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# Regulating for Quality of Service

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Survey Report

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## About this document

The organisations comprising UKRN together provide regulatory oversight of the companies which own and operate much of the UK's national infrastructure. This infrastructure and the products and services it delivers are important, and sometimes vital, for the normal functioning of our day-to-day lives. The quality of service within these industries is therefore an important topic for regulators, suppliers, and consumers.

This report sets out the findings of a survey of the approaches taken by regulators in the telecommunications, rail, energy and water sectors to regulating for quality of service. It summarises the various interventions by participant regulators relating to quality of service at different stages of a consumer journey, from starting a particular service through to concluding that relationship.

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## About UKRN

UKRN is a network formed by the UK's economic regulators:

- The Civil Aviation Authority (CAA)
- The Financial Conduct Authority (FCA), including the Payment Systems Regulator (PSR)<sup>1</sup>
- Office of Communications (Ofcom)
- Office of Gas and Electricity Markets (Ofgem)
- Water Services Regulation Authority (Ofwat)
- Office of Rail Regulation (ORR)
- Northern Ireland Authority for Utility Regulation (Utility Regulator)

Monitor, the sector regulator for health, participates in the network and its projects as appropriate. The Water Industry Commission for Scotland (WICS) and Legal Services Board (LSB) are contributing members which generally participate in projects as observers.

## Contributors to this document

Ofcom, Ofgem, Ofwat and ORR have contributed to this document. The Competition and Markets Authority (CMA), LSB, Monitor and WICS have been involved as observers.

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<sup>1</sup> Although it has competition and consumer protection functions, the FCA is not classed by HM Government as an economic regulator

## Table of contents

1. Executive summary.....	3
2. Introduction .....	10
3. What is quality of service?.....	15
4. The Consumer Journey.....	24
5. Conclusions.....	70
Annex I – Glossary of terms.....	71

# I. Executive summary

## Purpose and scope

- 1.1. Competitive markets often establish the level of quality of service consumers require without the need for external intervention. Competitive pressures and consumer choice and expectations drive up standards and service providers can distinguish themselves on the basis of the quality of service and products they supply.
- 1.2. However, in some instances, competition cannot be expected to deliver the optimum result. This tends to be the case where there are monopoly networks, or where there are no market imperatives to meet the needs of a given group of consumers or to deliver a level of service that consumers want, rather than a service that suits the service provider.
- 1.3. This project provides an overview of the current regulatory mechanisms used by Ofcom, Ofgem, Ofwat and ORR (the participant regulators) to promote quality of service in the telecommunications, energy, water and rail sectors.<sup>2,3</sup>
- 1.4. This report is structured around the consumer journey: by which we mean the stages of interaction between a consumer and their service provider. For clarity and to avoid overlap with other UKRN projects, the report notes but does not consider in detail, the pre-contract activities (e.g. marketing of the services) or post-contract interaction (for example, to address unresolved issues). The focus in this report is on the interaction between the consumer and service provider once they are in a contractual relationship (or – for water and sewerage – covered by statutory agreement) or the consumer is actively in receipt of a service.
- 1.5. This is the first collation of regulators' approaches to regulating for quality of service in these sectors – we expect it to be a useful guide to the ways in which we intervene in consumers' interests to promote quality in these sectors. It will help fellow regulators when considering options for introducing new, or modifying existing, regulatory quality of service interventions – or stepping back from them as appropriate. It will also act as a reference source for consumer representatives and interested consumers on what quality of service controls are in place, and what support is available, in a given sector. In light of this aim, the report includes links to supporting regulatory decisions, guidelines and reviews to aid readers to explore issues in more depth.
- 1.6. The report presents the results of a factual survey. The regulatory measures and mechanisms set out in this report have been developed for the particular conditions and circumstances of each sector. Accordingly, a successful approach in one sector is no guarantee of similar success or even appropriateness in another given the differences in market conditions and the specific nature of the service being delivered. Each participant regulator regularly reviews the efficacy of its interventions, for example, through periodic reviews of particular markets, and/or shortly ahead of the expiry of

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<sup>2</sup> Note that the Government intends for the Consumer Rights Bill to become law on 1 October 2015. Among other things, the Bill aims to clarify the standards a consumer can expect when they buy something and sets out what to do when goods, services or digital content do not meet those standards.

<sup>3</sup> In the rail sector, franchise conditions set by the Department for Transport govern the performance targets against which train operating company (TOC) performance is measured.

extant controls. The report sets out current practice at the date of publication, including new and recently-refined mechanisms, the success of which it is too early to evaluate.

## Summary of findings

- 1.7. The level of competition in service provision varies significantly across the sectors addressed in this report. There are competitive markets and areas where competition has either not yet been introduced or could not be efficiently delivered (for example, core infrastructure networks).
- 1.8. In both downstream (service provision) and upstream (networks), all sectors have some degree of service quality monitoring and instances of regulatory intervention to ensure service quality. The level of intervention, however, varies in response to the effectiveness of competition.
- 1.9. Figure 1.1 below outlines some of the main interventions in each sector.<sup>4</sup>

**Figure 1.1: Summary of main interventions**

Sector	Starting service	During Service	Finishing service
<b>Telecoms</b>	<ul style="list-style-type: none"> <li>• Minimum standard at the upstream level for service installation time</li> <li>• Consumers can switch provider</li> <li>• Conditions to require providers to take special measures when providing service to key consumer groups</li> </ul>	<ul style="list-style-type: none"> <li>• Complaints handling standards</li> <li>• Minimum standards at the upstream level for network operator fault resolution and provisioning of new lines</li> <li>• Priority service protections for certain consumers</li> <li>• Publication of quarterly complaints report</li> <li>• Broadband speeds voluntary Code of Practice</li> <li>• Price controls which assume a certain level of service quality</li> <li>• Enforcement action for non-compliance with regulatory rules, including ability to require consumer redress</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum contract period of no more than 24 months</li> <li>• Guidance on early termination charges</li> <li>• Ban on automatic renewal of fixed term contracts for fixed voice line and broadband services</li> <li>• Requirements for number portability during switching</li> </ul>
<b>Energy</b>	<ul style="list-style-type: none"> <li>• Connection time target</li> <li>• Network incentives for quality service in connecting larger customers</li> <li>• Consumers can switch to another provider</li> <li>• Service arrangements and processes accountable to standards</li> <li>• Licence conditions to safeguard key consumer groups</li> </ul>	<ul style="list-style-type: none"> <li>• Standards of Conduct on information and customer contact</li> <li>• Complaints handling standards</li> <li>• Publication of complaints data and Social Obligations Reporting</li> <li>• Priority service protections for certain consumers</li> <li>• Consumers can switch to another provider</li> <li>• Consumer redress order</li> <li>• Price controls which assume a certain level of service quality</li> <li>• Performance and quality standards for faults</li> <li>• Enforcement action for non-compliance with obligations</li> </ul>	<ul style="list-style-type: none"> <li>• Ban on automatic renewal of fixed contracts</li> <li>• Transferral of contracts with existing provider when consumer moves property</li> <li>• Switching of provider whether a consumer moves or remains in property</li> </ul>
<b>Rail</b>	<ul style="list-style-type: none"> <li>• Punctuality/reliability targets</li> </ul>	<ul style="list-style-type: none"> <li>• Complaints handling standards and quality of service targets set out under franchise</li> </ul>	<ul style="list-style-type: none"> <li>• Refunds can be provided if a</li> </ul>

<sup>4</sup> Please note that these are over and above the protections afforded by competition and consumer law, which participant regulators have concurrent powers to enforce in their respective sectors and general contract law.

Sector	Starting service	During Service	Finishing service
	<ul style="list-style-type: none"> <li>Code of Practice on retail information</li> <li>Franchise agreements detail performance standards at the upstream level</li> <li>Requirement for policies on limited mobility ensure confident travel for those needing assistance</li> </ul>	<ul style="list-style-type: none"> <li>obligations</li> <li>Obligations for delivering information that enables passengers to plan journeys including during disruption</li> <li>Publication of performance information</li> <li>Protections for passengers needing assistance</li> <li>Price controls with targets for service enhancement</li> <li>Entitlement for compensation under National Rail Conditions of Carriage (dependent upon circumstances).</li> <li>Enforcement action for licence breach</li> </ul>	<ul style="list-style-type: none"> <li>consumer decides not to travel due to instances such as cancellations, delays or if they no longer require use of a season ticket.</li> </ul>
<b>Water &amp; sewerage</b>	<ul style="list-style-type: none"> <li>Guaranteed Standards Scheme entitles consumers to guaranteed minimum service standards</li> <li>Statutory duties to provide assistance and protect key consumer groups</li> </ul>	<ul style="list-style-type: none"> <li>Complaints handling standards</li> <li>Formal investigation of complaints</li> <li>Priority service protections for certain consumers</li> <li>Service Incentive Mechanism for good performance</li> <li>Minimum standards for downstream service faults/failures</li> <li>Enforcement action taken for non-compliance to standards</li> <li>Quality of service incentivised through price controls</li> </ul>	<ul style="list-style-type: none"> <li>Protection from erroneous billing</li> </ul>

## Quality standards for and monitoring of complaints handling

- 1.10. Much of the focus of service quality monitoring and intervention is on how service providers engage with consumers, especially when things go wrong. All four sectors have standards and monitoring around complaints handling and other interactions, such as how quickly and effectively providers respond to loss of supply, service failure or disruption.
- 1.11. These quality standards can include specified compensation for wholesale consumers or retail consumers, where supply is lost or service provision is not as expected. The nature of those arrangements may depend on the legislative framework determined by Parliament. For example, Ofgem has statutory powers to make regulations setting out standards of performance for electricity distributors and gas transporters and has used these powers in order to impose Guaranteed Service Standards in the gas and electricity markets. Alternatively, the market may be relied upon to deliver appropriate compensation arrangements – this is currently the situation for telecoms. To supplement market incentives, the regulator Ofcom is currently considering the compensation arrangements offered by Communications Providers (CPs) in order to identify whether fixed-line consumers who experience poor quality of service are adequately protected and aims to decide on next steps in spring 2015.
- 1.12. In those sectors where regulation controls the compensation payable, there is typically a mix between automatic compensation and claims-based systems linked to the nature of the service consumed (for example, in the rail sector as the supplier cannot anticipate the impact of service failure on an individual consumer a claims based approach is appropriate, whereas in the water sector, automatic compensation is more appropriate for water supply interruption to a home).

## Quality and accuracy of information for consumers

- I.13. The quality and accuracy of information provided to consumers is regarded by regulators as an important component of customer service, both as a matter of good practice and to enable an audit trail in case of enforcement action. The ways in which good quality information provision is assured vary from sector to sector, but the objective in all cases is to mitigate information asymmetry between service providers and consumers (service providers usually have more information than consumers) and, where applicable, to empower consumers to make informed choices.
- I.14. In telecoms, much of the information published by Ofcom is based upon data provided by CPs, for example mobile voice call quality. Ofcom also publishes CP specific data on complaints it receives from consumers and results from market research such as consumer satisfaction with complaint handling/customer services and information on broadband speeds by CP. In energy, Ofgem has introduced licence requirements to ensure information provided by suppliers is accurate and appropriate to consumers' needs. In rail, train operators must follow an industry code of practice to ensure passengers get the information they need to buy the most appropriate ticket for their journeys. Train and station operators also have licence conditions to ensure that they provide accurate and timely information to enable passengers to plan their journeys, including during disruption. The Guaranteed Standards Scheme (GSS) applicable to water in England and Wales includes a requirement that companies inform billed customers of their rights every year.

## Information to promote competition – facilitating effective switching

- I.15. In sectors where switching is possible, regulators have intervened to promote the provision of information to empower consumers to make informed switching decisions. Ensuring good quality information is provided to consumers ahead of switching is a key part of Ofgem's approach. Ofgem requires suppliers to give clear, accurate information on costs and consumption to enable consumers to make meaningful comparisons between tariffs. Ofcom considers that well-functioning communications markets require effective switching processes, including to drive competition by enabling dissatisfied customers to change provider easily. As mentioned above Ofcom also publishes information on CP performance to assist consumers when deciding which CP to choose. ORR focus on clarity and accessibility of information to ensure that passengers can identify the best ticket for their needs. For some journeys, this can signpost a choice of provider, for example where routes are served by more than one train operator.

## Quality incentives in price controls

- I.16. For network monopolies and those with significant market power, price control incentives and other regulatory requirements can be crucial mechanisms to drive service quality where other pressures (such as competition) might be weak. In recent years, Ofcom has introduced service quality minimum standards (at the upstream level) for connections and repairs to BT's fixed voice and broadband network, alongside new information reporting requirements. Ofgem has incentivised energy networks to develop a sharper focus on consumer outcomes, alongside introduction of new assurance requirements on the quality of reported data. Water and sewerage services in England and Wales are price controlled, with allowances linked to what customers want and are willing to pay for. Retail water price controls also have a strong cost incentive. Similarly, ORR's current control period focuses on companies delivering what matters to passengers, with targets for punctuality and cancellations.

## Network quality monitoring

- I.17. Quality monitoring of networks is often focused on asset health and the ability of network operators to ensure reliable service. Ofcom's annual infrastructure report provides a snapshot of the state of UK communications infrastructure, including coverage and capacity. Both Ofwat and Ofgem's price controls have incentives to minimise supply interruptions and reduce leakage (in water) or loss of load (in electricity), both of which have cost implications for consumers. ORR's price control also includes measures to reduce overruns of engineering possessions<sup>5</sup> which can have a significant impact on passengers. Price controls across all sectors in the report also allow for investment to maintain service quality for the future.

## Protections to ensure services are accessible to consumers with specific needs

- I.18. Across all participant sectors, service quality requirements include particular provision for certain groups of consumers. While some of these groups may be described as 'vulnerable' or in need of special arrangements, the purpose of service quality interventions is often to ensure that these consumers are able to access markets and products, and are not additionally disadvantaged by the way that services are provided.
- I.19. Ofgem's Consumer Vulnerability Strategy focuses on consumers whose circumstances, combined with aspects of the market, lead to them being placed in a vulnerable situation. This dynamic view of vulnerability recognises that some groups are placed in a disproportionately more difficult position not only by their circumstances, but by product design and the ways that markets function. Tailored help for energy consumers in vulnerable situations is provided through the Priority Services Register (PSR). Under their licence conditions, suppliers and electricity distributors are required to establish and maintain a register of consumers identified to be 'vulnerable'.
- I.20. Similarly, conditions set by Ofcom require CPs to take special measures when providing services to consumers with disabilities. For example, there are obligations on CPs to provide priority fault repair for people who depend on telephone services because of their disability. In balance with its other duties, ORR has regard to the interests of people who are disabled in relation to services for the carriage of passengers by railway or to station service. It also requires train and station operators to put in place a policy setting out how they will identify and meet the needs of those who require additional assistance whilst travelling. This includes providing assistance in boarding and alighting trains and providing information in forms appropriate to the needs of consumers with visual and hearing impairments.
- I.21. Ofwat and water companies have statutory duties specifically to protect the interests of certain groups of customers. These are broadly similar to the groups which Ofgem must have regard to: the disabled and chronically sick; those of pensionable age; those on low incomes; and those in rural areas. As with energy companies, water companies must maintain 'special assistance' registers for the disabled and elderly so that they are aware of the circumstances of these consumers in emergencies.

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<sup>5</sup> Network Rail needs to restrict access to its network to carry out many of its maintenance and renewals activities. These restrictions of access are referred to as possessions.

## Regulatory, competition and consumer law enforcement powers

- 1.22. A crucial role for all regulators is to take action when regulated entities fail to meet their obligations. Typically, regulators take enforcement action for breaches of their regulatory framework and the regulators in this study also have concurrent powers with the Competition and Markets Authority (CMA) in respect of certain competition and consumer protection law. Emphasis on the interests of consumers, which tends to be a common theme in regulators' statutory duties, means that enforcement action is often positioned in terms of remedying harm or loss suffered by consumers (or deterring further loss or harm).

## Imposition of financial penalties and powers to require compensation

- 1.23. The participant regulators are all able to impose financial penalties for a breach of regulatory requirements. Up to 10% of company turnover is the usual ceiling on this power. In addition, Ofgem has powers to force payment of compensation alongside or instead of a penalty. Also distinct from any financial penalty, Ofcom can require that the consequences of the breach be remedied, which in appropriate circumstances may include a requirement that compensation be paid to affected parties.<sup>6</sup> Under Ofwat's GSS there are defined compensation payments that can be made to domestic consumers if defined standards are not met. Beyond this, Ofwat can also take enforcement action (and/or impose financial penalties) if standards are not met. Regulatory action against service providers can also have indirect financial consequences. For example Ofgem has, on occasions, stopped energy companies undertaking sales activity until a problem is resolved. Action of this kind can often be taken quickly.

## Alternative Dispute Resolution

- 1.24. In some regulated sectors, including telecommunications and energy, there are also requirements on service providers to provide access to Alternative Dispute Resolution (ADR) or ombudsman schemes as part of complaints handling mechanisms.<sup>7</sup> This should enable consumers to proactively seek to resolve individual issues regarding service and other failures without relying on specific enforcement action by the regulator. In water, an operational ADR scheme is scheduled to be in place for all water consumers by the end of the 2014 – 2015 financial year.

## Next steps

- 1.25. We are publishing this work in order to share the evidence we have gathered and analysis we have undertaken with those who have an interest in quality of service either within the markets we regulate or more widely. We invite comments on the content of this document, and, in particular, on quality of service issues that could be usefully considered through cross-sector work going forward.
- 1.26. We propose in the coming months to hold an event at which UKRN members will discuss options for promoting quality of service and share good practice. We propose also to hold an event bringing

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<sup>6</sup> Section 151(7) of the Communications Act 2003, explains that the obligation on a CP to remedy the consequences of a contravention may include the requirement to compensate a person for loss or damages that they may have suffered due to the breach, or make a payment to a person to cover the inconvenience they may have experienced.

<sup>7</sup> In July 2014 UKRN published an overview report on ADR in regulated sectors  
<http://www.ukrn.org.uk/wp-content/uploads/2014/07/Alternative-Dispute-Resolution.pdf>

together regulators and consumer bodies to discuss the approaches taken to regulating for quality of service and to gain feedback on this report. Any potential further collaborative work identified will be considered in the context of the UKRN's existing future work programme.

- I.27. Individual regulators will continue to take forward areas of further sector-specific work catalysed and informed by this review.

## 2. Introduction

- 2.1. The organisations comprising UKRN together provide regulatory oversight of the companies which own and operate much of the UK's national infrastructure. These services are often crucial to the normal functioning of the day-to-day lives of consumers. The quality of service within these industries is therefore important for regulators, suppliers, and consumers.
- 2.2. In competitive markets, consumers can exercise choice and companies can distinguish themselves on the basis of the quality of service or products that they supply, meaning that the market can be left to establish the most efficient price/quality equilibrium.
- 2.3. However, in some instances, competition cannot be expected to deliver the optimum result – for example, where:
  - there are network monopolies or organisations with significant market power;
  - the particular needs of a minority set of customers would not be met;
  - there is a need to compel collaboration between network industries for the purposes of ensuring a better product or services offered to network users/consumers;
  - there are political or societal expectations of quality of service; or
  - there is no market for competition to be present.
- 2.4. In these instances, the participant regulators have powers, duties and functions requiring them to intervene in order to, amongst other things, promote service and product quality.

## Project scope and analytical framework

### Scope of the project

- 2.5. The aim of the Regulating for Quality of Service project is to enable participant regulators to learn from each other's approaches with a view to ensuring good quality of service for consumers. A key step towards this is to set out current practice.
- 2.6. The purpose of this report is to provide an overview of the various regulatory mechanisms that exist to promote quality of service across particular sectors. The service qualities that are under review are limited to the level of performance in delivery of services, both at a network or upstream level and a downstream or service delivery level. This latter delivery level is within an agreement made between a given service provider and a domestic consumer. It may include, for example, the time to connection of those services; the speed with which faults resulting in the loss of those services are rectified; and the timeliness of arrival at a particular destination in the context of rail services.
- 2.7. This is a fact-finding survey and does not constitute a statement of or position on regulatory policy and the regulatory powers and duties of the participant sector regulators are unaffected. The participant regulators' remits vary in geographical scope. Ofcom's remit is UK-wide, ORR and Ofgem's remits cover Great Britain, and Ofwat's remit covers England and Wales. Where sector conditions and interventions are mentioned in this report, these should be considered in the context of each regulator's specific remit.

- 2.8. To avoid overlap with other UKRN projects and to reduce complexity, we include but do not go into detail on pre-agreement activities which may include, for example, price comparison services or sales (intermediary or otherwise). We do not consider aspects post-contract, such as speed of repayment of any outstanding balances on a closed account. Neither do we consider issues relating to the specific technical or safety characteristics of the product nor services (e.g. water purity) in detail. These technical aspects are very important and setting and upholding such standards is a core part of participant regulators' work, in liaison with other bodies as appropriate.<sup>8</sup> These aspects also tend to be considered as “hygiene factors” which consumers notice if they are not present but are not typically drivers of satisfaction or competitive choice. We therefore decided that they were out of scope for this survey to enable us to reduce complexity and focus on areas of greater commonality.
- 2.9. In order to focus on the area of most commonality amongst the participant sectors, this report covers the interventions which apply to domestic (non-commercial) consumers. Some of the protections which apply to individuals may also apply to sole traders or small and medium enterprises (SMEs), to the extent that they purchase the same services. However, there are some aspects which do not apply or apply to a lesser extent – such as consumer law protections and others aimed at protecting disabled consumers or those in a vulnerable situation. Conversely, and depending on the market, business consumers may be able to take advantage of additional contract types and, in some cases, a wider choice of suppliers.
- 2.10. Section 3 provides more detail on what quality of service means in each of the participant sectors.

