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Dear Ofcom,

With regard to your consultation for **Automatic Compensation** on the 24th of March 2017 and, as I highlighted in the response to your request for information in February, Zen Internet is largely supportive of the idea to automatically compensate consumers where they have a delayed fault repair, provisioning delay or missed appointment. We support fault repair where the actual fault is beyond the Network Termination Equipment (NTE) and relates to a total loss of service.

Although Auto Compensation does not apply to faults within the customers premises we will continue to build on the award winning service we are renowned for using skilled expertise, latest technology and processes and aim to improve in this area further to ensure consumers get the help they need in this area in order to minimise and resolve faults in as timely a manner as is possible.

Surveys conducted by recognised consumer groups such as WHICH and technology publications such as PC Pro magazine often put Zen Internet at the top of the service league tables when they are looking at the ISP industry and this is backed up by the fact it is the customers themselves who feedback directly into those surveys rather than a judging panel.

Zen Internet has built its reputation on providing its customers with the best ISP service in the UK, and one that focuses firmly on quality of service, reliability and transparency. Indeed Zen's service ethos is built into the company wide DNA and is reflected in the numerous year on year awards that it receives products and services.

Zen already compensate its customers through a gestures of goodwill system that ensures a customer is suitably compensated where appropriate. We believe the proposed automatic compensation scheme would build on this further and provide a consistent approach across industry.

Our company principles that we all work to are designed to ensure we have happy staff, happy customers and happy suppliers and this is carried out under a continual improvement framework across our business.



We believe the formal regulated approach under General Conditions is at this stage should not be necessary and we would prefer to support the Industry Voluntary Code of Practice highlighted in your consultation document, as this will allow ISP's to improve on the base level of compensation that regulation would require and give ISP's a chance to compete and improve further the compensation package they provide to their customers.

There are very good examples of where an industry supported by Ofcom voluntary approach has worked well such as the consumer and business broadband speeds codes of practice. These have helped consumers and sme's with clearly defined speed estimates and a right to exit process that reduces harm to them.

Ofcom and industry continue to work well together to continually improve on this as new products and services come into the market. A voluntary approach overseen by the Regulator makes this work much better in our opinion than formal regulation.

We believe a VICOP in respect of Auto Competition will work equally as well and would deliver a fair and robust system for the consumer and industry alike in particular the smaller providers whereupon a legislative approach could see a situation arise where Communication Providers only offer the legislated base level of compensation. The VICOP provides greater scope for enhancing further the service to the consumer beyond that base level.

- **The Supply Chain**

This is an area of real concern.

Irrespective the adoption of a formal or voluntary compensation scheme, it is vital that the upstream providers such as BT Openreach, BT Wholesale and Talk Talk Business are included. They provide services to virtually all of the ISP's downstream and reliance on contractual obligations in respect of SLG payments for auto comp is not good enough.

Downstream ISP's customers are often affected by faults with the services in the upstream providers control and they should not have to provide compensation to their end users until the upstream providers have compensated them. Many smaller sized ISP's may not have the flexibility within their margins and cash flow to pay out in advance whilst awaiting settlement from their upstream provider and in some instances could be at risk of their business failing if the level of compensation they might have to pay out in advance is significant.

The Automatic Compensation payment system needs to work seamlessly up and down the supply chain if it is to work correctly and protect consumers and ISP's alike. It needs to be mandatory for everyone.

Often the SLG payments process is not straightforward and disputes, some of which can be lengthy do arise thus delaying the payments to the retailer, especially if that payment is held up due to disputes over the fault conditions/ownership. These delays will introduce genuine harm to smaller ISP's.

With regard to Ofcom's specific consultation questions:

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

Yes. We are fully committed to supporting a framework that provides an agreed, fair and proportionate level of compensation to consumers for total loss of service and failed provisioning and where it is the fault of the ISP or network supplier concerned. Where Total loss of service is as a result of a third party wholesaler/network supplier such as BT Openreach then the customer compensation should be provided by their ISP but only subject to that same ISP being compensated from their supplier in advance of the payment being made to the end user concerned.

Failure to provide protections for the smaller ISP's in those instances could have a serious commercial impact on them both in terms of compensation being paid out to the end user in advance impacting cash flow and also their reputation as a provider. Smaller are unlikely to have sufficient cash in place to automatically compensate until they themselves have been compensated from their supplier. The automatic process should apply end to end if it is to work and ensure the smaller ISP is not impacted unfairly.

