Ofcom's annual Openreach monitoring report

Maintaining an independent Openreach

[Ofcom's annual Openreach monitoring report](#) – Welsh overview

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1. Overview

We want people across the UK to have access to faster and more reliable broadband. In 2016, we decided that Openreach needed greater independence to ensure it could operate in the interests of all its customers, in support of this aim. In 2016, we instigated a programme of reform by BT Group intended to address our concerns and deliver better outcomes for consumers and businesses. In March 2017, BT gave Commitments to reform Openreach.

We set up our Openreach Monitoring Unit (OMU) to monitor whether BT and Openreach are acting in accordance with the Commitments. This is an extremely important part of Ofcom's work. This report sets out our findings from our monitoring over the past year. We will continue to monitor and report on the Commitments moving forward.

Our findings since the last monitoring report[1]

Overall, Openreach has continued to operate with a high degree of strategic and operational independence from BT, as envisioned by the Commitments. Strong structures and processes exist within BT and Openreach which help to support compliance and address instances of non-compliance.

Openreach and BT must not lose sight of the Commitments – they are an important part of the ecosystem that supports competition in the telecoms market. Notably, there have been several changes in senior leadership, including the appointment of a new BT Chairman. Continued focus and vigilance will be required to ensure that progress made in recent years remains embedded and sustainable. We will monitor these developments closely.

During the year the COVID-19 pandemic has had a significant impact on Openreach's operations and has also reduced the quality of service that it has been able to deliver. We recognise the constraints that Covid-19 has placed on the telecoms industry. In spite of these challenges, Openreach and others have continued to provide services and build new fibre networks across the UK.

We are expanding the scope of the OMU

In March this year, Ofcom published the Wholesale Telecoms Fixed Market Review (WFTMR). The WFTMR put in place new rules around the regulation of the fixed telecoms markets that underpin broadband, mobile and business connections, for the period from April 2021 to March 2026.[2] These rules are designed to promote competition and investment in gigabit-capable networks – bringing faster, better broadband to people across the UK. The framework set out in the WFTMR aims to incentivise all network builders, including Openreach, to roll out new networks.

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[1] The 2020 OMU monitoring report was published in November 2020. It covered the financial year 2019/20, but where relevant included commentary on issues falling after the end of that financial year. In this report, we have set out our commentary on our findings since the last monitoring report.

[2] See Ofcom, 2021, Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets (WFTMR)

Through the WFTMR framework, we are seeking to regulate in a way that encourages large-scale deployment of new full-fibre networks both to homes and businesses and drives widespread availability of competing gigabit-capable broadband services.[3]

The Commitments and the WFTMR are two distinct parts of Ofcom's broader strategy to deliver better broadband to homes and businesses across the UK. Openreach has an important role to play in ensuring that competition operates effectively. Going forward therefore, in addition to our continued monitoring of BT's and Openreach's compliance with the Commitments, we will expand the scope of the Openreach Monitoring Unit to include the outcomes of the WFTMR.

In order to support our monitoring, we encourage our stakeholders to contact us where they are concerned that there are issues that might act as obstacles to the development of competition in gigabit-capable networks. Ofcom remains ready to use the tools at our disposal to support the policy set by the WFTMR, including through the use of Ofcom's enforcement function where appropriate.[4]

As part of this year's monitoring process, stakeholders have already highlighted a range of issues to us:

- The development of Openreach's physical infrastructure access product and how it can evolve to meet the needs of network builders.
- How Openreach can best work with other telecoms companies to ensure positive outcomes for consumers, for example in the adoption of FTTP.
- The level of transparency in Openreach's forward looking build plans.
- What further clarity Openreach can provide about how it will approach the shutting down of its copper network over time.

We encourage Openreach to continue to engage with its customers around these areas, working closely with industry to identify concerns and working collaboratively to overcome them. We expect to report on progress on these and other areas highlighted by stakeholders in our next report.

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[3] In 2016, we undertook a strategic assessment of the telecommunications sector. We decided to move away from access-based regulation, instead moving to an approach that promotes competition and investment through network competition. See Ofcom, 2016, Strategic Review of Digital Communications

[4] Enforcement activity, including any assessment of BT and Openreach's compliance with their SMP obligations, will be conducted by Ofcom's Enforcement Team, not the OMU.

2. BT, Openreach and the Commitments

2.1   In this section, we set out our key findings in relation to BT and Openreach's compliance with the Commitments over the past year, looking at the extent to which Openreach has continued to act in a way that is strategically and operationally independent from BT.

2.2   From our work over the last year, we consider that BT and Openreach remain supportive of the Commitments, and the processes and ways of working that support strategic independence are well embedded. However, we must remain vigilant to ensure that any future developments at BT do not disrupt the success of this model.

2.3   Ongoing oversight of the Commitments remains vital. The Commitments are a distinct framework from the obligations that were imposed by the WFTMR, but both are intended to create the conditions to promote competition in telecoms markets. Therefore, alongside our monitoring of WFTMR outcomes, monitoring of compliance with the Commitments will remain at the core of what the OMU does.