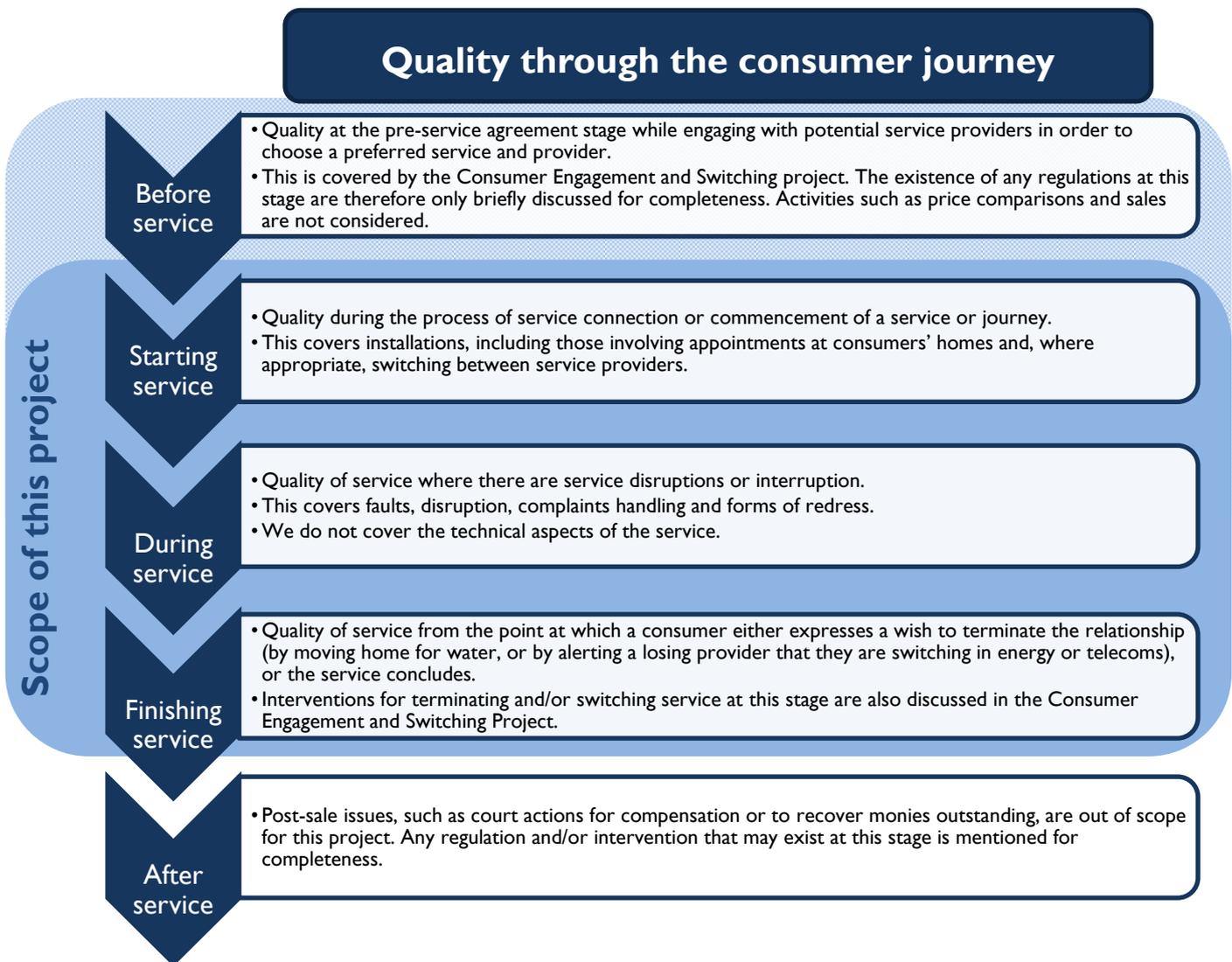
### **Analytical framework: Stages of the consumer journey**

- 2.11. There are many factors to which quality of service can relate and there are a variety of mechanisms used by participant regulators to regulate quality of service in their respective sectors. In order to capture the breadth of these factors and mechanisms, we have structured our analysis within a consumer journey framework.
- 2.12. The consumer journey refers to the stages of interaction between a consumer and their service provider. For the purposes of this project, we have defined the journey as consisting of five stages. We have focussed on the three middle stages, from when the consumer chooses (or is notified by as in the case for water) their service provider to when the consumer terminates their relationship with that provider. The stages are outlined in Figure 2.1 below.
- 2.13. As noted above to limit overlap with other UKRN projects and reduce complexity, we have not explored in detail either Stage 1: Before service or Stage 5: After service. They are noted in this report for completeness in terms of the consumer journey, and we refer to related UKRN work as appropriate.

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<sup>8</sup> Noting that various bodies are responsible for monitoring and enforcing requirements, for example, the environment agency in water and there are passenger bodies in the rail sector which help inform ORR when reviewing its regulations on service quality. In telecoms, the OTA facilitates and subsequently reports to Ofcom on negotiations between industry and Openreach on Openreach's Service Level Agreements and Service Level Guarantees.

Figure 2.1: Quality through the consumer journey and the scope of this project



### Key consumer groups

- 2.14. The personal circumstances and characteristics of a consumer can combine with market conditions to lead to situations which place the consumer in a position of vulnerability, relative to other consumers in the market. The consumer may become particularly reliant on a given service and/or find it more difficult than other consumers to engage with the market or their service provider. Their circumstances could also prevent them from being able to experience the same benefits from the market as other consumers.<sup>9</sup>
- 2.15. A consumer can find themselves in a situation where they could be considered to be vulnerable (or require accessibility assistance in the case for rail) at any stage of the consumer journey or their lifetime. This means that any consumer may, in certain situations, be considered to be vulnerable, regardless of age or physical ability.

<sup>9</sup> In the context of rail, vulnerable consumers are those who may require assistance with accessibility when undertaking a train journey.

- 2.16. Participating regulators have identified vulnerable consumers and consumers with particular accessibility requirements as key consumer groups for particular regulatory focus. We therefore specifically consider this group of consumers and the particular regulations that are in place to protect and further their interests throughout the consumer journey.

## Interaction with other UKRN / regulator projects

- 2.17. There are linkages between some of the discussion in this report and those in other UKRN and participant regulator projects. For example, in this report we discuss the regulatory mechanisms for quality of service in the incidence of service disruption or failure. While out of scope for this project, we acknowledge that a failure of one service, for example electricity, can result in other services, e.g. fixed line broadband also failing. The UKRN's *Resilience Project* is exploring collaborative approaches to dealing with multiple service failures. Other projects which explore issues briefly discussed in this report include:
- the UKRN *Consumer Engagement & Switching Report*<sup>10</sup> (in respect of selecting a provider on the basis of service quality and/or promoting good quality pre-sale interactions with consumers. Interventions when stopping a service are also discussed);
  - the UKRN *Understanding Affordability Across Sectors Report*<sup>11</sup> (in respect of obtaining a good quality service for vulnerable/low income consumers);
  - the UKRN *Benefits of Regulation Project*<sup>12</sup> (in respect of illustrating the improvements in quality of service driven by regulatory interventions);
  - Ofgem's *Infrastructure Reports*.<sup>13</sup> Several reports are produced as part of Ofgem's programme of work on infrastructure. Each report has varying degrees of consumer interest. The *Interactions Report*<sup>14</sup> was published on 24 November 2014 and references the consumer impact of efficiencies across sectors in infrastructure development. The *cross sector Investor Guide*<sup>15</sup> was published on 11 December 2014 as part of the UKRN *Cross Sector Infrastructure Project* and describes, among other things, how regulators challenge companies to deliver infrastructure at good value for money for consumers. Further reports are expected on innovation in network sectors, and on investment ahead of need; and

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<sup>10</sup> The UKRN's Consumer Engagement and Switching report details the factors affecting how a consumer is able to engage and participate in markets, and presents a review of the regulations that are present in the respective participant sectors which address known barriers to consumer engagement and empowerment in those markets. Consumer perceptions towards their service provider in regards to switching (and other aspects such as trust, market choice and accessibility of information) are discussed at length, along with the drivers of switching. The report is available here <http://www.ukrn.org.uk/?p=403>

<sup>11</sup> The first phase of this report is available here: <http://www.ukrn.org.uk/wp-content/uploads/2015/01/UKRN-Affordability-Report.pdf>

<sup>12</sup> Work on this project is on-going and has not produced any formal publication at the time of writing this report.

<sup>13</sup> Information and literature on Ofgem's work on infrastructure is available on its website: <https://www.ofgem.gov.uk>

<sup>14</sup> The report on next steps in cross-sector infrastructure interactions is available here <http://www.ukrn.org.uk/?p=343>

<sup>15</sup> The UKRN cross-sector investor guide is available here <http://www.ukrn.org.uk/?p=371>

- the UKRN Consumer Working Group's July 2014 discussion paper on *Reviewing the benefits and options for Alternative Dispute Resolution in regulated sectors*.<sup>16</sup>

## Structure of this report

2.18. The remainder of this report is structured as follows:

- Section 3: What is quality of service? – covers the role of competition, the role of regulators and what quality of service means in the telecoms, energy, water and rail sectors.
- Section 4: Consumer journey – covers each stage of the consumer journey setting out the context for each stage and regulatory interventions present in each of the participants' sectors. In each one, we draw out any interventions specifically related to protecting potentially vulnerable consumers, including those with particular accessibility needs.
- Section 5: Conclusions and next steps – covers our findings and proposal for next steps.
- Annex 1: Glossary – explains terms used in this document.

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<sup>16</sup> <http://www.ukrn.org.uk/wp-content/uploads/2014/07/Alternative-Dispute-Resolution.pdf>

### 3. What is quality of service?

- 3.1. Quality of service applies to any aspect of the provision of a service to a consumer, in relation to connecting to a service, a reduction in or loss of service or when they express their intention to terminate their relationship with or cease taking a service from a provider.

#### The role of competition

- 3.2. In an efficient and competitive market, quality of service would ordinarily be maintained by the presence of competition. Intervention should, therefore, only be necessary when competition cannot be expected to deliver adequate quality of service. For example, instances of network or scale monopolies where incentives to deliver reasonable quality of service are not as strong as in a competitive environment, where the specialist needs of key consumer groups may not be met, or to require that individual organisations work collaboratively to deliver the benefits of an integrated network (see paragraph 2.3).

#### The role of the regulator in quality of service

- 3.3. The principal role of the regulator is to protect and further the interests of consumers who participate in and engage with the markets of their regulated sectors. As part of this role, regulators can intervene when and where there is a market failure and/or failure of market mechanisms. From the perspective of quality of service, the purpose of the regulator is to ensure that consumers do not suffer undue detriment, for example as a result of any service provider or market failures, or where there is no market present (such as in water).
- 3.4. When considering and undertaking regulatory duties relating to quality of service, participant regulators must have regard to the desirability of promoting competition, as well as adhere to the principles of better regulation.<sup>17</sup> Participant regulators must also ensure that interventions are proportionate and avoid undue adverse effects on competition (which are detrimental to consumers) by, for example, raising or reinforcing barriers to market entry or unnecessarily increasing costs. Regulators must also have regard to key consumer groups when considering and/or pursuing regulatory intervention. This was discussed in more detail in paragraph 2.14.
- 3.5. This report focusses on quality of service issues with respect to the delivery of a given defined product – energy, telecoms, water or rail services. However, clearly, while in many markets competition can both define the quality of the service, as we have discussed, and the nature of the service being delivered (i.e. the wool content in a garment), in many of the markets covered in this paper it is difficult for consumers to determine the appropriate quality of base product to purchase, and absent external intervention/collective conscious market decisions, market failure is likely.
- 3.6. Specifically, there are a number of interventions regulators/government/standards boards have made in the interest of defining an acceptable base product around which the market can operate. While

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<sup>17</sup> These require regulators to ensure that their actions are proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed. See, for example, <http://webarchive.nationalarchives.gov.uk/20100407162704/http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/principlesleaflet.pdf>

we do not consider how such decisions are made in this paper it is worth noting how such decisions underlie the service issues we are considering.

- 3.7. There are direct interventions in each participant sector to ensure that the product/service being consumed meets a minimum standard which ensures consumers are confident about the product/service being purchased. For example, in energy there are defined standards on the calorific quality of the gas supplied and the voltage of electricity provided. In rail there are targets for rail travel punctuality and safety. In telecoms the provision of a fixed voice/broadband line to a home is linked to a specific performance standard for that line and includes requirements for network interconnections. Finally in water, the purity of the water supplied is regulated to protect public health as well as minimum standards for response times to customer complaints.
- 3.8. Competition, however, can lead to participant regulators building on these base standards, such as the supply of 'Green' energy or variation in broadband capacity.

## Defining quality of service for the purposes of this review

- 3.9. The characteristics that constitute better or worse service delivery vary across each of the participant sectors as does, critically, the level and nature of competition. Consumers' expectations may also vary along with the characteristics of each sector. As a result, the regulatory mechanisms in place and the level of intervention by the participant regulators to address quality of service also vary. While there are areas of commonality in the regulation of quality of service, there is not a universal definition of quality of service across each of the sectors.
- 3.10. A key step in scoping this project was to agree on a definition that encompassed key quality of service aspects of each of the participant regulators' sectors, and was sufficiently focussed to make the best use of the resources available. For the purposes of this project, we defined quality of service as the following:

Quality of service, in the context of the Regulating for Quality project, means the level of performance in delivery of services, both at a network or upstream level and a downstream or service delivery level, within a contract (or statutory agreement for water) which has been agreed between a domestic consumer and a given provider of those services. This may include, for example, the time to connection of those services; the speed with which any faults resulting in the loss of those services are rectified; the timeliness of arrival at a particular destination.

- 3.11. The acceptable level of quality of service differs across, and within, each sector. For example, a regulator could aim to:
- achieve a minimum level of quality to meet the needs of consumers;
  - a reasonable and (proxy for a) competitive level of quality;
  - an 'ever better' approach to quality (which reflects wider policy considerations that require a level which exceeds that expected in a competitive market, or which a competitive market has insufficient incentives to deliver (for example in markets where switching is possible, there is not necessarily a competitive incentive on providers to give their customers the information and means to switch to another provider); or

- intervene to remedy market failures (such as imperfect information available to consumers). Market failure means that competition does not act as a sufficient mechanism to ensure that consumers' service preferences influence the behaviour of market participants).

## Participant regulators and their respective markets

3.12. Quality of service covers a broad spectrum of regulation which varies across different markets and different sectors. Furthermore, competition is present to varying extents in the different sectors. Here, we provide a brief overview of the market conditions and respective roles of the participant regulators.

### ORR

- 3.13. In Great Britain, ORR regulates the monopoly infrastructure provider, Network Rail, holding it to account for delivering high levels of performance and service, as well as good value for money. ORR also licenses train companies. The licence and the franchise (the contract between government and the train operator) set out a number of service quality commitments designed to ensure that train operators have passengers at the forefront of their minds when making operational decisions and, where necessary, work collaboratively to deliver the benefits of an integrated network.
- 3.14. Performance is a key driver of satisfaction for passengers and a priority for ORR has been to ensure that Network Rail and Train Operating Companies (TOCs) work effectively together in delivering reliable and timely services.
- 3.15. Though road and air provide a competitive alternative for some journeys, consumers in rail have limited opportunities to switch rail providers. ORR's focus has, alternatively, been on the clarity and accessibility of information to ensure that passengers are able to identify the best ticket for their needs and make confident journeys even in times of disruption.
- 3.16. Government has a key role to play in defining the sort of railway it wants to fund and will set the performance target it wants the industry to achieve for the money available. It also, through its contract with train operators, sets out a number of detailed quality deliverables, including requiring franchisees to annually monitor and publish how they are performing against a new Passenger Experience Metric.<sup>18</sup>
- 3.17. Government has also funded an accessible railway and ORR ensures that licensed operators have appropriate policies in place to ensure disabled passengers, including those with limited mobility, vision etc. are able to access the railway and travel with confidence.

### Ofcom

- 3.18. Ofcom regulates the UK's TV and radio sectors, fixed line telecoms including broadband, mobile phone services, postal services, plus the airwaves over which wireless devices operate. Ofcom's primary duty is to further the interests of citizens in communications matters and consumers in relevant markets, where appropriate by promoting competition. There are a range of more specific

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<sup>18</sup> The Passenger Experience Metric combines the results of Passenger Focus' National Rail Passenger Survey of satisfaction, and an independently audited assessment of the standard of facilities and services provided by the operator.

factors that Ofcom must have regard to when exercising its functions by reference to this primary duty e.g. to take account of the needs of defined groups of people such as the elderly, those on low incomes and those who are disabled.<sup>19</sup> In this context, Ofcom seeks to ensure that consumers in the UK get the best from their communications services and are protected from sharp practices, while ensuring that competition can thrive.

- 3.19. While regulating for quality of service is also important in post and broadcasting, for the purposes of the report, it was decided, in the interest of brevity, to focus on the telecoms sector. Out of all of the sectors Ofcom regulates, it considers telecoms to be the most comparable to the other participating sectors in terms of the regulatory mechanisms that are in place for quality of service.
- 3.20. Retail telecoms is a largely competitive market in which consumers can benefit from having a choice of a wide range of Communications Providers (CPs) who deliver a range of services (telephony, mobile and broadband). Some operators deliver their services over their own networks, while others use parts of BT's copper network which is run by Openreach, a functionally separate division of BT. Other CPs operate mobile networks (through which other CPs can also offer mobile services to consumers). Ofcom imposes coverage obligations in terms of percentage of the UK covered by particular networks and improving mobile quality of service for consumers is a priority area for Ofcom. It has published a plan to help support initiatives to improve mobile coverage in the UK, and provide consumers with quality information on mobile reception – see Case Study I below.<sup>20</sup>
- 3.21. At the retail/downstream level – which Ofcom has found to be competitive – CPs are not subject to licence restriction nor are they generally subject to specific individual regulatory obligations. They are, however, legally obliged to comply with the General Conditions of Entitlement (GCs) and general contract and consumer law.<sup>21</sup> The GCs impose obligations on CPs in relation to certain consumers and parts of the consumer journey. The GCs also impose more specific requirements upon CPs, such as providing consumers with free-of-charge access to Emergency Services and a requirement to participate in ADR schemes. Ofcom also encourages performance improvement at the retail level through information remedies such as publishing complaint levels and service quality comparisons.
- 3.22. In addition to the GCs, BT and KCOM (in the Kingston-upon-Hull area) are the designated Universal Service providers in the UK and are subject to Universal Service Conditions.<sup>22</sup> Under Universal Service Condition 8 (BT) and Universal Service Condition 6 (KCOM), the Universal Service providers must publish quality of service information in relation to the provision of universal services. The relevant services are (a) provision of telephony service on request, (b) schemes for consumers with special social needs, (c) call box services and (d) maintenance and supply of directory information (BT only). The information must be published in the format prescribed in Annex III to the Universal Service Directive, with a copy sent to Ofcom and to any other person on request.

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<sup>19</sup> See, in particular, Article 3(4) of the Communications Act 2003.

<sup>20</sup> In December 2014, the Government reached an agreement with EE, O2, Three and Vodafone in which these operators committed to provide mobile voice coverage across 90% of the UK landmass by the end of 2017. This agreement will be made legally binding through new licence conditions, enforceable by Ofcom.

<sup>21</sup> [http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/GENERAL\\_CONDITIONS\\_22Sept2014.pdf](http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/GENERAL_CONDITIONS_22Sept2014.pdf)

<sup>22</sup> <http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/specific-conditions-entitlement/universal-service-obligation/designation-of-bt-and-kingston/>

- 3.23. As a result of Ofcom finding BT to have Significant Market Power (SMP)<sup>23</sup> in a range of markets, BT is required to provide access to and use of its infrastructure to CPs at the wholesale/upstream level in order to promote competition.<sup>24</sup> This requirement was part of Ofcom's Fixed Access Market Review (FAMR) 2014.<sup>25</sup> New obligations on Openreach (BT's wholesale access operating division) were also introduced under the FAMR 2014, which included:
- an annual set of minimum standards for provisioning and repair performance;
    - minimum standards for provisioning and repair performance for key services to ensure that at a minimum a given percentage of new line provisions and line repairs are delivered within contracted target times – this is the first time such measures have been introduced and the targets for performance increase year on year over the three years of the control period;
    - failure to meet these standards can lead to enforcement action including financial penalties.
  - a new Key Performance Indicator (KPI) regime to enable both Ofcom and industry to more closely monitor Openreach performance, identify any potential discrimination in service provision and identify new problems as they arise (e.g. failure to deal with “tail” beyond the legal obligation);<sup>26</sup> and
  - a requirement to publish a subset of the KPIs on provision of First Available Appointments at the connections stage (see stage 2 of the consumer journey), fault repair, as well as the number of faults which it has been unable to resolve in accordance with its Service Level Agreements (SLAs) on a quarterly basis.

#### Quality of service in the postal sector

- 3.24. As noted above, Ofcom also regulates the postal sector. While the report has focussed on Ofcom role in quality regulation for telecoms it is worth noting, for completeness, the quality controls applying in the postal sector.
- 3.25. Royal Mail is the designated universal service provider in the UK, under the Postal Services Act 2011. The specific nature of the services Royal Mail are required to provide are set out in a Universal Postal Services Order (the Order) made by Ofcom in March 2012.
- 3.26. In addition to the descriptions of the services that Royal Mail needs to provide as part of the universal service, it also sets out the standards of service delivery with which they need to comply.

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<sup>23</sup> Ofcom is obliged periodically to review certain telecommunications markets to establish whether any CPs have SMP. If Ofcom finds SMP, it assesses and can impose remedies to mitigate its potential impact. There are a range of relevant factors for assessing whether a CP is in possession of SMP and the EU Commission have a published set of guidelines for market analysis and SMP assessment. These guidelines are available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:165:0006:0031:EN:PDF>

<sup>24</sup> This requirement was part of the suite of measures introduced to remedy BT's SMP. Consumers will benefit from the promotion of competition in the provision of leased lines, as competition will impact upon the availability, choice, price, quality and value for money of those services provided.

<sup>25</sup> <http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/specific-conditions-entitlement/market-power/fixed-access-market-reviews-2014/statement>

<sup>26</sup> See [Volume I of the FAMR Statement](#), Sections 9 and 11.