Ofcom reference under section 3.28 of the consultation document.

- **Are there features of the market that lead to less favourable outcomes for consumers?**

Yes REIN faults should be considered under this as typically it can leave a customer's service unusable and the ISP unable to resolve either directly or indirectly via their downstream supplier as the fault is usually a cause of a third party not regulated to resolve the issue.

- **What, if any, intervention would be an appropriate and proportionate means of achieving them?**

Regulatory ownership and powers to force third parties to fix whatever is causing the fault once identified.

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?

In some cases it is possible that consumers struggle to receive any compensation for a loss of service. ISP's generally do compensate consumers albeit usually where they request it and Zen Internet is no exception to this. We empower our staff to consider any customer claim for compensation for failed repairs, provisioning delays etc. and offer where appropriate a gesture of goodwill that it takes into consideration the facts presented. Not all consumers want compensation and are happy to simply have their service restored.

Consumers often have clearly sign posted complaints routes as mandated under the Ofcom General Conditions of Entitlement. This ensures their ISP works with them to resolve any issues they are experiencing and indeed offers them an alternative arbitrator should they reach deadlock. Any subsequent compensation is considered by the ADR service and a decision is reached that 'should' be fair and proportionate.

While we support the good intentions of Automatic Compensation, consideration should be taken that by doing so it does not generate vexatious fault claims such as supplier equipment being deliberately damaged to generate a fault that could see compensation having to be applied to the consumers served off of that fault, for example malicious damage to a street cab. We certainly don't want to see a "Where's there's blame there's a claim" culture developing as a result.

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

In principle yes however where both services are affected by a fault there should only be one compensation payment applied not one for each service affected. Ofcom need to also take into consideration a common issue of a broadband only provider's customer being impacted with a fault caused by another provider's PSTN line service to the same customer.

In those situations where the PSTN line is at fault for dropping or impacting the service of the broadband then it should not be the responsibility of the ISP providing the broadband circuit to pay out compensation as they cannot influence the resolution of the PSTN fault.

This again would create particular risk for a number of smaller sized ISP's.

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?

In principle Zen would support this however it is worth noting that there will be occasions when faults created by suppliers such as network faults can often take longer than 2 days to resolve and it would be unfair to an ISP where they genuinely want to resolve a customer's fault to be paying out compensation where the delay is created by a third party that they have no control over such as access to land for example or a PSTN fault caused by that third party (see question 3).

SLG payments will typically account for this.

We would always try and resolve a customer's total loss of service fault very quickly, typically same day and anything beyond that will usually result in either a supplier having to carry out some work or a more complex repair by ourselves that might involve liaison with suppliers, hardware replacement etc.

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

Yes – So long as the ISP is also compensated if the delay is caused by their third party supplier. Smaller ISP's could be impacted badly if this is not the case as they might not have the commercial economies of scale to pay their customer up front if the fault is because of a delayed install due to site complications only identified at the point of install. Or where access is required that may require wayleave or safety considerations before work can commence and was not foreseen.

Sometimes a customer themselves might not agree to the work being done in a specific way due to concerns about property or land damage.

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?

Yes. All appointments are booked in advance and dates agreed between the engineering team assigned to carry out the work and the end user. The only exceptions should be force majeure such as inclement weather or where it would be dangerous for the engineer to take up the allocated appointment or where an engineer might be incapacitated due to illness. Missed appointments should be straightforward enough to rectify and compensate for and levels for us in this regard are quite low.

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

We already provide customers up front with speed estimates and it should be relatively easy to provide information that tells a consumer that compensation may well be available for delayed provisions, missed appointments and fault repair delays and what that compensation will be.

This can be presented in a number of ways however caution should be noted here that often the ISP's agents have a lot of information to remember when working with a customer and not all ISP's have automated systems and scripts in place to help support and prompt those agents and at the appropriate time. Transparency can also be achieved through online web and marketing material and in areas such as customer portals.



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

We believe that an agreed monetary payment process that is standardised across all ISP's is the right way to do this. By allowing ISP's to differentiate you run the real risk of the largest providers using compensation as a carrot to attract customers and one that could squeeze out the smaller ISP's because of the commercial scale of economies afforded to the larger providers. A one size fits all should work for everyone, would be fair and allow consistency not only to all ISP's but consumers also.