Changes to the format of this report

2.4   In previous years, this report has included a set of progress indicators, the purpose of which was to provide a summary of how well BT and Openreach were doing at complying with the Commitments and ensuring that they were sustainable.

2.5   As outlined above, we are resetting our approach to monitoring to go beyond the Commitments, and will now look at a broader set of risks and outcomes in telecoms markets.

2.6   We have decided that indicators such as those included in previous OMU reports are not the best tool for giving a real sense of how well things are going across such a broad set of issues. Therefore, starting this year, we have decided not to include these indicators, instead relying on the whole of our report to provide commentary.

Openreach strategic and operational independence

2.7   When the Commitments were first introduced, they were designed to enable a system which would support greater independence for Openreach, with the intention that it would determine its own strategy, taking into account the BT Group Strategic Framework.

2.8   Previously, our annual monitoring reports have commented on the progress that has been made to implement these Commitments. We have now reached a point in time where the processes and structures around the functioning of the Commitments are well embedded across BT and Openreach. However, BT and Openreach must not lose focus on the Commitments, and it is vital that all parties continue to ensure that they remain secure and central at the heart of the relationship between BT and Openreach.

2.9   Ofcom will monitor these developments closely.

Strategy and financing

2.10   In previous years we have noted continued progress in the strengthening of Openreach independence. Over the past year, we have seen this trend continue, with Openreach continuing to develop and champion its own strategy, most notably in relation to its fibre ambitions. While these ambitions are supported by BT, the strategy itself has been developed and owned by Openreach.

2.11   The operation of Openreach's strategy development and financial planning processes have been closely monitored by the BT Commitments Assurance Office (CAO), the Openreach Commitments Monitoring Office (CMO), and Ofcom. As in previous years, we consider that the 2021/22 strategy was developed within Openreach with reference to the wider context of the BT Group Strategic Framework, and then approved by the Openreach Board before being shared with BT.

2.12   In order for Openreach to deliver on this strategy, it must secure adequate funding. The governance in place around the development of Openreach's Annual Operating Plan and Medium Term Plan is intended to enable Openreach to make the case for funding to BT Group to support Openreach's strategy. As is the case with the development of Openreach strategy, Openreach develops the case for its own financial plans and capital requirements for approval by the Openreach Board before submitting its financial plans to BT Group, as its parent company.

2.13   To date, we have seen no undue influence from BT Group in relation to Openreach's strategy or financing, and it is encouraging that Openreach has been able to obtain the funding that it requires to continue to deliver its fibre ambitions.

Commercial decision making

2.14   We said last year that our monitoring of BT's interaction with Openreach going forward would be particularly focused on how decisions are reached on issues of real significance to the industry, including Openreach's wholesale pricing of fibre services.

2.15   One of the most significant decisions since April 2020 has been the development of Openreach's Equinox offer for FTTP products.[5] We understand that the Equinox offer is intended to drive uptake of FTTP services by giving CPs cheaper prices for Openreach FTTP products, so long as they largely stop making new sales of legacy broadband products where Openreach FTTP is available, and switch to selling mainly FTTP products instead.

2.16   These terms are available to all of Openreach's FTTP customers, including BT downstream units.

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[5] Openreach is required to notify Ofcom of proposed commercial terms where the price or other contractual conditions are conditional on the volume and/or range of services purchased. This notification process is intended to allow industry and Ofcom to scrutinise the terms before they are introduced, and where necessary allow Ofcom to intervene to prevent such terms being introduced. Equinox was notified to Ofcom under these terms on 1 July 2021, and on 30 September 2021, Ofcom confirmed that we would not be taking action to prevent the terms from being introduced.

2.17   FTTP commercialisation is an area where continued monitoring is required around the engagement between BT Group and Openreach. BT as a parent company is making significant investment in Openreach to deliver fibre, and the BT downstream units are likely be some of the largest consumers of Openreach FTTP products. However, Openreach must continue to ensure that it takes into account the preferences of all of its FTTP customers in setting its strategy, and does not give undue prominence to the plans of BT customer facing units.

2.18   BT and Openreach have agreed and published a 'Guidance Note' (approved by the Openreach Board) setting out a framework for commercial decision-making.[6] This note establishes that it is for Openreach to make its own product and pricing decisions without BT Group intervention. The referral of decisions to BT Group is only warranted where specific criteria that impact its regulatory, legal or financial responsibilities as Openreach's parent are met, one such case being where a commercial decision reaches certain defined thresholds of significant value.[7]

2.19   As noted by the BT Compliance Committee (BTCC), the commercial processes framework will be increasingly relevant as issues relating to FTTP commercialisation (including pricing) gain momentum.[8] It is vital that BT, acting as a parent company, and Openreach continue to operate within this framework as FTTP commercialisation progresses.

2.20   Given the significant financial value of the FTTP pricing strategy, following approval from the Openreach Board, those proposals were sent to BT in April 2021. Openreach's proposals were agreed by the BT Chief Executive in line with BT's delegation of authority framework,[9] and shared with the BT Group plc Board for information.