- 3.27. Further in March 2012, Ofcom imposed a number of regulatory conditions on Royal Mail, including an obligation on Royal Mail to provide end-to-end postal services six days a week and to meet certain performance targets. These targets include a number of targets for the performance of first and second class mail and other universal services<sup>27</sup> (for example the percentage of first class mail that has to arrive the next day in each region).
- 3.28. Ofcom can investigate Royal Mail for failing to meet its targets. These investigations can result in enforcement action, such as the imposition of financial penalties. Any enforcement action taken is subject to appeal in the Competition Appeal Tribunal (CAT).<sup>28</sup>
- 3.29. Royal Mail is also required to establish and maintain fair and reasonable remedies and redress for loss, damage or delay to USO items.<sup>29</sup> As a result, Royal Mail has established its own compensation scheme which provides retail compensation to consumers in certain circumstances. Compensation must be claimed by the consumer and the amount of compensation received is determined by Royal Mail (this can take the form of a book of stamps for low value claims or be based on actual loss suffered by the consumer but subject to a maximum cap). This further incentivises quality of service on Royal Mail so that the total amount of compensation it pays is reduced.
- 3.30. Regulation is not limited to Royal Mail. There are a number of companies (also called regulated postal operators (RPOs)) that provide similar postal services. Royal Mail and these RPOs are required to comply with certain quality-related codes of practice, such as the Mail Integrity Code of Practice (MICOP)<sup>30</sup> and the Postal Common Operational Procedures Agreement (PCOPA).<sup>31, 32</sup>
- 3.31. In addition, under Consumer Protection Condition 3,<sup>33</sup> RPOs are required to establish, make available and comply with a complaints handling procedure in accordance with certain requirements set out in that Condition. The Condition also states that an RPO must belong to a qualifying redress scheme (ADR) and should make consumers aware of their rights to refer their complaints to such a scheme. Furthermore, the Condition requires RPOs to provide special arrangements in their complaints handling process for consumers identified as vulnerable. In addition, all other non-regulated postal operators are required to comply with an obligation to operate transparent, simple and inexpensive complaint handling procedures to facilitate the fair and prompt settlement of disputes. This obligation does not extend to a requirement to belong to a qualifying redress scheme. Ofcom will be reviewing the effectiveness of these regulations during 2015.

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<sup>27</sup> The performance targets for Royal Mail are detailed here:

<http://stakeholders.ofcom.org.uk/binaries/post120713/dusp1.pdf>

<sup>28</sup> This is also the case for enforcement action taken in telecoms.

<sup>29</sup> See Consumer Protection Conditions CP4.2.1 - CP4.1.6:

<http://stakeholders.ofcom.org.uk/binaries/post120713/con4.pdf>

<sup>30</sup> Compliance with the MICOP is a requirement of Essential Condition 1

(<http://stakeholders.ofcom.org.uk/binaries/post120713/essential.pdf>). Further details on the MICOP are available here:

<http://stakeholders.ofcom.org.uk/binaries/post/341.pdf>.

<sup>31</sup> Compliance with the PCOPA is a requirement of Consumer Protection Condition 2

(<http://stakeholders.ofcom.org.uk/binaries/post120713/con2.pdf>). Further information on the PCOPA is available here:

<http://stakeholders.ofcom.org.uk/post/pcopa/>

<sup>32</sup> Both of these practices are currently under review: <http://stakeholders.ofcom.org.uk/binaries/consultations/mail-integrity/summary/condoc.pdf>

<sup>33</sup> <http://stakeholders.ofcom.org.uk/binaries/post120713/con3.pdf>

- 3.32. Non-compliance with the regulatory rules, such as those mentioned above, can result in Ofcom taking enforcement action.<sup>34</sup> Any such action is subject to appeal in the Competition Appeal Tribunal (CAT).
- 3.33. As part of Ofcom's ongoing monitoring regime, it runs a market research programme to ensure it has an up-to-date view of consumers on the postal market. The topline results are included in Ofcom's annual Consumer Experience Report, which, amongst other things, reports on usage of and satisfaction with postal services. In addition, RPOs are required under the MICOP and PCOPA to submit compliance reports to Ofcom. Specific to Royal Mail, Ofcom annually monitors its performance against its USO quality of service targets and publishes its findings.<sup>35</sup> Ofcom also requires Royal Mail to annually report on and publish its complaints data.<sup>36</sup>

## Ofgem

- 3.34. Ofgem's principal objective is to protect the interests of existing and future consumers in Great Britain, in relation to gas and electricity carried through networks. Ofgem works to promote value for money, security of supply and sustainability for present and future generations. It does this through the supervision and development of markets, regulation of monopoly networks, and the delivery of government schemes. Ofgem works effectively with, but independently of, government, the energy industry and other stakeholders, within a legal framework determined by the UK government and the European Union.
- 3.35. Ofgem sets rules for wholesale and retail energy markets in Great Britain, to ensure high standards of customer service, support competition and reduce barriers to entry. Under the Gas Act 1986<sup>37</sup> and the Electricity Act 1989<sup>38</sup> certain activities may only be carried out with a licence. Ofgem's responsibilities include determining the content of gas and electricity licences, to grant licences, and to regulate the behaviour of companies through licence conditions. Licence conditions are a key means to set and enforce standards of service. Ofgem also price regulates monopoly network companies through eight year price controls. Price controls use incentives to ensure reliable supply, improve connections times and encourage network companies to achieve high levels of customer satisfaction.
- 3.36. Key regulatory interventions in relation to quality of service include Standards of Conduct (SOC)<sup>39</sup> which cover all interactions suppliers have with consumers. The SOC are a principles-based set of requirements (to drive up standards) backed by licence conditions that address factors which Ofgem considers to be important in service delivery. These factors include honesty and transparency in interactions with consumers and provision of information in plain language that is accurate and appropriate to consumers' needs. The SOC require that it is easy for consumers to contact suppliers

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<sup>34</sup> For example, a requirement on the RPO to comply and/or remedy the consequences of any contraventions, and/or pay a financial penalty of up to 10% of the turnover of the RPO's postal services business for the relevant period.

<sup>35</sup> The most recent monitoring report is available here: <http://stakeholders.ofcom.org.uk/binaries/post/monitoring-report-13-14/annual-monitoring-update-postal-2013-14.pdf>

<sup>36</sup> See Consumer Protection Condition CP3.3.15: <http://stakeholders.ofcom.org.uk/binaries/post/120713/con3.pdf>

<sup>37</sup> <http://www.legislation.gov.uk/ukpga/1986/44/contents>

<sup>38</sup> <http://www.legislation.gov.uk/ukpga/1989/29/contents>

<sup>39</sup> These cover all interactions between the consumer and energy supplier. Under the Standards of Conduct, energy companies must take account of consumer needs and treat them fairly. (<https://www.ofgem.gov.uk/publications-and-updates/new-standards-conduct-suppliers-are-first-step-simpler-clearer-fairer-energy-market>)

and that suppliers act promptly to put things right. The SOC also apply to businesses who typically spend up to £10,000pa on gas and electricity. Ofgem's reforms extend existing protections to small business consumers, bringing greater clarity over, for example, contract termination.

- 3.37. Ofgem also sets Guaranteed and Overall Standards of Performance (GOSP)<sup>40</sup> that include performance standards on making and keeping appointments, dealing with queries about payments and target timescales for reconnection following disconnection for unpaid charges. Compensation payments are specified where timescales in GOSP are not met. To ensure compliance with licence conditions and other requirements, Ofgem has a range of enforcement powers. These are focused on delivery of credible deterrence, and ensuring visible and meaningful consequences for companies that fail consumers. Enforcement action for contravention of requirements can lead to a significant financial penalty, or an order to pay compensation to consumers.
- 3.38. Ofgem monitors the performance of energy providers and of the market through a number of products. For example, the Consolidated Segmental Statements<sup>41</sup> presents the profitability of generation and the different supply activities, while the Supply Market Indicator<sup>42</sup> is a monthly forecast of cost and pricing trends. In addition, Ofgem produce a quarterly report of detailed trend data and analysis on consumption, market engagement and types of energy contract. The prices and volumes of energy traded at a wholesale level are also tracked.
- 3.39. Ofgem also undertakes extensive consumer research, much of which is focussed upon quality of service. The Consumer First Panel,<sup>43</sup> which is a panel survey of 12,000 consumer respondents, provides Ofgem with quarterly data on consumer satisfaction with energy suppliers, which covers a broad range of consumer service indicators and perceptions including overall consumer satisfaction, ease of contacting supplier, ease of understanding bills, value for money and whether the energy supplier does enough to maintain engagement with their consumers. The research produced by the Consumer First Panel helps formulate Ofgem policy. Ofgem also conducts large-scale tracking surveys, which examine aspect of consumer service around supplier communications and perceptions of trust towards energy suppliers.
- 3.40. Ofgem is committed to monitoring and reviewing the effectiveness and impact of the reforms and proposals initiated under its 2010 Retail Market Review.<sup>44</sup> The Review was undertaken in response to concerns that the energy market was not working effectively for consumers. The Review identified that the solutions implemented following the 2008 Energy Supply Probe<sup>45</sup> were insufficient

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<sup>40</sup> <https://www.ofgem.gov.uk/publications-and-updates/supplier-guaranteed-and-overall-standards-performance-statutory-consultation-and-proposals>

<sup>41</sup> <https://www.ofgem.gov.uk/publications-and-updates/energy-companies%E2%80%99-consolidated-segmental-statements-2013>

<sup>42</sup> <https://www.ofgem.gov.uk/gas/retail-market/monitoring-data-and-statistics/understanding-energy-prices-great-britain/supply-market-indicator>

<sup>43</sup> The Consumer First Panel also allows Ofgem to undertake ad-hoc deliberative research into a variety of consumer service issues, such as quality of service in regards to network price controls and views on what aspects of service should support the Standards of Conduct.

<sup>44</sup> <https://www.ofgem.gov.uk/simpler-clearer-fairer/retail-market-review-background-and-publications>

<sup>45</sup> This was a previous investigation by Ofgem into whether the market was working effectively for consumers and small businesses. While the market was found to be working well in certain aspects (no evidence of lobbying was found), the investigation identified a range of market features that weakened competition. To remedy the situation, Ofgem introduced two new licence conditions on domestic energy suppliers as well as measures designed to promote

to ensure that the energy market was working effectively for and in the best interests of consumers and that barriers to consumer engagement with the energy market (such as complex tariff options, low levels of trust among consumers towards energy suppliers and the poor quality of information supplied to consumers) remained.

- 3.41. Under this Review, Ofgem developed a range of interventions to impose specific and binding requirements on energy suppliers to address these barriers and concerns. Ofgem is committed to annually assessing and reporting on the state of competition within and health of the energy market (the State of the Market Assessment). The first State of the Market Assessment was produced in March 2014 and involved collaboration between Ofgem and the Office of Fair Trading and the CMA.<sup>46</sup>

## Ofwat

- 3.42. Ofwat regulates the water and wastewater services in England and Wales. These are currently mainly delivered by 18 regional monopolies. There are also a number of other providers (new appointees and water supply licensees) at specific sites, but they represent a negligible proportion of the total supply. The companies vary significantly in size: 10 larger companies supply both water and sewerage services (WaSCs) and eight smaller ones supply water only (WoCs), although some of the largest WoCs are almost the size of the small WaSCs. All these companies are fully privatised, some listed and some privately held, and there is also one owned by a not-for-profit company (Welsh Water).
- 3.43. Companies are regulated by their Instrument of Appointment. They are largely vertically integrated and there is currently little competition. The market for water and wastewater services in England and Wales is largely not competitive at the moment, i.e. all consumers (except for the largest business consumers) within a specific geographical location are supplied by the incumbent supplier, which is also the owner of the local network. However, the recent Water Act 2014 establishes a framework for further competition. For example, water retail competition is to be introduced in England in 2017 for non-household consumers, which means that business, charity, and public sector consumers will be able to choose their water retailer.
- 3.44. Retail competition for non-household consumers is already in place in Scotland. If England follows the same pattern as in Scotland, 5% of revenues could be subject to competition in the retail market. To facilitate this, Ofwat has set separate price controls for wholesale water, wholesale wastewater, household retail and non-household retail in the PR14 price review that will cover the period 2015-20.
- 3.45. Much of the asset-heavy wholesale network, which represents by far the greatest part of the value chain, will remain a regulated monopoly activity. However, following the Water Act 2014. Ofwat and other stakeholders in the sector are considering how market mechanisms can play a greater part in upstream activities, particularly in respect of water trading.

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competition and consumer engagement (<https://www.ofgem.gov.uk/electricity/retail-market/market-review-and-reform/retail-market-review/energy-supply-probe>).

<sup>46</sup> <https://www.ofgem.gov.uk/publications-and-updates/state-market-assessment>

## 4. The Consumer Journey

### Introduction

- 4.1. This section explores the key mechanisms available to and used by regulators in order to encourage and/or ensure acceptable levels of quality of service at each stage of the consumer journey. Note that the mechanisms in place, and the level of intervention, reflect (in part) the level of competition in each sector and the structure of each market. The approaches taken by the participant regulators through the consumer journey are explored below. Before doing so we briefly outline some points which apply generally throughout.

### Enforcement of sector-specific regulation

- 4.2. In instances where service providers fail to comply with their sector-specific regulatory obligations, participant regulators have the power to take enforcement action.
- 4.3. Such enforcement action may include requiring that service provider to:
- i) comply with its obligations,
  - ii) pay a penalty, and/or
  - iii) provide redress to affected parties including consumers.
- 4.4. The level of any penalty will take account of various factors including the level of harm, but is usually capped as a percentage of the service provider's turnover. Any penalty paid by a service provider goes to the Treasury - no monies are paid to the consumer under this form of enforcement.

### Consumer law

- 4.5. In some instances, service providers may also be subject to legal obligations that have not necessarily been imposed by sector regulators but by legislation such as the Sales of Goods Act 1979<sup>47</sup> and the Supply of Goods and Services Act 1982.<sup>48</sup> Furthermore, the Consumer Protection from Unfair Trading Regulations 2008 (CPRs)<sup>49</sup> protect consumers from unfair and poor trading practices companies may engage in (such as implementing aggressive tactics in order to secure a sale or misleading actions such as advertising products which do not exist). Consumers may have rights (introduced in October 2014) to redress if they have experienced unfair trading. The forms of redress available to the consumer include the right to terminate their contract with their service provider, a right to attain a discount on the price paid for that product/service and an entitlement to seek reclamation of financial damages.
- 4.6. Part 8 of the Enterprise Act 2002<sup>50</sup> improves customer protection by providing strengthened powers to specific regulators (including the participant regulators) to enable them to apply for court orders

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<sup>47</sup> <http://www.legislation.gov.uk/ukpga/1979/54>

<sup>48</sup> <http://www.legislation.gov.uk/ukpga/1982/29>

<sup>49</sup> The CMA has published various guides on consumer protection. They are available here:

<https://www.gov.uk/government/collections/cma-consumer-enforcement-guidance>

<sup>50</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284456/oft512.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284456/oft512.pdf).

to prevent service providers from acting in a way prohibited by this legislation and which would harm the collective interests of consumers.

- 4.7. These powers enable the participant regulators to enforce certain consumer protection legislation which aims to ensure consumers are treated fairly. This legislation relates to all aspects of interactions between businesses and consumers including information provision, contractual terms and delivery of goods and services that match their descriptions. Regulators can apply to the courts to require businesses to cease any aggressive or misleading practices and potentially to disqualify individual directors of those businesses in certain circumstances.<sup>51</sup>
- 4.8. Note that the Government intends for the Consumer Rights Bill to become law on 1 October 2015. Among other things, this Bill aims to clarify the standards a consumer can expect when they buy goods and services.<sup>52</sup>

### Competition law

- 4.9. The participant regulators have concurrent powers to enforce competition law in their respective sectors. Regulators can use their competition law enforcement powers to penalise anti-competitive behaviour, to ensure that undertakings compete fairly. As noted above, in healthy, competitive markets, competitive pressures and customer choice and expectations drive up standards and service providers can distinguish themselves on the basis of the quality of service or products they supply.

### Reputational incentives

- 4.10. Incentivising transparency and the reputation of service providers is an on-going practice of the participant regulators. Reputation motivates service providers to improve the quality of service that they offer and to encourage competitive differentiation based on quality. This can arise from pressure from financial markets if there are consumer concerns over management quality,<sup>53</sup> potential future regulatory intervention or loss of good will from consumers. In addition, transparency of information is vital for effective market pressure on quality of service and regulators have a key role in addressing any information gaps.
- 4.11. The UKRN's July 2014 report, *The use of data publication to enable reputational regulation*, provides a brief overview of how and what type of data is used by particular regulators to incentivise transparency and reputation.<sup>54</sup> The *Consumer Engagement and Switching* report also captures measures of information transparency. To avoid overlap with these other projects, we briefly consider (where appropriate) the regulatory incentives for transparency and reputation participant sectors may have in place throughout the consumer journey. See the case study opposite for an example of publishing information to assist consumers in selecting an appropriate service and promoting competition.

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<sup>51</sup> For more information, please see the consumer protection guidance issued by the CMA here:

<https://www.gov.uk/government/publications/consumer-protection-from-unfair-trading-regulations-traders>

<sup>52</sup> <https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/consumer-bill-of-rights>

<sup>53</sup> Management quality can also be important to investors: the ability of the management of the service provider to deliver returns on their investment.

<sup>54</sup> [http://www.ukrn.org.uk/?page\\_id=217](http://www.ukrn.org.uk/?page_id=217)

## Case Study I:

### Ofcom: Improving mobile quality of service

Improving mobile quality of service for consumers is a priority area for Ofcom. It has published a plan to help support initiatives to improve mobile coverage in the UK, and provide consumers with quality information on mobile reception.<sup>55</sup> Ofcom considers that information is important in helping consumers choose a mobile service that suits their needs. It also helps promote competition between mobile operators on service quality, to the benefit of consumers.

To date, information published on mobile quality of service includes:

- Ofcom's research on:
  - Mobile phone call quality provided by network operators.<sup>56</sup> The report includes research on mobile phone call quality from the consumers' perspective on mobile handsets; data supplied by EE, O2, Three and Vodafone on the performance of their networks; and consumer research on satisfaction with mobile networks.
  - Mobile broadband performance which compares 3G and 4G mobile broadband speeds, following detailed testing across five UK cities.<sup>57</sup> This will help consumers choose a service that suits them and encourage providers to improve performance.
- A consumer [guide](#)<sup>58</sup> on maximising coverage.
- Ofcom's [interactive map](#)<sup>59</sup> which provides information on the level of outdoor mobile coverage in the UK by local authority.

Other progress on Ofcom's plan to help improve mobile coverage in the UK and provide consumers with reliable information on mobile reception:

- All four mobile providers are now meeting the [90% coverage](#)<sup>60</sup> obligations for 3G mobile, while mobile operators have indicated they intend to match O2's 98% coverage obligation for 4G mobile. This will extend mobile broadband coverage into many areas still underserved by 3G.
- Ofcom is working with Government on its £150m mobile infrastructure project, which is funding mobile phone masts in uncovered areas. Ofcom is also supporting the Department for Transport and Network Rail on improving mobile services on railways and welcomes recent proposals to invest £53m to improve Wi-Fi access on trains.<sup>61</sup>
- In December 2014, the Government reached an agreement with EE, O2, Three and Vodafone in which these operators committed to provide mobile voice coverage across 90% of the UK landmass by the end of 2017. This agreement will be made legally binding through new licence conditions, enforceable by Ofcom.

<sup>55</sup> <http://consumers.ofcom.org.uk/phone/mobile-phones/coverage/five-point-plan-to-improving-mobile-coverage/>

<sup>56</sup> <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/consumer-experiences-mobile-phone-calls/>

<sup>57</sup> <http://stakeholders.ofcom.org.uk/binaries/research/broadband-research/mbb-nov14.pdf>

<sup>58</sup> <http://consumers.ofcom.org.uk/files/2010/11/maximising-coverage.pdf>

<sup>59</sup> <http://infrastructure.ofcom.org.uk/>

<sup>60</sup> <http://media.ofcom.org.uk/news/2014/3g-mobile-coverage-requirements-now-met/>

<sup>61</sup> <https://www.gov.uk/government/news/plans-unveiled-to-boost-wi-fi-on-trains>

## Consumer Journey Stage 1: Before service

### Quality through the consumer journey

#### Before service

- Quality at the pre-service agreement stage while engaging with potential service providers in order to choose a preferred service and provider.
- This is covered by the Consumer Engagement and Switching project. The existence of any regulations at this stage are therefore only briefly discussed for completeness. Activities such as price comparisons and sales are not considered.

- 4.12. The first stage of the consumer journey typically involves the consumer engaging with potential service providers in order to choose a preferred service and provider. While consumer research suggests that the price of the service is the determining factor for most consumers at this stage, other factors, such as the provision of appropriate information by the service provider to the consumer on the service that is offered, can also potentially influence this decision.
- 4.13. However, this is different for water. Currently, there is no choice for a household consumer and so there is no pre-sale/pre-contract discussion. Water and sewerage services are provided by the regional appointee for its area. Water and sewerage providers are obliged to connect a new customer to its network if asked (except in the case of certain rural customers for sewerage). This may be a different supplier for water and sewerage or a combined supplier.
- 4.14. For rail, the Rail Information Code of Practice on retail information ensures that the passenger is produced with the right information to ensure that they are purchasing the product/service that is right and appropriate for their needs. The Code is prevalent even in circumstances where competition is limited
- 4.15. Due to this, and behavioural biases in the decision making process, consumers often do not think at this stage about what might go wrong once they have purchased and start receiving the service. Regulators' current interventions to increase information transparency are covered in more detail in the section below on Consumer journey stage 3: During service. An area for potential further exploration could be the provision of information and the transparency of information on quality of service at this pre-contract / pre-sale stage. This could enable the consumer to choose their service provider on the basis of quality of service, as well as price.
- 4.16. As mentioned above, the consumer's interaction with the service provider at this stage is explored in depth in the UKRN's *Consumer Engagement and Switching* report.<sup>62</sup> Therefore, this report will not cover this stage in detail.