Differentiation however might be achieved to additional service elements such as enhanced care or better quality routers or similar. The actual payment calculations in the VICOP we support.

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?

No, a cap would be sensible and offer protection to ISP's. There is nothing to suggest that by having a cap would not mean an ISP would then give up on resolving the customer issue once they have reached the cap. If Ofcom insist on no cap, ISP's may well encourage a customer to terminate their service without penalty and advise them to seek another provider especially on difficult repairs that are complex. It would likely work out cheaper for the ISP to do so.

A cap could work in the following way.

Minimum offer:

Automatic compensation for loss of service and delayed provision limited to 30 days beyond a notice given to the customer that automatic compensation payments will cease. CP's notice must not be served before the date 30 days after the 'trigger day' for compensation payments..

Notice must:

- (i) set out the date on which compensation will cease;
 - (ii) set out that no early termination/default charges will be charged in the event of cancellation if a customer cancels during the 30 day period from receipt of the notice (even if service is restored during this period);
 - (iii) set out that the customer can still raise the issue through the complaints process and seek additional compensation via that route, including reference to ADR.
- This remains without prejudice to any other right a customer has to cancel.

Question 10: Do you agree with our proposed exceptions?

Yes however we do have some concerns that need either further clarification or further discussions.

- Repetitive Electrical Impulse Noise (REIN) needs to be included in force Majeure. These types of issues need to be clearly exempt from the Automatic Compensation scheme. Networks are complex, the supplier relationship can often be complex and not all service failures can be attributed to something the ISP or even the Network Operator let alone the end user could have foreseen.

Often ISP's will see faults that arise on a customer's service that can be difficult to resolve where electrical interference from a third party impacts their connection detrimentally such as a railway line or perhaps a faulty lift mechanism in a building. Often these faults are left unresolved by the service providers involved and the customer is left to pursue the impacting third party themselves with no form of recourse such as with the regulator, Ombudsman or legal recourse.

There are many examples of customers impacted by REIN related faults going back many years and ISP's should not be forced to compensate in these circumstances given the current lack of regulatory support and clarification. ISP's need protection too as much as the consumers of which the scheme is aimed at and ISP's should not be put at risk of paying out compensation for something they cannot realistically be able to resolve.

You can find more information on REIN related issues here in a Zen blog article: <https://blog.zen.co.uk/troubleshooting-dsl-faults-reducing-pain-rein-sin349/> and here at the ISP Review website: <http://www.ispreview.co.uk/index.php/2013/11/isp-zen-internet-calls-uk-government-tackle-broadband-noise.html>

- **End of Contracts**

Ofcom need to clarify what happens when a customer whose fault has not yet been resolved decides to leave the contract and seek another provider. At the moment there is nothing that highlights an ISP would be exempt in these circumstances from continue paying compensation indefinitely.

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

Yes, however force majeure should not be narrowed down to the point that ambiguity leaves a consumer or indeed the ISP with nowhere to go with their issue. Neither should ISP's be put into a position where they are penalised for circumstances that are beyond their direct control.

A clear example of that is REIN (see previous question 10) these faults should most certainly be included given the lack of a clear and strong regulatory support route for those impacted including the ISP's. These are often difficult and at times unresolvable on the part of the provider and can involve complex legal ownership challenges.

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

In principle yes – We already exceed the current complaints obligations and will continue to work with our customers to resolve any issues they might have to their satisfaction and in a timely manner. However Ofcom need to ensure that the grounds where a consumer can invoke ADR is not used detrimentally to receive auto compensation plus adr compensation given the thresholds for adr could involve up to £10,000.

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

It is right that Consumers are compensated for total loss of service where it is the fault of the provider/supply chain. The compensation payment levels as highlighted in the proposed Industry Voluntary Code look fair, proportionate and represent good value for consumers as a starting point but for the ISP's it provides an opportunity to differentiate on service and compensation and improve above and beyond that base payment scheme. Competition to win consumers on the basis of good service, compensation when things go wrong is much better than selling them cheap as chips services where service is compromised due to margin constraints.

We would however urge caution so that we do not see an industry that squeezes out the smaller providers simply because they have the commercial scale and capability to offer significantly higher levels of compensation.

- **Timeline and Automation**

We are concerned at the impact of short lead times to deliver the scheme. Ofcom have indicated they would like to see the scheme implemented within 12 months from their final statement being published. This is an unrealistic expectation and would suggest a more sensible option would be between 18-24 months.