2.21   The CAO and CMO worked in cooperation to monitor the work undertaken to develop the Equinox FTTP pricing proposals, and found that these were handled in line with the Commercial Processes Guidance Note. In addition, the OMU has not identified any undue influence of Openreach by BT Group in the development of the Equinox offer, but we will continue to monitor this area as FTTP commercialisation continues to develop.

Compliance and oversight

2.22   BT and Openreach have established committees for monitoring compliance and behaviours within the organisations in relation to the Commitments: the BTCC and Openreach Board Audit, Risk and Compliance Committee (OBARCC).

2.23   We have seen OBARCC and BTCC continue to work proactively on ensuring that the Commitments are upheld. This has been supported by the work of the CMO and the CAO respectively. The CMO and CAO assurance functions continue to undertake ongoing

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[6]This guidance note is available on BT's website: https://www.bt.com/about/bt/policy-and-regulation/our-governance-and-strategy/our-commitments
[7] BTCC Annual Review 2020-21. See: https://www.bt.com/bt-plc/assets/documents/about-bt/our-company/group-governance/our-committees/bt-compliance-committee/publications-and-dcr-documents/btcc-annual-review-2020-21.pdf
[8] BTCC Annual Review 2020-21, page 12
[9] BTCC Annual Review 2020-21, page 12

monitoring and targeted deep-dive reviews, providing challenge and guidance to business areas.

2.24 The CMO and CAO also report regularly to the OBARCC and BTCC respectively, providing the support that these committees need to oversee organisational compliance with the Commitments. The OBARCC and BTCC also publish their own yearly reviews on their work and the functioning of the Commitments.

2.25 Below we set out some of our observations from our monitoring of BT and Openreach's compliance with the Commitments since the publication of our last report.

Changes to the BTCC

2.26 On 15 April 2021 the BTCC ceased to be a sub-committee of BT's Board Audit and Risk Committee, and became a committee of the BT Group plc Board. It is therefore now directly accountable to the BT Group plc Board.

2.27 We welcome the increased visibility that this change is giving to the BTCC, the Commitments and broader compliance issues, and we believe that this change will continue to ensure that the Commitments remain a point of focus for BT.

2.28 In addition to this, on 1 April 2021, the remit of the BTCC was expanded to include oversight of consumer fairness. The BTCC now monitors "whether BT is living up to Ofcom's consumer fairness principles, whether the culture and behaviours of colleagues are conducive to BT being trusted to treat customers fairly, and the extent to which BT is meeting the desired outcome of being trusted."[10]

2.29 In expanding its role, BTCC must ensure that it does not lose sight of the Commitments. We support prominence for consumer protection, but this must not come at the expense of effective Commitments oversight. We note that steps have been taken by the BTCC to mitigate this risk, including expanding the time permitted for meetings of the BTCC to ensure that sufficient time is available to ensure effective governance of both the Commitments and consumer fairness.

Oversight of new BT finance and accounting system

2.30 BT is currently in the process of introducing a new finance and accounting system, using SAP. This platform will be used by BT and Openreach, and will contain Openreach information, including Openreach Commercial Information[11] and, ultimately, Customer Confidential Information.[12] It is therefore vital that strong controls are in place to ensure

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[10] BTCC Annual Review 2020-21, page 3.
[11] Commercial Information is defined in the Commitments as information of a commercially confidential nature relating to SMP Products and which relates to any or all of the following in relation thereto: (a) product development; (b) pricing; (c) marketing strategy and intelligence; (d) product launch dates; (e) cost; (f) projected sales volumes; or (g) network coverage and capabilities.
[12] Customer Confidential information is defined in the Commitments as meaning any information, in whatever form, which, in the case of written or electronic information, is clearly designated by the Communications Provider as commercially

that this information is properly controlled, accessible only by those who should have access under the Commitments.

2.31   Openreach and BT have put such controls in place, including implementing access restrictions that ensure that only appropriately authorised people can access Openreach information – and all users that require access to Openreach data via SAP must request access from a senior member of Openreach's finance team and obtain an appropriate regulatory compliance marker, which must be regularly renewed to ensure that it remains appropriate for the individual to hold it.[13]

2.32   The ongoing deployment and operation of this system will be closely monitored by the BTCC and OBARCC, and will continue to be monitored by the OMU.

Openreach remuneration

2.33   An important part of creating the correct incentives to maintain independence is remuneration, specifically ensuring that incentives for Openreach employees are based on Openreach objectives. Accordingly, the Commitments require Openreach incentives to reflect solely the objectives of the Openreach Division.[14]

2.34   We note that BT 'yourshare' awards were introduced in 2020 to give all employees of participating BT Group plc companies a share in BT Group's success. When these awards were first introduced, steps were taken to ensure that all awards to Openreach staff under this scheme would be dependent on performance criteria that are defined independently by Openreach and overseen by the Openreach Remuneration Committee.

