclusions not to introduce automatic compensation for delayed repair of mobile loss of service?

We have no comments on this section.

Q19: Do you have any comments on the draft condition set out in Annex 14 to this document

As stated previously, we would like absolute clarity on the timeframes suggested in the condition. In its wording for SML1, Openreach refers to "clear by 23.59 day after next" whilst Ofcom uses "at midnight on the second working day".

We appreciate the formality of the GCs but a "worked example" would be beneficial.

The definition of "Working Days" in the draft GCs is "the hours between 09.00 - 17.00 on Monday to Friday, with the exception of Bank Holidays".

Openreach's SML1 does not include Saturday within the calculation, matching the above, whereas SML2 upwards do. CPs need to be able to state with clarity to SMEs who take a residential product what compensation payments they will be eligible for as this appears to give potential for conflict

Conclusion

The FCS hopes that these comments are helpful to Ofcom in its considerations. We support the overall aims that Ofcom wants to achieve but believe that further detail and consideration are required in certain areas.