



Mobile UK welcomes the opportunity to respond to Ofcom's Call for Inputs on Automatic Compensation. Our remarks in this response relate exclusively to the mobile market in the UK.

By way of introductory comments, we agree with Ofcom's conclusion in the Review of Digital Communications that there is demand for the communications sector to deliver better quality of service. Customers want more, particularly more coverage, more data capacity, more powerful handsets and more bandwidth for innovative products and services, all with great customer service at competitive prices.

And the UK mobile market has a long history of delivering more, through continuous risk taking, innovation and investment, driven by competition in the market. For the ten years or so that Ofcom have been monitoring levels of satisfaction, the sector has consistently hovered around the 90% level. But mobile operators have had to run very fast to achieve this, as they have invested in more coverage, in spectrum and networks, various intermediate standards and most recently in 4G, which delivers download speeds approximately 1,000 faster than was available on 2G. It is clear that operators will continue to invest in their quality of service. Competitive forces demand it.

Operators have always competed on both price and quality. Ofcom's Annual Market reviews repeatedly identify falling mobile prices and highlight that prices in the UK are among the most competitive in the EU and other developed economies.

With regard to quality, operators work on multiple differentiating factors, including:

- Coverage & capacity
- Technology (3G, 4G etc)
- Value added services (such as voice over wi-fi and wi-fi offload)
- Content bundles
- Roaming territories
- Handset specifications
- Brand (recognition and trust)
- Customer service and experience

Ofcom and third parties (such as approved comparison sites, independent retailers) provide independent metrics that compare prices and many of the qualitative aspects of mobile services and so there is plenty of information in the market to drive competition. The level of innovation and dynamism in pricing provides ample evidence that all this is effective.

While there is always room for improvement, it must be recognised that the level of customer satisfaction is as much about the dynamic nature of customer expectation as about the measurable quality levels themselves. Network (and handset) performance and quality has improved dramatically without shifting satisfaction levels up a notch.

The interaction between performance and satisfaction, therefore, is not a simple linear relationship, when improved performance goes on pushing, Tantalus like, full consumer satisfaction continually just out reach. But the operators have a very strong record of detecting and supplying innovative products and services to customers at a price that they are prepared to pay. This is what has brought the sector from the first voice only, analogue services to the multimedia mobile broadband offerings in the market today.

In embarking on a project of this nature, therefore, Ofcom has to proceed with extreme caution and to be very clear and explicit about its objectives and the key indicators of success. They are effectively proposing a very complex intervention, and second guessing the market by imposing and enforcing their own quality standards at a cost yet to be determined. It is thus essential to follow the principles of Better Policy Making by conducting a full assessment that assesses all the options, including 'do nothing'. Otherwise, there is a risk that our sector will be forced into an unfocused and expensive exercise, which will add costs to the service but not achieve anything of long term benefit to the customer.

Having set the context, Mobile UK has the following observations on the specific questions raised:

Question 1: What are your views on our initial thinking regarding the factors potentially relevant in determining:

(a) scope, including possible eligibility;

(b) form and process of compensation;

(c) level of and basis for compensation; and

(d) possible costs and risks of introducing automatic compensation?

An automatic compensation scheme is potentially a very significant market intervention. Mobile UK is pleased to see that Ofcom recognises that there will be associated costs and that there is a significant regulatory risk of distorting competition or taking the market in a direction that would not result from normal market forces.

Moreover, as Ofcom also acknowledges, a scheme of this sort goes beyond the requirements of the Consumer Rights Act.

During the passage of the Bill, the matter of quality standards for services was very carefully looked at by the pre-legislative scrutiny committee and the Government's response was as follows:

"The Government has looked in detail at whether to add a new quality standard for services. As well as its own consultation, the Committee's report, a detailed roundtable and the commissioning of further evidence, the Government is not persuaded of the benefits of an outcomes-based service standard for consumers and is concerned by the potential costs for businesses."

This view was not challenged during the subsequent parliamentary debate on the Bill.

While Mobile UK recognises Ofcom's right to act independently in the sector, it is a strong step to go beyond the considered view of Parliament so soon after the Act has come into force.

Furthermore, mobile services are not sold on the basis of exaggerated claims on reliability or coverage; quite the reverse. Typical terms and conditions point out that, due to the nature of mobile technology, there are a number of reasons why it's impossible to provide a fault-free continuous service.

These include: damage to network infrastructure and base stations; the number of people using the network at any one time; other factors outside the operator's reasonable control such as new buildings and structures being erected between the customer and base stations, the thickness of property walls or a change of mobile equipment. Furthermore, identifying root cause can often be a costly task too, adding further cost and risk to any proposal for automatic compensation.

In summary, there are significant risks of market distortion and unintended consequences. In addition, Ofcom will have to wrestle with the range of questions highlighted in the Call for Inputs (and no doubt others). Service problems for a mobile customer base have asymmetric impacts, depending on whether a customer is a regular user of the cell in question, or a visitor passing through; and what is an appropriate payment? (Rail compensation, for example, is based on a refund of some portion of the ticket price up to a maximum of 100%). Ofcom suggests refunding more than the *pro rata* loss of service, making an assessment of inconvenience and effectively taking the sector into the realm of consequential losses to the customer. This is fraught with potential difficulties and potential distortions, which seem avoidable, particularly when customers have ADR schemes available to them to deal with the more complex cases.