<sup>62</sup> <http://www.ukrn.org.uk/wp-content/uploads/2014/12/Statement-Consumer-engagement-and-switching.pdf>

**Figure 4.1 – Summary of stage 1: Before service**

Sector	Stage 1: Before service
<b>Telecoms</b>	<ul style="list-style-type: none"> <li>• General Conditions of Entitlement place obligations on CPs to offer contracts with specified minimum terms</li> <li>• Broadband Speeds Voluntary Code of Practice in which Internet Service Providers (ISPs) commit to provide certain information to consumers before they enter a contract</li> <li>• CPs required to publish clear and up-to-date information on their applicable prices and tariffs, and on their standard terms and conditions</li> <li>• KPIs for network service</li> <li>• Consumers can switch to another provider</li> </ul>
<b>Energy</b>	<ul style="list-style-type: none"> <li>• Standards of Conduct set requirements around information provision and customer contact</li> <li>• Tailored help for consumers in vulnerable situations provided through Priority Service Register obligations</li> </ul>
<b>Rail</b>	<ul style="list-style-type: none"> <li>• Draft information code of practice – provisions on how information should be presented and provided at any point of sale (for example, ticket machines and in station ticket offices)</li> <li>• Network benefit obligations: through tickets; interavailability; impartiality</li> <li>• Operator commitments on accessibility of facilities and services</li> </ul>
<b>Water &amp; sewerage</b>	<ul style="list-style-type: none"> <li>• Guaranteed Standards Scheme entitle consumers to guaranteed minimum service standards</li> </ul>

4.17. Figure 4.1 shows that telecoms, energy and rail all set requirements relating to the accuracy and completeness of information provided to consumers, which supplement the requirements of consumer and contract law. For water & sewerage, there are information requirements companies must comply with under the Guaranteed Standards Scheme (GSS) but this relates more to consumer awareness (such as written notification of any planned interruptions and a requirement to inform billed customers of their rights under the GSS). Where switching is possible, these requirements promote competition by ensuring consumers are equipped to make well-informed, economically-rational switching decisions. There are also particular requirements to promote effective engagement for consumers in vulnerable situations. In rail, further protections exist in order to preserve network benefits.

4.18. Please see the *Consumer Engagement and Switching* report for more information on the approaches taken by Ofcom and Ofgem, including the approval of codes of practice relating to switching websites.

## ORR

4.19. ORR is currently working with the industry in the development of an information code of practice. The Code is drafted around a key set of principles that cover the sort of information that is material to a purchasing decision and how that information should be presented depending on the mode of sale (i.e. ticket vending machines versus the station ticket office). The Code will cover much of the ground already covered by consumer law but was considered necessary due to the strong perception of complexity held by passengers and the lack of trust in the buying experience.

4.20. Passengers also continue to access the benefits of a national network due to regulatory intervention by both government and the ORR. ORR is under a duty, for example, to promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator. ORR ensures by licence that passengers can buy a ticket to anywhere

within the UK from most ticket retail outlets, and obligations arising from licence and the franchise ensure that train operators create a through ticket price from and to every station in the country, and create interavailable tickets to ensure that passengers can make journeys agnostic as to who is running the service. Similarly, obligations exist to support a national retail network by ensuring that train operators sell all tickets impartially.

- 4.21. At the wholesale level, the Network Rail Monitor sets out how ORR thinks Network Rail is doing in delivering its obligations to its customers and funders, and highlights any areas of concern. ORR is also publishing performance outturns at an increasingly disaggregated level.<sup>63</sup>
- 4.22. See Case Study 2 below on a proposed code of practice on retail information.

#### Accessibility

- 4.23. Disabled passengers should be confident that the information they are given is accurate and consistent. This is particularly true where their journey involves a change of train, for example, since they may require assurance that their whole journey can be made without undue difficulty.
- 4.24. ORR would not, therefore, approve, an operator's disabled policy that did not give a commitment to providing up-to-date information about the accessibility of facilities and services at stations and on their trains
- 4.25. Operators must also commit to ensuring that, where disabled passengers are unable to buy a ticket at a station before their journey, they are able to buy a ticket without penalty on the train or at their destination.
- 4.26. Operators must also ensure that disabled passengers are aware of any fare discounts or reductions available including those available to customers that do not hold a Disabled Persons Railcard.

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<sup>63</sup> [http://orr.gov.uk/\\_data/assets/pdf\\_file/0011/15230/network-rail-monitor-2014-15-q1.pdf](http://orr.gov.uk/_data/assets/pdf_file/0011/15230/network-rail-monitor-2014-15-q1.pdf)

## Case Study 2:

### ORR: Code of practice on retail information

ORR is concerned to ensure that passengers are able to choose, buy and use the most appropriate ticket for their journey.

Concerns expressed by passenger groups, and its own research, showed that the information provided to passengers about the choices available to them is not always adequate to enable them to make informed decisions, for example, to trade off price against the flexibility they require when buying or ticket, or to exercise their rights when things go wrong.

The industry has accepted that the information it provides is not as it should be. Some of this is due to problems with the underlying systems and data, such as that relating to routing information, and has put in place a number of initiatives aimed at addressing these.

However, those providing information to passengers about rail products and services, particularly those selling tickets and/or delivering services also need to do more to ensure that passengers are properly informed.

ORR agreed with the Department for Transport, in its role as a consumer authority, to oversee the development of a code of practice on retail information, to be adopted by the industry to promote best practice in meeting consumer law and industry standards around information provisions and retailing.

ORR consulted on a proposed format and structure for the code in autumn 2014 and is currently working with the industry to finalise it.

The code, which is designed to reflect the requirements of the Consumer Protection Regulations, in particular, identifies the information that is likely to be material to passengers and includes principles for how it could best be provided depending on the mode of sale.

The industry has agreed to publish the code in March and ORR is looking to develop some passenger facing material, such as tips on how to choose a ticket, to publish at the same time.

Once the code is published ORR will focus on developing its approach to monitoring and ensuring compliance.

## Ofcom

- 4.27. The GCs place obligations on CPs to be transparent in the information that they provide to consumers. For example, GC 9 requires CPs to offer contracts with certain minimum terms to prospective consumers, which includes:
- i) the time for initial connection;
  - ii) the contract duration (and the conditions for renewal and termination of services of the contract);
  - iii) the applicable prices and tariffs;
  - iv) details on any applicable compensation and/or refund arrangements which will apply if contracted quality service levels are not met, and;
  - v) the means of initiating procedures for the settlement of disputes in respect of the contract.
- 4.28. Furthermore, under GC 10, CPs are required to publish clear and up-to-date information on their website (and provide such information to customers on reasonable request) regarding their tariffs, any compensation and/or refund policy, any types of maintenance service offered, the standard contract conditions offered and any available dispute resolution mechanisms.
- 4.29. Ofcom has recently imposed on BT a requirement to publish a range of key performance indicators (KPIs), both to Ofcom, industry and, in some cases, the public. These KPIs provide transparency in relation to BT's upstream (but not downstream) performance and, in particular, will allow the public to understand the underlying service that their prospective (or actual) service provider is receiving and help avoid discrimination in service quality between CPs which rely on the same BT wholesale service.
- 4.30. Some fixed-line access internet service providers (ISPs) are signed up to Ofcom's broadband speeds code of practice which includes a commitment for them to provide, among other things, information to consumers before they enter into a contract about the maximum speed they should expect on their line (known as the access line speed) and the factors that will affect their actual speeds.<sup>64</sup> The Code is currently being reviewed.
- 4.31. Consumers are at liberty to terminate their service and/or switch CP at any time between the point of entry into a contract with that CP and the completion of the duration of that contract (subject to minimum contractual conditions). This is discussed further in paragraph 4.59.
- 4.32. Ofcom publishes a range of reports in relation to service provider performance which help the consumer to make a more informed choice about their service provider. For example, the Consumer Experience Report,<sup>65</sup> Communications Market Report<sup>66</sup> and the Infrastructure Report<sup>67</sup> provide general information on service providers. In addition, Ofcom launched a new online tool in

<sup>64</sup> <http://stakeholders.ofcom.org.uk/telecoms/codes-of-practice/broadband-speeds-cop-2010/code-of-practice/>

<sup>65</sup> <http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/consumer-experience-14/>

<sup>66</sup> [http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr14/2014\\_UK\\_CMR.pdf](http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr14/2014_UK_CMR.pdf)

<sup>67</sup> [http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/infrastructure-report/IRU\\_2013.pdf](http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/infrastructure-report/IRU_2013.pdf)

December 2014 where consumers can check their local broadband and mobile (and TV and radio) coverage – the interactive map provides a single-stop for consumers and businesses to discover the quality of the telecommunications infrastructure in areas where they live and work, or somewhere they intend to move.<sup>68</sup>

- 4.33. Ofcom also conducts and publishes a range of research specific to quality of service. For example, since 2009 Ofcom has annually conducted research to quantify the levels of consumer satisfaction with the customer service provided by CPs. The research enables Ofcom to monitor experiences with customer service, understand whether experience varies by the type of issue being dealt with as well as to evaluate changes over time. The most recent report was published in December 2014<sup>69</sup> Ofcom also regularly publishes research reports which monitor the speeds of UK fixed-line residential broadband connections,<sup>70</sup> such as the average download speeds delivered over connections. Other metrics regarding the consumer experience of using those broadband services are also published.
- 4.34. In addition, research into the quality of service of mobile services has formed part of Ofcom's work to improve mobile reception and coverage.<sup>71</sup> The research covers aspects of consumer experience with their mobile services, such as which issues with reception affect consumers along with which types of problems are most prevalent and of most concern to consumers. The most recent report focussed on consumers' experience of mobile broadband and was published in November 2014.<sup>72</sup>

#### Consumers with disabilities

- 4.35. Under GC15, CPs are required to make available (free of charge) contracts and bills (and other information) in a format that is appropriate to meet the needs of consumers with disabilities. For example, the CP may produce their contracts and bills in Braille or a suitable electronic format for consumers with visual impairments. Other obligations in GC 15 include text relay for deaf and speech-impaired people, free directory enquiries for blind people and priority fault repair for people who depend on the phone because of their disability.
- 4.36. Ofcom has specific duties under the Communications Act to take account of the needs of defined groups of people such as those who are disabled, but is also mindful that anyone can experience circumstances that make them vulnerable to harm, for example in an emergency. Ofcom requires a range of measures to ensure that no one is prevented from making an emergency call because of their circumstances:
- public call boxes are useful for consumers without a mobile phone or whose phone has been lost or stolen, who have run out of credit or have no mobile signal;
  - emergency calls are free of charge, so citizens can call 999 or 112 without cash or to have credit on a prepay mobile. Consumers whose line has been restricted for non-payment can still call 999 or 112;

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<sup>68</sup> <http://infrastructure.ofcom.org.uk/>

<sup>69</sup> [http://stakeholders.ofcom.org.uk/binaries/research/quality-of-customer-service-annual-reports/Quality\\_of\\_Customer\\_Service\\_2014\\_report.pdf](http://stakeholders.ofcom.org.uk/binaries/research/quality-of-customer-service-annual-reports/Quality_of_Customer_Service_2014_report.pdf)

<sup>70</sup> <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/broadband-speeds/>

<sup>71</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/mobile-voice-data-experience/annexes/usage.pdf>

<sup>72</sup> <http://stakeholders.ofcom.org.uk/binaries/research/broadband-research/mbb-nov14.pdf>

- mobile 999 or 112 calls benefit from Limited Service State<sup>73</sup> ('roaming'), meaning that consumers can call the emergency services over other available mobile networks when out of range of their home network; and
- consumers with impaired hearing or speech can use text relay<sup>74</sup> or emergency SMS<sup>75</sup> to call 999 or 112.

4.37. Other examples of Ofcom's work on participation and vulnerability include:

- Ofcom's code and guidance on complaints handling sets particular requirements in respect of disabled consumers and also says that a reasonable complaints escalation process should include procedures for frontline staff to identify and treat appropriately complaints from consumers that are vulnerable in any way;
- guidance on fixed line mis-selling regulation<sup>76</sup> states that it would be inappropriate for sales representatives to take advantage of vulnerable consumers, such as those who are elderly or whose first language is not English;
- an Easy Read guide to dealing with nuisance calls; and
- the affordability of essential services.

4.38. For more information see Ofcom's website.<sup>77</sup>

## Ofgem

4.39. This stage differs for the energy sector, as when a consumer moves to different premises their energy needs will be met by whichever energy supplier is already registered at the premises. Therefore, there is no initial pre-sale / pre-agreement choice for the consumer. However, consumers have the choice to switch energy provider when they move into a new property. This is discussed in further detail in paragraph 4.67.

## Vulnerability

4.40. Ofgem's Consumer Vulnerability Strategy<sup>78</sup> is designed to ensure that 'vulnerable' consumers can participate effectively in this stage, by providing the necessary help and assistance to allow them to be able to communicate with energy providers and to access the best deals that are available in the market. Furthermore, Ofgem's Retail Market Review<sup>79</sup> reforms serve to complement the Consumer Vulnerability Strategy, by making access to the market simpler for consumers, including those whose circumstances combined with aspects of the market, place them in a vulnerable situation. For

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<sup>73</sup> <http://consumers.ofcom.org.uk/2009/10/connecting-citizens/>

<sup>74</sup> <http://www.textrelay.org/>

<sup>75</sup> <http://www.emergencysms.org.uk/>

<sup>76</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/protecting\\_consumers\\_misselling/statement/statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/protecting_consumers_misselling/statement/statement.pdf)

<sup>77</sup> <http://consumers.ofcom.org.uk/disability/consumer-vulnerability/>

<sup>78</sup> <https://www.ofgem.gov.uk/publications-and-updates/consumer-vulnerability-strategy>

<sup>79</sup> [https://www.ofgem.gov.uk/sites/default/files/docs/decisions/the\\_retail\\_market\\_review\\_-\\_implementation\\_of\\_simpler\\_tariff\\_choices\\_and\\_clearer\\_information.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/decisions/the_retail_market_review_-_implementation_of_simpler_tariff_choices_and_clearer_information.pdf)

example, with regards to billing, energy providers are required to provide clear information on the cheapest tariff offered which is most suited to the consumer's needs.

- 4.41. Tailored help for consumers in vulnerable situations is provided through the Priority Services Register (PSR) requirement.<sup>80</sup> Under their licence conditions, energy providers and electricity distributors are required to establish and maintain a PSR of their consumers who are identified to be 'vulnerable'.<sup>81</sup> The Consumer Vulnerability Strategy states that additional assistance for accessing the market must be provided to all registered consumers.<sup>82</sup> Ofgem's Social Obligations Report (SOR)<sup>83</sup> provides quarterly data on the number of consumers registered under the PSR per one million consumers as well as those who receive certain services under it, such as the number of free gas safety checks per one million consumers.

## Ofwat

- 4.42. There is essentially no pre-sale/pre-contract stage for water and sewerage services. This is discussed further in paragraph 4.13.

## Consumer Journey Stage 2: Starting service

### Quality through the consumer journey

#### Starting service

- Quality during the process of service connection or commencement of a service or journey.
- This covers installations, including those involving appointments at consumers' homes and, where appropriate, switching between service providers.

- 4.43. Integral to the consumer journey is the performance of a service provider when providing service connections (i.e. the time that it takes a provider to install a new connection to a particular service or provide a particular product/service,). Given the importance of utilities, these are vital aspects of quality of service. Performance in relation to service connection requests can impact on the consumers' perception of the quality of service provided by their service provider once they start receiving that service.

<sup>80</sup> <https://www.ofgem.gov.uk/ofgem-publications/75552/vulnerable-consumers-and-priority-services-register-june-2013-bt.pdf>

<sup>81</sup> The establishment and maintenance of a PSR is an enforced requirement by Ofgem. Consumers can become part of the PSR by request and energy providers must offer free-of-charge help and assistance to all consumers on the PSR. In July 2014, Ofgem consulted upon reviewing the current PSR arrangements (<https://www.ofgem.gov.uk/ofgem-publications/88552/condocpsrreview.pdf>).

<sup>82</sup> Such assistance includes the provision of large print communications and communications on audio CD for those with visual impairments and aid with meter readings.

<sup>83</sup> <https://www.ofgem.gov.uk/ofgem-publications/92186/annualreport2013finalforpublication.pdf>

Figure 4.2 – Summary of stage 2: Starting service

Sector	Stage 2: Starting service
<b>Telecoms</b>	<ul style="list-style-type: none"> <li>• Minimum standards on quality of wholesale service received by CPs from BT Openreach (relating to first available appointment date and the completion of installations)</li> <li>• Obligations to inform consumers on the implications of switching</li> <li>• Conditions and procedures of contract termination must not act as disincentive to switching</li> <li>• Special provisions for disabled consumers and those with visual impairments</li> </ul>
<b>Energy</b>	<ul style="list-style-type: none"> <li>• Network performance targets on new connections</li> <li>• Standards of Conduct to ensure that consumer service arrangements are fit for purpose</li> <li>• Licence conditions around deemed contracts (where start of supply has not resulted from switching)</li> <li>• Information requirements on costs and consumption to enable consumers to compare and switch easily</li> <li>• Requirements on debt and disconnection – to facilitate switching</li> <li>• Tailored help for consumers in vulnerable situations provided through Priority Service Register obligations</li> </ul>
<b>Rail</b>	<ul style="list-style-type: none"> <li>• Requirements on the reliability of information, for example about delays and cancellations</li> <li>• Obligations on service punctuality and reliability</li> <li>• Service quality targets on station facilities, rolling stock and customer service</li> <li>• Train operators required to have policies on limited mobility travel</li> </ul>
<b>Water &amp; sewerage</b>	<ul style="list-style-type: none"> <li>• Guaranteed Standards Scheme for customer contacts, complaints and visits</li> <li>• Assistance for low income households (social tariffs and payment terms)</li> <li>• Requirements on debt and disconnection – to facilitate switching</li> <li>• Tailored help for consumers in vulnerable situations provided through Special Assistance Register obligations</li> </ul>

- 4.44. Figure 4.2 shows that participant regulators also impose **information requirements** at this stage of the consumer journey, to supplement the requirements of general consumer and contract law. Again there are specific protections aimed at ensuring effective engagement for consumers with specific needs, who are disabled or who find themselves in a vulnerable situation.
- 4.45. In telecommunications, energy and water, there are provisions for **low-priced tariffs for low income consumers**. These tend to be requirements on major suppliers and absent the regulatory requirements are unlikely to be offered under normal market conditions. This reflects the essential nature of these utilities, for which some consumers may otherwise struggle to pay.<sup>84</sup> In rail, price protection for captive consumers is provided by means of **fares regulation on commuter tickets** – set by the Department for Transport (DfT).
- 4.46. In telecommunications and energy, there are **minimum connection standards** to require network operators to promptly connect/migrate customers who are either taking a new service or changing provider. The rail sector equivalent is a set of **requirements on the punctuality and reliability of rail services** – enabling passengers to obtain timely services. There are also service quality requirements on station facilities, rolling stock and customer service. These promote quality in terms of, for example, the speed with which passengers are able to buy tickets and the standard of

<sup>84</sup> For more information on Ofcom and Ofgem’s approaches, see the UKRN’s January 2015 Understanding Affordability Across Sectors Report (<http://www.ukrn.org.uk/wp-content/uploads/2015/01/UKRN-Affordability-Report.pdf>).

train accommodation they can expect. Consumers typically already have a water supply when moving into a new home.

- 4.47. In energy, there are **provisions around debt and disconnection** which aim to ensure the fair treatment of consumers who have either been or are at risk of being disconnected due to debt. These **facilitate switching** for consumers whose debt is below certain levels, enabling the debt to be transferred to another supplier, who may be able to offer a cheaper tariff. These aim to protect consumers who find themselves in a vulnerable situation.
- 4.48. In energy, for example, the Debt Assignment Protocol (DAP) is the industry process used to transfer debts between suppliers when consumers with indebted prepayment meters (PPM) attempt to switch energy provider. When an indebted PPM consumer chooses to switch, their supplier must facilitate the transfer of that debt to their chosen supplier. The consumer then repays that debt to the supplier they have switched to. The transfer of debt is subject to the amount of debt in the consumer's account.<sup>85</sup> Ofgem reviewed the DAP in early 2014 and wrote to energy suppliers in September 2014 informing them of the results of its review and next steps to address the identified issues and to improve the DAP.<sup>86</sup>
- 4.49. At this stage, participant regulators also use **reputational incentives**, publishing or requiring the publication of information on performance against standards, regulatory requirements and codes of practice.

## ORR

- 4.50. Service commencement in rail can be considered to be the journey itself. The quality of service elements that are relevant here are the punctuality and reliability of the service (whether the train is late arriving or turns up at all and gets to the passengers' destination 'on time') and the reliability of information about that service such as what platform it is arriving at or whether it has deviated from its published timetable and is subject to delays and cancellations.
- 4.51. Connections for rail are therefore related to performance of the rail service and the ability to make a through journey, which itself is dependent upon the functionality of both the train operator and Network Rail. It is Network Rail's role to ensure that the infrastructure is fully operable and the train operator must ensure that its rolling stock is functional and that it has fully trained and available staff.
- 4.52. ORR holds Network Rail to account for performance via its licence and through the development of performance strategies both government and ORR ensures that train operators comply with the performance standards which are set out in each franchise agreement.
- 4.53. Licence and franchise obligations also ensure that the industry works together in the development of the national timetable. ORR holds both Network Rail and train operators to account via licence to ensure delivery of an integrated and consistent information strategy for passengers including during disruption.

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<sup>85</sup> The debt threshold is now £500 (<https://www.ofgem.gov.uk/ofgem-publications/90376/openletter.pdf>)

<sup>86</sup> <https://www.ofgem.gov.uk/ofgem-publications/90376/openletter.pdf>

- 4.54. Service quality targets around such aspects of the passenger experience as the quality of station facilities, rolling stock and customer service are set out in the franchise agreement. A prescribed annual expenditure is required for each missed target, up to a pre-defined level. The TOC must produce a plan, which the DfT approves, on how they will address the issues that lead to the missed target.