2.35   In March 2021 BT's Group Director of Reward, Employee Relations, Safety and Wellbeing wrote to the Openreach Chair and Openreach Remuneration Committee Chair asking them to decide on the overall 2021 yourshare award for Openreach employees. In June 2021, the Openreach Chair and Openreach Remuneration Committee Chair concluded that Openreach employees should be granted a yourshare award.

2.36   As part of formalising the governance process, the responsibilities of the Openreach Remuneration Committee in respect of the yourshare award have been codified in a terms of reference document. The OMU welcomes the proper codification of this process within Openreach's governance, and will be observing closely the operation of the process in the coming years.

2.37   We also note that BT asked Openreach to introduce a BT Group-wide environmental target to its remuneration scorecard. OBARCC reported that "the Openreach Board supported

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confidential and which, in the case of information disclosed orally, is identified at the time of disclosure as such or is by its nature commercially confidential, but excluding any information which: (a) enters the public domain otherwise than by reason of a breach of confidentiality; (b) is previously known to BT (other than the Openreach Division) at the time of its receipt; (c) is independently generated or discovered at any time by BT (other than the Openreach Division); or (d) is subsequently received from a third party without any restriction on disclosure.
[13] CAO Director's Report to the OMU, July 2021, page 3
[14] Paragraph 8.2 of the Commitments

this environmental target, and considered that they should adopt the group-wide target rather than look for something for Openreach simply to be different."[15]

2.38   As a result, following due governance processes, BT and Openreach agreed an exemption to the **Commitments and, after notification of the proposed change to Ofcom, it** came into effect on 29 November 2020 which allows for the Openreach Scorecard to reflect a BT-wide environmental objective, weighted at no more than 5% of the Scorecard.

2.39   We consider that it is unlikely that the inclusion of such a target would create an incentive for Openreach to favour BT downstream, or otherwise indicates undue influence by BT Group on Openreach's strategy. Any future changes to Openreach's remuneration arrangements will be carefully monitored by the OMU.

Covid-19 pandemic

2.40   The Covid-19 pandemic has continued to create challenges for BT and Openreach. At paragraph 3.11 of this report, we note the work that Openreach has undertaken to try to ensure continued service quality in light of the pandemic.

2.41   We have not seen any evidence that BT's response to Covid-19 has significantly changed its relationship with Openreach, and Openreach has continued to pursue its strategy throughout the pandemic. In particular, we note that Openreach has continued to be able to secure significant capital investment to pursue fibre rollout, including for the additional 5 million homes announced in May 2021, despite the challenges that BT Group has faced through Covid-19.

2.42   We are therefore of the view that Openreach has been able to maintain its strategic and operational independence despite the challenges of Covid-19, and this is in part due to the continued strength of the internal compliance mechanisms that BT and Openreach have in place around the Commitments.

Maintaining focus on the Commitments over time

2.43   There is a risk that as we move further in time from the inception of the Commitments that Openreach and BT could lose focus on their importance. While we do not see evidence that this has happened to date, we note over the past year, there have been some notable organisational and people changes in BT, including:

   a)   Earlier this year, Jan du Plessis announced that he would be stepping down as BT Chairman. Adam Crozier took over as BT Chairman on 1 December 2021.

   b)   BT Strategy and Finance have been consolidated under Simon Lowth, BT CFO.

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[15] OBARCC Commitments Compliance Report 2021, page 15. See https://www.openreach.co.uk/cpportal/content/dam/cpportal/public/images-and-documents/home/footer-documents/commitment-monitoring-office/OBARCC_OpenreachComplianceReport2021FINAL.pdf

c) Following the departure of the BT Group Director Regulatory Affairs in July 2021, role has been consolidated with the role of BT Group General Counsel.

d) Rob Shuter joined BT as the new CEO of BT Enterprise in February 2021.

e) The reform of BT Technology to create two new divisions in 2021 – BT Networks and BT Digital Networks – headed up respectively by Howard Watson, BT CTO, and Harmeen Mehta, BT's new Chief Digital and Innovation Officer.

2.44 BT and Openreach are mindful of the risks that are presented by organisational changes such as these, and have put in place mitigations, including:

a) A new Commitments focused induction programme has been undertaken with the new CEOs of BT Enterprise and BT Digital, which include meetings with Openreach executives and Board members.[16] BT and Openreach have committed to similar engagement with the new BT Chairman.

b) BT is rolling out a refresher programme for senior leaders (direct reports to executive committee members and a number of their direct reports) re-emphasising the purpose and intent of the Commitments and stressing the need to ensure proper and timely consideration of, and engagement with, Openreach. There will be a particular focus on recent joiners.

2.45 Alongside this, BT and Openreach recently completed a project to review and refresh the guidance notes that sit alongside the Commitments and which cover issues such as strategy development, equal treatment, commercial processes around pricing.[17] We understand the purpose of this review has been to keep them current, to simplify them and enhance their usefulness.[18]

2.46 It is important that the Commitments, the surrounding governance and accompanying guidance remain a focus for BT and Openreach over the coming years.

2.47 We are reassured by the steps being taken by BT and Openreach to ensure that the Commitments remain fresh and front of mind. The OMU will be monitoring the evolution of this area over the coming year.