Our reasoning for this is down to existing, planned and significant scheduled work within our business. This is work that is designed to enhance customer experience, improve reliability and lessen the risk of downtime such as better line management, proactive monitoring of circuits, enhanced service restoration for faults etc.

We would need to implement some significant systems changes to put in place automatic compensation and would have to put on the back burner a lot of our existing planned developments to afford the resource to do so. We are undergoing a 5-10 year plan to consolidate our legacy in order to streamline those into a CRM solution for our entire business. This requires significant investment and training but will help us in providing a much stronger service proposition to our customers.

We are also undertaking a multi-million pound investment into our network that will future proof not only our business services but also all of our wholesale partners etc. and again this requires skills and engineering and systems development expertise both in house and external support to carry out and complete the work.

We also have a number of regulatory and other legislative obligations such as GDPR that we need to invest in to ensure we are compliant by the deadline of May 2018 and beyond. Smaller ISP's are unlikely to have the in house skills or capacity to accommodate a lot of this work or indeed the ability to fund the external help that might be needed to do it for them.

While 12 months looks perfectly feasible if we were only working on this one piece of work it's unfortunately not the case and we are as are many ISP's undergoing a lot of impacts from Regulatory change and legislative to implement other work, systems into our schedules some of which wasn't planned for.

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

We support Ofcom in its aims of providing a fair and appropriate compensation scheme.

We do think there's a really strong proposal in the Voluntary Industry Code and would urge Ofcom to consider this as we think it will provide a robust collaborative and fair scheme where industry is collectively working for consumers and sme's alike. It also allows ISP's to build on and improve further service delivery improvements and compensation methods that will reduce consumer harm even further.

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

No - 12 months is certainly not giving ISP's sufficient time to design and implement into their existing systems infrastructure, billing platforms etc. We are currently undergoing a huge internal IT transformation cycle not to mention significant work in other areas of our business that require all of our developers for many months. To throw more work their way at this critical time would generate real risk to our business, systems development and products and service development. All of which we are working on so that we can extend the great service we provide to our customers today and in the future.

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

Yes however we believe that by developing an industry code of practice this could also open up an opportunity for consumer groups such as WHICH or similar to engage in the customer satisfaction elements of the code – Often service delivery is best viewed from the consumers perspective and Zen wins many awards for their great service and reliability from customers such as those who are members of WHICH. Engagement with Consumer groups could help narrow the gap with regard to service and quality of same across the industry if we could engage support with those who like ourselves have the customer's best interests at heart.



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

We are pleased that Ofcom recognises that SME's and medium sized enterprises should not be extended automatic compensation.

SME's who require products that rely on service quality and compensation should purchase a product and service that is designed with the business continuity they need in mind. Zen Internet already offers products that extend the standard service levels available such as a 12 hour response to and resolution of a fault occurring. Typically businesses would look to purchase a product or service that provide enhanced service levels such as Ethernet circuits that come with guaranteed SLA's and where compensation or service credits are paid during an outage. However often the costs associated with these are prohibitive for the sme.

An ISP should not be penalised where a customer purchases a residential consumer spec product and then expects to get business grade services from it.

SME's typically range from micro to businesses of up to 10 employees and it is all too often the case that a product is selected on its price rather than one that provides the service backup which will keep the business up and running should a service affecting fault arise.

ISP's need to be clear in their product descriptions, point of sale discussions, web marketing collateral what these products are and service support levels made much clearer should things go awry so that the customer is not disappointed should they have a service issue that might impact their business. We would be willing to look at areas to enhance this further and this might well be something we could participate in looking at with other industry colleagues through a VICOP model as we have seen with the Broadband Speeds Codes development in both the Consumer and SME space.

If Automatic Compensation is to be considered for sme's then it should be based upon the same agreed levels as laid out for the consumers. These are consumer products despite sme's using them for business purposes. Businesses need to be responsible for ensuring that they purchase the correct product that will meet the ongoing requirements for their business critical needs.

Zen has a clearly signposted set of products and services that cater for sme's on its website here: <https://www.zen.co.uk/smallerbusiness/> and we continue to look at opportunities to continually improving that for our customers.



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

Yes. Nothing more to add in this respect.

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

No

Gary Hough

Regulatory Manager – on behalf of Zen Internet Limited