### Accessibility

- 4.55. ORR ensures that train operator policies on disabled and limited mobility travel include a number of commitments to enable confident travel such as commitments around the provision of assistance at stations and commitments to provide clear aural and visual up-to-date status information on the rail service. These policies apply on-journey from arrival at the station through to disembarking (see Stage 4: Finishing Service).

### **Ofcom**

- 4.56. In fixed-line telecoms, service connection relates to the installation of the physical line at the consumer's premises, engineering work at an exchange to connect the consumer's existing line to the new service providers' equipment and/or to a software update to provide a new service over an existing line. BT is the dominant provider of network infrastructure in the UK (due to its legacy copper network) and is required to provide a last resort service for unconnected households to ensure access to a copper or telephone connection.<sup>87</sup> However, BT is not the only infrastructure operator, with communications providers offering services which are either wholly delivered over their own infrastructure or partially (i.e. may use some of BT's wholesale network). However, in order to promote effective competition at the retail level (and as discussed at paragraph 3.23 above), BT is required to provide access to and use of its infrastructure and equipment to its competitors, enabling some retail CPs to also use parts of BT's copper network. Most recently, this obligation was confirmed as part of Ofcom's FAMR 2014,<sup>88</sup> following a finding that BT has SMP in various fixed access markets in the UK.<sup>89</sup>
- 4.57. The FAMR 2014 also requires BT to provide regulated minimum standards of quality of service through its Openreach access division to retail CPs. Of particular relevance to this stage of the consumer journey is the requirement for Openreach to offer a 'First Available Appointment'<sup>90</sup> date for new service installations which requires an engineer to visit the consumers premise in no more than 12 days.<sup>91</sup> There are also minimum quality of service standards regarding the completion of appointed installations. BT's charge controls are set on the basis of achieving these standards and

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<sup>87</sup> This is the Universal Service Obligation ([http://www.ofcom.org.uk/static/archive/oftel/publications/eu\\_directives/2003/uso0703.pdf](http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/uso0703.pdf)). The USO is applicable to BT across the UK except the Kingston-upon-Hull area, where KCOM has SMP and is subject to the USO.

<sup>88</sup> See Section 11: <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixed-access-market-reviews-2014/statement-june-2014/volume1.pdf>

<sup>89</sup> This is excluding the Kingston-Upon-Hull area, where KCOM has SMP.

<sup>90</sup> This is the number of days between consumer requesting for a service to be installed at their premises and the next appointment date available for that service to be installed.

<sup>91</sup> Openreach will be obliged to meet this 12 day First Available Appointment date in 80% of cases (excluding force majeure) by the end of the current control period.

failure to achieve them may result in enforcement action including the potential of financial penalties.<sup>92</sup>

- 4.58. As a result of the above, consumers should ordinarily have a choice of CP to provide their fixed-line telecoms services to their premises, the retail telecoms market being effectively competitive. Further, where retail CPs rely on BT's legacy network, obligations on Equivalence of Inputs (EOI)<sup>93</sup> aim to ensure that such CPs are not discriminated against in terms of the quality of the wholesale service they receive from Openreach and, therefore, that they are able to offer a similar standard of service to their customers as BT is able to offer to its own retail consumers, including at this stage of the consumer journey. Further, the existence of the minimum standards referred to above should ensure that Openreach consumers are able to match quality levels with CPs using their own network.
- 4.59. Regulations are in place to ensure that consumers are able to switch to another CP. Under GC 22, fixed-line CPs are obliged to ensure that the switching consumer is provided with clear information on the implications of switching. For example, GC 22.10 and GC 22.11 require the gaining and losing provider respectively to write to the consumer in order to explain clearly, amongst other things, the impact of the switch. Consumers also have termination rights under GC 22.5, which states that they are able to terminate their contract with the gaining provider, between the point of sale to the completion of the transfer period, without incurring any charges or being required to provide any other form of compensation to the gaining provider. Furthermore, GC 9.3 states that the conditions of contract termination and the termination process must not act as a disincentive towards switching.
- 4.60. In addition, CPs have obligations under GC 22 to provide clear information to consumers on switching CP and also must abide by the regulations in place under GC 22.3 that prevent CPs from engaging in mis-selling and other malpractices (such as aggressive and/or misleading and deceptive conduct towards the consumer and slamming<sup>94</sup>). GC 22.4 requires the gaining service provider to take reasonable steps to ensure that, before switching, consumers are provided with information on (amongst other things) the minimum contract charges and the existence of any termination right and its associated procedures (along with any associated early termination charges) in a clear, comprehensible, prominent and accurate manner.
- 4.61. With regards to mobile services, mobile service providers (MSP) must comply with GC 23. GC 23.2 protects consumers from mobile mis-selling by prohibiting the MSP from engaging in dishonest or aggressive conduct and contacting the consumer in an inappropriate manner. Similar to the conditions under GC 22 for fixed-line services, MSPs are required (under GC 23.5) to provide clear, comprehensive and accurate information to consumers at the point of sale. In addition, GC23.10 sets out further information requirements on MSPs in relation to any sales incentives which the consumer may not immediately benefit from.

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<sup>92</sup> See Sections 9-11: <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixed-access-market-reviews-2014/statement-june-2014/volume1.pdf>

<sup>93</sup> The EOI obligation requires BT to provide the same product and service to CPs (and itself) on the same timescales and the same conditions (for example, SLAs and cost) via the same processes of delivery. In addition, the same information on the product and service is communicated to all CPs as to itself.

<sup>94</sup> This is a form of mis-selling where consumers are switched from one CP to another without their knowledge or consent. The consumer may only become aware of this when they receive a bill from a different CP. To prevent consumers from being slammed, there are safeguards built in under GC 22 (such as requiring the losing provider to write to the consumer informing them of the switch) and GC 23.

## Vulnerability

- 4.62. General Condition 15 requires CPs to take special measures when providing their service to certain end-users with disabilities. For example, CPs are required to provide consumers with visual impairments with free of charge access to directory information and enquiry facilities in a form which is appropriate to meet their needs. CPs are also required to provide access to and use of relay services<sup>95</sup> to consumers who require them.

## **Ofgem**

- 4.63. Service commencement in the energy sector happens in a number of ways. A customer may move into premises where a supply already exists (see above). Newly-developed premises may receive supply for the first time. An existing customer may switch their supplier.
- 4.64. For new connections, Ofgem monitors the performance of network companies through a target that looks at the time taken from initial application to connection quotation, and the time taken from quotation acceptance to connection completion ('time to connect'). Ofgem accepts that some connections may have timescales that are considerably longer than average. However, to maintain the simplicity of the incentive arrangements, no exemptions apply. A bespoke incentive (Incentive on Connection Engagement – ICE) applies for connections for larger customers such as housing developers.
- 4.65. Energy companies must also comply with requirements regarding connections (in terms of appointment provisioning) set out under the GOSP.<sup>96</sup> Non-compliance results in payments by the energy provider to the consumer. These are discussed further in paragraph 4.147. In addition the Standards of Conduct (SOC)<sup>97</sup> aims to make sure that all consumer service arrangements and processes (including those associated with a tariff change or supplier switch) are complete, thorough, fit for purpose and transparent. See Case Study 3 below for more information on the SOC.
- 4.66. When a consumer starts to receive their energy supply, they enter a 'deemed' contract. Deemed contracts generally arise when a consumer moves into new premises. Ofgem's general view (which is not intended as an interpretation of statutory provisions) is that energy needs to be consumed for a deemed contract to arise between a supplier and a consumer. Licence conditions require that the terms of a deemed contract are not unduly onerous. However, interpretation of contracts needs to be undertaken on a case by case basis.

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<sup>95</sup> These are operator services that allow consumers who are at a disadvantage in being able to communicate with others (due to hearing impairments or speech impediments) to make calls to standard telephone users. In addition, there must be no discrimination of charges for calls made over a relay service between a 'vulnerable' consumer and another consumer (irrespective of whether the other consumer is 'vulnerable'), and calls that are made without use of a Relay Service. Furthermore, the speed of communication of any Relay Services that are supplied must be equivalent to those provided by voice services.

<sup>96</sup> <https://www.ofgem.gov.uk/publications-and-updates/supplier-guaranteed-and-overall-standards-performance-statutory-consultation-and-proposals>

<sup>97</sup> <https://www.ofgem.gov.uk/publications-and-updates/new-standards-conduct-suppliers-are-first-step-simpler-clearer-fairer-energy-market>

## Case Study 3:

### Ofgem: Standards of Conduct

As part of Ofgem's Retail Market Review (RMR) it introduced legally binding Standards of Conduct (SOC) that govern the interactions of energy suppliers, and their representatives, with consumers. The SOC are expressed as high-level principles, applicable as standalone regulatory rules and which also apply alongside other rules in the supply licence.

SOC came into force on 26 August 2013. They cover three broad areas:

**Behaviour:** suppliers must behave and carry out any actions in a fair, honest, transparent, appropriate and professional manner.

**Information:** suppliers must provide information which is:

- complete, accurate and not misleading (in terms of the information provided or omitted);
- communicated in plain and intelligible language;
- relates to products or services that are appropriate to the customer to whom it is directed; and
- fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence).

**Process:** the supplier must:

- make it easy for the consumer to contact them;
  - act promptly and courteously to put things right when they make a mistake; and
  - otherwise ensure that customer service arrangements and processes are complete, thorough, fit for purpose and transparent.
- As well as providing a broad level of protection for consumers and addressing concerns about industry practice that are not covered by other regulatory rules, the SOC enable Ofgem to manage the need for more prescriptive regulatory rules in the future. In addition, the principles-based nature of the SOC gives suppliers a degree of flexibility regarding implementation. This will allow them to adapt their approach over time while still delivering the outcomes Ofgem, and consumers, expect. This is an important feature given the technological and market innovations that may result from developments like the roll-out of smart metering.

- 4.67. As mentioned in paragraph 4.39, an existing consumer is at liberty to switch their energy provider. Good quality of service in terms of the information provided to a consumer ahead of their switch is a key part of Ofgem's approach to switching. As such Ofgem requires suppliers to give clear, accurate information on costs and consumption to enable consumers to compare tariffs and switch more easily. Furthermore, Ofgem's tracking surveys are primarily concerned with consumer experiences and perceptions of switching energy supplier. There are also safeguards and standards in place to

ensure a smooth switchover and Ofgem has taken enforcement action to prevent energy providers from blocking transfers. More information on switching in the energy sector is in the UKRN *Consumer Engagement & Switching Report*.<sup>98</sup>

- 4.68. From the end of 2014, most large suppliers have cut the time it takes to switch supplier to 17 days (this is down from 5 weeks).<sup>99</sup> Ofgem has also published proposals<sup>100</sup> to make the switching process more reliable and put next day switching in place by the end of 2018 at the latest. These changes represent a significant modernisation of infrastructure which will help consumers take full advantage of the benefits of smart meters, and pave the way for reliable, fast and easy switching.

#### Vulnerability

- 4.69. There are binding licence conditions to ensure that service connections are secure and remain in place to safeguard 'vulnerable' consumers. For example, energy providers are prevented from disconnecting energy supplies to elderly consumers during the winter months. There is further information on the prevention of winter disconnections in the UKRN's *Understanding Affordability Across Sectors Report*.<sup>101</sup>

#### **Ofwat**

- 4.70. Similar to the energy sector the service connection for water and sewerage is essentially already established for domestic consumers as they will be served by whichever service provider provides the water and sewerage for the particular region in which that consumer lives. Unlike telecoms and energy, it is not possible for domestic consumers to switch service provider in this sector under the current legislation.<sup>102</sup> However, non-domestic consumers who use a large amount of water can switch water or sewerage services.

#### Vulnerability

- 4.71. Ofwat and the service providers have statutory duties to protect the interests of certain groups of consumers. These include the disabled and chronically sick; those of pensionable age; those on low incomes; and those in rural areas. Companies need to maintain 'special assistance' registers for those who are disabled and elderly so that they are aware of the circumstances of these groups in emergencies.
- 4.72. There are a range of options offered to those on low incomes both in terms of tariffs and payment options. Recent legislation has recently allowed companies to offer 'social tariffs' to low income groups. There are also Guidelines issued by Ofwat on dealing with household consumers in debt. In addition, many companies have set up charitable trusts which help consumers who cannot afford their water and sewerage bill.

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<sup>98</sup> <https://www.ofgem.gov.uk/publications-and-updates/new-standards-conduct-suppliers-are-first-step-simpler-clearer-fairer-energy-market>

<sup>99</sup> <https://www.gov.uk/government/news/january-energy-detox-leaner-tariffs-in-half-the-time>

<sup>100</sup> <https://www.ofgem.gov.uk/publications-and-updates/moving-reliable-next-day-switching>

<sup>101</sup> Phase one of the report is available here: <http://www.ukrn.org.uk/wp-content/uploads/2015/01/UKRN-Affordability-Report.pdf>

<sup>102</sup> Ofwat note that in 2002 the Government considered that the cost and complexity of regulations for introducing competition for domestic customers would outweigh any potential benefit.

## Consumer Journey Stage 3: During service

### Quality through the consumer journey

During  
service

- Quality of service where there are service disruptions or interruption.
- This covers faults, disruption, complaints handling and forms of redress.
- We do not cover the technical aspects of the service.

- 4.73. A consumer can experience service failures at any time from the point of starting that service and consequently suffer detriment. Failures experienced can be via:
- disruptions to their service, such as a power outage leading to loss of connection and therefore loss of service;<sup>103</sup> and/or
  - poor quality service, such as incorrect information on their bill.
- 4.74. Some participant regulators have in place certain regulatory mechanisms to minimise the incidence, and impact, of service failure and to protect consumers (for example through price controls, the imposition and enforcement of licence or general conditions).
- 4.75. In some regulated sectors, there are also regulations and frameworks in place to enable the consumer themselves to obtain redress (via complaints handling processes and, if required, ADR schemes).
- 4.76. In addition to regulations, consumer law is applicable across the participant sectors (with the exception of water and sewerage) as a default mechanism for protecting consumer rights and interests. For some consumers, consumer law may be a solution in circumstances where specific sectoral regulation may be ineffective in protecting them against quality of service failures. For example, there are implied terms under Articles 13 and 14 of the Supply of Goods and Services Act 1982<sup>104</sup> which state that, under certain conditions, suppliers will carry out the service with reasonable care and skill,<sup>105</sup> and within a reasonable time.<sup>106</sup> As noted above, the Consumer Rights Bill, due to take effect on 1 October 2015, aims to clarify the standards that a consumer can expect when purchasing goods and services.

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<sup>103</sup> Such particular service disruptions can subsequently impact upon other sectors as well. For example, a power outage on an electrical network can also disrupt a consumer's broadband connection.

<sup>104</sup> <http://www.legislation.gov.uk/ukpga/1982/29>

<sup>105</sup> Article 13 states that: in a contract for the supply of a service where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill.

<sup>106</sup> Article 14 states that, where, under a contract for the supply of a service where the supplier is acting in course of a business, the time for the service to be carried out is not fixed by the contract, left to be fixed in a manner agreed by the contract or determined by the course of dealing between the parties, there is an implied term that the supplier will carry out the service within a reasonable time.

Figure 4.3 – Summary of stage 3: During service

Sector	Stage 3: During service
<b>Telecoms</b>	<ul style="list-style-type: none"> <li>• Ofcom-approved code of practice for complaints handling</li> <li>• Reputational incentivisation through publication of quarterly complaints report</li> <li>• Consumers can switch to another provider</li> <li>• Minimum standards on Openreach for timeliness in the repair of faults received by retail CPs</li> <li>• Price controls to avoid adverse effects of dominant providers</li> </ul>
<b>Energy</b>	<ul style="list-style-type: none"> <li>• Standards of Conduct and Complaints Handling Standards set requirements for complaints and other consumer contact</li> <li>• Reputational regulation through publication of quarterly complaints report</li> <li>• Quarterly debt and disconnection reporting</li> <li>• Consumers can switch to another provider</li> <li>• Quality of service incentivised through price controls</li> </ul>
<b>Rail</b>	<ul style="list-style-type: none"> <li>• Regulatory guidance and performance standards on complaints handling procedures</li> <li>• ORR monitoring of complaints handling</li> <li>• Price controls with targets for service enhancement</li> </ul>
<b>Water &amp; sewerage</b>	<ul style="list-style-type: none"> <li>• Guaranteed Standards Scheme cover customer complaints</li> <li>• Reputational regulation through publication of complaints statistics and Service Incentive Mechanism quarterly scores</li> <li>• Quality of service incentivised through price controls</li> </ul>

- 4.77. Figure 4.3 and the sub-section below shows that participant regulators have **intervened by means of price controls to minimise service disruptions and/or ensure prompt and effective fault repairs**, these take a variety of forms – from price control incentives where good network performance is rewarded via the ability to increase access charges (in water and energy), or to outperform anticipated profitability through improving network reliability and timeliness of repairs (in telecommunications charge controls) through to incentivising higher network performance - as measured by improving train punctuality and reliability - in access charge controls (in rail).
- 4.78. Participant regulators have also imposed **standards to improve the quality of suppliers' complaints handling procedures**. As noted above, these supplement market incentives and tend to be backed by sector enforcement powers to give them more weight. In some instances, regulators have had to take enforcement action to compel better consumer outcomes – for example in energy.<sup>107</sup> The aim is to create a virtuous cycle where service providers take consumer complaints seriously and view the data gathered through them as an important means of identifying opportunities to continuously improve.

<sup>107</sup> Ofgem wrote to suppliers in September 2014 to urge better performance against complaints handling standards: <https://www.ofgem.gov.uk/publications-and-updates/ofgem-demands-action-energy-companies-poor-consumer-complaints-handling>. It concluded enforcement action against EDF energy in 2014: <https://www.ofgem.gov.uk/publications-and-updates/investigation-compliance-gas-and-electricity-consumer-complaints-handling-standards-chsr-regulations-2008> and has recently opened investigations into Scottish Power's compliance (<https://www.ofgem.gov.uk/publications-and-updates/investigation-scottish-power%E2%80%99s-compliance-standards-conduct-slc-25c-slc-27-provision-final-bills-and-gas-and-electricity-cchs-regulations-2008>) and Spark Energy's compliance (<https://www.ofgem.gov.uk/publications-and-updates/investigation-spark-energys-compliance-its-gas-and-electricity-supply-licences-and-gas-and-electricity-consumer-complaints-handling-standards-regulations-2008>).

- 4.79. There are **specific escalation processes for consumer complaints** within each participant sector, such as Alternative Dispute Resolution schemes (ADR) in energy and telecommunications, the Consumer Council for Water (CCWater) and Passenger Focus for rail passengers. Each of these routes enables consumers to take their complaints further if the complaint takes too long to resolve or they are not satisfied with the outcome. This is a developing area at present, as the Government is considering – with ORR and Ofwat – the optimum means of implementing the ADR Directive. These second-tier bodies are able to assist individuals in obtaining better redress. The ability of consumers to refer matters up also acts as an incentive on suppliers to resolve the matter before it is referred. These bodies publish statistics on cases handled and this can act as a reputational incentive to reduce referrals, over and above the potential extra cost of administering them.
- 4.80. Separately, there are **provisions for requiring compensation in the event of service interruption/disruption or failure** in water and energy, arising from legislative powers. In a number of instances, this compensation is automatic. In others, where the likely impact on a given consumer is less clear, compensation must be claimed. In rail, compensation for delays and cancellations exists – where a passenger claims it. The level and conditions are set by a combination of EU, UK and sector-specific provisions. For example, consumers are compensated by a minimum amount (usually a proportion of the ticket price) for a given minimum duration of delay. In telecommunications, consumers are typically due a pro-rated refund for service disruption based on the amount paid. In telecommunications, the market is relied upon to deliver appropriate compensation arrangements. Ofcom is currently considering the compensation arrangements offered by CPs in order to identify whether fixed-line consumers who experience poor quality of service are adequately protected. Ofcom aims to decide on next steps in spring 2015
- 4.81. As a means of ensuring compliance with these requirements, participant regulators **monitor adherence** to them **and where necessary take enforcement action to compel it**. All participant regulators have the ability to require particular actions to achieve compliance, and to varying degrees, can require redress to remedy the consequences of a contravention. Ofcom and Ofgem are able to require financial compensation for consumers, where this is part of remedying the consequences of a breach. Ofwat is able to require that the consequences are remedied, but does not have the power to require monetary compensation. ORR is not currently able to require redress through its sector enforcement powers, though it may, like other participant regulators, consider voluntary redress packages when assessing any mitigating factors when setting the level of a financial penalty.

## Price controls

- 4.82. Price controls can act as a remedy for market failures, or where there are no markets in that they can be used to incentivise behaviour and performance of incumbents (such as in the water sector).
- 4.83. Price controls may be applied by all of the participant regulators to charges applied by dominant/monopoly network operators. The central role of a price control is to ensure that dominant operators cannot exploit their position to the detriment of both consumers and other market players, by addressing the risk of excessively high pricing and/or margin squeezing strategies. They are typically set so as to maintain and/or improve services to customers by incentivising investment in the operation, maintenance and renewal of the relevant network. Providing incentives to invest supports quality of service because adequate investment enables the network to sustain a sufficiently reliable level of service. However, importantly in the context of this review, regulators

may also use price controls to establish incentive mechanisms for maintaining or improving quality of delivery and for innovation.

- 4.84. In some cases, such as, Ofwat, there are dynamic two way incentives in the price control that allow overachievement of performance levels to lead to permission to charge higher charges and similarly failure against targets can lead to lower charging controls.
- 4.85. In other cases, such as the recent Ofcom charge control, the charge control sets charges based on expectations of a given performance level but any mechanism for enforcing that level is separate to the charge control (i.e. compliance reviews and if necessary financial or other penalties).

#### ORR

- 4.86. Price controls applied by ORR contain outputs focussed upon enhancing the quality of service of train operators. Such an output includes delivering milestones across a wide range of improvement projects, designed to deliver benefits for passengers in terms of (for example) reduced journey times and travelling on longer trains to reduce overcrowding. These output targets (such as performance) that emerge from price controls are regulated and enforced by licence, with a financial penalty attached for any contravention.