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[16] As an existing member of the BT executive team Howard Watson was not a part of this new-joiner induction.
[17] These guidance notes are available on BT's website, and can be found here: https://www.bt.com/about/bt/policy-and-regulation/our-governance-and-strategy/our-commitments
[18] CAO Director' s Report to the OMU, July 2021, page 11

3. Looking ahead: WFTMR outcomes

3.1   Ofcom seeks to regulate in a way that encourages large-scale deployment of new full-fibre networks both to homes and businesses and drives widespread availability of competing gigabit-capable broadband services. Through the WFTMR, we seek to promote investment in gigabit-capable networks by BT and Openreach and other companies in order to promote network-based competition.

3.2   Openreach has an important role to play in ensuring that competition operates effectively. As well as pursuing its own fibre build programmes, we expect Openreach to work constructively with customers to build commercial relationships and trust, in order to best enable industry progress in fibre build. In previous reports, we have looked at how greater independence for Openreach has influenced its efforts to engage constructively and fairly with all its customers. Part of our work involves engaging with Openreach and its customers to understand the positive and the more challenging elements of their relationships.

3.3   In the remainder of this section, we have reflected in more detail on issues relating to the delivery of fibre networks, including how these relate to outcomes for consumers and some of the areas of focus for Openreach's customers.

3.4   As we explain later in this section, the OMU will continue our industry engagement over the coming year, and we encourage all of our stakeholders to proactively raise issues with the OMU. The OMU will act as a point of contact for issues relating to the Commitments and the WFTMR, and will ensure that, where necessary, concerns are passed to the appropriate area of Ofcom for further consideration. Ofcom remains ready to use the tools at our disposal to support the policy set by the WFTMR, including through our enforcement function where appropriate.

Customer outcomes

Availability of fibre broadband

3.5   We have seen the availability of full-fibre broadband continue to increase to 6.9 million of homes (24%) now able to access full fibre services as of May 2021.[19] This is an increase from our previous monitoring report when the figure was reported as 14%, as of May 2020. Ofcom provides regular updates on the coverage of fixed broadband networks through our Connected Nations reports.[20]

3.6   We have continued to see increased roll out from Openreach and the building of new fibre networks by altnets.

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[19] The level of full-fibre build varies across the UK – with Northern Ireland having the highest proportion of premises able to access full-fibre (67%) compared to 23% in both Scotland and England. The figure for Wales is 24%. See https://www.ofcom.org.uk/__data/assets/pdf_file/0013/224212/connected-nations-summer-2021.pdf
[20] See: https://www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research

3.7   By September 2021, Openreach had built full fibre connections to 6 million premises[21].

3.8   In May 2021, Openreach announced that it is expanding its FTTP network rollout target from 20 million premises to 25 million premises by 2026. It also increased its rural build plans to 6.2 million premises as part of this programme. This represents a significant expansion of Openreach's fibre footprint.

3.9   Virgin Media O2 has also announced that 90% of its network is now gigabit ready, making gigabit capable broadband available to 14.3m homes across the UK through their network.[22]

3.10   We have continued to see altnets roll-out fibre networks throughout the UK often making use of Openreach's physical infrastructure. The Independent Networks Cooperative Association (INCA) reports that at the end of 2020, an estimated 2.5 million premises had been passed by fibre networks built by operators other than Openreach or Virgin Media.[23] This is up from 1.2 million at the end of 2019.[24] INCA also calculates that 6.6 million premises will be passed by these providers by the end of 2021, and that the announced build plans of alternative network providers, when taken together, amount to around 30 million premises passed by the end of 2025.[25]

Quality of Service

3.11   The quality of service provided by Openreach to its customers has improved in recent years, however Openreach failed to meet some of the quality of service standards that Ofcom imposed for 2020/21. Specifically, Openreach did not achieve 7 of the 42 quality of service standards for voice and broadband services in 2020/21, and it also missed one of its three Ethernet quality of service standards.

3.12   Ofcom recognises that the pandemic created unprecedented challenges for the communications industry, including for Openreach. Throughout 2020/21, Ofcom engaged closely with Openreach to monitor both the impact of the pandemic on its quality of service performances, and the specific steps it was taking to try and mitigate those impacts on its service levels.

3.13   Openreach put in place several mitigations to deal with the commercial and operational challenges generated by the pandemic, including:

   a)   revising operational processes to ensure that projects related to the delivery of critical national infrastructure were delivered;

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[21] https://newsroom.bt.com/results-for-the-half-year-to-30-september-2021/
[22] See https://news.virginmediao2.co.uk/virgin-media-o2-within-touching-distance-of-upgrading-entire-network-to-gigabit-speeds/
[23] Metrics for the UK independent network sector, INCA and Point topic, May 2021, page 6, see https://www.inca.coop/sites/default/files/inca-point-topic-report-2021.pdf
[24] Metrics for the UK independent network sector, INCA and Point topic, May 2021, page 9
[25] Metrics for the UK independent network sector, INCA and Point topic, May 2021, page 9

b) development of a new system to contact end-customers and allow them to manage appointments and understand the Covid-19 safety precautions that were needed to protect both engineers and end-customers; and

c) implementation of new payments plans to allow CPs impacted by the pandemic some flexibility to pay bills over longer period.