A fully automated compensation scheme is very unlikely to pinpoint accurately customers that suffer 'detriment' due to the mobile nature of phone usage. For example, customers being in the vicinity of a site that is out may not be impacted if adjacent sites can take over the coverage. Depending on the type of outage, parts of a customer's service may still work (for instance voice, in the case of a data outage). Another factor to take into account when assessing the impact is the availability of Wifi calling, which would mitigate the impact of an outage.

As to the projected costs to the sector, that will depend on the nature of the scheme.

As Ofcom indicates, it will be necessary to identify a factor of 'service quality' that is objective and relatively straightforward to measure. Ofcom rightly notes that this is likely to be a complex exercise in relation to mobile and that many aspects of quality are unlikely to be suitable candidates. We agree; it is a complex intervention.

By way of example if outages were to be determined by Ofcom as being possible to measure objectively, it is quite another matter to assert that an auto-compensation scheme would incentivise significant improvement. This would assume that Ofcom and operators could assess the cost/benefit analysis for, respectively, setting appropriate levels of compensation and improving network availability.

Table 1: Fixed and Mobile network incidents notified to Ofcom (source: Ofcom)

Network incidents reported to Ofcom Sept 2014-Aug 2015		
Hardware failure	240	45.8%
Software bug	102	19.5%
Power cut	72	13.7%
Cable cut or break	35	6.7%
Bad maintenance	24	4.6%
Bad change	9	1.7%
Bad weather	8	1.5%
Procedure flaw	6	1.1%
Power surge	5	1.0%
Fire and explosion	4	0.8%
Configuration error	4	0.8%
Overload	3	0.6%
Cooling outage	3	0.6%
Human factor	3	0.6%
Not applicable	3	0.6%
Cyber attack	2	0.4%
Design error	1	0.2%
Total	524	100.0%

In table 1, 45.8% of incidents (and do these always lead to outages?) relate to hardware failure and 19.5% to software bugs (the mobile/fixed split is not shown). No operator deliberately introduces software bugs but it is widely recognised they are virtually impossible to eliminate completely. In the absence of a rational investment decision/Cost Benefit Analysis, there is the risk that any automatic compensation payments would just be added to the cost of business and not drive improvement.

A further large category is hardware faults, where elimination of failure would also present extremely difficult problems, when they are likely to arise from normal wear and tear.

Of the categories listed above, perhaps less than 10% result from human error, where there may be some scope for incremental improvement driven by the threat of having to pay automatic compensation in the event of a failure. With less than 8% of total reported incidents being for the mobile sector, it would suggest that it would be very disproportionate to introduce an automatic compensation scheme for the mobile sector which could be designed to drive any more improvements than are already being delivered, demonstrably, through competitive market forces. The challenge for the regulator is setting levels that are neither too high nor too low – since either has distorting effects. We see little evidence that the problems Ofcom identifies warrant this risk.

Question 2: Are there any additional considerations?

In addition to the potential costs of compensation and/or the costs associated with improvements designed to reduce the risk of having to make a payment, Ofcom must consider the cost of administering the automatic compensation scheme, which are likely to be very significant and take time to implement. This will also have an opportunity cost, as IT development programmes are a limited resource within the operators and time taken up with regulatory compliance can displace feature upgrades that are of more pressing interest to the market.

Question 3: Do you agree with our initial views on the service quality issues that could matter most to consumers?

The Consumer Rights Act already sets the test that providers are required to deliver their service with due care and skill. In a competitive market, providers are free to go beyond the law to win or retain customers. Markets are generally the most efficient mechanism for responding to consumer demand. Ofcom's intervention in this competitive process therefore carries clear regulatory risk. Robust assessment of the costs and benefit of intervention will be needed.

We believe that the TopNet exercise that ran between 2005 and 2009 demonstrated that relatively peripheral measures such as dropped calls were not significant in influencing consumer behaviour and that, in any event, operators made every reasonable effort to ensure that their network ran reliably and was repaired as soon as practical, when required. The differences in performance were not big enough to influence customer choice.

Question 4: Do you agree that some of the above issues may be more suitable for automatic compensation than others?

Mobile UK agrees that objectively measurable factors are more suitable than subjective factors (such as network congestion, which could arise from a whole range of causes, as Ofcom acknowledges) .

Question 5: Do you agree that we should consider the need for exceptions and dispute resolution?

Yes.

Under the CRA, mobile operators are legally obliged to provide their service with due care and skill. That is what they do and that is the basis on which they sell their service.

If Ofcom wants to justify going beyond that, it should not be in relation to matters that are essentially beyond the operator's control.

With regards to dispute resolution, the current ADR schemes work well, when there is a dispute between the customer and the operator that cannot be resolved in a timely or satisfactory manner.

Question 6: Do you think Ofcom should consider the relationship between retailers and suppliers and if so, how?

No comments