#### Ofcom

- 4.87. Price controls may be applied to a CP which possesses SMP in markets where Ofcom considers there to be a relevant risk of adverse effects (such as excessively high pricing or a price squeeze) resulting from its SMP. In some cases, Ofcom has imposed price controls which reflect the efficiently incurred costs of the company providing a particular level of quality of service.
- 4.88. As mentioned in paragraph 4.57, there are certain minimum quality of service standards imposed on BT (at the upstream level) as part of the FAMR 2014. When imposing these standards, Ofcom reviewed the charge controls applied to BT to enable it to recover any efficiently incurred costs associated with delivering the new minimum standards. If BT fails against these targets it is subject to a compliance review, and if found in breach would risk financial penalties of up to 10% of turnover.

#### Ofgem

- 4.89. Ofgem employs an extensive range of quality measures within its price controls governing reliability, customer satisfaction and connection times.
- 4.90. As part of its price controls, Ofgem incentivises the performance of quality of service of network operators at the upstream / wholesale level. For example, the annual Network Innovation Competitions encourage network companies to compete to secure funding for the research & development and demonstration of new technologies, operational and commercial arrangements.
- 4.91. Furthermore, the Business Plan Assessment stage of the price controls aims to manage the risk of a network company allocating its resources to only achieving a minimum standard, by challenging companies to develop business strategies which improve consumer service and are more active in addressing vulnerable consumers.

**Vulnerability**

- 4.92. Ofgem's price controls and licences require operators to play a full role in identifying and assisting 'vulnerable' customers and the fuel poor. Furthermore, Ofgem's SOR provides it with quarterly statistics on debt and disconnection, number of consumers on the PSR per one million customers and the number of free gas safety checks per one million customers.<sup>108</sup>

**Ofwat**

- 4.93. Ofwat's current price control methodology places emphasis on the consumer, as price control allowances are linked to what consumers have confirmed they want and are willing to pay for. The price controls also include incentives to achieve these defined outcomes (Outcome Delivery Incentives). These agreed outcomes vary across companies as they reflect what each company's consumers want. There are financial incentives associated with a majority of these outcomes, as penalties and rewards can be incurred or gained depending upon whether a company achieves its agreed outcomes. As each company's agreed outcomes are different, the level of penalty or reward incurred or gained will differ for each company as well. See Case Study 4 below for more details.

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<sup>108</sup> Energy suppliers are obliged to offer free gas safety checks to consumers who are eligible under a specific set of criteria.

## Case Study 4

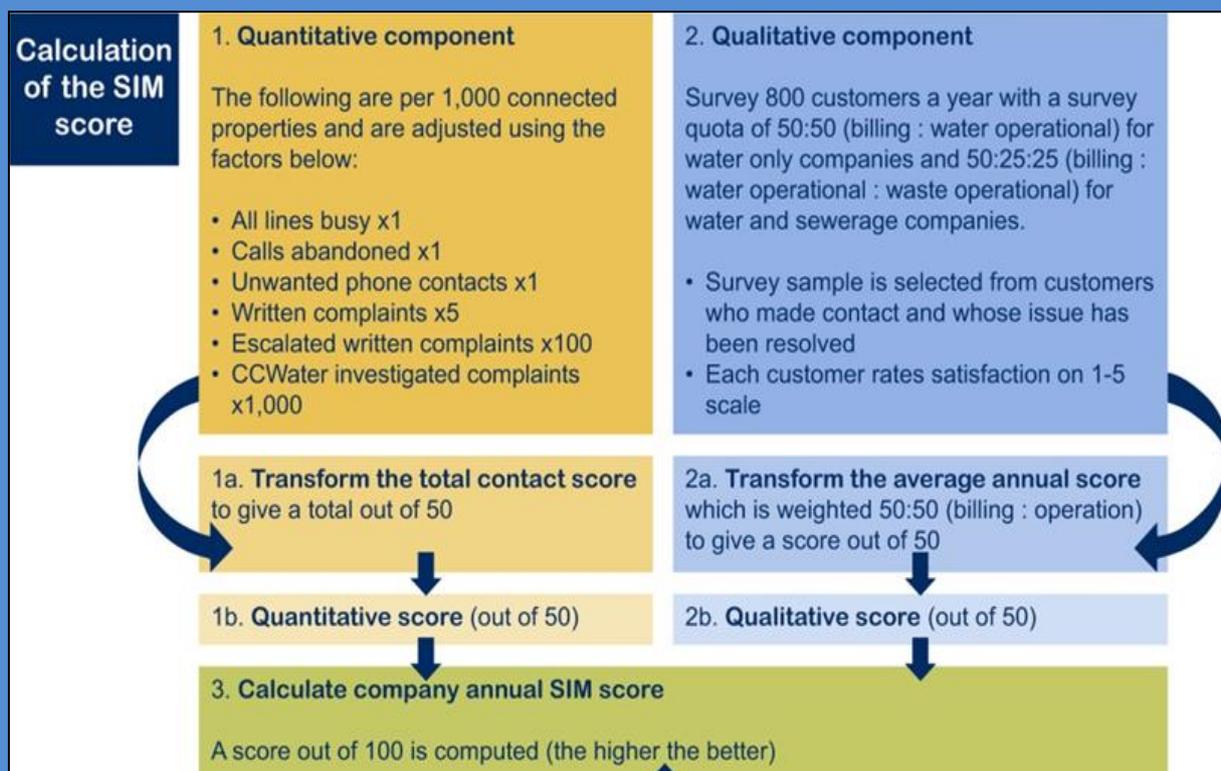
### Ofwat: Service incentive mechanism for customer service in water companies

The service incentive mechanism (SIM) is a financial and reputational incentive mechanism. Ofwat introduced it in 2010 to encourage companies to provide better customer service by comparing service delivery performance and providing financial rewards and penalties in relation to this. It replaced the overall performance assessment (OPA) incentive used in the three previous price reviews in 2009, 2004 and 1999. Under the SIM, companies that perform comparatively well are rewarded and those that perform comparatively poorly are penalised.

The SIM measures and incentive properties were set out in Ofwat's Information Note IN 11/01, 'Service incentive mechanism – auditing, scoring and levels of service reporting'.<sup>109</sup>

SIM is a composite measure of quantitative customer performance in telephone contacts, written contacts and complaint handling together with a qualitative element based on a quarterly survey of consumers experiences. The detailed assessment of SIM is shown in the diagram below.

Case Study 4 Figure 1: Assessment process for SIM performance



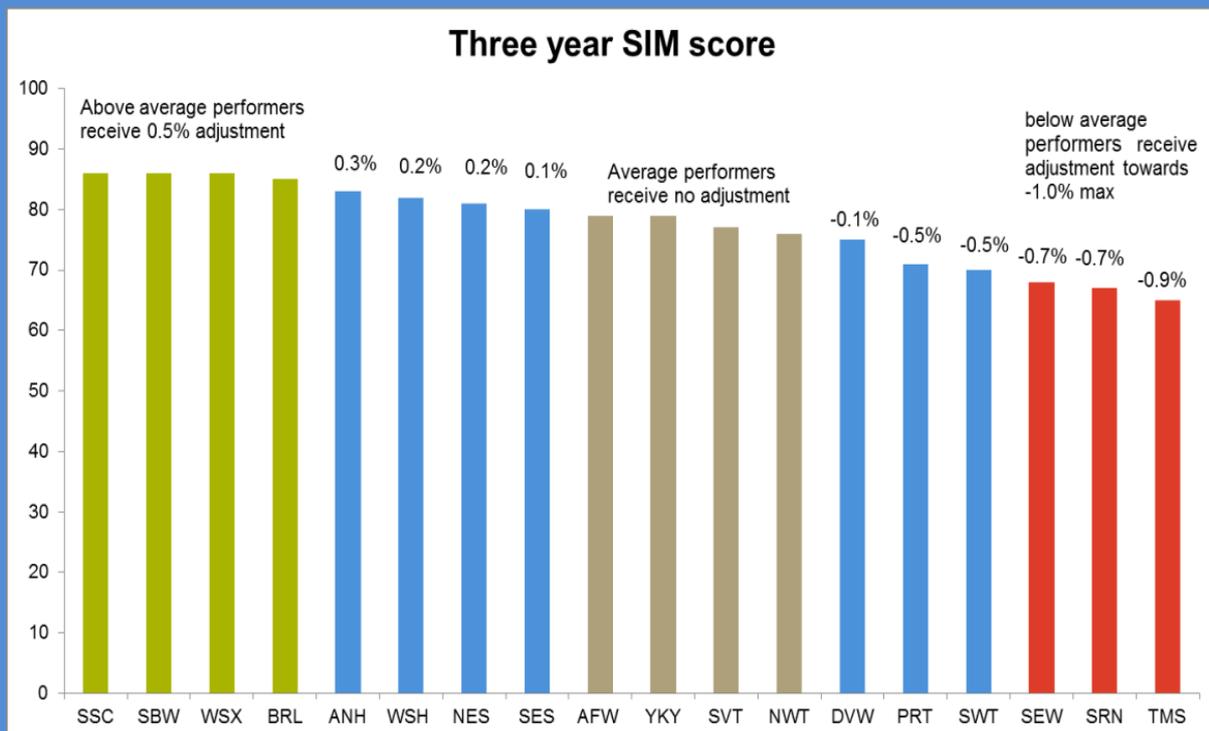
The SIM scores are published annually. Accordingly consumers can see how their company has performed, how it is ranked relative to other companies and the direction of travel of its ranking. This provides a strong reputational incentive on water companies to improve their customer performance. The SIM performance is the average of the three years prior to the price review i.e. 2011-12, 2012-13 and 2013-14.

<sup>109</sup> [http://www.ofwat.gov.uk/regulating/aboutconsumers/sim/prs\\_in1101sim.pdf](http://www.ofwat.gov.uk/regulating/aboutconsumers/sim/prs_in1101sim.pdf)

The SIM does provide a financial incentive to companies. Ofwat set out in its methodology, for the price review for 2015 that it would include a financial reward or penalty for customer service performance based on companies' SIM scores. The reward and penalty range was set at 0.5% to -1.0% of companies' regulated turnover.

Case Study 4 Figure 2 below details the three-year average SIM performance of companies for the years 2011-12, 2012-13 and 2013-14, and the resulting rewards or penalties used in Ofwat's final price determinations derived using the approach set out above. The rewards or penalties are presented as wholesale revenue adjustments in the next control period, in the range +0.5% to -1.0% of company regulated turnover in 2013-14.

**Case Study 4: Figure 2: Three-year average (2011-12 to 2013-14) SIM performance (y-axis) and resulting rewards and penalties (above bars)**



Each of the coloured bands represents the company positions around the mean and standard deviations defined in Ofwat's final methodology statement (section 10.5.2<sup>110</sup>):

- green companies are above one standard deviation above the mean;
- grey companies are at or very close to the industry mean;
- red companies are between one and two standard deviations below the mean; and
- blue companies are between the mean and one standard deviation above or below the mean.

As the chart shows, four companies achieved the highest reward of 0.5% and four other companies received a positive reward. These companies were allowed to increase their revenue as part of Ofwat's final determination of price controls for 2015-20 by the percentage shown. Six companies had below average performance and their turnover was reduced by the percentage shown as part of Ofwat's final determination for 2015-20.

<sup>110</sup> [http://www.ofwat.gov.uk/pricereview/pr14/pap\\_pos201307finalapproach.pdf](http://www.ofwat.gov.uk/pricereview/pr14/pap_pos201307finalapproach.pdf)

## Complaint handling

4.94. The complaints handling procedure that a service provider has in place constitutes an additional element of quality of service and can significantly influence a consumer's perception of the service provider. There are obligations on service providers to have a complaint handling process to help rectify the problem and/or (providing on circumstance) compensation schemes to provide redress to put consumers back in the position they were in prior to the service failure. In a competitive market, providers would be likely to focus on providing an effective complaints handling process (amongst other things) as a way of differentiating themselves from competitors.<sup>111</sup> An effective complaint handling process can be an important means of a service provider finding out about, and rectifying any problems with their service. Translating information gained from consumer complaints into transformative action within the business (for example to prevent repeat occurrences of the same issue) can lead to improved performance and potentially competitive advantage.

### ORR

- 4.95. Train operators are required by licence to establish complaints handling procedures in line with regulatory guidance on how they will manage complaints and what should be included in their complaints procedures. These guidelines include certain standards against which the performance of a train operator's complaints handling is measured against, such as the number of days taken to respond to a complaint. These procedures are developed in discussion with Passenger Focus and London TravelWatch in order to ensure that they capture the interests of the passenger.
- 4.96. While passengers are advised to approach their train operator directly with a complaint in the first instance, they are not prevented from approaching the upstream provider. As a result, Network Rail is obliged by licence to also have its own complaints handling procedure which also covers its responsibilities at managed stations.
- 4.97. ORR is in the process of developing a core data set for the purpose of monitoring changes to the quality of operators' complaint handling procedure, and to track the amount or volume of activity in this area. In doing so ORR will increasingly be able to use reputational incentives through transparency. ORR intends to periodically report its findings from this range of data, offering an opportunity to review good practice and identify key trends or changes in performance.

### Ofcom

- 4.98. The Communications Act 2003 requires Ofcom to set such general conditions as it thinks appropriate for securing that CPs establish and maintain procedures, standards and processes to handle complaints and resolve disputes between CPs and their domestic and small business customers. GC 14 requires all CPs to comply with the Ofcom Approved Code of Practice.<sup>112</sup> This Code of Practice details the minimum standards that Ofcom has set for CPs in the handling of complaints made by residential and small business customers. For example, CPs must have in place a

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<sup>111</sup> The differentiation of providers through quality of service is much more prevalent in sectors that have a largely homogenous product. For example, when a product has the same input costs and quality, providers are more likely to seek alternative factors to distinguish themselves from competitors; quality of service is one way by which they are able to do this.

<sup>112</sup> <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/complaints-handling-code.pdf>

customer complaints code which is transparent, accessible and simple to understand and facilitate appropriate access to ADR. The customer complaints code must be kept up to date and as a minimum include information about:

- i) the process for making a complaint,
- ii) the steps the CP will take to investigate with a view to resolving a complaint;
- iii) the timeframes in which the CP will endeavour to resolve the complaint;
- iv) the contact details for making a complaint to the CP; and,
- v) the contact details for the CP's ADR scheme, with details on when a Complainant will be able to access the service (see paragraph 4.115 for more on ADR).

4.99. Each CP's customer complaints code is also required to be sufficiently accessible to enable vulnerable consumers to submit and progress a complaint.

4.100. Furthermore, good quality complaints handling at this stage is incentivised through Ofcom's publication of a quarterly complaints report on the volume of complaints received by its Consumer Contact Team. A CP's standing within these publications provides a reputational incentive to better performance. More information on this is presented in the Consumer Engagement and Switching Project.

### Ofgem

4.101. Energy providers are obliged to handle consumer complaints in accordance with the Complaints Handling Standards and Ofgem's SOC. Consumers are also directed by Ofgem to the Citizens Advice<sup>113</sup> service if they require support through the complaints process.

4.102. Energy providers<sup>114</sup> are required every quarter to publish data on their websites on complaints received and resolution times. The top five issues for consumer complaints and the measures implemented by energy providers to improve their complaints handling process are also published. There is a requirement imposed by Ofgem for energy providers to present their complaints information in a common format. The quarterly complaints data is used by Ofgem to monitor the performance of the energy providers on their complaints handling process.

4.103. Ofgem also conducts its own complaints research,<sup>115</sup> which monitors the performance and compliance of energy providers against the Complaints Handling Standards. Research has highlighted that there is increased dissatisfaction among consumers (i.e. both domestic and micro business complainants) with the handling of complaints in the energy sector.<sup>116</sup> Ofgem issued a statement in September 2014 demanding action from service providers to improve their complaints handling

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<sup>113</sup> The former Consumer Futures functions now with Citizens Advice provide a Government funded consumer service which offers practical and impartial advice on a range of consumer quality of service issues. It also directs consumers to the relevant authorities needed to resolve their issues.

<sup>114</sup> The "Big Six" and the majority of the largest smaller energy providers

<sup>115</sup> This research is restricted to the "Big Six" and the four largest smaller energy providers.

<sup>116</sup> Every two years Ofgem commissions a piece of independent research into consumer satisfaction with complaints handling. This report is published on the Ofgem website.

processes.<sup>117</sup> In particular, Ofgem noted that service providers need to improve the speed of complaints resolution, to establish better communication with the consumer throughout the complaints handling process and to be more proactive in resolving complaints.

### Ofwat

- 4.104. Ofwat's GSS<sup>118</sup> covers consumer complaints and can require service providers to make compensation payments to consumers if certain complaints handling standards are not met. These are discussed further in paragraph 4.151.
- 4.105. The majority of consumer complaints which remain unresolved by a service provider's own complaints handling procedures are handled by the Consumer Council for Water (CCWater). This is an independent body to which consumers can refer unresolved complaints. However, this is a more informal method of complaints resolution, as decisions made by CCWater are non-binding on the service provider and the consumer. If a complaint is still unresolved after being handled by CCWater, that complaint can be referred to Ofwat which would then pursue a more formal investigation into the complaint. In this instance, decisions made by Ofwat are binding on both the consumer and the service provider. Consumers can also refer their complaints and issues to other organisations such as Which? and Citizens Advice. Consumers can also pursue a resolution via formal court proceedings.
- 4.106. Ofwat's Service Incentive Mechanism (SIM) measures two areas of customer service delivery: the number of occasions consumers have had to make contact with their service provider because something has gone wrong; and the service providers' ability to handle/resolve such issues when they occur. There are also financial incentives for service providers under the SIM. High SIM scores can result in financial rewards (up to 0.5% of turnover), whilst poor performance can lead to financial penalties (up to 1.0% of turnover). Service provider performance against the SIM is rated each quarter and Ofwat use this performance rating to determine and adjust their price controls (every five years). There is an additional reputational incentive to the SIM, as service provider scores are ranked in league tables.
- 4.107. Service quality incentives, some of which are financial are also provided under Ofwat's Outcome Delivery Incentives (see paragraph 4.93).

### **Alternative Dispute Resolution (ADR)**

- 4.108. ADR schemes enable consumers to take their complaint to an independent adjudicator in the event that either:
- a deadlock has been reached with their service provider in the complaints handling process; or
  - they are not satisfied with how their complaint was resolved and the consumer feels that they have exhausted the service provider's complaints handling process.

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<sup>117</sup> <https://www.ofgem.gov.uk/publications-and-updates/ofgem-demands-action-energy-companies-poor-consumer-complaints-handling>

<sup>118</sup> <https://www.ofgem.gov.uk/licences-codes-and-standards/standards/quality-service-guaranteed-standards>

- 4.109. ADR schemes are generally free to access for consumers and are effective tools in helping to avoid consumer issues and disputes continuing for an indeterminate period of time and remaining unresolved. In addition, any decisions made by the scheme may be binding on the service provider.
- 4.110. Some participant regulators require service providers to be members of an ADR scheme. Any cases referred to the ADR scheme are funded by the service provider. This acts as an incentive for the service provider to either:
- invest in the provision of their own effective complaints handling process initially (or to improve their existing process) in order to resolve as many cases to the satisfaction of consumers thus limiting the number of cases that get referred to the ADR scheme; or
  - invest in the ADR scheme itself.
- 4.111. EU member states are currently implementing an ADR directive, which requires each sector to have an ADR scheme in place, although it is not compulsory for individual service providers within a sector to belong to a scheme.<sup>119</sup> The requirements of the ADR directive, (along with additional detail on the ADR schemes already present within telecommunications and energy) are outlined in the UKRN's July 2014 report *Reviewing the benefits of and options for Alternative Dispute Resolution in regulated sectors*.<sup>120</sup>
- 4.112. While the general purpose of ADR schemes is to resolve consumer complaints and issues without the need for going to court, consumers may be entitled to pursue further legal action after a decision has been made by the scheme.

## ORR

- 4.113. ORR does not currently require train operators to participate in an ADR scheme. However, under the new EU ADR directive, an ADR scheme will be made available to passengers as part of the appeal process.<sup>121</sup> At present, if a passenger is dissatisfied with the train operator's complaints handling process, they can refer their complaint to Passenger Focus. This is an independent consumer representative body sponsored by the DfT which can advocate individual passenger's interests to train operators to reach a resolution. However, resolutions are non-binding between the consumer and the train operator.
- 4.114. As with telecoms and energy, ORR does not handle individual complaints. However, if the complaint still remains unresolved after the consumer has pursued both the train operator's own complaints procedures and Passenger Focus, ORR has the powers under consumer law to intervene and consider the complaint if it deems that there is evidence that the issue could lead to collective consumer harm.

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<sup>119</sup> However, in telecoms, it is compulsory for CPs to be a member of one of the two ADR schemes available in the sector.

<sup>120</sup> <http://www.ukrn.org.uk/wp-content/uploads/2014/07/Alternative-Dispute-Resolution.pdf>

<sup>121</sup> The Department for Transport is currently considering how best to implement the ADR Directive in the rail sector. A decision is yet to be made, however, the ADR scheme is likely to be voluntary with the existing passenger complaints/advocacy bodies, Passenger Focus and London TravelWatch, continuing to provide assistance to passengers.

## Ofcom

4.115. There are two ADR Schemes available in telecoms:

- Ombudsman Services: Communications;<sup>122</sup> and
- Communications and Internet Service Adjudication Scheme (CISAS).<sup>123</sup>

4.116. Under GC 14, CPs are required to belong to one of these two schemes and to comply with the decisions that are made by them (which may require the CP to fix the problem and, if appropriate, pay compensation) for the resolution of disputes between residential and small business customers. The schemes' decisions are not binding on the consumer, who is still free to pursue the issue through the courts.

4.117. Ofcom requires the Ombudsman: Communications and CISAS ADR schemes to adopt a set of principles and guidelines which should be considered in their decision-making as a means of achieving a fair and reasonable outcome for both parties.<sup>124</sup> These include, for example, ensuring fair treatment of both the CP and the consumer, and requiring the ADR decision-maker to remain objective and not to promote the interests of either party (including those of the ADR scheme itself).