3.14 We also note that during the pandemic, engineers from Openreach and across the industry have continued to deliver services across the UK, working on the frontlines and exposing themselves to risk in order to ensure that the UK has been able to stay connected.

3.15 When considering whether to open an investigation, we noted the following factors which impacted Openreach's performance during 2020/21:

a) the impact of the Covid-19 pandemic on staff and resource availability, as absence levels were high due to illness and self-isolation requirements;

b) as a result of social distancing guidelines, there were challenges in carrying out engineering work and accessing premises or sites; and

c) the increased demand in broadband usage (and increased level of fault reporting by customers) as a result of Covid-19 lockdowns gave rise to challenges in resourcing and planning for meeting the demand.

3.16 In each case, taking account of the uniquely difficult circumstances of the pandemic, we considered these factors were beyond Openreach's control and had a substantial impact on its quality of service.

3.17 In light of the relevant circumstances, Ofcom decided it was not appropriate to open an investigation into Openreach's quality of service performance during 2020/21.[26]

3.18 Nonetheless, compliance with regulatory obligations continues to be important. Ofcom took into consideration the impact of Covid-19 when determining the QoS standards for 2021/22 in the WFTMR and we will closely monitor Openreach's performance in relation to these obligations over the coming year.

Industry concerns

3.19 Given Openreach's commitment to treat all customers equally and in light of the regulation imposed by the WFTMR, we expect to see Openreach commit to engaging constructively to support those customers who wish to develop fibre networks, in line with its regulatory obligations. This should have the effect of creating an environment where industry participants invest and operate with confidence.

3.20 In this section, we set out concerns that stakeholders have raised in relation to several key areas of interest for them. We encourage Openreach to engage closely with its customers

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[26] See: https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/openreachs-qos-performance-leased-lines-wholesale-local-access-2020-21

around these areas over the coming year, doing all it can to collaborate constructively with industry.

Access to Openreach's physical infrastructure

3.21   UK telecoms networks rely on physical infrastructure, such as underground ducts and telegraph poles to connect high capacity fibre lines.

3.22   The provision of effective access to ducts and poles (DPA) by Openreach via its Physical Infrastructure Access (PIA) product is an important component in enabling fibre network deployment. As explained in the WFTMR, DPA is our overarching remedy for the support of network competition in all areas.

3.23   We note that there is continued interest in PIA, with over 130 providers registered with Openreach by September 2021, in comparison to 90 at the time of our previous report Around three quarters of these CPs were actively placing orders with Openreach. As of September 2021, a total of 99 CPs placed PIA orders and 56 of the 99 CPs were building or had built their network using PIA.

3.24   In terms of PIA usage, Openreach reports that PIA Notice of Intent orders to the end of June 2021 covered 41,000km duct and over 300,000 poles, up from 14,000km duct and 68,000 poles a year earlier. The total Openreach network footprint is c.450,000km of duct and c.4m poles.[27]Openreach also reports that the average time to verify Network Adjustments[28] stands at 2.05 days, with 99% verified within five days.[29]

3.25   The increased use of PIA is encouraging, and indicates that progress is being made towards the growth of competing fibre networks. Openreach and its customers continue to discuss the development of PIA through relevant industry fora, and these discussions have resulted in changes to some ways of working, for example in changes to Openreach's underground and overground engineering policies.

3.26   We are aware that many PIA customers have concerns around the use of this product, and have highlighted a number of issues to Ofcom.

Physical infrastructure challenges

3.27   CPs have told us that they have experienced some challenges when using Openreach's physical infrastructure to build their fibre networks. One of the key challenges that CPs have encountered is defective poles (D-Poles). A D-Pole is a pole within Openreach's network which is defective, requires replacement, and is often not able to support the addition of fibre dropwires being attached to the pole until it is replaced. This means that

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[27] Information provided by Openreach to OMU, 1 September 2021.
[28] Information provided by Openreach to OMU, 1 September 2021
[29] A network adjustment is a request that a PIA customer can make of Openreach to make a change to its network infrastructure in certain circumstances. More information can be found at Annex 8 of the WFTMR, https://www.ofcom.org.uk/__data/assets/pdf_file/0021/216084/wftmr-statement-annexes-1-26.pdf

PIA customers are often not able to add their own fibre to these poles, and it is not always possible to connect homes to the fibre network through such poles.

3.28 We understand that there are a number of D-Poles in Openreach's network, with many D-Poles awaiting repair or replacement. Replacing D-Poles is complex, in part due to the difficulties of securing the necessary bespoke equipment required to replace them. We understand that Openreach is in the process of developing some new initiatives in relation to poles, which it believes will help address this matter.

3.29 As Openreach and PIA customers continue to deliver fibre through Openreach's ducts and poles, there will need to be continued close collaboration between PIA customers and Openreach to ensure that the D-Pole challenge and any further challenges that emerge can be tackled. Openreach will also need to be flexible and innovative in finding solutions to problems such as D-poles.