4.118. See Case Study 5 below for a summary of Ofcom's 2012 review of telecoms ADR.

## Ofgem

4.119. Energy providers are required to provide consumers with access to the Ombudsman Services: Energy ADR scheme. The energy provider will contact the consumer and refer them to the Ombudsman if the complaint is not resolved to the satisfaction of the consumer eight weeks after being made, or if deadlock has been reached. Ofgem also requires energy providers to publish performance data on complaints received, resolution times and the top five issues dealt with by the Ombudsman.

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<sup>122</sup> <http://www.ombudsman-services.org/communications.html>

<sup>123</sup> <http://www.cisas.org.uk/>

<sup>124</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/adr-review-12/statement/statement.pdf>

## Case Study 5:

### Ofcom Alternative Dispute Resolution Review

The Communications Act 2003 ('the Act') places a duty on Ofcom to set such general conditions as it considers appropriate for securing that public communications providers establish and maintain procedures, standards and policies with respect to, amongst other things, the handling of complaints made to public communications providers by any of their domestic and small business customers.

Through General Condition 14.5 Ofcom has required all CPs to be a member of an approved Alternative Dispute Resolution Scheme. Ofcom currently approves two such schemes:

- (i) Ombudsman Services: Communications ('OS'), and
- (ii) the Communications and Internet Services Adjudication Scheme ('CISAS') (together, 'the Schemes').

In May 2012, Ofcom published a consultation ('the May Consultation') to seek stakeholders' views on a set of options proposed to help conclude our review of Alternative Dispute Resolution Schemes ('the Review'). The Review had sought to assess whether the Schemes still meet the approval criteria set out in the Act, which include the requirement that there should be consistent outcomes for consumers and small businesses, and CPs who used the Schemes.

In the May Consultation, Ofcom set out its view, based on the evidence available, that the Schemes met most aspects of the approval criteria. In particular, Ofcom noted significant improvements in accessibility and efficiency made by the Schemes during the course of the Review. The Review also indicated that reasonable decisions were being reached in over 90% of cases considered by the Schemes. However, Ofcom identified that some aspects of decision making in the Schemes were leading to inconsistent outcomes for consumers in some circumstances, in particular in cases where evidence was lacking and where small awards of compensation might be considered appropriate for poor customer service.

Following assessment of consultation responses, Ofcom decided to modify the conditions of its approval. This would involve the introduction of a new condition of the approval requiring the Schemes to adopt a set of 'Decision Making Principles', including the development of guidelines on awarding compensation. The Decision Making Principles are aimed at addressing some inconsistencies in decision-making in a relatively small proportion of cases and Ofcom does not expect them to lead to significant additional costs or changes in compensation levels overall.

Ofcom's decision and the Decision Making Principles can be found [here](#).<sup>125</sup>

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<sup>125</sup><http://stakeholders.ofcom.org.uk/binaries/consultations/adr-review-12/statement/statement.pdf>

## Ofwat

- 4.120. There are a number of organisations involved in the redress system for water and sewerage consumers once they have exhausted their company's complaints process. The organisation that consumers use will depend on the nature of their dispute with their company. It will also depend on individual consumers awareness of the organisations; their preferences, and ability to access.
- 4.121. Ofwat can make decisions ('determinations') on specific types of consumer complaints. For example, for companies not meeting their statutory duties or the terms of their licence conditions. Ofwat can also tackle such things as the payments under the GSS regulations or the costs of supplies for non-households. But Ofwat cannot make determinations which result in consumers receiving financial redress such as compensation or rebates.
- 4.122. CCWater is the statutory organisation that represents customers. They can investigate complaints for the purpose of determining whether it is appropriate for them to make representations on behalf of the customer to the company or to Ofwat about the complaint. But they can only negotiate a mutual, non-binding agreement between companies and consumers to resolve disputes. For binding agreements, CCWater must refer the matter to Ofwat.
- 4.123. As with other regulated services, organisations such as Citizens Advice and Which? can offer advice and help to consumers.
- 4.124. In addition, consumers can potentially refer any matters to the county court. But in practice, where Ofwat has powers to determine a matter, the courts will normally consider that the consumer should refer the matter to Ofwat instead. The small claims court will consider matters which either consider a consumer's liability for charges or claims for loss or damage that have resulted from poor service up to £5,000.
- 4.125. Ofwat's review of redress in the sector and its research, *Empowering Water Customers: Customers' attitudes to information provision in the water and sewerage sectors*, found a number of gaps and weaknesses in the existing system including absence of a clear route to independent ADR.
- 4.126. Ofwat has worked with the regulated companies, Water UK (the industry body) and CCWater to agree principles and a specification for a self-regulated independent ADR scheme. This was put out to tender in the summer 2015 with a view to an operational scheme for all water consumers being in place by the end of the 2014-15 financial year.
- 4.127. This initiative is supported by the Water Act 2014 which includes clauses to enable Ofwat to impose licence conditions to require licensees to provide independent ADR to their customers.

## **Compensation for service disruption/interruption**

- 4.128. Redress can be provided to the consumer through regulatory intervention, such as regulation in relation to service faults and/or retail compensation, regulatory enforcement and price controls.

- 4.129. Some regulators have mechanisms in place which require service providers (in certain circumstances) to make retail payments (compensation)<sup>126</sup> to the consumer in order to compensate the consumer for any detriment caused by service faults and failures (for example, the loss of the service or if certain standards are not met).<sup>127</sup> Compensation plays a particular role in incentivising the performance of a service provider in delivering a good quality of service and in how it manages consumer complaints about service problems/faults.
- 4.130. Payments can either be:
- *Automatic*: This is where the service provider automatically makes a compensation payment to the consumer when it becomes aware of a relevant fault. The ability to operate automatic payments depends largely on two factors: the ability to distinguish who has actually lost service during a fault, and whether the provider has an on-going relationship with the consumer and thus has a suitable channel to provide automatic compensation.
  - *Claims-based*: This is where a consumer has to actively claim compensation from their service provider. In some sectors (energy for example) a consumer's entitlement to claim compensation can sometimes be automatic and sometimes claim based dependent upon the circumstances. Opportunities to make a claim can also be time-limited.
- 4.131. Compensation can also be payable by a wholesale provider to retail providers (rather than to consumers), either as a result of commercial negotiation and/or regulatory intervention. The payment of compensation by upstream operators/providers to downstream providers may be an important factor in determining the level of any compensation ultimately payable by the downstream provider to the consumer (and accordingly, ensure that the wholesale provider has a direct incentive to reduce the total amount paid out in downstream compensation).
- 4.132. Where regulations are not in place, quality of service is left to the market, and the decision to pay retail compensation to the consumer is at the service provider's discretion (subject to contractual and consumer law principles).

## ORR

- 4.133. For rail, regulations relate to disruptions to the rail service, which could be the result of failures with the network infrastructure or with the train itself.
- 4.134. Regulatory intervention by way of licence obligation ensures that there are a standard set of conditions that apply across the whole network, preserving again the benefits of an integrated railway. The National Rail Conditions of Carriage (NRCoC) detail the extent to which train operators are liable for service disruptions (regarding delays, cancellations and poor service) and the compensation and refund entitlements.<sup>128</sup> An increasing number of operators go beyond this basic

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<sup>126</sup> Retail compensation is where payments are made directly from the CP to the consumer (i.e. at the downstream / retail level).

<sup>127</sup> The intention of the compensation payment can be a differentiating factor across sectors; some payments are designed to cover the direct loss caused by the consumer being without service, whereas others aim to cover the more general inconvenience that was caused.

level of compensation, however, as the department introduces delay/repay mechanisms into new franchises (see below). The level of compensation is settled at each franchise bidding process and is set out in each passenger charter.

4.135. These entitlements differ by ticket type:

- *Non-season ticket holders*: refunds are payable, for example, in circumstances where the passenger chooses not to undertake a journey due to disruption. Compensation is payable in the event of a delay to the service. Compensation is made payable in the form of travel vouchers, although some train companies will pay cash on request. The NRCoC are currently being amended to reflect this practice.
- *Season ticket holders*: Compensation is made in the form of a discount on the consumer's next season ticket. However, this discount is dependent upon whether or not the train operator's average performance (in terms of reliability of cancellations) falls below a certain threshold over a 12 month period.

4.136. Increasingly government is migrating all franchises to a Delay Repay scheme. This new scheme requires train operators to compensate consumers for services which are delayed for over 30 minutes, with no force majeure associations. The amount of compensation paid under the Delay Repay scheme is dependent upon the price paid by the consumer for that particular delayed journey.

4.137. Automatic compensation payments are not made to consumers affected by quality of service failures, as train operators neither have an on-going relationship nor the ability to tell who has lost out as a result of the service not being available. Only in the case of season ticket holders is a relationship between consumer and train operator, but even in these instances only the consumer contact details are held by the operator and not the passenger journey details. Compensation is therefore to be claimed by the consumer.

4.138. Passenger compensation is determined by franchising authorities, through franchise agreements. The compensation arrangements paid at the wholesale level are regulated by ORR via track access contracts (known as Schedule 8 payments) and forms part of the price control determinations. While compensation paid through Schedule 8 and passenger compensation both reflect performance on the network, they perform very different roles and are not back to back i.e. the compensation paid by Network Rail to train operators is not directly passed through to consumers.

4.139. Schedule 8 payments between train companies and Network Rail reflect the impact of lateness and cancellations on fare revenue over time. The passenger facing arrangements are a means of compensating passengers for delays to their journeys. Train operators are not provided with compensation to recover payments to passengers but to some extent the passenger compensation arrangements may help offset some of the impact of lateness and cancellations on revenue that TOCs are compensated for through Schedule 8.

### **Accessibility**

4.140. ORR expects the policies for disabled and limited mobility travel to contain a commitment by train operators that in circumstances of planned or unplanned short notice disruption, they will provide, without extra charge, an appropriate alternative accessible service to take disabled passengers to the nearest or most convenient accessible station from where they can continue their journey. This

commitment applies also to where the substitute service generally provided (such as a bus replacement service) is not accessible to the passenger.

### Ofcom

- 4.141. In general, consumers enter into standard terms and conditions and therefore may be unable to choose from different levels of fault repair services<sup>129</sup>. Business consumers, who may be more reliant on having uninterrupted landline and broadband service, are more readily able to choose from services with different fault repair care levels, for higher prices
- 4.142. There is no sectoral regulation in place requiring faults to be repaired in accordance with certain timescales at the downstream/retail level (CP to consumer). However, there are some regulatory safeguards in place in relation to this stage of the consumer journey for retail CPs using the Openreach network which should, in turn, protect the consumers of those retail CPs. In particular, at the wholesale/upstream level, BT is required to meet certain minimum standards in relation to the completion of fault repairs and must compensate its consumers (the retail CPs) for any failure to deliver to the contracted repair times (as noted above it is up to the retail CP to determine compensation for its end consumers). The charge controls for BT are set in anticipation that these minimum standards will be met, but in the event of failure BT would be subject to a compliance review and be open potentially to fines of up to 10% of turnover.
- 4.143. In order to address service failures due to disruptions, retail CPs may set out timescales for faults repairs in their consumer contracts. For retail CPs using the Openreach network, the repair timescales in the consumer contract may be determined by their own contractual conditions with Openreach.<sup>130</sup>
- 4.144. The Communications Act 2003 does not make specific provision for Ofcom to require guaranteed compensation arrangements for consumers if they have experienced service failures.<sup>131</sup> However, CPs usually voluntarily offer claims-based compensation payments (rather than automatic). The downstream / retail level of the telecoms sector is competitive and thus making voluntary compensation payments as part of their redress procedure enables them to compete in the market. However, as noted previously, compensation can also be awarded through the Ombudsman Services: Communications and CISAS ADR schemes.
- 4.145. Ofcom is currently reviewing CPs' compensation arrangements for fixed-line telecommunications customers experiencing quality of service issues to assess the appropriateness of those arrangements. It hopes to decide on the way forward by spring 2015.

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<sup>129</sup> However, this is not always the case as we note that, for example, BT Retail customers have the option to choose and pay for faster repair services. This known as Expedite Repair (<http://www.openreach.co.uk/orpg/home/products/serviceproducts/serviceharmonisation/serviceharmonisation.do> )

<sup>130</sup> There are different fault repair service levels associated with different Openreach services and/or retail CPs could choose to pay for certain service levels.

<sup>131</sup> However, under the Act Ofcom may require CPs to compensate a consumer to cover the inconvenience they may have experienced as part of any enforcement action taken for contravention of regulatory rules – see section 151(7)

## Vulnerability

- 4.146. GC 15 requires CP's to provide a priority fault repair service to any of their subscribers with disabilities who have a genuine need for an urgent repair. This must be charged at a rate that does not exceed that of their standard fault repair service. Furthermore, CP's are required to take reasonable measures to ensure that 'vulnerable' consumers who are heavily dependent upon their telephone service are able to participate in a scheme which safeguard those services.

## Ofgem

- 4.147. Ofgem's GOSP derive from two statutory instruments (one for gas and one for electricity). At the time of writing this report, Ofgem is proposing significant changes to the GOSP<sup>132</sup> to reform the individual standards, payment levels and information provision requirements. The details given here refer to the current arrangements and are subject to change. Currently, the standards are focussed upon the quality of service provided to consumers experiencing service faults originating from gas and electricity networks. These impose various conditions on the management of a fault, such as the response time to a fault and subsequent restoration within the relevant timescales. However, these conditions vary in accordance with the duration of the fault (in terms of how many consumer premises are affected) and the nature of the fault (different conditions are applicable for the three different categories of severe weather conditions for example).
- 4.148. The GOSP provide for compensation payments to customers in case supplier or network companies breach their obligations. The level of compensation payable is set to be proportionate to the inconvenience caused to consumers, rather than actual loss. Under the Guaranteed Standards (GS) for suppliers, payments should be made to consumers automatically. Under the GS for network companies, certain circumstances trigger automatic payments to customers while in other situations payments are non-automatic. However, in these cases network companies will sometimes make payments proactively without a claim being submitted.
- 4.149. In addition, energy providers have requirements under the SOC. For this stage of the consumer journey, the SOC require that it is simple for consumers to contact energy providers during times of service failure or poor customer service and that energy providers act promptly to resolve such failure.
- 4.150. Ofgem monitors how energy companies respond to faults. Ofgem noted that the 2013-2014 winter storms highlighted failings in fault response procedures, which meant that there was a failure in meeting the quality of service standards for fault repair. See Case Study 6 below for more details.

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<sup>132</sup> <https://www.ofgem.gov.uk/publications-and-updates/supplier-guaranteed-and-overall-standards-performance-statutory-consultation-and-proposals>

## Case Study 6:

### Ofgem's action after the winter storms 2013/14

Over Christmas 2013, Britain was hit by a succession of severe storms. Strong winds and heavy rain caused extensive damage to the electricity distribution networks. In total over two million customers lost their power supply. For most, the interruptions were momentary and supply was automatically restored within three minutes. However, nearly one million people experienced a longer interruption, ranging from three minutes to over five days. This caused considerable distress and disruption to many consumers over an important holiday period.

In early January 2014 Ofgem launched a review into the Distribution Network Operators (DNOs') preparedness for, and response to, the December storms. The review included an independent report. This showed that the performance of the southern DNOs of Scottish and Southern Energy (SSE) and UK Power Networks (UKPN) could have been better, both in restoring customers' electricity supplies and in managing and communicating with those customers whilst their supplies were affected. The independent report highlighted a number of factors which contributed to the poor service received by customers:

- customers affected by the supply interruptions are reported to have had difficulty in contacting these two companies;
- during the Christmas 2013 event, SSE suffered due to its comparatively high level of dependence on contractors for overhead line work in the south and their lack of availability over the period. This was combined with the inability to move internal resources from the north of Scotland, which was also under a severe weather warning;
- under most circumstances the North East West South Area Consortium (NEWSAC) mutual aid consortium, to which all companies are a party, would provide additional resources from the less severely hit companies. On this occasion NEWSAC did not produce the additional resource when it was most needed. There are two factors which go some way to explaining this. Almost all companies were on severe weather alerts and, as a consequence, understandably wary about releasing their own staff in case they were needed. It was also the Christmas holiday period; and
- there were concerns over the consistency in how companies reported their key measures for telephony performance, which Ofgem will address to ensure consistency going forward.

Ofgem opened an investigation into the performance of SSE and UKPN. This resulted in an initial payment to consumers of £4.7m under the guaranteed standards and in goodwill payments. Subsequently, Ofgem secured an additional £3.3m from SSE and UKPN after its investigation into the companies' performance. Ofgem also made improvements to the guaranteed standards, with minimum payments substantially increasing from April 2015.

See here for more details: <https://www.ofgem.gov.uk/publications-and-updates/sse-and-ukpn-pay-out-%C2%A38-million-following-christmas-storms>

## Ofwat

- 4.151. Similar to Ofgem, Ofwat have the power to impose minimum standards of service in the water sector at the downstream/retail level. These are the part of the GSS. Service providers are required under the GSS to make payments to the consumer if they fail to meet defined standards. The level of compensation made payable is determined in the regulations. The approach to making compensation payments involves both automatic and claims-based payments. For those which are automatic:
- If a service provider fails to meet a GSS, they must make an automatic GSS payment to the consumer within 10 working days of the payment becoming due.
  - If a service provider does not make the GSS payment within the 10 working day timeframe, they are required to make an additional payment to the consumer. However, this is only the case if the consumer makes a claim for additional payment within 3 months of the original GSS payment becoming due.

## **Sector-specific requirements and regulatory enforcement**

### ORR

- 4.152. Under sector legislation, if ORR finds a breach of licence (past, current or likely future) it has legal powers to:
- Impose financial penalties up to 10% of company's turnover. ORR may levy a financial penalty for a past breach. ORR can also impose a penalty for a current breach of a licence condition or impose an enforcement order. ORR cannot impose a penalty for a likely future breach, although it can make an order which could include a reasonable sum to be paid if certain conditions are not met.
  - Impose provisional and final orders (current and likely future breaches) to make the licensee remedy or resolve the failings through activities; these have included developing and delivering recovery plans, or setting up an industry Joint Recovery Board. Orders can be provisional (lasting up to 3 months before either lapsing or becoming confirmed) or final, and require the licence holder to carry out any activities which are reasonable, enforceable and aimed at securing compliance. An enforcement order can also include an incentivising reasonable sum.
- 4.153. The Act does not provide specifically for reparations – but if a penalty is deemed appropriate, ORR can consider offers of reparations as a mitigating factor as part of its consideration of the size of a penalty. Whilst the existing policy encourages early offers of reparations, there is currently no formal process to consider offers of reparation or early redress in its existing policy. ORR is currently consulting on its enforcement policy<sup>133</sup> and is revisiting its policy on reparations. Since adopting options for reparations into the policy, ORR has yet to approve a formal offer of 'reparations' as stipulated in its policy and guidance and considers a reason why reparations do not work as well as they do for other regulators is because its current policy only allows for reparations to be considered as a mitigating factor. It is now considering incentivising early admission and redress

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<sup>133</sup> The consultation was published on 8 December 2014 and closed on 6 February 2015. It is available here: <http://orr.gov.uk/consultations/policy-consultations/open-consultations/economic-enforcement-policy-consultation>

offers by establishing in its policy that the absence of such offers will be considered when deciding whether a financial penalty is appropriate.

- 4.154. ORR also has a range of regulatory options to hold licence holders to account as part of its monitoring and escalation process to influence, intervene to highlight and address issues before formal action is necessary – this includes meetings, letters, public statements, data analysis, industry and government engagement.
- 4.155. In its current consultation on enforcement it is looking to achieve greater flexibility and improvement in its processes going forward. It is exploring, for example, the possible increased use of reparations and enforcement orders.<sup>134</sup>
- 4.156. Franchise breaches are a matter for the DfT.

### Ofcom

- 4.157. Ofcom has certain consumer redress powers under the Communications Act 2003. For example under section 96A of the Communications Act, Ofcom has the ability to pursue various types of enforcement action whenever a CP is found to be in breach of a General Condition<sup>135</sup> or a condition of Significant Market Power.<sup>136</sup> Such enforcement action includes specifying the procedures that Ofcom wants the breaching CP to take to remedy the consequences of that breach. In addition, CPs may be required to compensate a consumer for loss or damages that they may have suffered due to the breach, or make a payment to a consumer to cover the inconvenience they may have experienced (see section 151(7) of the Communications Act 2003).
- 4.158. Ofcom can also impose financial penalties upon CPs of up to 10% of their turnover if they are found to be non-compliant with the GCs and/or any applicable SMP conditions. Unlike compensation payments which go to the consumer, penalty payments go direct to the Treasury. At an upstream / wholesale level, Ofcom could therefore impose financial penalties if Openreach were to fail to meet the minimum standards introduced under the FAMR 2014.<sup>137, 138</sup> Any enforcement action taken by Ofcom is ordinarily subject to appeal in the CAT.
- 4.159. Where appropriate, representations from CPs on force majeure incidents are considered alongside the consideration of any enforcement action. While there is no universal definition of what a force majeure incident may be, CPs may have their own definitions of force majeure which are detailed in their contracts with consumers. Each force majeure incident is assessed on a case-by-case basis and Ofcom makes the decision as to whether it needs to be accounted for in any enforcement action that is taken.

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<sup>134</sup> The consultation was published on 8 December 2014 and closed on 6 February 2015. It is available here:

<http://orr.gov.uk/consultations/policy-consultations/open-consultations/economic-enforcement-policy-consultation>

<sup>135</sup> As the General Conditions apply to anyone who provides an electronic communication service or an electronic communications network in the UK, these apply to both upstream and downstream providers.

<sup>136</sup> These may only be imposed on operators that we have found have SMP in the relevant market. As we have found that the retail telecommunications markets are effectively competitive, SMP conditions tend to be imposed at the wholesale level only, where Ofcom has found that the relevant wholesale market is not effectively competitive.

<sup>137</sup> See Sections 9 and 11 in Volume I of the FAMR 2014 (<http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixe-access-market-reviews-2014/statement-june-2014/volume1.pdf>).