Customer confidential information

3.30 In order to use Openreach's physical infrastructure, a PIA customer must provide information to Openreach about how it intends to use that infrastructure. Under its regulatory obligations, Openreach must ensure that it uses this information only for the purpose for which it is provided.

3.31 Some PIA customers remain concerned that Openreach may use this information to inform its own decisions on when and where it deploys its fibre network, and that there is insufficient separation between PIA and Fibre teams within Openreach.

3.32 To date, Ofcom has not found evidence to suggest that Openreach has used PIA customer confidential information improperly. Following discussions with Ofcom, Openreach has recently refreshed the information that is available to customers which explains the steps that it takes to protect their confidential PIA information, including how it ensures separation of those functions that use PIA data from the teams responsible for delivering Openreach's own fibre network.[30] These protections include:

a) requiring all employees who need access to detailed PIA CP data to apply for a PIA regulatory compliance marker, which is granted for a limited period of time and the list of recipients is regularly reviewed;

b) employing protections in the PIA systems estate to ensure that systems that contain potentially sensitive information can only be accessed by those with a regulatory compliance marker; and

c) ensuring that the team responsible for PIA operations is ringfenced from the wider Fibre Networks Delivery team in which it sits, with additional training provided to members of this team to cement their information sharing responsibilities.

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[30] This information is available to Openreach customers on its website:
https://www.openreach.co.uk/cpportal/products/passive-products/physical-infrastructure-access(PIA)#Documents

3.33   We are mindful of industry concerns around the protection of PIA confidential data and will continue to monitor this area closely. We encourage Openreach to ensure it continues to provide transparency and clarity around the protections it has in place.

Competing fibre networks

Openreach's expanded build plans and overlapping build footprints

3.34   There have been some concerns raised by stakeholders around instances where Openreach builds its network in the same place as its competitors. This is sometimes referred to as "overbuild". As noted above, this has included concerns around use of customer data in Openreach's build decisions; however, we have not to date found evidence to suggest that Openreach has used CP confidential build plan information inappropriately.

3.35   Openreach has completed an independent audit around the governance of its fibre footprint decision-making, which found that there were no major items of concern but did highlight the need for some improvement, for example in ensuring that documents setting out footprint decision-making processes were regularly reviewed and updated.

3.36   Ofcom expects Openreach to ensure that it can continue to demonstrate why it has reached build decisions at a given time, including why there might be changes from published build plans or why the timings or locations have changed.

3.37   We have seen ongoing improvements by Openreach in its response to overbuild complaints. Over the last year Ofcom received some complaints related to the use of customer confidential information. These complaints were investigated by Openreach through its internal processes and none were upheld. Where requested, Openreach shared non-confidential versions of these conclusions with the concerned party.

3.38   As altnets and Openreach continue to build their networks, there will continue to be instances where multiple networks are being built in the same location. Ofcom expects Openreach to be able to respond to "overbuild"-related complaints and explain how build decisions have been reached. Openreach has its own process for responding to complaints from its customers about Openreach build activity, and we encourage stakeholders to raise these issues directly with Openreach in the first instance. If, following a discussion with Openreach, stakeholders continue to have concerns, they should contact the OMU for further discussion.

Fibre build transparency

3.39   Openreach voluntarily publishes its forward build plans for its Fibre First Towns, Cities and Boroughs and Market Towns and Villages Build Programmes.[31] The published plans and are published at an exchange level.

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[31] More information is available on Openreach's website: https://www.openreach.com/fibre-broadband/where-when-building-ultrafast-full-fibre-broadband

3.40   Some altnets have commented that there is a lack of clarity that flows from the published build plans, in part because of the level of detail in the plans and in part because Openreach does not publish plans covering all of its build activity. In summary, alt-nets have made the following comments:

a) some have observed that the plans are published at an exchange level, but it is not clear if this means that Openreach will connect the entire exchange area to FTTP;

b) others have said that it is not immediately clear what post-codes fall within exchange areas, while others have expressed concerns around the lack of specificity in relation to when Openreach will commence building in any given area; and

c) several also observed that Openreach does not publish its plans in relation to all of its build activity, for example in relation to its retro new sites programme.

3.41   As noted above, Openreach's publication of build plans is voluntary and our main concern here is to ensure that any such publication does not distort competition in the market, for example by publishing misleading information.

3.42   More generally, it is important to note that we would expect that there will be limitations around the extent to which Openreach can provide the clarity that stakeholders want in its fibre-build plans. These include its obligations under competition law.

3.43   We understand that there are times when Openreach may build in an area that is not subject to a publicly announced timetable for a variety of reasons, for example when delivered in response to a request for connectivity under the USO or because a property developer has requested a connection for a new build site. We also understand there might also be operational challenges in determining a very specific time when Openreach will be building in any given area, as Openreach may, for example, find that the infrastructure in a particular area that it plans to build is inadequate upon arrival, and thus have to adapt its plans accordingly, including revising the previous timing of its build activity.