<sup>138</sup> Ofcom's guidelines of enforcement are available here: [http://stakeholders.ofcom.org.uk/binaries/consultations/draft-enforcement-guidelines/annexes/Enforcement\\_guidelines.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/draft-enforcement-guidelines/annexes/Enforcement_guidelines.pdf)

## Ofgem

- 4.160. Only Ofgem (out of the participant regulators) has the ability to impose a consumer redress order. Ofgem imposes redress orders in situations where it is satisfied that:
- i) an electricity or gas supplier has contravened, or is contravening, a regulatory condition or requirement, and;
  - ii) as a result of the contravention, one or more consumers have suffered loss or damage or been caused inconvenience.
- 4.161. Requirements to compel redress can be placed upon the energy providers such as the pursuit of measures which address the consequences of contravention, and/or that prevent the future occurrence of the same or similar type of breach.
- 4.162. In addition, Ofgem has powers to make a consumer redress order which requires compensation payments to be made to consumers to cover the loss experienced by them as a result of being without service. This therefore puts the consumer back in the position they were in before the contravention occurred.
- 4.163. A financial penalty can also be imposed on the energy provider alongside the decision to issue a consumer redress order. The purpose of the penalty is to:
- i) recover the detriment to the consumer as well as any gain made by the energy provider during the failure in quality of service or licence breach, and to;
  - ii) be of an amount proportionate to the seriousness of the licence breach and to act as a deterrent for future possible breaches.
- 4.164. Ofgem can also impose penalties with indirect financial effects, such as imposing a freeze on any sales activity of an energy provider until the complaint or issue is resolved.
- 4.165. In March 2014,<sup>139</sup> Ofgem consulted upon the introduction of changes to their policy on consumer redress and imposition of financial penalties. The changes that are to be made as a result were detailed in a statement published in November 2014.<sup>140</sup>
- 4.166. To incentivise the reputation of energy providers, Ofgem publicises the enforcement action it takes in response to licence breaches.<sup>141</sup>

## **Vulnerability**

- 4.167. Consumers on the PSR are entitled to special arrangements from their energy provider in the event of a fault with their service (and thus leading to an interruption in their energy supply). For example, during certain types of faults of certain duration, consumers with disabilities or with chronic illnesses are provided with access to alternative cooking or heating facilities.

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<sup>139</sup> <https://www.ofgem.gov.uk/ofgem-publications/86948/penaltiesandredresspolicystatementconsultationletter31march2014.pdf>

<sup>140</sup> <https://www.ofgem.gov.uk/publications-and-updates/decision-ofgems-statement-policy-respect-financial-penalties-and-consumer-redress>

<sup>141</sup> <https://www.ofgem.gov.uk/investigations/investigations-and-enforcement-data>

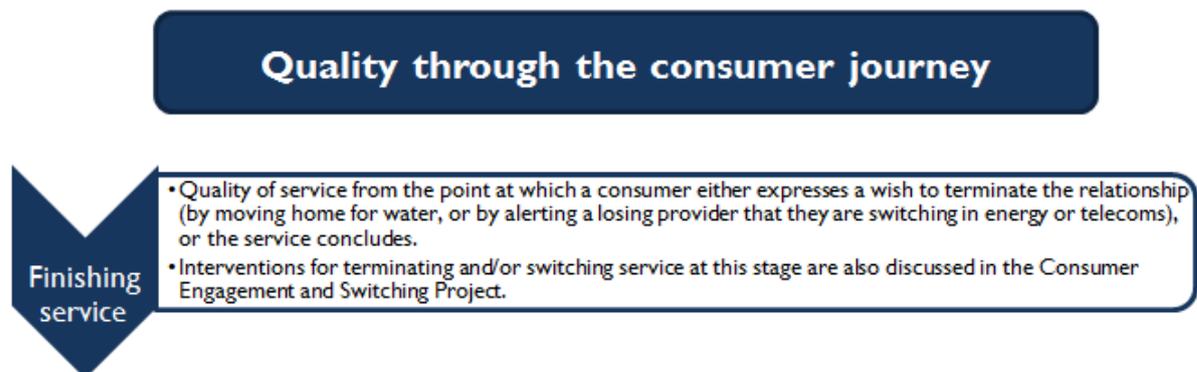
4.168. The PSR also provides support to consumers with service problems other than interruption or disruption to their energy supply. For example, services are available for consumers with communication needs who find it difficult to access information or understand their energy bill (such as large print communications for those with visual impairments). Furthermore, the register helps avoid the occurrence of other service issues in the first place. For example, certain consumers are eligible for assistance to be provided when reading their energy meter.

Ofwat

4.169. Ofwat does not have the power to impose requirements upon service providers to compel redress. However, as mentioned in paragraph 4.151 the GSS requires service providers to provide compensation to consumers in the event that standards are not met. However, in addition to the GSS requirements, Ofwat has the ability to pursue regulatory enforcement if service providers are found to be non-compliant with the GSS standards or its licence conditions. This enforcement can be in the form of undertakings from the company and/or financial penalties of up to 10% of the service provider’s turnover.

4.170. At an upstream / wholesale level, the Drinking Water Inspectorate and the Environment Agency have powers of enforcement in the event that drinking water is below the acceptable level or that environmental standards are breached respectively. Ofwat also has the power to enforce regulatory action, in the form of financial penalties, as well as licence revocation and placing the service provider under Special Administration.

## Consumer Journey Stage 4: Finishing service



4.171. There are two methods through which a consumer can stop their service. Either a consumer can:

- complete their service, for example, by reaching the end of terms of their contract with their CP and not renewing it, completing a rail journey or by ending the relationship with their service provider by physically moving property (in the context of energy and water); or

- cease their service mid-way through their contract or agreement with their service provider subject to any minimum contractual period protocols and early termination conditions<sup>142</sup> (for example, by choosing to terminate their service and/or switch their service provider).<sup>143</sup>

**Figure 4.4 – Summary of stage 4: Finishing service**

Sector	Stage 4: Finishing service
<b>Telecoms</b>	<ul style="list-style-type: none"> <li>• Minimum contract term limited to no more than 24 months</li> <li>• Guidance on fairness of early termination charges (ETCs) if consumer leave contract before end of minimum term</li> <li>• Broadband Speeds Code of Practice with termination rights for broadband customers who are within the first three months of their contract but experience specific speed-related problems</li> <li>• CPs cannot automatically renew contracts at end of fixed term for fixed-line voice and broadband services</li> <li>• Consumers can switch to another provider</li> <li>• Requirements on number portability so consumers can keep their existing telephone number when switching to another provider</li> <li>•</li> </ul>
<b>Energy</b>	<ul style="list-style-type: none"> <li>• Suppliers cannot automatically renew contracts</li> <li>• Consumers can switch to another provider</li> </ul>
<b>Rail</b>	<ul style="list-style-type: none"> <li>• Refunds can be provided in certain circumstances, for example if the journey is not undertaken</li> <li>• Refunds or compensation can be paid in event of delay or cancellation</li> <li>• Accessibility and assistance policies continue to apply until completion of the journey</li> </ul>
<b>Water &amp; sewerage</b>	<ul style="list-style-type: none"> <li>• Guaranteed Standards Scheme cover customer complaints</li> </ul>

- 4.172. Figure 4.4 shows that in telecoms and energy, there are **interventions aimed at preventing unexpected contract roll-overs**. In telecoms this takes the form of guidance on fairness in the context of consumer law requirements and a maximum fixed-term contract period. In energy, there is a specific prohibition on contracts automatically rolling over to a further fixed-term. These are in place to promote competition and reduce consumer harm by ensuring that consumers are aware of able to exercise their ability to switch at the end of a fixed-term contract. These protections are not required in water – consumers cannot switch. In rail, consumers are typically able to purchase season tickets lasting up to a year. There are protections available in terms of returning unused tickets and obtaining a refund under certain circumstances, for example, if they move to a different area and wish to use the services of a different train operator to get to work.
- 4.173. **Complaint handling standards** typically continue to apply at least up until the point at which the contract/agreement has concluded. This is the case in water, rail, energy and telecommunications.
- 4.174. In telecommunications, there are further interventions relating to early termination charges (ETCs) and number portability, both of which are intended to promote competition. Making clear the boundaries of fairness regarding ETCs gives consumers confidence in signing up to new contracts,

<sup>142</sup> The service is ceased when the notice period given at the point of request for termination is completed.

<sup>143</sup> We note that a consumer can switch their energy provider whilst remaining in their place of residence.

and reinforces consumer law requirements on fair explanation of contract terms. Number portability requirements promote switching by removing a potentially significant barrier.

## ORR

- 4.175. Consumers enter into an agreement with the train operator upon purchase of a ticket for travel, and the ticket acts as evidence of this agreement (the ticket effectively is the contract between the consumer and the train operator). This agreement lasts for the duration of the validity of the ticket and this varies depending upon the type of ticket purchased (season vs single/return/day travel tickets etc). Upon completion of the journey, the service is complete.
- 4.176. Refunds of the ticket can be provided in certain circumstances, as described above, for example, the NRCoC sets out the circumstances in which passengers can require a refund in circumstances where they decide not to enter into the service or undertake the journey and where they wish to cease a season ticket already commenced.
- 4.177. Franchises and train operators are obliged by their licence to comply with the NRCoC, which details the arrangements of a consumer's entitlement to compensation resulting from the interruption to a service. These arrangements differ by ticket type:
- *Non-season ticket holders*: refunds can be granted to the consumer under Condition 26 of the NRCoC in the event of a cancellation or delay in the service. The level of refund is dependent upon the level of use of the ticket.
  - *Season ticket holders*: The terms of refunds are detailed under Condition 36 of the NRCoC. The entitlement to a refund and the amount of refund is dependent upon a number of factors, such as the time left on the validity of the ticket.

### Vulnerable consumers

- 4.178. The policies that are in place at stage 2 to ensure passenger accessibility and assistance apply at the service completion stage with regards to getting off the train.

## Ofcom

- 4.179. When a consumer comes to the end of their minimum contract term (which is limited to a period of no more than 24 months under GC 9.4), they can exit the contract without penalty as no ETCs are payable. This is providing they give the CP notice in accordance with the timescales set out in their contractual terms and conditions.<sup>144</sup>
- 4.180. Some consumers may exercise their right to terminate their contract during the minimum term. In most cases, CPs would require the consumers to pay an ETC for leaving a contract before the end of the minimum term. Ofcom has issued guidance in relation to the fair calculation of CPs' ETCs in such circumstances.<sup>145</sup> In addition, the Broadband Speeds voluntary code of practice allows broadband

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<sup>144</sup> Ofcom has issued guidance in relation to minimum notice periods

<sup>145</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/addcharges/statement/Guidance.pdf>

consumers to exit their contract without penalty where they experience specific speed-related problems which cannot be remedied.<sup>146</sup>

- 4.181. Ofcom has banned CPs from automatically renewing contracts when a consumer of fixed-line voice and/or broadband services reaches the end of the terms of their fixed contract. This prevents consumers from being tied into another fixed contract which may require them to pay a penalty fee if they choose to exit it before the end of their minimum contract term.<sup>147</sup> Automatically Renewable Contracts have never been a feature of the mobile market.
- 4.182. GC18 sets out the requirements on number portability so consumers can keep their existing telephone number when switching to another provider. For example, in the case of mobile number portability, GC18.2 requires providers to allow subscribers to request a Porting Authorisation Code (PAC) over the phone and provide the PAC immediately over the phone or by SMS within two hours of the request.

## Ofgem

- 4.183. For the energy sector there are two ways in which the service can cease. Either:
- The consumer moves out of their property. In this case, the consumer can, if they want, transfer their contract with their energy supplier to their new property. If network operators are aware of the consumer's move-in date, they can notify the consumer's chosen energy provider in advance and have the pre-existing supplier switched for when the consumer arrives.<sup>148</sup> Or;
  - The consumer switches away from their energy provider, subject to any minimum contractual terms, and joins a different energy provider. Consumers can do this whilst either remaining in their property, or when they move out of their property. Every household meter is uniquely identifiable, which allows switching to be possible. See paragraph 4.67 for more information on switching energy provider.
- 4.184. As with telecoms, Ofgem has also banned energy providers from automatically renewing consumer contracts. More information on this intervention is detailed in the *Consumer Engagement and Switching Report*.

## Ofwat

- 4.185. Service completion is effective once a consumer physically moves out of a property. However, unlike telecoms and energy, it is not possible for domestic consumers to switch service provider in this sector under the current legislation.<sup>149</sup>
- 4.186. There may be some services that the consumer does not require, for example, surface water drainage where a property is not connected to a public sewer for drainage, and so the consumer needs to inform its supplier that it should not bill them for this element of charge.

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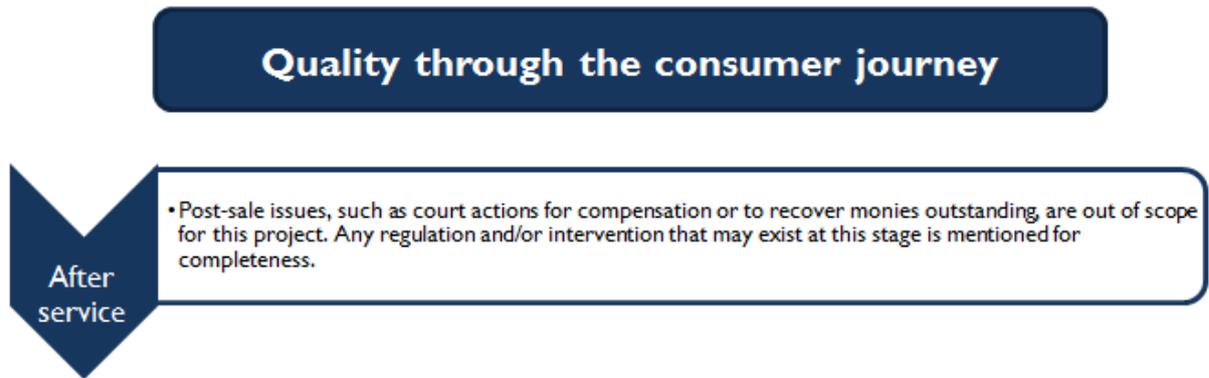
<sup>146</sup> See 4th Principle: Managing customers' speed related problems, <http://stakeholders.ofcom.org.uk/telecoms/codes-of-practice/broadband-speeds-cop-2010/code-of-practice/>

<sup>147</sup> For more information, please see the Consumer Engagement and Switching Project.

<sup>148</sup> This is providing that there is a notification period of at least five weeks before the consumer is due to move in.

<sup>149</sup> Ofwat note that in 2002 the Government considered that the cost and complexity of regulations for introducing competition for domestic customers would outweigh any potential benefit.

## Consumer Journey Stage 5: After service



4.187. There may be particular circumstances where regulators intervene on issues that a consumer may experience even after they have exited their service and are no longer receiving it (and are potentially being served by a different service provider). However, that is beyond the scope of this project. As such it is only briefly considered at this stage for the sake of completeness of the consumer journey. After-sales issues, such as consumers getting their money back, are not considered.

**Figure 4.5 – Summary of stage 5: After service**

Sector	Stage 5: After service
<b>Telecoms</b>	<ul style="list-style-type: none"> <li>• Complaints policies continue to apply after termination of contract</li> <li>• Ability to escalate complaint to ADR scheme</li> </ul>
<b>Energy</b>	<ul style="list-style-type: none"> <li>• Complaints policies continue to apply after termination of contract</li> <li>• Ability to escalate complaint to ADR scheme</li> <li>• Supplier-run website to reclaim money left in closed accounts</li> </ul>
<b>Rail</b>	<ul style="list-style-type: none"> <li>• Regulations on redress and compensation continue to apply</li> </ul>
<b>Water &amp; sewerage</b>	<ul style="list-style-type: none"> <li>• Guaranteed Standards Scheme cover customer complaints</li> </ul>

4.188. Figure 4.5 shows that complaint handling requirements tend still to apply in relation to any issues which have not been resolved prior to service cessation. In some instances, requirements in telecommunications may no longer apply. However, broadly speaking, consumers can still benefit from these protections. ADR schemes in energy and telecommunications also apply at this stage, enabling consumers to take complaints further if they are unsatisfied with the result. These protections are in place where companies would have no further incentive to deal promptly and effectively with complaints – given the complainant is no longer a consumer .

4.189. In energy, the treatment of outstanding balances is a particular focus, so as to ensure that consumers can be confident of retrieving their money after switching, and of paying by direct debit – which typically means they can benefit from a cheaper tariff than payment in arrears.

**ORR**

- 4.190. For rail, the regulations that are in place in stage 3, with regards to providing redress and compensation to passengers, also apply at this stage.

**Ofcom**

- 4.191. A consumer can still complain to a CP if they experience problems after terminating their contract and cease to be served by that CP. In such circumstances, a consumer may also escalate their complaint to an ADR scheme if they consider that the CP's complaints handling process has been ineffective. The consumer must take their complaint to an ADR scheme within 12 months of complaining to the CP.

**Ofgem**

- 4.192. Part of Ofgem's challenge to energy companies to deliver high standards of customer service is to ensure that when consumers move away or switch suppliers, closed account credit balances are repaid or used in a way that benefits consumers more widely.
- 4.193. With the rise in numbers of consumers switching suppliers, consumers need to be confident that they will not lose out if they close an account. Ofgem expects suppliers to do all they can to return money to individual consumers and to tell consumers clearly what to do when closing an account. Where it is not possible to repay a balance, suppliers should find ways to use this money to benefit consumers more widely.
- 4.194. Following Ofgem intervention, in September 2014 the industry launched a campaign and website to reunite consumers with their money.<sup>150</sup> Ofgem is clear that suppliers' policies and processes must not prevent large sums being retained in future. Suppliers should be open with consumers about the size of balances held and what suppliers are doing with the money. If switching is poorly handled it is possible for monies to be left outstanding for the consumer.

**Ofwat**

- 4.195. This is not as relevant for the water sector given the lack of choice of supplier for domestic consumers. However, water and sewerage companies must maintain consumer satisfaction by ensuring that closing accounts is done as quickly as possible. GSS standards will still apply.

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<sup>150</sup> <http://www.myenergycredit.com/>

## 5. Conclusions

- 5.1. Each participant regulator has developed quality of service interventions and metrics to meet a range of consumer requirements and the particular circumstances of its sector. That said, strong similarities can be seen in the broad outline of how regulators have approached actual or potential quality of service deficits.
- 5.2. As noted above, when considering and undertaking regulatory duties relating to quality of service, participant regulators have regard to the desirability of promoting competition, as well as the adherence to better regulation principles. Participant regulators must ensure that interventions are proportionate and avoid undue adverse effects on competition (which are detrimental to consumers) by, for example, raising or reinforcing barriers to market entry or unnecessarily increasing costs.
- 5.3. Even long-established competitive markets, such as retail telecoms and retail energy supply, benefit from targeted interventions around areas where competitive pressures may be weaker, for example, in the effectiveness of complaints handling and in the provision of tailored usage information to assist consumers to switch provider. In such areas, it is arguable that regulators have had to set service standards because providers do not necessarily have a market incentive to help their customers find a better deal elsewhere.
- 5.4. An overriding theme is quality of service interventions which address those aspects in each sector that consumers most value. For example, metrics for broadband speeds and punctuality of rail services give tools to consumers to help get the service they require. In rail, telecoms, water and energy, requirements are in place to encourage providers to minimise service interruptions, as in these sectors reliability of supply is valued by all consumers and, for water, energy and to some extent telecommunications, is of critical importance to some. This is also one reason why water, energy and telecommunications companies are required to have mechanisms to identify and prioritise certain groups of consumers.
- 5.5. However, the similarities between sectors must be seen in the context of the diverse market conditions to which the different sectoral regulatory frameworks have been tailored. Examples within the report of the types of interventions in place illustrate options available in different circumstances, but cannot be identified as generic 'best practice' as circumstances across sectors – and the aspects of provision which matter most to consumers – are not always directly comparable.
- 5.6. As a next step, the UKRN proposes to convene a workshop for all UKRN members to share experiences of regulating for quality more broadly and to continue to learn from each other about good practice – with observers and other UKRN members. This will take place in the coming months. To the extent that stakeholders consider it would be useful, the UKRN proposes also to organise an event to present and discuss these approaches with consumer representative bodies and other interested stakeholders. Any further work arising from these events would be considered by the UKRN as part of the prioritisation of its future work programme.

## Annex I – Glossary of terms

- ADR – Alternative Dispute Resolution
- BT – British Telecom
- CAT – Competition Appeals Tribunal
- CCT – Consumer Contact Team
- CCWater – Consumer Council for Water
- CISAS – Communications and Internet Service Adjudication Scheme
- CMA – Competition Markets Authority
- CP – Communications Provider
- DAP – Debt Assignment Protocol
- DfT – Department for Transport
- DNO – Distribution Network Operator
- EOI – Equivalence of Inputs
- ETC – Early Termination Charge
- EU – European Union
- FAMR – Fixed Access Market Review
- GC – General Conditions of Entitlement
- GOSP – Guaranteed and Overall Standards of Performance
- GS – Guaranteed Standards
- GSS – Guaranteed Standards Scheme
- ICE – Incentive on Connection Engagement
- KPI – Key Performance Indicator
- MICOP – Mail Integrity Code of Practice
- MSP – Mobile Service Provider
- NEWSAC – North East West South Area Consortium
- NRCoC – National Rail Conditions of Carriage
- ODI – Outcome Delivery Incentives
- Ofcom – Office of Communications
- Ofgem – Office of Gas and Electricity Markets
- Ofwat – The Water Services Regulation Authority

ORR – Office of Rail Regulations

PCOPA – Postal Common Operational Procedures Agreement

PPM- Prepayment Meter

PSR – Priority Services Register

RPO – Regulated Postal Operator

SIM – Service Incentive Mechanism

SLA – Service Level Agreements

SMP – Significant Market Power

SOC – Standards of Conduct

SOR – Social Obligations Report

SSE – Scottish and Southern Energy

TOC – Train Operating Companies

UKPN – UK Power Networks

UKRN - UK Regulators Network

WaSCs – Water and Sewerage Companies

WoCs – Water Only Companies