3.44   We also note Openreach's ability to predict the timing and location of its build may be less accurate the further out in time that projection goes. There is therefore a risk that in providing a more detailed but less-certain build schedule for its network, Openreach may deter investment in areas that it may ultimately decide not to build or otherwise arrive at later than it anticipated.

3.45   While Openreach continues to share information with its stakeholders as to the nature of its build plans, it should also seek to be clear about the limits on the amount or nature of the information it can provide.

The move to all-IP services and closure of Openreach exchanges

3.46   As Openreach expands its FTTP network and moves to all-IP services,[32] it will seek to move away from the use of its copper-based lines. As users migrate from copper services to fibre services, many of the current exchanges will no longer be required. As a result, Openreach will look to close some of its exchanges.

3.47   On 3rd December 2020, Openreach published a consultation which set out Openreach's initial thinking on the evolution of its exchange footprint over the next 20+ years and sought views from CPs on these plans. In addition, on 12 November 2021 Openreach published a further consultation on Exchange exit pilots to seek views from CPs on this topic.[33]

3.48   We also understand that Openreach has held bilateral discussions with individual CPs, and led sessions with groups of CPs in industry fora, for example the Copper and Fibre Products Commercial Group.

3.49   It is clear from the feedback we have received from industry that the process for exchange closure is one of considerable importance to Openreach's customers. The closure of any exchange will be a complex task, and one which requires careful planning and close working between Openreach and its stakeholders. We therefore encourage Openreach to take a proactive approach in working with stakeholders, with early and consistent engagement as its plans evolve.

Consumer focus

3.50   In light of its duties, Ofcom seeks to further the interests of citizens and consumers. The strategy set out in the WFTMR aims to secure high quality services, choice and affordable broadband for consumers throughout the UK. We expect industry to keep in mind the need to secure positive outcomes for consumers as they continue to build FTTP networks.

3.51   As Openreach and its customers begin to look towards the challenge of driving FTTP uptake, this will present opportunities to work together to ensure a high-quality experience for customers migrating from copper services to full-fibre. We encourage Openreach to look for opportunities to work collaboratively with its customers to deliver the best possible consumer experience.

3.52   With the increasing focus on the development of FTTP, we must not forget that there will still be many customers that continue to make use of Openreach's copper network for some time to come. Many of our stakeholders have stressed that the importance of ensuring that customers who remain on the copper network continue to receive a high-

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[32] All-IP services use internet protocol (IP) based networks to deliver both broadband and landline telephone services, rather than using the traditional 'public switched telephone network' (PSTN), which has historically been used to deliver fixed-telephony services.

[33] Openreach makes its industry consultations available to its customers on its website: https://www.openreach.co.uk/cpportal/products/industryConsultations

quality service until FTTP is fully rolled-out across the UK. Openreach should continue to work with its customers to achieve this.

3.53   We will therefore want to ensure that sufficient resource continues to be devoted to maintaining quality of service on the existing copper network, and, as set out at paragraph 3.15, we will be monitoring quality of service over the coming years.

Looking ahead

3.54   In response to our call for inputs this year, a number of stakeholders have called on Ofcom to commence a broader strategic review on whether the Commitments and the legal separation of Openreach are delivering the outcomes intended by the Digital Review of Strategic Communications. Some stakeholders have suggested that we should consider whether full structural separation of Openreach and BT should be implemented, while others have called for a revised set of Openreach commitments governing their activity around fibre build and duct and pole access.

3.55   At this time, we consider that the Commitments are working as intended, and we have no immediate concerns around Openreach's ongoing strategic independence.

3.56   To the extent that such a review might be necessary in future, we consider we should wait until such a time when the WFTMR interventions have had time to embed. This is because, while the Commitments and the WFTMR address different competition concerns and establish distinct frameworks, there are linkages between these two interventions, for example in how Openreach develops its fibre strategy independently from BT.

3.57   Ofcom will continue to closely monitor the current arrangements and developments in the market, and should we consider that any changes warrant a broader strategic review we will commence one accordingly.

3.58   As we have made clear in this report, Ofcom will continue to closely monitor the Commitments and the broader outcomes relating to the WFTMR. This work will take place alongside other relevant areas of Ofcom activity, which includes, for example, consideration of changes to Openreach's charges, terms and conditions for network access products and services in each of the relevant fixed telecoms markets.[34] Where we are concerned that such terms could have anti-competitive effects, Ofcom will be ready to intervene as necessary.

3.59   We encourage our stakeholders to bring issues to us where they are concerned that the expected outcomes from the WFTMR are not being met. We will be vigilant in monitoring the WFTMR framework and remain ready to use the tools at our disposal to support the policy, including through the use of Ofcom's enforcement function where appropriate.

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[34] In the WFTMR we said that the use of certain commercial terms by Openreach may give rise to competition concerns by deterring new network build by alternative network operators. We said we would consider proposed commercial terms that may deter altnet build on a case by-case basis, and where necessary we would intervene to prevent such terms, including using our direction making powers under SMP conditions.